REPORT

FROM

THE SECRETARY OF STATE,

In compliance with a resolution of the Senate, in relation to the operation of the Bankrupt law.

DECEMBER 27, 1842.

Read, and referred to the Committee on the Judiciary, and motion to print referred to the Committee on Printing.

DECEMBER 28, 1842.

Ordered to be printed.

To the Senate of the United States:

In compliance with the resolution of the Senate of the 13th instant, circular letters were addressed by this Department to the judges and clerks of the courts of the United States, and to the district attorneys. Answers to many of these letters having now been received, they are herewith transmitted to the Senate.

DANIEL WEBSTER.

DEPARTMENT OF STATE, *December* 27, 1842.

To the clerks of the United States District Courts.

DEPARTMENT OF STATE,
Washington, December 15, 1842.

SIR: You will receive herewith a copy of a resolution adopted on the 13th instant by the Senate of the United States, to which your prompt attention is requested.

You will please state the number of applications made under the bankrupt law, both in the circuit and the district courts for the district of ; distinguishing applications made by persons desirous to be made bankrupts from applications made by creditors; the number of discharges; the number of cases in which discharges have been refused, and the number of cases still pending.

If your observation has enabled you to suggest any modifications of the law which you think would be useful, or if you have any other information which you deem important, as tending to show the effects and operations of the law, you will please state such modification, and communicate all such information in your reply to this letter.

Circumstances render it expedient that your answer should be forwarded with all practicable despatch.

Yours respectfully,
DANIEL WEBSTER.

To the United States attornies for the States and Territories.

DEPARTMENT OF STATE,
Washington, December 14, 1842.

SIR: I enclose you a copy of a resolution passed by the Senate of the United States on the 13th instant, and I have to ask your immediate attention to the subject of it.

The clerk of the courts of the United States in the district of , has been requested to give information of the number of cases or applications, as required by the resolution. As your practice in the courts may have enabled you to suggest useful amendments or modifications of the law, as well as to observe its effects and operation, you are desired to communicate any such suggestions as may have occurred to you in these respects, and any information which may be in your power.

I am, with regard, your obedient servant,

DANIEL WEBSTER.

To the Judges of the United States.

DEPARTMENT OF STATE,
Washington, December 14, 1842.

SIR: Herewith I have the honor to transmit to you the copy of a resolution of the Senate adopted on the 13th instant. You will fully learn the objects from the resolution itself. Statements of the number of applications and discharges have been requested from the clerks, so that you need not be called on to perform any duty of that kind. But if your observation and judicial experience have enabled you to suggest alterations or amendments of the law, or if you are able to give information which you may deem important in regard to its effect and operation, I shall be obliged to you to communicate such suggestions or information as soon as convenient, to be laid before the Senate.

I have the honor to be, with high respect, your obedient servant,

DANIEL WEBSTER.

OFFICE OF THE CLERK U. S. COURT, MAINE DISTRICT,
Portland, December 19, 1842.

SIR: In reply to yours of 15th instant, received this day, I have the honor to state, the total number of petitions filed in the United States courts, for Maine district, under the bankrupt law, up to the present time, is two thousand eight hundred and seventy-nine.

Voluntary petitions - - - -	2,865
Involuntary or creditors' petitions - - -	14
Total entered - - - -	2,879

The whole number of cases in which decrees of bankruptcy have been passed by the courts is - - -		2,455
Cases in which the petitioners have moved for leave to withdraw their petitions - - - -		8
Number of cases now pending for decree - -		416
		2,879
The whole number of cases in which those decreed bankrupts have petitioned for a certificate of discharge, is - -		1,429
The number to whom certificates have been decreed by the courts - - -	467	
Number now pending for such certificates of discharge	962	
		1,429

The courts have not, *in any* case in this district, passed a decree *refusing* the certificate of discharge. A small number only of the bankrupts are opposed by their creditors, which cases have not as yet been disposed of.

Respectfully, your obedient servant,

JOHN MUSSEY,
Clerk United States Courts.

Hon. DANIEL WEBSTER,
Secretary of State, Washington.

PORTLAND, *December* 21, 1842.

DEAR SIR: I have duly received yours of the 14th instant, desiring me to suggest such useful amendments to the bankrupt act as may have occurred to me.

The operation of this act in this district has, I think, been salutary; debtors deeply insolvent have resorted to it for relief, and, so far as my observations have extended (and I have been a very close observer), there have been very few cases of fraud.

In the district court here, the examination of bankrupts has been very strict, and the ordeal a severe one; and I know of no cases where I even *suspect* that fraud has escaped detection. Its retrospective effect is nearly over, and, in prospect, creditors were beginning to look to it as a regulator to check and control credit.

No amendment occurs to me at present, except to include *moneyed or trading corporations*, such as banks, manufacturing companies, &c., not to include those that are *eleemosynary* merely. I think such a provision, properly regulated, would promote the public interest, and effectually check irresponsible and speculating associations, which are but too often combinations to swindle the public. Such a provision would be of no detriment to the employment of capital where it is *real*, but might detect that which is *fictitious*.

I verily believe that the bankrupt law should have a fair trial in its *pros-*

pective operations, and that such an amendment would be an improvement.

I am, sir, with high respect and consideration, yours truly,

J. HOLMES,
District Attorney United States.

Hon. DANIEL WEBSTER,
Secretary of State.

NOTE.—Allow me to subjoin, that, in cases of *involuntary* bankruptcy, the *acts* and *persons* are too limited, additional acts and persons should be subjects or grounds of *compulsory process.*

DISTRICT CLERK'S OFFICE, MASSACHUSETTS DISTRICT,
Boston, December 20, 1842.

SIR: In compliance with the directions contained in the circular from the Department of State, I have the honor, herewith, to forward a statement of the cases in bankruptcy in this district.

I am, very respectfully, your obedient servant,

FRANCIS BASSETT, *Clerk.*

Hon. DANIEL WEBSTER,
Secretary of State.

Report of the number of applications, &c., under the bankrupt law in the district court of the United States, Massachusetts district.

Number of petitions by bankrupts.	Number of petitions by creditors.	Number of cases, discharge granted.	Number of cases, discharge refused.	Number of cases, petitions for discharge pending.	Whole number.
2,392	31	–	–	–	2,423
		973	2	571	1,546

DISTRICT CLERK'S OFFICE,
MASSACHUSETTS DISTRICT, *Boston, December* 20, 1842.

FRANCIS BASSETT,
Clerk of the Court.

U. S. ATTORNEY'S OFFICE,
New York, December 19, 1842.

SIR: I have the honor to acknowledge the receipt of your circular of the 14th instant, directing my attention to the resolution of the Senate of the United States, in reference to the bankrupt law, and asking me to "communicate such amendments or modifications of the law as my practice in the courts may have enabled me to suggest."

My practice in the courts, under the bankrupt law, has been very limited; I have not been employed in a single case, either for the petitioner or the opposing creditors. My attention has been directed solely to those cases where the United States were creditors, in order to protect the interests of the Government, and secure the priority of payment out of the assets of the bankrupt. In not a single case, I believe, have the assets of the bankrupt yielded anything to the United States; and I have had no opportunity so "to observe the effects and operation of the law," as to make any suggestions of mine useful to you or to the Senate. Judge Betts, whose time and attention have been devoted, indefatigably and zealously, to the administration of this law, and who has had a greater opportunity of observing its operation than perhaps any other individual in the United States, can, no doubt, furnish all the information and suggestions that the resolution of the Senate seeks.

Very respectfully, your obedient servant,

O. HOFFMAN,
U. S. Attorney.

Hon. DANIEL WEBSTER,
Secretary of State.

U. S. DISTRICT CLERK'S OFFICE,
Southern District New York, December 17, 1842.

SIR: In reply to your communication bearing date the 15th instant, and this morning received, I transmit the statements of bankruptcy applications, both voluntary and involuntary, contained in the accompanying schedules marked A and B, and embracing as full answers to the information sought for as my dockets and files afford up to this date, inclusive.

In addition to the statements contained in the schedules above referred to, I would state, that *one hundred and twenty-five* cases have been contested before the court, sometimes upon points of law only, and at others on full proofs; these have been generally argued by counsel on both sides.

The judge has rendered *ninety-four* decisions on written opinions, besides numerous decisions on points of practice, amendments, and other incidents to the proceedings, which were not formally contested, and were disposed of orally as they arose and were presented to the consideration of the court.

I would further state, that all the bankruptcy applications, either voluntary or compulsory, have been made in the first instance to the district court, and the circuit court has not taken cognizance of the proceedings, except on appeal from the decision of the district court, or on adjournment of law points by the district judge. The number of such cases in this district has been comparatively small; only *two* being carried up on appeal, and *six* on adjournment.

I would also add, that the number of applications under the compulsory branch of the bankrupt act, has been on the increase within the last four months, and that the number of voluntary applications for the benefit of the act during the past month, greatly exceeds those in any one antecedent month.

The inquiry for information respecting the operation or structure of the act appears to be intended for the judges, and I accordingly do not feel authorized to offer any suggestions of my own on that part of your communication.

I respectfully subscribe myself your very obedient servant,

CHAS. D. BETTS,
Clerk for the Southern District of New York.

Hon. DANIEL WEBSTER,
Secretary of State, Washington, D. C.

SCHEDULE A.

Statement of different matters relating to bankruptcy applications in the southern district of New York, and inquired of by the Department of State, under the resolution adopted by the Senate of the United States bearing date December 13, 1842.

Under the voluntary provisions of the bankrupt act.

Number of petitions still pending, and to which no objections are filed	930
Number of petitions filed, and to which objections have been interposed, still pending, and objections not disposed of	47
Number of petitions to which objections have been interposed	118
Number of petitions which have been withdrawn and new ones filed, petitioners being denied decrees of bankruptcy on first papers	4
Number of petitions withdrawn before proceedings perfected, and in which new petitions were not filed	2
Number of petitions to which dissents of majority in number and value of creditors were filed, and cases in which trials by jury were had on application of bankrupt	2
Number of petitions to which dissents of majority in number and value of creditors were filed, and cases in which trials by jury were had on application of bankrupt in the circuit court on appeal from district court	1
Number of petitions filed to which objections were interposed, and trials by jury had in district court, and which are still pending	1
Number of petitions on which discharge was absolutely denied by judge	1
Petitions filed in which the application was made by copartners	30
Total number of voluntary applications to date	1,859

SCHEDULE B.

Under the involuntary provisions of the bankrupt act.

Number of petitions still pending, and to which no objections are filed	37
Number of petitions filed, and to which objections have been interposed, still pending, and objections not disposed of	20
Number of petitions to which objections have been interposed	20
Number of cases in which a decree of bankruptcy was denied on objections	1
Number of cases in which proceedings were stopped by consent before decree of bankruptcy	9
Number of cases in which decrees of bankruptcy were granted, and then on bankrupts voluntary application discharge granted	2
Number of cases in which the petitioning creditors were copartners	22
Total number of involuntary applications to date	60

Of the thirty voluntary applications as copartners, two were composed of three persons, and the rest of two.

Of the voluntary petitions filed, five were by females.

Total number of voluntary and involuntary petitions, filed to December 17, inclusive, 1,919.

Total number of discharges granted to December 17, inclusive, 867.

CHARLES D. BETTS,
Clerk for the Southern District of New York.

NEW YORK, *December* 19, 1842.

SIR: I had the honor to receive this morning your circular of the 14th inst., transmitting a resolution of the Senate adopted on the 13th, and requesting me to communicate to you as soon as convenient, the suggestions and information called for by that resolution.

I hasten to comply with your request, and that I may meet it with promptitude, I shall offer my views, without delaying the communication to give them more of method or thoroughness.

They will necessarily be desultory, for although numerous defects or insufficiencies have been discerned in the law in the progress of its administration, I never arranged the observations with a view to the amendment of the act, nor have I even preserved minutes of them except in instances where they became points for judicial decision.

I shall therefore be compelled to offer such as occur to my memory without much regard to order.

I shall assume that the leading features of the act are to be preserved, and shall limit my suggestions of amendments to particulars, which may aid in giving greater precision and simplicity to some of its provisions; and these amendments will relate chiefly to the powers or authority given by the act, and the mode of proceeding under it.

My views may probably be most clearly and succinctly presented in the form of enactment, and I shall venture to propose them in that manner:

1. The acts of fraud upon the act, designated in the second section, shall be deemed acts of bankruptcy.

2. A partnership shall not be declared bankrupt because of insolvency merely; nor unless they have committed acts which would subject an individual to a decree of bankruptcy.

3. Liens or securities upon the lands or chattels of a bankrupt, valid by the laws of the State where he resides, shall not be impaired or invalidated by any subsequent act of bankruptcy.

4. A bankrupt's estate shall vest in the assignee, on a decree of bankruptcy, from the time the petition is filed.

5. The equity powers of the courts in bankruptcy after a petition filed, shall extend to securing, taking into possession, or ordering to sale (if necessary), any property or rights of property of the bankrupt, to which the assignee might become entitled on a decree of bankruptcy.

6. On decrees of bankruptcy rendered in different districts against individuals composing a partnership, or other joint debtors, the joint estate shall vest in the assignee resident in the district where such estate is situated without regard to the order of time in which the respective decrees may be rendered. The district courts shall take proper order for transferring to the appropriate assignee, every such decree of bankruptcy.

7. On a decree of bankruptcy against individuals of a partnership, the assignee shall be vested with their separate interest only; nor shall the voluntary application of copartners, less in number than the whole, lead to a decree of bankruptcy against the partnership.

8. The wife of a bankrupt may be examined touching his property and rights of property.

9. Creditors shall have the same right as a bankrupt to demand a trial by jury on his petition for a discharge.

10. The assignee may set apart to the bankrupt (when not purchased by him in contemplation of a decree of bankruptcy), his necessary household furniture in actual use by him or his family, provisions or family stores necessary to the family; tools of trade, professional books or instruments, or other articles belonging to the occupation of the bankrupt and necessary to its prosecution, not exceeding in value the sum of three hundred dollars.

11. Amendments to proceedings in bankruptcy may be allowed to the like extent as in suits at law or equity.

12. On the refusal of the district judge to adjourn a point to the circuit court, either party may appeal from the decision *on* the point, in the same manner as from the decision denying a decree of discharge to a bankrupt.

13. All hearings in proceedings in bankruptcy may be before, and all orders may be given by a commissioner in bankruptcy in the district where the bankrupt resides, except for a decree of bankruptcy or final discharge, with the right of summary appeal from his decision to the district judge.

14. The court shall designate competent commissioners to execute these powers, not exceeding two in any one city or town, and they shall proceed in conformity to such rules and orders as the court may from time to time prescribe.

15. Debts may be proved by foreign creditors before any minister, consul, or commercial agent of the United States, resident in the same country with the creditor, or before a commission appointed for the purpose by the proper court.

16. Debts may be proved in the United States before commissioners ap-

pointed by any circuit court to take affidavits, &c., in civil cases, and residing in the same district with the creditor or the witness who proves the debt.

17. Creditors residing abroad shall for all purposes of notice be regarded as residing within the United States, and no other service of notices on them need be made than the publications directed in the newspapers. But notices to known agents of foreign creditors resident in the United States shall be the same as if they were principal creditors.

18. Notices sent by mail shall be post-paid, and be addressed to the creditor or his agent at the place of residence described in the proof of debt. If none is there designated, and his present residence is unknown, then to his last place of residence.

19. The creditors representing the larger amount of the bankrupt's debts, shall be deemed the majority in number and value of his creditors. The amounts shall be ascertained from the schedules and proofs of debts filed.

20. Costs may be decreed in all controverted cases, and motions and remedies be given therefor, in conformity with the principles and usages of courts of equity.

21. Publication of notices in a single newspaper at one place and one insertion a week during the period of notice ordered, shall be sufficient.

22. If a majority of creditors who have proved debts assent thereto in writing, the assignee, out of the estate of a bankrupt in his hands, sufficient therefor, shall pay the necessary expenses of the bankrupt in the proceedings to a decree of bankruptcy, and also to a decree of discharge.

I should not trouble you with any suggestions in regard to the effects and operation of the bankrupt law, were they not particularly invited by you, as I presume very little information can have been acquired by me in that respect, not open and equally known to the public.

It affords me satisfaction to state my conviction that most of the applicants whose cases have come before me, are meritorious objects for the provisions and privileges of the law.

The greatest proportion of them are hopelessly insolvent, and the amount of indebtedness exhibited by the schedules is of appalling magnitude; yet so far the jealous and vigilant scrutiny of creditors has brought to light no acts of dishonesty or unfairness tending to discredit these debtors as a class. As a general fact, their integrity stands untarnished.

Another prominent particular in most of the cases in this city is, that the debtors have exhausted all resources before appealing to the bankrupt act. It is very rare that a pittance of property remains for distribution among the mass of debts with which the schedules labor; and from the general acquiescence of creditors in the discharge of applicants, it is just to believe that whatever of means they possessed were honestly applied in efforts to sustain their credit and meet their liabilities. For out of seventeen or eighteen hundred voluntary applications, only about one hundred have been opposed, and in a large proportion of these cases, the opposition was made to a decree of bankruptcy, and was not continued against a petition for discharge.

Another noticeable particular is, the small proportion of applicants become bankrupt under the pressure of mercantile debts.

There are many instances, it is true, of merchants of high character and wealth, who are driven by reverses in business to this relief; yet I am persuaded it will hold true as a general remark, that far the greatest part of the indebtedness relieved by the act is not of a mercantile character.

Another particular worthy notice, is the comparatively small number of

bankrupts who have made voluntary application in this district; taking into view its population, and business, and peculiar relation to other parts of the country, it may be regarded remarkable, that instead of outnumbering every other district in the Union in applicants, it is among the lowest in the scale. It is understood that this is owing to a very general composition of mercantile debts, induced to a considerable degree by the passage of the law, which has in that way effected relief to a deeply suffering class of debtors without driving them to open bankruptcy.

While the aggregate of bankrupt cases is less than was anticipated, and those of the voluntary class are probably nearly exhausted, the proceedings in compulsory bankruptcy have undoubtedly equalled in number those in any other district; and this branch of the business is on a rapid increase.

Complaints are frequent here on the part of bankrupts, that the expenses are too heavy, and that the bankrupt is not allowed to take them from funds on his inventory.

Creditors complain that too many advantages are awarded bankrupts, and that the proceedings are too summary.

There is doubtless reason for both complaints. The charges might be properly abridged, and the creditors may require additional time and facilities for testing the debtors' claims to a discharge. Some of the amendments I have suggested are directed to both these objects.

The tariff of fees and charges, the court was directed, by the sixth section of the act to prescribe, was necessarily, in the first instance, experimental. It was framed with a view to supposed services that would be performed, and allowed less, therefore, than was then taxable, under the State law, for like services; and it was believed to be so constructed as to make the aggregate of expenses short of the taxable costs in an ordinary suit between individuals contested in the State courts.

The power given by the act to vary the tariff from time to time, was not exercised immediately after the act went into operation, because it was notorious that the subject was before Congress, and was soon embraced in the act of May 18, 1842 (No. 167), so far as respects fees of attorneys and clerks in this State. That provision has rather increased than diminished the allowances previously fixed by the court.

I am persuaded the taxable costs would not be regarded excessive or a grievance, measured by the services rendered in each particular case. They become essentially too high, only because of the great number of cases from which they may be received by any one officer.

Thus, if the number of cases should be 2,000 a year, a small charge on each would produce a heavy emolument; but if, as is most probable, should the law be continued, the cases hereafter will not exceed 200 a year, the present rate of charges will not more than defray the expenses in this city of carrying on the business.

The heaviest disbursement will, ordinarily, be for attorneys and counsel fees; and these, almost universally, are matters of bargain between the parties. While the taxable items need not exceed fifteen or fifty dollars, the actual charge may be many hundreds. It would be quite natural that a debtor, getting freed of debts ranging from $100,000 to $2,000,000, would pay large compensations to his legal advisers. This matter can not well be restrained or limited by rules or enactments. I hope it will not be deemed improper for me to call your attention, and that of the Senate, to another consideration of moment in this district, and, undoubtedly, of like importance

in others: that, unless the courts can be, in some degree, relieved of the administration of the bankrupt act, all other judicial business must be left unattended to. More than an entire half of the time is devoted by the district court here to bankrupt cases, and that is insufficient to dispose of them as fast as they arise. This is so now, when the contestations bear an inconsiderable proportion in number (about one to twenty) to the cases presented.

The old and desperate cases being now, in a good measure, out of the way, there will hereafter be, undoubtedly, a more urgent opposition to voluntary applications; and the compulsory cases, greatly on the increase, must always present subjects of controversy between adversary creditors, as well as the immediate parties to the proceedings.

Should the cases now exceed ten times the numbers to follow in succeeding years, yet the labor of disposing of from one to two hundred cases, with their collateral issues and equities, would absorb two thirds or three fourths of all the judicial days of the year.

I think the more oppressive portions of this labor may be performed by commissioners on preliminary hearings, only bringing before the courts, by appeal, points of weight and difficulty, and reserving to the judges a portion of time for the other important business of the district; and I have ventured to suggest, in the amendment proposed, a provision meeting that object.

I feel it owing to myself to add, that although I have endeavored to apply the most assiduous diligence to all branches of my duties, and have been actually sitting and hearing causes every day of business since the first of February last (with an intermission of about two weeks in mid-summer), it has not been within my power to dispose of the bankrupt business and the law and admiralty cases pressing upon the court for trial and decision.

This difficulty must continue to augment, and will soon become a great evil, in regard to the rights and interests of suitors, as well as those of the Government.

I have, accordingly, taken the liberty, with great deference, to suggest that additional powers may be given a limited number of commissioners, for the relief of the courts in districts where other duties disable the judges from devoting to bankrupt business the time required for its prompt despatch.

I have the honor to be, with great respect, your obedient servant,

SAMUEL R. BETTS.

Hon. DANIEL WEBSTER,
Secretary of State.

NEW YORK, *December* 21, 1842.

SIR: I perceive on recurring to the notes of my report of the 19th instant, transmitted you yesterday, that I omitted one amendment intended to have been included, which I regard of great importance if the compulsory provisions of the bankrupt law are continued in force.

It was to have been inserted as No. 2.

2. Procuring a credit, or purchasing or procuring goods, merchandise, or stocks, on false representations or pretences, or with intent to cheat, shall be an act of bankruptcy.

Several gross cases within the purview of this amendment have come before me, and were found not to be provided for under the existing law.

I have the honor to be, with great consideration, most respectfully yours,

SAM'L R. BETTS.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE OF CLERK OF THE DISTRICT COURT OF THE U. S.,
DISTRICT OF NEW JERSEY, *December* 19, 1842.

SIR: I have the honor to acknowledge the receipt of yours of the 15th instant, and in reply to state:

That the number of voluntary applications for the benefit of the bankrupt law filed in the District Court of New Jersey to this date, is six hundred and seventy-three.

That the number of involuntary cases in said court, to this date, is five.

That the number of discharges which have been granted to this date is three hundred and ninety-six.

That the number of cases now pending is two hundred and seventy-five.

That the number of discharges refused is *one.*

The only "information which I deem important as tending to show the effects and operations of the law," is the fact that none apply for the benefit of its provisions who are not hopelessly insolvent. As a proof of this, no one case has come to my knowledge, where the assets would pay six per cent. upon the schedule of claims, and not one case in ten pays anything at all. Thus making manifest that the law is not seized upon as a means of disentangling the applicants from their engagements, until all hope of being able to fulfil them is at an end. Indeed, so entirely do creditors understand this, that of the actual claims scheduled, not ten dollars in the thousand is ever proved. The law appears to be, thus far, merely the sponging out in form, what was, on all hands, held to be lost in fact, long since.

Invited by your letter "to suggest any modifications of the law which I think would be useful," I respectfully submit the following:

1. That the acts of bankruptcy in the involuntary branch of the law should be so increased, as to embrace all acts done with intent to defeat, delay, or prefer creditors—such as confessing judgments sufficient to cover all his property, assigning all his estate and effects, filing petition to take the benefit of the insolvent law, &c.

2. That no voluntary petitioner should receive his discharge, where one third of his creditors in value, who had proved their debts, united in dissenting.

You will perceive from the return of involuntary cases, that that portion of the law in this State is a dead letter. And the chief objection urged against the voluntary part of the law, aside from its retrospective operation, is the helpless condition in which it places creditors.

With great respect, I am your obedient servant,

JOSEPH C. POTTS, *Clerk.*

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE CLERK DISTRICT COURT U. S.,
EASTERN DISTRICT OF PA., *Philadelphia, Dec.* 19, 1842.

SIR: The circular from the Department of State dated the 15th instant was received on Saturday the 17th, and in compliance with it I state as follows:

Up to and including the 17th instant, the number of applications under the bankrupt law, filed in this office, was 1,295, of which 1,269 are voluntary, and 26 are involuntary, or petitions by creditors.

Of the 26 applications by creditors, one has been discharged and received his certificate, eleven have been dismissed or settled without any final order of the court, and the remaining fourteen are still pending.

Of the 1,269 voluntary applications, 530 have been discharged—545, after having passed to a decree of bankruptcy, are either waiting the day appointed for hearing on petition for discharge and certificate, or are suspended for non-compliance with some of the rules of court, or have been withdrawn, and 194 have not yet passed to a decree of bankruptcy.

Discharges have been refused in thirteen cases only. Most of them on account of assignments with preferences, since the 1st of January, 1841, which may probably debar from a discharge a portion of the 739 voluntary applicants whose petitions are still pending. The result is therefore:

Whole number of voluntary petitions - -	1,269	
do do by creditors - - -	26	
		1,295
Discharges - - - - - -	530	
Decreed bankrupts and pending - - -	545	
Pending and not yet decreed bankrupts - -	194	
Involuntary bankrupts discharged - -	1	
do do petitions dismissed or settled -	11	
do do still pending - -	14	
		1,295

Very respectfully, your obedient servant,
FRA. HOPKINSON,
Clerk District Court.

HON. DANIEL WEBSTER,
Secretary of State.

PHILADELPHIA, *December* 23, 1842.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant enclosing a copy of a resolution of the Senate of the United States relative to the bankrupt act, and asking suggestions of any useful modifications of the same.

The act, owing to the conflicting opinions of courts of co-ordinate jurisdiction, operates unequally in the different districts of the United States; and it therefore seems to me expedient so to amend it as to confer upon the Supreme Court a power to revise and correct. This would rectify the incongruity of decisions.

A wide difference of opinion already exists between Mr. Justice Story and Mr. Justice Baldwin as to the construction of the third section of said act: the former holding it to be the duty of the court to control the pro-

cess of the State courts by injunction after the presentation of a petition in bankruptcy; and the latter that, in the interval of the petition and decree, the estate of the petitioner is subject to the execution of his creditors issued from the State courts.

I think it would be judicious to amend the section so as make the decree in bankruptcy relate to the time of petition, and thus to preserve the estate from the grasp of the foremost creditor, for an equal distribution among all.

In this district it has also been decided that after petition the person may make a general assignment of his estate without preferences, and that such a deed would be valid.

The effect of this would be to subject the estate of the bankrupt, who avails himself of the privileges of the act, to the operation of the State laws, which differ very materially from each other, and from the provisions of the bankrupt act.

Both the assignee and the estate assigned ought, in my humble judgment, to be kept under the control of the court, according to the general provisions of the bankrupt act. Perhaps a salutary amendment might be made in the selection of the assignee by a majority in amount of the creditors.

Some inconvenience has been felt here by debtors who have made assignments with preferences since the first of January last, and before the passage of the bankrupt act, and have thus been deprived of the benefit of it. It would be a humane policy to relieve these unfortunate persons, when there has been no fraud committed.

Some inconvenience has also resulted from the want of uniformity in the proof of debts out of the district of the petitioner.

My inexperience of the practical operation of the act does not enable me to make any further suggestions.

I have the honor to be your humble servant,

H. M. WATTS,
U. S. Attorney, Eastern District, Pa.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE U. S. DISTRICT ATTORNEY,
Western Dist. of Penn., Pittsburg, Dec. 21, 1842.

SIR: I have the honor to acknowledge the receipt of your communication of the 14th instant, in relation to the resolution of the Senate of the United States, asking certain information as to the bankrupt law.

I herewith enclose you a communication from the clerk of the district court of the United States for the western district of Pennsylvania, showing the number of applications under the bankrupt law, up to this date, to be one thousand five hundred and seventy-seven, all of which are voluntary applications except five. The number of discharges decreed is four hundred and forty-eight, leaving one thousand one hundred and twenty-nine applications yet to be disposed of. The honorable Thomas Irwin, judge of the district court of the United States, will communicate to your Department his views, as to amendments or modifications of the act, as he may entertain.

The great objection to the bankrupt law in this district is, that those persons, who are least entitled to the benefit of the act, have availed themselves of it. So far as this is considered a public wrong, the injury has been already effected: for those least entitled to the benefit of the law have in almost all cases, been the most prompt to apply for it, and have obtained their discharges. The unconditional repeal of the act would, therefore, seem to operate against the honest but unfortunate debtor, who, thus far, has been struggling along, and refusing to become bankrupts so long as any other resource was left them.

So far, the law has been almost exclusively used for the benefit of the debtors. In this district, compulsory process in bankruptcy has been applied for but in five cases. It is believed that, hereafter, the law will operate for the benefit of the creditors, who have already suffered under the voluntary bankruptcies.

It will be observed that a large number of applications in this district are yet undisposed of. These applicants have paid fees, &c., and it would seem to be right that, if the law is repealed, provision should be made to perfect their discharges.

I have the honor to be, very respectfully, yours, &c.

C. DARRAGH,
U. S. Attorney.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE, CLERK DISTRICT COURT U. S.,
For the West. Dist. of Penn., Pittsburg, Dec. 20, 1842.

DEAR SIR: In compliance with your request, I now inform you that the number of applications under the bankrupt law, in the western district of Pennsylvania, up to and including the 19th instant, is one thousand five hundred and seventy-seven; of which number, one thousand five hundred and seventy-two were voluntary, and five involuntary; and, of the whole number, there have been four hundred and fifty-eight discharges.

Very respectfully, your obedient servant,

A. A. IRWIN, *Clerk.*

CORNELIUS DARRAGH,
Attorney for U. S., Pittsburg.

WILMINGTON, *December* 20, 1842.

In answer to your communication of the 14th, with a copy of the resolution of the Senate of the 13th:

It is uncertain, whether persons owing debts contracted in a fiduciary capacity can claim the benefit of the bankrupt act. They being excluded by the first section from the description of persons who may apply for this benefit, it is not seen how the clause, in section 4th, concerning persons applying, after the passing of the act, trust funds to their own use, can have the effect to modify this exclusion. But there are different opinions upon the point.

In this State, it would conduce to the convenient execution of the law, to give power to the assignee to sell real estate clear of liens by judgment, recog-

nisance, and *mortgage;* requiring the application of the proceeds of the sale to the liens according to their legal priority, and excepting all liens not being debts, or ascertained sums. There is now a case in this district in which the real estate, it is supposed, can not be sold, because of a lien by mortgage; and the expense and delay of proceeding upon the mortgage must be incurred. Our State law, authorizing the sale of real estate of deceased persons for the payment of their debts, confers the power to sell clear of such liens; providing for the application of the proceeds as suggested.

It is thought, that upon a decree of bankruptcy the court ought to have power to discharge the bankrupt from imprisonment for debt, upon whatever process confined. This is not the construction of the act.

With great respect,

WILLARD HALL.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE OF CLERK DISTRICT COURT U. S.,
Delaware District, Wilmington, December 21, 1842.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant.

The number of applications made under the bankrupt law in the district court up to the present period has been seventy-four, all of which have been made by persons desirous to be made bankrupts; the number of discharges has been twenty-nine; the number of cases in which discharges have been refused, one; the number of cases still pending, forty-two; and two have been withdrawn. No applications have been made in the circuit court, and none by creditors.

I have the honor to be, sir, very respectfully, your obedient servant,

T. BOOTH ROBERTS,
Clerk District and Circuit Courts U. S. for Delaware district.

Hon. DANIEL WEBSTER,
Secretary of State, Washington, D. C.

DISTRICT COURT OFFICE,
BALTIMORE, *December* 16, 1842.

SIR: This morning I received your printed letter of yesterday's date, together with a resolution of the Senate of the 13th instant, making inquiries relative to the bankrupt law.

In reply thereto, I have the honor to state, that there have been filed in the district court of the United States for the district of Maryland, as follows, viz:

Petitions in voluntary bankruptcy		371
Discharges granted	99	
Petitions withdrawn	4	
Rejected	1	
Pending	267	
		371

Petitions in involuntary bankruptcy - - - - -		8
Dismissed - - - - - - -	6	
Declared bankrupt - - - - - - -	1	
Pending - - - - - - -	1	
		8

No petitions have been filed in the circuit court, either voluntary or involuntary. There are a great many objections made to the law, both by the bench and the bar, in its present form; but all agree that a proper law would be beneficial to the country.

Respectfully your obedient servant,

THOS. SPICER,
Clerk of the District Court.

Hon. D. WEBSTER,
Secretary of State.

RICHMOND, VIRGINIA, *December* 20, 1842.

SIR: Your communication, under date of the 14th instant, enclosing a resolution of the Senate, directing inquiries to be made respecting the provisions and operation of the bankrupt law of 1841, was received by the last mail, and I reply to it without delay. With regard to the details of the statute in question, an attentive perusal of them must, I think, convince every one that they are marked with great want of clearness and precision; and abundant support of the opinion here expressed seems to be supplied in the varying decisions of the judges by whom those provisions have been interpreted. Upon the justice and policy of a bankrupt system, we know that widely differing opinions are entertained in this country; and it is scarcely possible that those more general and fundamental opinions should not exert an influence upon conclusions which may have been formed relative to the particular plan now in operation. My opinion, however, having been asked, I am bound to say, that within the range of my observation and experience, I believe its effects to have been detrimental. That although many individuals may have found relief from the law, yet this, as a social result, has been greatly overweighed by the decay, I might, perhaps, be warranted in saying by the destruction, of confidence, and of wholesome credit, the consequent withdrawal of pecuniary facilities, and the torpor of useful energy and enterprise. A remedy for the evils just adverted to, is not, I verily believe, to be found in modifications of the existing law, but in its simple and unconditional repeal; and in a restoration to the community of a course of things to which they have been long accustomed, and in which they believe they can confide.

Yours, with respect, &c.

P. V. DANIEL.

Hon. SECRETARY OF STATE.

RICHMOND, *December* 20, 1842.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, enclosing a copy of a resolution passed by the Senate of the

United States, in relation to the bankrupt law, and desiring me to communicate my views of its operation and effects, and also to state whether my observation has suggested any useful amendment or modification of its provisions.

With respect to the operation of the law and its effects upon the community, I am constrained to say, that, while it may have done some good in releasing from thraldom many honest, but unfortunate individuals, its general tendency and influence are decidedly pernicious. I believe it is calculated to weaken the sense of moral obligation, and to impair that confidence between man and man which is so essential to the prosperity of every, and especially a commercial community.

It has had the effect, I doubt not, in many instances, of inducing individuals to apply for its benefits, who would otherwise have been able, by the exercise of ordinary industry and economy, to have met all their engagements. And thus, by greatly facilitating a release from debts, it holds out an invitation to extravagance and imprudence.

The foregoing remarks apply to the voluntary branch of the system. Very few cases of involuntary bankruptcy have occurred in this district, which induces me to suppose that that which I considered the only valuable and useful portion of the law is not found, in practice, to be as essential for the protection of creditors, as was anticipated, but that *they* are content with the remedies provided by the pre-existing laws for securing and recovering their debts.

From the opinions above expressed, in regard to the operation and tendency of the bankrupt act, I am led to the conclusion, that the wisest course for Congress to pursue upon the subject, would be, to repeal the law *in toto*. But, if they should come to a contrary conclusion, and determine to continue the system, there are many parts of the present act which I should humbly think would require amendment, for the purpose, at least, of removing doubts in regard to the proper interpretation to be given them. The points upon which those doubts have occurred, have been made the subject of judicial investigation and decision, and will no doubt be reported (in compliance with the request of the Senate) by the judges who, in their official character, have been called upon to consider them. The two questions of most importance, which have occurred in this district, in regard to the interpretation of the law, are, 1st. Whether an individual, owing a debt in a fiduciary character, is entitled to the benefits of the bankrupt act, and, if at all, to what extent; opposite opinions have been given in different circuits of the United States.

2d. Whether a deed of trust or assignment made after the passage of the bankrupt act, by an individual whose property is insufficient to pay all his debts, whereby he gives a preference to one or more creditors, over the other creditors, is an act of bankruptcy, which will authorize the court to declare him a bankrupt, on the petition of the creditors, not provided for in the deed of assignment.

I have, in the foregoing remarks, endeavored to respond, as fully as possible, to the inquiries contained in your letter, above referred to, and am, with very great respect, your obedient servant,

ROBERT C. NICHOLAS,
United States Attorney Eastern District of Virginia.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE CLERK CIRCUIT COURT,
Washington county, D. C., Dec. 21, 1842.

SIR: In answer to your circular of the 15th instant transmitting a copy of the resolution of the Senate passed on the 13th instant, in relation to cases of bankruptcy, I have the honor to lay before you the following list of cases which have been brought before the circuit court of the District of Columbia for the county of Washington, with the disposition which has been made of them, viz:

Three involuntary cases, two of which were abandoned by the creditors, and the third prosecuted to bankruptcy.

186 voluntary cases:	Discharges refused - - - -	2
	Discharges granted - - -	85
	Cases still pending - - - -	66
		153
Cases in which the parties neglected to prosecute their application or failed to comply with the orders of the court - -		33
		186

I am, sir, yours respectfully,

WM. BRENT.

HON. SECRETARY OF STATE.

SAVANNAH, *December* 21, 1842.

SIR: All the applications in this district for the benefit of the act to establish a uniform system of bankruptcy throughout the United States have been voluntary, a statement of which is annexed.

Whole number of applicants to 20th December, 1842, 228, viz:

Discharged - - - - - - - -	39
Withdrawn - - - - - - -	1
Refused - - - - - - - -	1
Appeal to circuit court not decided - - - -	1
Dissented to and referred to commissioners - - -	10
Decreed bankrupts - - - - - -	126
Of which number 71 have filed petitions for discharge, now in progress.	
Applicants who have filed preliminary petitions and have not been deemed bankrupts - - - - - -	50
	228

Yours respectfully,

GEO. GLER,
Clerk District Court U. S.

HON. DANIEL WEBSTER,
Secretary of State.

OFFICE U. S. ATTORNEY,
District of Georgia, Dec. 21, 1842.

SIR: Your communication of the 14th instant enclosing a resolution passed by the Senate of the United States on the same day, was received by me yesterday. No amendments or modifications of the bankrupt law occur to me for suggestion at this early period. The fact of there having been, up to the present time, comparatively but few applications and still fewer discharges under the law in this district, it is impossible to draw anything like a just conclusion as to its effects and operation.

I am, sir, with respect, your obedient servant,

ALEX. DRYSDALE,
U. S. Attorney for the District of Georgia.

HON. DANIEL WEBSTER,
Secretary of State, Washington, D. C.

To be appended to Doc. 19.

REPORT

FROM

THE SECRETARY OF STATE,

In further compliance with a resolution of the Senate, in relation to the operation of the Bankrupt law.

JANUARY 4, 1843.
Read, and referred to the Committee on Printing.
JANUARY 6, 1843.
Ordered to be printed.

DEPARTMENT OF STATE,
Washington, January 3, 1843.

To the Senate of the United States:

I transmit, herewith, several communications, in answer to circulars issued from this Department, in compliance with the resolution of the Senate, of the 13th of last month.

DANIEL WEBSTER.

PORTLAND, *December* 22, 1842.

SIR: I have received your letter of the 16th instant, covering a resolution of the Senate, and asking for certain information with respect to the bankrupt law, and I avail myself of the first moment of leisure to give you an answer.

In regard to the first point of your inquiries, that is, as to any alterations or amendments of the law, I can say nothing, further than that it has been in operation for so short a time, that the adequacy of the general provisions of the law, to effectuate its general objects, has not yet, perhaps, been sufficiently tried to enable one to form a decided opinion. Hitherto I have not perceived but that the provisions of the law are sufficient for the purpose; but further experience may point out defects that have not yet been made apparent.

In regard to the other point of your inquiries, what have been the effects and operation of the law, I can speak more explicitly. The law embraces two distinct systems of bankruptcy, voluntary and involuntary. So far as the act is compulsory, and enables creditors to coerce a debtor into bankruptcy, it has introduced an important change into the relation of debtor and creditor in this State, that is altogether in favor of the creditor, and my belief is, that in the present state of the law of debtor and creditor in this State, it will be found in its operation decidedly salutary. And such, I think, is the prevailing opinion among the creditor class of the community.

With regard to the system of voluntary bankruptcy, I do not feel prepared to give so explicit an answer, bnt I am strongly inclined to the opinion that thus far the effects of the law have, on the whole, been favorable, but that its benefits have not been clear and unmixed with evil. The first operation of the law in this State may be very plainly inferred from a view of the schedules of debts and assets annexed to the petitions. It has been to redeem a great number of persons from hopeless insolvency. The amount of indebtment is so large and so disproportionate to the assets, that it is obvious, indeed too clear to admit of any doubt, that in by far the greater number of cases the debts never could be paid. If the debts had been left, as legal and subsisting obligations, they must have remained in the hands of the creditors entirely worthless. By cancelling them the debtor is relieved from embarrassments, from which no diligence or prudence on his part could ever extricate him. And as the effort, if made by the debtor, would be made without hope, the presumption is, that it would not be made at all. The result, therefore, is, that the debtor is relieved with the opportunity of becoming a useful member of the community, without any real injury to the creditor. If no bankrupt law had been passed, the statute of limitations would gradually have performed the same operation as the law has accomplished at once. But this operation would have been slow, and as many debts have been converted into judgments, the period of the debtor's emancipation would have been postponed to to so late a day, and in many cases to such an advanced period of his life, that it would have been of little value when it arrived. These observations will apply to a large portion, probably to a large majority of the voluntary petitioners in this State.

The voluntary bankrupts in this State may be divided into two classes. The first comprehends persons who have been engaged in large and unfortunate speculations, and are insolvent to a large amount—quite too large to admit even a distant hope of their ever being paid, if no bankrupt law had existed. Generally speaking, they could have had as little hope of ever settling with their creditors by compromise, for having lost, by misfortune or imprudence, the whole, or nearly the whole of their property, they have nothing left to offer their creditors by way of compromise.

The second, and by far the most numerous class, consists of persons whose indebtment is comparatively small. A large part of them are farmers and mechanics. From misfortune, or otherwise, they have become involved in debts, which, compared with the debts of merchants or others who have done a large business, look, it is true, very small, and quite insignificant, but to persons of their occupations and habits in life, are formidable, and such as they could have but little, if any hope of ever being able to pay; and though their debts are not large, they are usually due to creditors of that class, that it is quite as difficult for them to effect a compromise, as it is for merchants or speculators, whose debts are larger, and I am inclined to think, usually more so. The only chance they could ever have of being placed in a situation in which they could enjoy the fruits of their labor beyond what was consumed by their daily subsistence, that is, in a condition in which they could labor with cheerfulness, was by a discharge under a bankrupt law. The number of persons of this class who have applied for the benefit of the law is much larger than I had anticipated. Many have applied, I have no doubt, who would have acted more wisely, as well as more

honestly and honorably, not to have done it. But still, the relief which the law has given is very extensive, and though not unmixed with evil, the good, upon the whole, greatly preponderates.

This opinion, which is the result of my own observation as far as it has extended, is confirmed by the remarks which I have heard from others who have had better opportunities of witnessing the effects of the law, particularly in relation to this class of petitioners. These observations apply of course to the first effects of the law. What may be its ultimate operation on the morals and business habits of the community, and especially on what is called the credit system, can, I suppose, only be ascertained by further experience.

On the whole, looking at the system of voluntary bankruptcy as somewhat in the nature of an experiment, the effects of which can be determined only by longer experience, I should say, that if any substantial alteration is made, at present, it should be by a simple repeal of the law so far as it enables a person to be declared a bankrupt and obtain a discharge by proceedings instituted by himself, leaving it in force without alteration so far as it establishes a system of compulsory bankruptcy.

I have the honor to be, with sentiments of great respect, your most obedient servant,

ASHUR WARE.

Hon. DANIEL WEBSTER,
Secretary of State.

CLERK'S OFFICE, U. S. CIRCUIT AND DISTRICT COURTS,
Vermont District, Montpelier, Dec. 22, 1842.

SIR: I have the honor to acknowledge the receipt, by mail yesterday, of a circular from the Department of State, bearing date the 15th December inst., and beg leave respectfully to submit the following reply:

The number of petitions in bankruptcy, on file in the district court, is	1,540
Number of discharges - - - -	600
Number of voluntary petitions - - -	1,524
Number of discharges on voluntary petitions - -	599
Number of cases pending on voluntary petitions - -	902
Number of cases dismissed on motion of petitioners -	21
Number of cases where discharges have been refused -	2
Number of cases appealed to circuit court - -	1
Number of involuntary petitions - - -	16
Number of discharges on involuntary petitions - -	1
Number of involuntary cases dismissed on motion of petitioners	5
Number of involuntary cases pending - - -	10

With the highest respect, I am your obedient servant,

EDWARD H. PRENTISS, *Clerk.*

HON. DANIEL WEBSTER,
Secretary of State.

DANVILLE, *December* 23, 1842.

SIR: I have the honor to acknowledge the receipt of the printed circu issued from the State Department under date of the 14th inst., on the sub

ject of the operation of the bankrupt act in this district, and enclosing a copy of a resolution of the United States Senate relative to the same subject. The number of applications under that act, mostly voluntary, will doubtless be furnished by the clerk of the district court. It is much larger, I believe, than was anticipated by any one. A very large proportion were of men never engaged in trade, or other kinds of business deemed peculiarly hazardous, the amount of whose debts severally was small, not exceeding a few hundred dollars. Our population being mostly engaged in agriculture, with such a proportion engaged in trade, the professions, and handicraft occupations, as is usual in other parts of New England where there are no large towns, and where associated operations in manufactures are not numerous or extensive, the necessity of a bankrupt law of any kind, whatever it may be in more commercial and populous parts of the country, is not readily perceived or acknowledged. Hence the present law has at no time been looked upon with much favor in Vermont: and since the practical operation has been such as to admit so considerable a number to avail themselves of its provisions, it is not to be disguised that the disfavor with which it was regarded has been much increased. This fact will scarcely need other evidence to support it than the almost entire unanimity with which the act was disapproved of, and its repeal recommended by the legislature of this State at their late session. That that body, on that occasion, fairly represented the voice of their constituents, is, in my apprehension, past all doubt. I have as little hesitation in saying that it is not the modification of the law, but its unconditional repeal, that is desired. If originally it had been confined to the description of persons embraced by the bankrupt laws of England, or if it had comprehend those only, the aggregate of whose liabilities amounted to two thousand dollars, or even one thousand dollars, it would have probably excited little attention; and yet it will be readily understood that any modification of the act to meet these suggestions, if it could be expected, would not have the effect of disarming the hostility which has arisen. No other suggestions occur to me at present as within the contemplation of the resolution and circular.

I am, sir, with great respect your most obedient servant,

CHARLES DAVIS,

United States District Attorney for Vermont.

Hon. DANIEL WEBSTER,

Secretary of State.

HOPKINTON, N. H., *December* 28, 1842.

SIR: Yours of the 14th inst. has just been received, with a resolution of the Senate requiring information in reference to the operation of the bankrupt law.

This law never was a favorite measure in this State, and went into operation with a strong current of public opinion against it. Its advocates were few, if we except such as intended to apply for relief under its provisions. During the short period in which it has been in operation, I have no doubt it has become less objectionable, and if that part of the law which provides for voluntary bankruptcy should be repealed, it would be still less so.

I can hardly suppose that this part of the law was intended as a permanent measure. If satisfactory reasons existed for it at the time the act was

passed, few of them remain now, I apprehend. That class of debtors destined to become voluntary bankrupts at that time has already received the benefit of the act. And any relief law which invites the debtor to elect whether his debts shall be discharged by his own efforts and industry, or by a decree of the court, will, in most cases, produce a decision in favor of the latter, and thereby cause a greater evil than it was intended to remedy. Many persons within my knowledge have recently applied for the benefit of the act who would have spurned at the thought of doing so one year ago.

If the voluntary provision should be repealed, no reason exists, in my judgment, why the residue of the law might not become useful and acceptable to the community. Even now the objections to this part of the law come principally from attaching creditors, who, from abundant caution, have secured their debts, to the exclusion of all other creditors.

Presuming these brief remarks are in accordance with the terms of the resolution, they are hastily and respectfully submitted by your obedient servant,

MATTHEW HARVEY.

Hon. DANIEL WEBSTER,
Secretary of State.

BOSTON, *December* 24, 1842.

SIR: I have had the honor to receive your communication transmitting to me the copy of a resolution of the Senate adopted on the 13th instant.

The clerk of the district court has already communicated to you statements of the number of applications and discharges under the bankrupt law.

If the law is to remain as a permanent system, I would respectfully suggest that the acts of bankruptcy should be increased in number, so that creditors may be able to bring their debtors under the operation of the statute in cases where they have not now the power.

For example; it is now an act of bankruptcy willingly to procure an attachment, but not so to submit passively to an attachment.

Any one acquainted with the laws of Massachusetts will readily perceive how wide a door is thus left open in this district for preferences which will be inconsistent with that just and equal distribution of assets which it is the object of a bankrupt law to accomplish.

Upon a petition, *in invitum*, the debtor has the right to a trial by the court, and if the decision be against him, then to appeal to a jury to try the same question, while the creditor must abide by one decision against him. I see no sufficient reason why the debtor should not be required in the first instance to elect whether the question of his bankruptcy should be tried by the court or a jury.

The power with which the district court is invested by the statute, to exercise summary jurisdiction as a court of equity, and to make new rules as occasion may require, and to appoint its own officers—such as assignees and commissioners, will, I think, enable the court to obviate nearly all the practical inconveniences which experience may develop (should it be deemed just by Congress to impose upon that tribunal the continued duty of executing the law).

I have the honor to be, with great respect, your obedient servant,

PELEG SPRAGUE.

Hon. DANIEL WEBSTER,
Secretary of State.

DISTRICT ATTORNEY'S OFFICE,
Boston, December 26, 1842.

SIR: I received your circular respecting the bankrupt law. I have not had much practice myself under it; but I have by a circular addressed to members of the bar, and conversations with them, and their written answers, ascertained the prevailing objections to the details of the system; and so far as my own experience and observation lead me to concur in them, they are chiefly as follows:

1. The want of appeal to the Supreme Court upon important questions of law.

2. The want of a provision for the immediate custody of assets upon the filing of petition for voluntary bankruptcy, and upon proper preliminary proof in cases of petition *in invitum*.

3. A large discretion is wanted in the assignee as to sales, compromises, &c., preventing so frequent a recurrence to the court, which now makes unnecessary delay and expense.

4. The machinery of the act is very cumbrous, particularly in distributing the assets. There is a very general complaint against this.

5. As the act now stands, the bankrupt's tools of trade are not excepted out of his assets; a change in this particular is desirable.

6. Differences of opinion exist in different circuits and districts upon the following points:

1. The protection of attachments under State laws as "liens."

2. The period to which the proceedings relate, as to discharge of debts, whether to the filing of petition or decree of bankruptcy.

3. The operation of the act upon debtors owing debts in a fiduciary capacity.

These differences should be reconciled by provision of law or right of appeal to the Supreme Court.

The foregoing are matters of detail (with the exception of those stated as differences of opinions of courts) upon the practical operation of the system. The very prevailing opinion among the bar is in favor of the law, subject to the objections noticed.

The following substantial changes of the system would, I think, be generally thought by the bar expedient:

1. To make a refusal to pay a debt certain an act of bankruptcy.

2. To protect securities taken bona fide for pre-existing debts, the creditor being ignorant of the fraud or actual insolvency of the debtor.

3. A minimum in the amount of debts necessary to entitle a person to be declared a bankrupt voluntarily, but such minimum to be a sum not greatly exceeding the expenses of the process.

I had intended to answer your circular more in detail, pointing out the remedies as well as the defects, but the present aspect of the debate in Congress leads to a belief here that the act will be repealed; and I have not had time to consider the matter further.

Should the act go into the hands of a committee for amendment, I shall be able hereafter to make some more useful suggestions.

I am, very respectfully, &c.

FRANKLIN DEXTER,
United States District Attorney.

Hon. DANIEL WEBSTER,
Secretary of State, Washington.

CAMBRIDGE, *December* 24, 1842.

SIR: I have the honor to acknowledge the receipt of your circular letter of the 16th instant, asking for the results of my observation and experience in relation to the bankrupt act of 1841, and such information as to its effects and operation, and such suggestions as to its amendment, as may have occurred to me.

It is difficult to speak with any positive certainty as to the effects and operation of the bankrupt act from such a limited experience and observation as the short period in which it has been in force can supply. To give that system a fair and just trial, and to ascertain its true operation and results, will, in my judgment, require at least five years of steady action upon it. In the present state of things, it is highly probable that different minds will arrive at very different results; and I have no doubt that, in different parts of our extensive country, the system has worked with considerable inequality, and will, therefore, give rise to different opinions as to its benefits and its utility. Time, and time alone, can solve the whole problem. Nevertheless, in compliance with your request, I have not the slightest hesitation in saying that, as far as my observation and experience extend in my own circuit (where applications for the benefit of the act have not been less than five thousand), the system has worked well and been for the public benefit, as a cheap and expeditious means of accomplishing the just ends of all laws of this sort. 1. It has promoted many equitable compromises between debtors and creditors. 2. It has given relief to a very large class of poor and unfortunate and honest debtors, whose property has been lost by misfortune, and whose only means of a return to business, with any chance of success or encouragement, is by a discharge under the act. 3. It has enabled creditors to snatch from the ruins the fragments of property of their debtors and to compel them, when unwilling to surrender it, to submit to an equal distribution.

It is true that the dividends for the creditors have hitherto been small, but this has arisen, not from fraud or concealment of property, but from the fact that whole classes were insolvent in ruin before the system existed; and, therefore, its principal operation has hitherto been to relieve debtors, and not to give much relief to creditors. At the same time, I am well satisfied that it has not done to these creditors generally any harm or mischief. They have received their share of all the debtor had, be it more or less.

I have suggested that there have not been any extensive frauds perpetrated under the act by voluntary bankrupts. I draw this conclusion from the fact that very few cases of fraud have ever been suggested or brought before the court; and yet, as the judges themselves have the entire supervision of the whole system, without any compensation, and have full powers to act in equity summarily in such cases, the remedy for creditors in any cases of fraud is so facile and cheap, that I am persuaded that it would have been resorted to in many cases if frauds had existed in taking the benefit of the act. As yet, I believe not one case in fifty, and probably not one case in a hundred, has given rise to any controversy of this sort in my circuit; and where they have occurred, the fraud has been met and relief granted to the creditors.

But it is not unfair to judge of the operation of the bankrupt act from its operation during the short period for which it has as yet been in operation. Its true value and importance are to be judged of with reference to its prospective operations upon cases of insolvency and failure in business occurring

since it has been in force. And here I can say, that in all the cases, both of voluntary and involuntary bankrupts (not numerous indeed), which have come under my observation, where the insolvency or failure has taken place since the [passage of the] act, it has had a most salutary operation, and, if permitted to remain, will have increasing value and benefits. 1. It holds out inducements to voluntary bankrupts to apply for relief at the first moment, when they feel that they must fail and before they have parted with their property in delusive struggles to keep up their business. Some very striking cases of this sort have occurred in my circuit, which have had the general approbation of the creditors. 2. In the next place, it cuts off all the tempting inducements to give undue preferences to any creditor in contemplation of bankruptcy, because they are frauds upon the bankrupt act, and, therefore, can not avail either the debtor or the creditors. 3. It strikes at the root of that great public evil—accommodation paper—which has been the main source of so many ruinous speculations and caused the downfall of so many of our banks. It cuts down the temptation to grant any such accommodation, by preventing the parties from giving what are called honorary preferences and securities in cases of failure; and also, by making banks more vigilant in detecting such contrivances. This consideration, I know, has had an extensive operation in my circuit, and has confined business transactions of late to real debts and discouraged accommodation negotiable paper.

I would add, that there is no commercial nation of any extensive trade in modern times that has not, and does not, continue to support a bankrupt system, or *cessio bonorum*, of a kindred character. In England, the system has been constantly enlarging, and now, in a great measure, embraces not only traders and merchants, but also voluntary insolvents applying for a discharge. So far from the statesmen of that country being willing to surrender the system, they adhere firmly to it; and even, at the last session of Parliament, added many improvements to it, not restricting, but enlarging its operation. I draw the conclusion, therefore, that my own limited experience is confirmed by the very large experience of English statesmen.

As to the other branch of inquiry, what amendments and improvements can be made in the system, I have no doubt that much may be usefully done in both respects if the system is to continue. But, if it is now to perish, it is not worth the labor to attempt any amendment or improvement. For myself, I feel bound to say that, considering the novelty of the system among us, the fact that it had to operate in twenty-six different States whose jurisprudence is infinitely diversified, the wonder to me is that more defects have not been discovered, and more obstructions encountered, in executing its provisions, in both its branches of voluntary and involuntary bankruptcies. In this respect, from the diversities of our laws and the difficulty of making any provisions which shall not on this account unite some inequalities, our country stands alone. No other nation on earth has to execute a system which is to meet so many local interests and institutions, and habits of action, of a peculiar, and sometimes of an opposite character.

What amendments and improvements ought to be made, and would be useful to adopt, must essentially depend upon the questions, which Congress alone are competent to decide, 1st, whether the system shall continue at all; 2d, whether it shall continue as to both branches, voluntary as well as involuntary; or 3d, whether it shall be limited to the mere functions of the old bankrupt law, cases of merchants and traders, &c., *in invitum*. It would be

easy to adopt amendments and improvements in either of the two latter cases. But if the former is to prevail, and there is to be a total repeal, it is almost a work of supererogation to suggest any amendments or improvements.

I have not leisure at the present time to go into more details upon this interesting subject. I could add many reflections if time would permit, and the occasion did not call upon me to limit myself to the very topics suggested by your circular.

I have the honor to be, with the highest respect, truly yours,

JOSEPH STORY.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE CLERK DISTRICT COURT,
District of Connecticut, December 22, 1842.

To yours of the 15th, enclosing a copy of a resolution adopted on the 13th by the Senate of the United States, "*Resolved*, That the Secretary of State communicate, with all convenient despatch, with the judicial officers of the United States who have had the execution of the bankrupt law, and ascertain from them the number of applications under the act, both voluntary and involuntary, the number of discharges, the opinions of the judges as to any amendments or modifications of the act, and such other information as he may deem necessary to show the effects and operation of the act, and that he report to the Senate from time to time as soon as the information shall be received," the clerk of the district court for the district of Connecticut makes the following answer:

The total number of petitioners under the bankrupt law up to the 13th of December, A. D. 1842, inclusive, was	1,304
Of these were voluntary cases	1,822
Involuntary cases	22
Cases in which discharges have been refused	5
Petitions withdrawn	19
Number of discharges granted	807
Number of cases still pending	451
The total number of petitioners under the bankrupt law up to the 22d of December, A. D. 1842, inclusive, was	1,363
Of these were voluntary cases	1,338
Involuntary cases	25
Cases in which discharges have been refused	5
Number of petitions withdrawn	19
Number of discharges granted	867
Number of cases still pending	472

Very respectfully, your obedient servant,

CHARLES A. INGERSOLL.

Hon. DANIEL WEBSTER.

DISTRICT OF CONNECTICUT,
Canterbury, December 24, 1842.

SIR: A few days since your circular was received, covering a resolution of the Senate adopted on the 13th instant, requiring an opinion as to any

"*amendments* or *modifications*" of the act of Congress establishing a uniform system of bankruptcy, together with such "other information as may be deemed necessary to show the *effect* and *operation* of the act," and I now have the honor of submitting the following reply:

1st. The *effect* and *operation* of the law.

Since the 1st day of February, 1842, and up to this day, there have been presented within this district about *fourteen hundred applications*, all of which, at three distinct periods of their progress, pass through my hands and under my personal examination. Ample opportunity has thus been furnished for me to perceive the *effect* and *operation* of the law in this district at least. It may not be improper here to notice that *effect* upon the *creditor*, the *debtor*, and the *public*. How, then, has the interest of the creditor been affected? Thus far, I have not seen a case of discharge where the condition of the creditor has been made worse or rendered more hopeless than it actually was before the passage of the law, unless the creditor derived hope and gratification from the power of holding his debtor in perpetual bondage, and standing between him and all his domestic comforts, and the good he might do the community. Privileges, benefits, and powers, like these made the creditors no richer, and the sooner dissipated the better for him. Nine tenths of the cases have proved utter insolvents of five or six years' standing, during which time the creditor must have been satisfied there had been no improvement in the condition of the debtor. His ability to pay was, in fact, growing worse. It would seem that this was a sufficient length of time for the creditors to indulge these vain hopes. Should an obligation attended by such circumstances cease to exist by the laws of the land, it is difficult for me to see how the obligee has sustained any injury. He loses nothing when he parts with a phantom. The effect of this law thus far has not been injurious or prejudicial to the rights of the *creditors*.

2d. How has it affected the debtor? To him relief has been afforded—relief to his mind and relief to his energies. Before the enactment of this law he could hold no visible property—he could possess no means for a month or even a single day without having it seized by the process of attachment, and sacrificed, not in reducing the debt, but in the payment of costs and fees to the ministers of the law. But now he may labor in the hope of reward, in the prospect, too, of feeding, clothing, and educating his family. A farmer must have his stock as well as the undisturbed possession of the soil he cultivates before he can procure a crop. These he could not hold, for as soon as either found its way into his hands through the kindness of friends or as the result of his own industry, the State attachment process followed in quick succession.

The *mechanic* needs something more than his naked hands; he wants the *raw material*, that he may add to it his own labor and skill, before anything can be accomplished for himself or family.

The *merchant*, having a cloud of old debts hanging over his head, is watched with argus eyes; and no sooner does he accumulate the smallest amount of goods, than they are seized too, sold under the hammer, and applied to the cost of the creditor's watchfulness, and the debt generally remains the same. These discouraging operations break down his spirits, and the debtor returns to idleness and despair. *This* law in its operation has relieved thousands of our fellow-men from such a condition, and they may yet be useful to themselves and their families.

This is not all. Community have, and should have, an interest in the enterprise, industry, and talents of each of its members. If the public are served by the man who makes a "single blade of grass grow where none grew before," then this interest should not be neglected.

When all the means of doing good are taken out of his hands, and the citizen bound and cast into prison, he surely can do nothing for the public. He may live, but that is all. By the provisions of the law in question, these fellow-citizens are set free; their efforts, industry, ingenuity, and talents, may now become useful and available, first to themselves and their families, and then to the community of which they are members.

While these men were in this state of bondage, it was beyond the reach of possibility that *any* of their obligations should be discharged. The relief that has come to them will be the means of making them useful in every station.

The foregoing remarks are designed to apply particularly to that branch of the law which admits voluntary cases. There is yet another interest.

The compulsory provisions of the act enable creditors to do justice to themselves, where *means exist*, and the debtor is perverting or hazarding those means. When a trader has his capital through the medium of *credit*, it would seem that those who, by giving him the credit, have furnished his capital, possess a joint interest in his assets, and whenever in their judgment this becomes perilous, they should have the power, as this law affords them, of recalling the means intrusted to his care, and of dividing this joint interest upon equitable principles. There are now but very few who complain of *this part* of the law. All have witnessed the operations of the law in this branch of it, and acknowledge its entire justice. Every case of this character, which I have seen, has produced much good. In many of these cases plans had been devised to divert that property which of right belonged to all the creditors, to *a few favorites*, and exclude from all participation in it the general creditors.

Under the State laws, as they had existed for many years, sanctioned by judicial decision, a practice had grown up and become of general use among insolvent debtors, which proved unjust to the confiding and unwary creditor. Originally suggested perhaps by ingenuity and selfishness, it had become so common that few escaped its consequences. The insolvent debtor, on the eve of his failure, would first select his favorite creditors (generally his kindred), and mortgage, or actually transfer to them, *all his property*, and then, as a mere form, make a general assignment of the *rest* for the benefit of *all* his creditors, under the statute insolvent law. The result was, that these favored creditors, and perhaps fictitious too, would carry off all, while the others equally meritorious lost all. Friends had the substance, and the residue a shadow. It is true the statute law of the State purported to divide what was assigned equally, but the insolvent took special care there should be nothing to divide. This had become a mere nominal affair to the honest creditors, while favoritism and fraud were its essential and usual attendants.

Thus the bankrupt law found us when it came into operation. Its *effect* has been to dissolve these fictions, and break up these unjust preferences, securing an equal and an equitable division among all the creditors. The State system created the insolvent an agent to obtain the money from one and bestow it upon another, at his will and pleasure. The involuntary feature in the bankrupt law has taken away the power of this agent, and restores to those who furnished the capital their own, in just proportions.

The commercial interests of the country are deeply involved in maintaining this law. My opinion is, that the *effect* and *operations* of this law are not injurious, but beneficial.

In relation to "amendments or modifications" of the act, very few suggestions are deemed necessary. The provisions of the law, so far as my experience has enabled me to judge, are by no means difficult or complicated. Owing perhaps to the introduction of amendments during the progress of the bill before Congress, the arrangement of its several subjects is not as orderly as it might have been; yet that is not of sufficient importance to require revision. I have found the law, in all its parts, *simple*, *practical*, and *easy of execution*. Being thus, it may be difficult to know where to begin with improvements.

As an illustration of its practicability, I take the liberty of sending herewith a copy of the Rules and Forms of Proceedings in this district, by which a very large proportion of these unfortunate men have been enabled, of themselves, without the aid or expense of counsel, to realize the benefits of this law, for the very moderate sum, on an average, of about $15, including blanks, printing, fees of clerk, marshal and assignee.

With these convictions, the only modification which I would presume to suggest is, that its provisions be extended to corporations.

Respectfully submitted, by, sir, your humble servant,

ANDREW T. JUDSON.

Hon. DANIEL WEBSTER,
Secretary of State, U. S.

RULES AND REGULATIONS

Established by the District Court of Connecticut for the proceedings in Bankruptcy, February 2, 1842.

RULE 1.

Proceedings in bankruptcy may be conducted by the petitioner in person, or by an attorney authorized to practice in the courts of the United States, and the defence may be conducted in the same manner, but a creditor not allowed to defend except in his own interest.

RULE 2.

The forms drawn up by the district judge, from time to time, and to be found in the clerk's office, are hereby established as the FORMS for proceedings in bankruptcy, under the act of Congress approved August 19, 1841.

RULE 3.

The petition may be addressed to the judge of the district court or to the district court, and shall be drawn with precision, setting forth the facts required by the act of Congress, in language concise and appropriate, and concluding with a prayer for the benefit of the act of Congress—the list of creditors, describing their place of residence and stating the amount due to each—and the inventory of his goods and estate, describing the location and situation of each part and parcel thereof, to be made part of, and annexed to the petition.

RULE 4.

The petitioner will appear in court, and having subscribed his PETITION LIST and INVENTORY, will there verify the same by oath or affirmation.

RULE 5.

At the time of presenting the petition, a separate copy of the inventory will be furnished by the petitioner for the use of the assignee.

RULE 6.

Printed blanks must be furnished of all the forms established, so arranged that all may constitute one file when completed, having at the top a broad margin—to be stitched together at the top.

RULE 7.

The party appearing in the defence, will, in writing, make a brief statement, embracing the grounds of the objections.

RULE 8.

Motions for a jury, and for an adjournment into the circuit court, may be made in writing by the party or his attorney.

RULE 9.

When a jury is demanded, the clerk will issue his venire in the usual manner to the marshal of the district, and before the trial is commenced, the clerk will draw up the issue to be submitted, and the trial to proceed on that issue.

RULE 10.

The oath to be administered to the jury, to be as follows: "Well and truly to try the issue between A. B., a bankrupt, and his creditor, whether the said bankrupt is entitled to his discharge and certificate as a bankrupt, and a true verdict given according to evidence;" adding thereto the usual asseveration, and changing the oath according to the issue.

RULE 11.

Witnesses may be summoned and their attendance secured and compelled, in the same manner as in civil causes.

RULE 12.

On the application of any creditor, the attendance of the bankrupt may be ordered, and interrogatories may be put by the judge, or any creditor, or his attorney, requiring answers, on oath, at any stage of the proceedings.

RULE 13.

All notices requiring a publication in a newspaper, shall be printed in the "Patriot and Eagle," a newspaper printed at Hartford in this district; and if a second or more publications be deemed necessary, the further designation of the newspaper for that purpose will be made at the time of passing the order.

RULE 14.

Notices served by the marshal will be proved by his return, and those which may otherwise be served may be proved by affidavit.

RULE 15.

The petitioners may be required in each case to give a stipulation, with surety, in such sum as may be deemed proper, conditioned that the fees and expenses of the assignee shall be paid in full, in case the bankrupt's property shall be insufficient; and conditioned, also, that the marshal's fees be paid if any should occur.

RULE 16.

When a petition is preferred by a creditor against a bankrupt, the same must state the amount of the debt or debts due him from the bankrupt, and also that the bankrupt owes $2,000, or more. The employment and particular business of the bankrupt must be stated, as well as the special act of bankruptcy relied on for the proceeding.

RULE 17.

A docket will be kept by the clerk, in which shall be entered short memoranda of the proceedings in bankruptcy, with their proper dates as they may occur, with corresponding numbers to those on the file.

RULE 18.

Whenever the bankrupt appeals to the circuit court, he shall, on entering his appeal, add thereto his election in writing, whether the cause shall be tried by a court or by a jury.

RULE 19.

There shall be appointed for each county in this district, two commissioners, either of whom may take testimony in any cause pending in court, from their respective county, in proof of debts or to be used for any other purpose in the course of the proceedings of the cause; and the court may refer to any commissioner for examination and report, such matter as may arise, as according to the course of courts of equity, may be referred to a master in chancery.

RULE 20.

A commissioner may cause any witness, whose evidence may be needed, to come before him in the same manner as in civil causes, and the evidence given shall be reduced to writing by the commissioner, and subscribed by the witness in the form of a deposition; and the commissioner will administer the witness' oath used in this State, and add to such evidence his own certificate, stating the appearance of the witness, the administration of the oath, and the title of the cause in which the same is to be used, which testimony shall be transmitted to the judge or clerk of the court, by mail, or otherwise, all which shall be done at the cost of the party applying for the evidence, including postage if the same be transmitted by mail.

RULE 21.

On the appointment of each commissioner he shall be furnished with an attested copy of the same by the clerk, and on the receipt of the same, the commissioner shall be deemed qualified to act.

RULE 22.

There shall be appointed one assignee in each county in this district, who

shall act in all the cases in bankruptcy in such county, except when from interest or other sufficient reason another may be appointed; and in each case the acting assignee shall give the bond with surety required by law, before he enters upon his duties.

RULE 23.

All sales by the assignee to be at public auction, after reasonable notice, returns thereof to be made to the court without delay, and to be made for cash.

RULE 24.

Assignees to keep an accurate account of all fees and expenses, and submit the same to the court for liquidation and adjustment; and when adjusted, the same is to be deducted from the amount of sales of the property of the bankrupt, but if sufficient, the residue to be paid from the stipulation given in the case.

RULE 25.

Form of notice to be sent to each creditor, named in the original petition, by an indifferent person, or the marshal, as the order may require, for the bankrupt, after subscribing his petition for discharge and certificate. This petition is presented after the decree in bankruptcy has passed.

To creditor of by order of the district court of Connecticut, you are notified that my further petition in bankruptcy, for a discharge and certificate, will be heard at the district court-room in on the day of 1842. Yours, &c.

After the above is filled up, and signed by the bankrupt, an indifferent person will compare and seal it, and direct the same to each creditor, at his usual place of residence, like any other letter, and on the seal side must be added these words: "The bankrupt notice of ———."

The indifferent person will see that all these blanks are properly filled up, then he will lodge the letters in a post office, and make his return in the following form:

RETURN.

To the District Court of Connecticut:

District of Connecticut, *ss.* this day of 184 , I then deposited in the post office at in said district, a notice to each and all the creditors named in the petition of in bankruptcy, directed to the said creditors at their several and usual place of residence, in conformity to rule 25, of the district court of Connecticut, and in compliance with the published order of said court.

Indifferent person.

Sworn to and subscribed this day of 1842.

Justice of Peace.

RULE 26.

In serving the "letter notice" on creditors, either by the marshal or an indifferent person, when the debt is due to any company or copartnership, the name of the firm may be used alone, or distinguishing the individuals of the firm.

When the debt may be due to a corporation, the name of the corporation may be used, and the blanks to be filled accordingly.

And in all cases of service of these special or "letter notices," a *circumstantial error* shall not vitiate the service, if the name and place can be fairly intended or understood.

RULE 27.

In all cases where any creditor may desire it, or where suspicions of fraud may arise, the assignees will consider it their duty to investigate all deeds, mortgages, conveyances, assignments, bills of sale, and all other transfers of property, made or attempted to be made in contemplation of bankruptcy, or in fraud upon the act of Congress on the subject of bankruptcy.

All payments or securities made or given to prefer one creditor above another, in any form, in contemplation of bankruptcy, are void, and these are to be claimed as the assets of the bankrupt, for the benefit of the creditors.

Special reports of all such cases may be made, that the court may issue its proper order for the possession of the property.

RULE 28.

Before the sale of property at auction as provided by rule 23d, the assignee will post up, in some public place in the vicinity, a written notice of the time and place of sale; or if he may deem best, insert the same in a newspaper, and the sale shall be made at the place and on the day specified in such notice.

Provided however, that in case the articles to be sold are of very small value, the sale may be made on proclamation at some public place in the vicinity of the bankrupt's residence.

RULE 29.

By the law of Congress, no record is to be made of cases in bankruptcy, and all evidence of the proceedings is to be preserved in and by the files and papers of each case.

It is therefore ordered that these *files* be retained in the clerk's office, at all times, and not to be there used by any one except the officers of court, and by gentlemen of the bar duly admitted to practice in the courts of the United States.

Copies are to be furnished by the clerk, at the ordinary fees of copies; and the attorney of the court can, with the clerk or his assistant, examine the files or take memoranda therefrom, paying only reasonable compensation for the attendance in looking up and restoring the files.

RULE 30.

The 13th rule is hereby rescinded.

RULE 31.

In each case in bankruptcy, as the same may occur, this court will designate a newspaper in the district for the publication of the order of notice to the creditor. The paper to be designated will be printed in the county where the bankrupt resides, or in an additional county, as the circumstances of the case may require; and, before such assignation is made, the applicant who moves the order may, if he sees fit, add to the motion the

name and location of the paper he may desire for the publication of the order. When designated, the applicant will cause the order to be published, and at or before the time of hearing fixed in the order, he will cause to be delivered to the clerk of the court the affidavit of the editor or printer, proving the publication of the notice according to the order of the court.

FORM OF THE AFFIDAVIT.

The subscriber being the [editor or printer] of a newspaper printed in the county of and district of Connecticut, called the on his oath says, that on the day of 184 , there was printed and published, in said newspaper, a notice in bankruptcy, to the creditors of residing in the town of in said district, to be heard on the day of 184 , for [a decree in bankruptcy or for a discharge] in conformity with the order of court. Signed A. B.

Sworn to and subscribed the day above mentioned.

—— ———, Justice of Peace.

RULE 32.

One copy of the newspaper containing each notice, to be sent, by mail or otherwise, to the bankrupt, without additional charge by the printer.

RULE 33.

In each newspaper printing the order of notice on the petition of a *discharge*, there will also be printed, without additional charge, the 25th rule in bankruptcy, that the applicants may be directed in the mode of giving letter notices to creditors.

RULE 34.

Any *circumstantial* error in the printing of any notice, either to creditors or for assignee's sale, shall not invalidate the proceedings, if the subject, name, place, and time, be fairly understood and known.

RULE 35.

Should the printer of any paper designated under the foregoing rules decline a publication upon the terms specified in rules 32, 33, 34, and 35, then the order will be returned and another paper designated.

Rules applicable to cases under the involuntary or compulsory provisions of the act of Congress.

RULE 36.

The petition must be addressed "To the district court of Connecticut," and should set forth all the facts required of the act of Congress, specifying the "acts of bankruptcy," and several acts in bankruptcy may be joined in one petition, in the form of different counts in a declaration, and the proof of either one may be deemed sufficient. The petitioner will allege an indebtedness to himself to the amount of not less than five hundred dollars, and also allege that he owes to the amount of not less than two thousand dollars, specifying in addition, the actual sum due.

RULE 37.

The petition will be presented to a commissioner in bankruptcy of the county where the alleged bankrupt resides, who will examine the same, and if found correct in form, he will so certify, and administer to the person or persons subscribing the petition, an oath in the following form, to wit: "You solemnly swear that you verily believe the facts stated in the petition are true, so help you God;" and a certificate of the administration of the oath will be subscribed by the commissioner, in the following form, to wit:

"District of Connecticut, ss., 184 Personally appeared before the subscriber, a commissioner in bankruptcy for the county of the above-named petitioner, and made solemn oath to the facts therein stated. Attest, Commissioner."

and when said petition hath been so examined, verified, and certified, the same shall be, at the expense of the petitioner, transmitted to the clerk of the district court, and thereupon an order of notice shall be issued and published as in cases of voluntary bankruptcy.

RULE 38.

The petitioner or petitioners may at any time, after the publication of the order of notice, and before the day of hearing, apply to the commissioner, before whom the petition was verified, to take the evidence in support of the petition. The commissioner will appoint the time and place when the evidence shall be taken, and cause reasonable notice to be given to the petitioner and the alleged bankrupt. The witness may be summoned and the evidence taken in the manner heretofore prescribed in voluntary cases. The substance of the proof required is as follows:

1st. Proof of the debt or debts of the petitioner or petitioners, which must amount to a sum not less than $500.

2d. Proof that the alleged bankrupt is at that time owing not less than $2,000.

3d. Proof of the allegation in the petition that the respondent is "a *merchant*—is *using the trade of merchandise*—is a *retailer of merchandise*—a *banker*, *factor*, *broker*, *underwriter*, or a *marine insurer*," whichever may be alleged in the petition, as the employment of the respondent.

4th. Proof of the *act* or *acts* of bankruptcy alleged.

RULE 39.

The alleged bankrupt may also, in like manner, apply for and take evidence, to be used against the allegations in the petition.

RULE 40.

The party applying for evidence will pay the commissioner's fees.

RULE 41.

Should a decree in bankruptcy be passed, an order will be allowed for the attachment of the bankrupt's property for the benefit of his creditors, directed to the marshal, who will therewith take possession of the property, make an inventory of the same, deliver the property and inventory to the assignee, and return to the clerk.

RULE 42.

All evidence to be used in proceedings in bankruptcy, whether the case be voluntary or involuntary, to be taken out of this district, shall be taken before some disinterested State judge, of the State where the deposition is to be taken, and reasonable notice thereof to be given to the opposite party, if within one hundred miles of the place of taking. The notice must be proved to the judge by an affidavit; or at the option of the party taking the deposition, the notice may be given by the judge through the mail, and in either case, the certificate of the judge shall be conclusive evidence of the facts therein stated.

RULE 43.

When proof of debts may be required to be taken out of this State, such proof may be taken without notice, in the State where the creditors reside, before any disinterested State judge.

RULE 44.

Evidence, either in proof of debts, or to be used on any other questions, may be taken within the State, before any disinterested State judge, as well as before a commissioner. And before the evidence is taken (except for the proof of debts when it is not required), notice to the opposite party shall be given, when that party resides within 100 miles of the place of taking the deposition. The notice may be given as provided in the 42d rule, and a certificate of a commissioner shall be equally conclusive as that of a judge when taken before him.

RULE 45.

In all cases where moneys have been paid to the clerk, over and above the lawful fees and expenses, a dividend shall be made thereof to and among the creditors who may have proved their debts, and filed their proof with the clerk previous to the day on which the dividend is to be made; the first dividend to be made within six months from the date of the *decree* in bankruptcy; and as often as there may be additional moneys to be divided, thereafter such additional dividends shall be made within six months of each other. And before any dividend shall be made, the clerk of the disrtict court will advertise notice of the *time* and *place* of making such dividend, in one or more newspapers, as he may deem reasonable, at least thirty days before the day of making the dividend.

RULE 46.

Any creditor may prove his claim, and file his proof in the clerk's office prior to the day fixed for making a dividend, and if not filed before that day, such creditors who so neglect will not be considered in the dividend. So also in regard to all subsequent dividends, debts not proved before the day of the subsequent dividend can not be considered for such dividend.

RULE 47.

On the day designated for making up a dividend upon any estate, the clerk will state his account with that estate, and deduct from the moneys paid in by the assignee, his commission fees, and cost of printing together with three per cent. for the assignee, as a compensation for distributing the

money to the creditors, and thereupon a dividend sheet shall be made up, and lodged in the file, a copy whereof shall be delivered to the assignee, together with a separate check for each dividend, drawn by the clerk, and payable to the creditors, and to be delivered on request, the same to be in full payment. Receipts to be taken on the dividend sheet in the hands of the assignee, and to be returned into the clerk's office when so settled.

RULE 48.

The assignee, on receiving the dividend sheet, shall give notice, by letters, to each creditor, on the dividend sheet, of the amount due; and, in case any dividend shall not be claimed within six months from the day where the same was made out, such unclaimed dividend to be returned to the clerk of the district court, to be subject to such further order as may be made regarding the same.

The foregoing rules, adopted in the district of Connecticut, this first day of September, 1842.

ANDREW T. JUDSON,
District Judge.

FORM OF A PETITION—VOLUNTARY CASE.

To the honorable Andrew T. Judson, Judge of the United States for the District of Connecticut:

The petition of , residing in the town of , in the county of , and district of Connecticut, respectfully represents, that he now owes debts which have not been created in consequence of a defalcation as public officer, executor, administrator, guardian, or trustee, nor while acting in any other fiduciary capacity; that, according to your petitioner's best knowledge and belief, he hath made out, and hereunto annexed, a list of his creditors, the respective places of their residence, and the amount due from the petitioner to each; together with an accurate inventory of your petitioner's property, rights, and credits of every name, kind, and description, and the location and situation of each and every parcel and portion thereof; all which your petitioner is ready to verify by his oath , which said list and inventory so annexed, are made part of this petition. And your petitioner doth declare himself to be unable to meet his debts and engagements; whereupon, your petitioner prays for the benefit of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841. And he, as in duty bound, will ever pray.

Dated at , in said district, this day of anno Domini 184 .

A list of the creditors of the foregoing petitioner, their respective places of residence, and the amount due to each; made out and subscribed the day and date of said petition, according to his best knowledge and belief, and verified by the oath of the petitioner, as follows:

Names of creditors.	Respective places of their residence.	Amount due to each creditor.

An accurate inventory of the property, rights, and credits of every name, kind, and description, of the foregoing petitioner; and the location and situation of each and every parcel and portion thereof; made out and subscribed the day and date of said petition, according to the best knowledge and belief of the petitioner, and verified by his oath, as follows, viz:

I, , signer of the foregoing petition, list, and inventory, do, on solemn oath say, that the same, and the facts therein stated, are true—so help me God.

Dtstrict of Connecticut, ss:

Be it remembered, that, at a district court of the United States, held at , on the day of , 1842;

Present: ANDREW T. JUDSON, *Judge;*

Personally appeared, in open court, the above named petitioner, and made solemn oath to the facts set forth in his said petition, list of creditors, and inventory, as abovementioned.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, the day and year abovementioned.

Clerk.

DECREE OF NOTICE TO CREDITORS TO SHOW CAUSE.

District of Connecticut, ss:

Be it remembered, that, at a district court of the United States, held at , in said district, on the day of , A. D. 1842;

Present: ANDREW T. JUDSON, *Judge;*

Then, was duly filed in this court, the application and petition of , of the town of , in the county of , within said district, setting forth that the petitioner is owing debts and engagements which he is unable to meet; setting forth, also, a list of his creditors, their respective places of residence, and the amount due to each; together with an accurate inventory of his property, rights, and credits of every name, kind, and description; and the location and situation of each and every parcel and portion thereof, according to his best knowledge and belief, as he saith, verified by the oath of the petitioner—praying for the benefit of the act of Congress, entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841, as per petition on file, dated the day of , A. D. 1842.

Thereupon, it is ordered, That said petition be heard at the district court-room in , within said district, on the day of , 1842, when and where all persons interested may appear and show cause, if any they have, why the prayer of said petition shall not be granted: *notice* whereof to be given, by a publication of a copy of this order, at least twenty days before the day of such hearing, in a newspaper printed in , in said district, called the .

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, the day and year abovementioned.

Attest: *Clerk.*

DECREE IN BANKRUPTCY.

District of Connecticut, ss:

Be it remembered, that, at a district court of the United States, held at , within said district, on the day of , 1842;

Present: ANDREW T. JUDSON, *Judge;*

Upon the petition of , residing in the town of , in the county of , and district of , that he owes debts and engagements which he is unable to meet; that, according to the petitioner's best knowledge and belief, he has made out, and annexed to his said petition, a list of his creditors, their respective places of residence, and the amount due to each; together with an accurate inventory of the petitioner's property, rights, and credits of every name, kind, and description, and the location and situation of each parcel and portion thereof, verified by the oath day of , 1842, praying for the benefit of the act of Congress, entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841. And, upon which said petition, this court did, on the day of , 1842, order that the hearing thereof be had at *this* time and place; and that *notice* of said hearing should be given to all interested, by the publication of a copy of said order of notice, at least 20 days before the time of said hearing, in a newspaper printed , in said district, called the .

And now it hath been made to appear that said notice hath been published according to said order, and this court having fully heard the parties, and duly considered thereof, doth *deem* the said petitioner to be a bankrupt within the purview of said act of Congress; and thereupon this court doth, by this decree, *declare* that the said —— ——— is a bankrupt within the purview of the act of Congress entitled and approved as aforesaid.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this day of , 1842.

Attest: Clerk.

APPOINTMENT OF ASSIGNEE.

DISTRICT OF CONNECTICUT—*ss.*

At a district court of the United States, held at , within and for said district, on the day of , 184 ;

Present, ANDREW T. JUDSON, judge;

Whereas, various proceedings, in due form of law, have been had before this court in bankruptcy, upon the petition of , residing in the town of , in the county of , and district aforesaid, in and by which the said hath been *deemed* and *declared* to be a bankrupt, within the purview of the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841: *Therefore*, this court reposing special confidence and trus n , of the town of , in the county of , and distric

aforesaid, doth hereby appoint the said assignee of the said bankrupt's property and rights of property, in whom, by virtue of said act, are vested all the rights, titles, powers, and authorities specified by said act of Congress; the said assignee first giving a bond to the United States, with at least two sureties, in the sum of $, conditioned for the due and faithful discharge of all his duties as assignee, and his compliance with the orders and directions of this court, making returns of all his doings in the premises in due form of law.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this day of , anno Domini, .

Attest: Clerk.

ASSIGNEE'S BOND.

To all people to whom these presents shall come, greeting:

Know ye, that we, , of , in the district of Connecticut, as principal, and of and of , both in said district, as sureties, are holden, bound, and obligunto to the United States in the sum of $, well and truly to be made, bind ourselves jointly and severally, our heirs, executors, and administrators, firmly by these presents. Signed with our hands, and sealed with our seals, this day of , .

The condition of the above bond is such, that whereas , in said district, has been deemed and declared to be a bankrupt, by a decree of the district court of the United States for the district of Connecticut, passed on the day of , and the said hath been, by said court, duly appointed assignee of the said bankrupt's property, all in pursuance of the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841. And the said assignee having accepted said trust—

Now, therefore, if the assignee shall duly and faithfully discharge all his duties as assignee, as aforesaid, and comply with all the orders of the court in relation thereto, then the foregoing bond shall be void; but on failure thereof, then said bond shall remain good, valid, and binding in the law.

Signed, sealed, and delivered in the presence of

The foregoing bond approved by me on the day of its date, , judge of the United States district of Connecticut.

TO THE COMMISSIONERS IN BANKRUPTCY.

The following form has been prescribed for the proof of debts before commissioners, under the 20th rule.

District of Connecticut, county of , town of , this day of 184

In matters of

A B
vs.
His creditors. } In Bankruptcy.

I, C D, of , in the county of , and district of , on oath depose and say, that the said A B, by whom [or against whom] proceedings

have been had in bankruptcy, in the district of Connecticut, at and before the time of filing the original petition, was, and now is, justly indebted to this deponent for an on account of [here describe the *note*, *bond*, *judgment*, contract, book-debt, or such other claim as he may desire to have proved, minutely, if there are several notes describe each, and compute the interest, ascertain what is due on each, and if more than one, add them together] and upon the same there was due me on the day of , 184 , when said original petition was filed, the sum of $, and the same has never been paid, and is now due.

Dated at , this day of , 1842.

Signed C. D.

Personally appeared before the subscriber, a commissioner in bankruptcy for the county of , in the district of Connecticut, and made solemn oath to the truth of the facts stated in the foregoing deposition, by him subscribed. And I further certify, that I find there is due the said C D from said bankrupt the sum of $, and that the same was justly due on the day when said bankrupt's petition was filed. Dated the day and year first abovementioned.

Attest: Commissioner.

—

MEMORANDUM.

If the commissioners should not be satisfied with the affidavit of the creditor, or if there should be any suspicion of fraud in the case, he may require further proof, such as the subscribing witness to the note, or a witness who knows the handwriting of the maker of the note, or a contracting party. If the debt is due on judgment, a copy of the judgment and the original executions should also be produced before the commissioner.

Corporations may prove their debts by one of their officers, varying the form accordingly, and the form may be varied to suit the case of proof coming from other witnesses than the party.

The following form has been prescribed for the taking of evidence in other cases than the proof of debts before commissioners, under the 20th rule:

District of Connecticut, county of , town of , this day of 184 , in the matters of—

A B
vs. } In Bankruptcy.
His creditors.

I, , of , in the county of , and district of , on oath depose and say [Here state the evidence.]

Signed.

Personally appears before the subscriber, a commissioner in bankruptcy for the county of , in the district of Connecticut, and made solemn oath to the truth of the facts stated in the foregoing deposition, by him subscribed, to be used in the above entitled cause.

Before me, Commissioner.

MEMORANDUM.

All papers to be used in evidence or otherwise, should be written or printed on foolscap, with a broad margin at the top.

AN ORDER OF COURT TO TAKE POSSESSION OF ASSETS.

The President of the United States of America, to the marshal of the district of Connecticut, greeting:

Whereas, at a district court, within and for the district of Connecticut, held on the day of 184 , the said district court did deem and decree, that of in the county of in said district, was a bankrupt within the purview of the act of Congress, entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved, August 19th, 1841:

Now, therefore, we order and command you, forthwith, to attach, seize, and take possession of the following described lands, tenements, hereditaments, goods, chattels, assets, credits, property, and rights of property, of the said bankrupt, to wit:

Together with all such other lands, hereditaments, goods, chattels, assets, credits, property, and rights of property, of the said bankrupt, which may be found, discovered, or come to your knowledge, by diligent search, or otherwise, either in the possession of the said bankrupt or any other person or persons, the whole whereof you will deliver over to the said assignee, with an inventory of the same, attested by yourself, and make return of your doings to said district court. Hereof fail not.

Witness, ANDREW T. JUDSON, judge of the United States, for the district of Connecticut, this day of 184 .

Clerk.

—

UNITED STATES OF AMERICA—*District of Connecticut, ss:*

184 . By virtue of the foregoing order of the district court of Connecticut, I have attached, seized, and taken possession of the following described lands, tenements, hereditaments, goods, chattels, assets, credits, property, and rights of property, of the said bankrupt, to wit:

And in the further pursuance of the said order, I have delivered the property so attached to , the assignee of the said bankrupt, together with a true inven ory and schedule of the same.

Attest: *Marshal.*

FEES. Travel, - - - - - - $

Collecting, securing, and delivering property,

Making out return, - - -

Inventory for assignee, - - -

Assistance, - - - -

Clerk's fees for seal, blank, &c., - -

for entry of this return, - -

$____

DISTRICT OF CONNECTICUT, *ss:*

Received of the marshal of the district of Connecticut all the goods, chattels, assets, credits, property, and rights of property, described in the foregoing return, together with the possession of the lands, tenements, and hereditaments, therein also specified.

Assignee of said bankrupt.

FORM OF THE DISSENT OF CREDITORS.

_____ vs. His creditors. } In Bankruptcy.

To the district court of the United States, now in session at within and for the district of Connecticut.

This being the time and place of *hearing* the petition of , for a discharge and certificate, and the subscribers being a majority in number and value of the creditors of the aforesaid petitioner, who have proved their debts *do* file this, our written *dissent* to the allowance of a *discharge* and *certificate* to the said petitioner.

Dated at this day of 184 .

NAMES.	RESIDENCE.	AMOUNT.

FORM OF DEMAND FOR A JURY AFTER DISSENT.

_____ vs. His creditors. } In Bankruptcy.

To the district court of the United States, now in session at within and for the district of Connecticut.

Whereas, upon previous proceedings, lawfully had, said court hath deemed and decreed to be a bankrupt, within the purview of the act of Congress in such case made and provided: *And whereas*, upon the petition of the said bankrupt, for a discharge and certificate, at the hearing thereof, this day, a majority in number and value of the creditors of said bankrupt, who have proved their debts, have now, here in court, filed their written dissent to the allowance of a discharge and certificate to the said bankrupt, therefore, the subscriber doth hereby demand a trial by jury of his said petition, upon a proper issue to be directed by the court, at such time and place, and in such manner as the court may order.

Dated at this day of 184 .

Signed,

DEMAND FOR A JURY ON THE DENIAL OF THE DISCHARGE.

_____ vs. His creditors. } In Bankruptcy.

To the district court of the United States, now in session at within and for the district of Connecticut.

Whereas, upon the hearing of the petition for a discharge and certificate of who hath, by said court, been duly declared a bankrupt, within

the purview of the act of Congress, in such case made and provided, a discharge and certificate have not been decreed to him by said court; *therefore*, the subscriber doth hereby demand a trial by jury of his said petition, for a discharge and certificate, upon a proper issue, to be directed by the court, at such time and place, and in such manner as the court aforesaid may order.

Dated at this day of 184 .

Signed,

FORM OF AN APPEAL TO THE CIRCUIT COURT.

_____ _____ } In Bankruptcy.
vs.
His creditors. }

To the district court of the United States, to be in session at within and for the district of Connecticut, on the day of 184 .

Whereas, upon the hearing of the petition for a discharge and certificate of who hath, by said court, been duly decreed a bankrupt, within the purview of the act of Congress in such case made and provided, a discharge and certificate have not been decreed to the said bankrupt by said court; *therefore*, the said bankrupt, within ten days thereafter, doth appeal from the decision of the district court, refusing the said discharge and certificate, to the honorable circuit court of the United States, next to be held at within and for said district of Connecticut, on the day of 184 , and the subscriber prays that his said appeal be allowed.

Dated at this day 184 .

Signed,

Office of the District Court, Conn.,
Canterbury, February 2, 1842.

In the execution of the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841, I do appoint the following person, resident of the district of Connecticut, to be commissioners within their respective counties, viz:

Hartford county—Walter Mitchel and Gideon Wells.
New Haven county—Samuel J. Hitchcock and Robinson S. Hinman.
New London county—Joel W. White and John D'Witt.
Fairfield county—Thomas Robinson and Thomas T. Whittlesey.
Windham county—Jonathan A. Welch and Uriel Fuller.
Litchfield county—Elisha S. Abernathy and William H. Merriman.
Middlesex county—Noah A. Phelps and Jonathan Barnes.
Tolland county—Loren P. Waldo and Jeremiah Parish.

And I do also appoint the following persons to be assignees, within their respective counties, viz:

Hartford county—Erastus Smith.
New Haven county—Norris Wilcox.
New London county—James A. Hovey.

Fairfield county—Frederick S. Wildman.
Litchfield county—William S. Holabird.
Windham county—Chester Lyon.
Middlesex county—S. W. Griswold.
Tolland county—Abner Hendee

Attest: ANDREW T. JUDSON
District Judge.

The following tariff of fees for the officers of the district court of Connecticut, is established this 2d day of February, 1842, by Andrew T. Judson, judge of the United States for the district of Connecticut, in bankruptcy:

ATTORNEY'S FEES.

Drawing petition, list of debts, and inventory	$3 00
Drawing up each decree	25
Argument of any contested question to court	5 00
do to the jury	8 00
Attendance before a commissioner to take evidence on an account	2 00
Drawing assignee's deed	1 00
Written notice of an appeal	1 00

MARSHAL'S FEES.

Travel to serve any process, subpœna or notice, aud to return the same, per mile	05
Service by reading	09
Service by copy	25

WITNESSES' FEE.

Travel per mile to court or commissioner	05
Attendance per day	34

CLERK'S FEES IN THE DISTRICT COURT.

Entry of each petition and numbering the same	05
Administration of the oath in verification	05
do to each witness in court or on an affidavit	05
Certificate of the oath of verification	25
Filling up each oath, copy, order, decree, or appointment	05
Affixing name and seal to any form, decree, copy, order, or appointment, per statute	25
Filing each additional paper, after petition filed, and noting same in the docket	05
Each entrance of an appearance to defend	05
Entry of a motion to adjourn or appeal	05
Copy of same to circuit court	25
Signature and seal on "	22
Swearing jury or constable	10

Receiving and noting verdict	10
Framing issue for the jury	25
Process, when required to issue against bankrupt a witness	25
Signature and seal on do.	25
Receiving and depositing money, and drawing out the same in each case	1 00

FOR COMMISSIONERS IN BANKRUPTCY.

Taking proof in each debt, not to exceed	1 00
Each subpœna or notice	25
Travel *to* the place of taking the evidence, per mile	10
Taking each deposition to be used on the trial of causes	1 00
When more than *three* depositions are taken at the request of one party, fees per day	3 00
Taking the answers to the interrogatories put to the petitioners, per day	3 00
Taking proof in cases referred, on objections filed, or taking an account, per day	3 00
Receiving and examining each petition, in compulsory cases	1 00
Administration of the oath on the petitions	10
Certificate of examination and oath	10

To the above, *actual* expense and postage may be added.

At a district court held at Canterbury, within and for the district of Connecticut, in the United States of America, on the 9th day of September, 1842, the above tariff and table of fees were established for the services of commissioners in bankruptcy.

Attest: ANDREW T. JUDSON,
District Judge.

OFFICE CLERK OF U. S. DISTRICT COURT,
West. Dist. of Pennsylva., Pittsburg, Dec. 22, 1842.

SIR: In answer to your letter of the 15th instant, and in compliance with a resolution of the Senate of the 13th, I now respectfully inform you that the number of applications under the bankrupt law, in the Western district of Pennsylvania, up to and including the 19th instant, is fifteen hundred and seventy-seven; of which number fifteen hundred and seventy-two were voluntary, and five involuntary; and of the whole number there have been four hundred and fifty-eight discharges.

Very respectfully, your obedient servant,
A. A. IRWIN, *Clerk.*

Hon. DANIEL WEBSTER,
Secretary of State, Washington city.

PITTSBURG, *December* 24, 1842.

SIR: Yours of the 14th instant, with the resolution of the Senate, requesting the opinion of the judges as to any amendments or modifications

of the bankrupt act, and its effects and operation, was received in course of mail.

The only material amendment that I venture to suggest is, that express power should be given to the courts to issue injunctions. Our rules and adjudications have met other difficulties, which the act at first presented; I will not therefore notice them as subjects of amendment.

The act, in this district, has been extensively beneficial in its operation. Out of nearly 1,600 applications, there are not above 50 opposed cases; and of these 50 less than one half for alleged frauds against the law, and not more than six of that half have been sustained.

I have the honor to be, with high respect, your obedient servant,

TH. IRWIN,

District Judge, Western District of Pennsylvania.

Hon. DANIEL WEBSTER,

Secretary of State.

PHILADELPHIA, *December* 24, 1842.

SIR: Your circular of the 14th instant, enclosing a copy of a resolution passed by the Senate, requesting information from the judicial officers of the United States on the subject of the bankrupt law, was duly received.

In answer thereto I beg leave to state, that, so far as my experience has enabled me to observe the effects and operation of the bankrupt law, it has had a beneficial effect on the business community in this district, by ensuring an equal distribution of the assets of a debtor among his creditors, and thus preventing a practice which was almost universal here, of a debtor, in failing circumstances, assigning all his property for the benefit of some relative or favorite creditor, to the exclusion perhaps of the merchant who supplied the very goods assigned. The knowledge that such preferences can not now be given has inspired more confidence in the seller, and made the purchaser cautious of incurring obligations, without a reasonable prospect of being able to comply with them.

There are, however, portions of the law, in which I respectfully suggest it would be advisable to have some modification.

By the third section of the act, the property is divested out of the bankrupt by the decree of bankruptcy, which can not be had until the expiration of at least twenty days after filing a petition, describing (in case of a voluntary application) the location and situation of the property. In this circuit it has been held that the property remains in the debtor until the decree, and is consequently subject to alienation by him, or to levy and sale under legal process against him, up to that time.

In some cases suits have been commenced and judgments obtained against the petitioners after filing their application, and their property taken from the general creditors by executions issued without and against the will of the debtor, before the decree of bankruptcy could be obtained.

I think a provision in the law vesting the property of the debtor, from the time of filing a petition by or against him, in an assignee to be appointed by the court, would be useful. It would also relieve the court from responsibility, and no doubt give satisfaction to the creditors, to direct that the property should be surrendered at any time thereafter, to such person or persons as a majority in interest of the creditors should select as assignee.

The second section of the law declares that all future transfers, conveyances, &c., made in contemplation of bankruptcy, and for the *purpose of giving any creditor a preference or priority* over the general creditors, shall be deemed void, and a fraud upon that act; and such "fraudulent conveyance" is, by the first section, declared an act of bankruptcy. But, in many instances, assignments have been made by debtors of all their property, for the equal benefit of all their creditors, *and without any preference or priority.*

In this circuit it has been held, that such assignments are not prohibited by the bankrupt law, and are therefore valid. The effect of such an assignment is, to take all the property out of the jurisdiction of the United States courts, and vest it in persons chosen by the debtor, who are subject only to the jurisdiction of the courts of the State, and, in Pennsylvania, to deprive the creditors of the right to call on the assignee for an account of the assigned property, until the expiration of twelve months from the date of the assignment.

I respectfully suggest that a provision, leaving it optional with a certain portion in interest of the creditors, to have such an assignment declared an act of bankruptcy, if applied for within two or three months after its execution, and vesting the property in the assignee in bankruptcy (except so far as it had been *bona fide* disposed of, and in that case the proceeds of it), from the date of the voluntary assignment, would be useful.

I also respectfully suggest, that in all cases where the debtor has a right of appeal, or trial by jury, where the decision of the district judge is against him, the same right should be extended to the creditor, when he is dissatisfied with the decree.

These are the principal modifications of the law which have suggested themselves to my mind as important, and are respectfully submitted, as requested, by

Your obedient servant,

ARCH. RANDALL,
Judge, Eastern District of Pennsylvania.

Hon. DANIEL WEBSTER,
Secretary of State.

BALTIMORE, *December* 24, 1842.

SIR: I have the honor to acknowledge the receipt of your letter enclosing the resolution of the Senate requesting information upon certain points from the judicial officers of the United States who have had the execution of the bankrupt law.

The execution of that act of Congress being mainly committed to the district courts, my duties under it have been confined to the decision of such questions as were from time to time adjourned by the district to the circuit court. My official experience in the administration of the law, therefore, enables me to do nothing more than suggest amendments which (if the law continues in force) it would be advisable to adopt, in order to remove some difficulties in its construction which have given rise to conflicting decisions in different districts. But I observe that a proposition to repeal the law is now under discussion in Congress. And while that question remains unde-

cided, it is, I presume, not desired that I should trouble the Senate with matters which are altogether unimportant if the law be repealed.

I am sir, with high respect, your most obedient servant,

R. B. TANEY.

Hon. DANIEL WEBSTER,
Secretary of State.

COLUMBUS, *December* 29, 1842.

SIR: In answer to your communication of the 14th inst., enclosing a resolution of the Senate, I have the honor to state, that I have very seldom had occasion, in the performance of my judicial duties, to examine the bankrupt law. Only a few cases under it have been brought into the circuit court of the seventh circuit, and I have consequently but little judicial knowledge of the practical effect of the act. So far as my observation has enabled me to judge, I think the provision authorizing voluntary bankruptcy is most objected to. Should this provision be stricken out of the law, its operation should be limited to traders.

With these modifications, and an amendment which shall embrace banks, the act, I think, would be more acceptable to the public than it now is. Its tendency would be salutary in restricting credit, and in preventing, rather than encouraging fraud. Its beneficial influence would be felt more by creditors than debtors.

With great respect I have the honor to be, your obedient servant,

JOHN McLEAN.

Hon. DANIEL WEBSTER,
Secretary of State.

COLUMBUS, *December* 30, 1842.

SIR: In reply to your communication of the 14th inst. accompanying a resolution of the Senate, requesting the opinions of the judges of the United States as to any amendments or modifications of the bankrupt law, that they may deem useful and expedient, I have the honor to submit the following brief suggestions.

1. If that part of the act authorizing voluntary bankruptcies should be continued, no one whose debts did not amount to five hundred dollars, should be permitted to apply for relief under it. Nor should any person be discharged under the act from any order or judgment of a court, for the payment of money under the bastardy laws of the States, nor from any judgment obtained for a breach of marriage promise, or in any action for a tort.

2. It would be well for Congress, instead of the general term used in the first section, to define more definitely what are to be considered debts due in a fiduciary capacity, and especially, whether debts due from an auctioneer, or a commission merchant, for property sold on account, shall be regarded as fiduciary debts, for which a discharge can not be obtained.

3. In my judgment it would be advisable that the sixth section should be so amended, as to give the State courts and tribunals concurrent jurisdiction with the federal courts in all cases and controversies between assignees and persons indebted to the bankrupt, in which the sum in dispute does not exceed one hundred dollars.

I would remark in general, that from my knowledge of proceedings under the act, less difficulty has arisen in its execution than was anticipated. I would also say, that, while it has doubtless happened that some dishonest and fraudulent debtors, owing to the indifference and supineness of creditors, have obtained the benefit of the law, its operation in the main has been benignant in its results, and such as to give general satisfaction to the community. And it is the result of my observation, that very few cases have occurred in which creditors have really lost anything by the discharge of a debtor. In the great majority of cases, the creditors would never have received their debts, or any part of them, if the debtors had not obtained relief under the law.

In have the honor to be, with high respect, &c.

H. H. LEAVITT.

Hon. DANIEL WEBSTER,
Secretary of State.

COLUMBUS, *December* 22, 1842.

SIR: Yours of the 14th has just reached me. As district attorney I have had nothing to do under the bankrupt law. I venture a few suggestions.

I. The involuntary.

As to this class I am of opinion that the operation of the law has a beneficial influence. But there have been very few applications of this kind in Ohio. If corporations were brought within its range, it would render it much more beneficial, and make the law decidedly more popular.

II. The voluntary.

1. If the law was so amended as to exclude from its operation those who owe less than $300, or even $200, it would, in my opinion, be a decided improvement. Those who owe less than $300 seldom apply for the benefit of the law from any real necessity, but either from a fraudulent wish to escape payment, or a malicious wish to escape from some particular creditor.

2. It appears to me to be wrong that judgments obtained in action for *torts* should be included. A *trespasser* by a forced construction becomes a *debtor*. In general such debtors are very anxious to escape. They are under strong temptation to do wrong to effect it. And in general they are persons least likely to resist such temptation. And, at any rate, why should every *malicious* and *vicious wrongdoer* be placed upon the same footing with the unfortunate debtor whose insolvency may be brought about by circumstances which no human prudence could guard against or foresee.

Among the first applications were the loafers and least scrupulous class. Of late a more respectable sort of men have applied, and their discharge will bring in many others; their creditors and sureties then, with the increased, and still increasing pressure of the times, will bring into bankruptcy many respectable men of business, who having acted honestly are really entitled to favor. Future applications, in my opinion, will be of a more meritorious class than those who made haste to get the benefit of the law. And the continuance of the law, with proper amendments and modifications, will, I have no doubt, have a good influence in controlling and diminishing that

disposition to make free use of credit so prevalent among us, which has been the fruitful source of present distress.

Very respectfully, yours, &c.

C. ANTHONY,
U. S. Attorney District of Ohio.

Hon. DANIEL WEBSTER,
Secretary of State.

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
Michigan, December 28, 1842.

SIR: Your letter of the 14th instant, enclosing a resolution of the Senate of the United States, directing inquiries to be made of the several judicial officers of the United States charged with the execution of the bankrupt law, as to the number of application, voluntary and involuntary, and any amendments or modifications that may have suggested themselves, has been laid before me, and I hasten to comply with its requisitions, so far as I am able without access to the records of the court. The whole number of applicants in this district has been about 400, nearly all of which were for its benefits as voluntary bankrupts. There have been, however, several cases where the law has been used with great success to compel individuals in failing circumstances to make a full surrender of their property for the benefit of all their creditors; and in this respect it is now becoming a most efficient instrument for the collection of debts, and is daily gaining popularity with the business men of the district. Its operations, so far as I have been able to discover, have been such as to accomplish all the great purposes for which it was passed, with perfect safety to the creditor, and with economy and despatch to the debtor. Nor am I aware that any modifications or amendments are now necessary. Indeed, so limited has been the time since it became a law, that its defects, if any there be, have not yet been developed to the members of the bar, or the district at large. Under its operations many of the most enterprising and industrious of our young men, who were crushed by the sweeping misfortunes of the last few years, have, after a full surrender of all their property to their creditors, received their discharge, and have commenced lives of usefulness and industry with a store of experience calculated to prevent a recurrence of their former misfortunes. Many, however, of the oldest and most worthy of our citizens who have delayed applying for its benefits in the hope of amicable adjustments and compromises, are now looking to it as their only hope of obtaining a release from liabilities which they are wholly unable ever to discharge.

But its usefulness as a means for covering the full surrender of the property of individuals in failing circumstances, and its equitable distribution among all creditors, has but just begun to be developed; and I may say that in this particular it is constantly becoming more and more useful and popular with the business men of our district, and is likely to prove of incalculable benefit to the whole community. One of the greatest evils growing out of the failures and distress of the past, has been the unjust and fraudulent assignments made by persons in failing circumstances, by which certain creditors acquire preferences over others equally worthy. A very large proportion of the real and personal estate in this district has, under the operation of those assignments, been tied up, the debtor remaining in possession, car-

rying on his business as usual, and appropriating all the proceeds of his property and earnings to the payment of some *one* debt, to the exclusion of all others. There is no limit to the fraud and injustice perpetrated by such means, which the bankrupt law entirely prevents.

In cases of insolvency, it is now found to be a thorough, cheap, and expeditious mode of extorting from the debtor all his property, and distributing the proceeds equally among all his creditors, while the powers of searching examination of the debtor under oath, before the commissioners and court, has effectually terminated the expensive and dilatory proceedings in chancery by creditors' bill. Whatever changes or modifications may be made, this feature of the law should remain; for in many of our western States, and especially in this, it is found to be the only law for the collection of debts. I am not aware that any frauds have been committed in our courts under its provisions, nor that any changes are necessary to prevent them. As the prosecuting officer of this district, I have never heard any complaint of the violations of its provisions, nor in my practice at the bar have I discovered, nor heard from others, of any material defects.

In conclusion, I have only to say that, so far as my knowledge extends, the operations of the act have been satisfactory to the people of this district, both creditors and debtors; that its defects have not yet been discovered, and that in my capacity as an officer of the court, a member of the bar, or a citizen of the district, I have not been able to learn that any present alteration or modification was necessary.

Your obedient servant,

GEO. C. BATES,
U. S. District Attorney of Michigan.

Hon. DANIEL WEBSTER,
Secretary of State.

PINE FORGE, SHENANDOAH CO., VINGINIA,
December 26, 1842.

SIR: A few days ago I received your letter transmitting to me a copy of the resolution of the Senate adopted on the 13th instant, instructing you, as the Secretary of State, to obtain from the judges of the United States court certain information in regard to the operation and effects of the bankrupt law, &c. And in your letter you say, "Statements of the number of applications and discharges have been requested from the clerks, so that you need not be called on to perform any duty of that kind. But if your observation or judicial experience have enabled you to suggest alterations or amendments of the law, or if you are able to give information which you may deem important in regard to its effects and operation, I shall be obliged to you to communicate such suggestions or information as soon as convenient, to be laid before the Senate." I will cheerfully comply with the request which has been made, though I can not suppose that what I may say will be of much importance to the Senate.

As yet the bankrupt law has not been fully acted upon. The judges have not progressed much further with it than to grant discharges. Collateral proceedings growing out of cases in bankruptcy have not originated to any great extent. The experience of the judges, therefore, as to the sufficiency or insufficiency of the act—its wisdom or impolicy—must be

but partial. Sufficient, however, is known to enable them to say that some defects exist in the law, and that its operation upon the judge is somewhat burdensome.

1st. The business of the courts has been greatly increased by it.

2d. To judges living at a distance from the place or places at which the business is transacted, the courts being deemed to be always open, and the business immense, the operation of the law is very onerous.

3d. From many petitions which have passed through my hands, I have been led to believe that many individuals, under the voluntary clause in the act, resort to the act, not for the purpose of relieving themselves from inextricable embarrassment, but rather for the purpose of saving a penny. In many of the cases the amount of indebtedness did not exceed one hundred dollars. In some of the cases the amount was less; in very many not much more. In most of the cases some little property was surrendered, but not more than the assignees would assign to the bankrupts. The costs were known to be considerable. But little relief, therefore, could have been expected to be obtained beyond the mere property which might be assigned to such persons. Many, very many, of the voluntary cases, however, were the cases of persons hopelessly insolvent and inextricably embarrassed. Whether these facts should suggest to the Senate a repeal of the voluntary feature of the act, or a modification of the same, restraining the same to a certain amount of indebtedness, the Senate must judge.

4th. Whether the act should be so amended as to require the consent of a portion of the creditors to the discharge and certificate the Senate must also determine. I would say, however, in regard to the matter that, in my opinion, such an amendment would operate in practice as a denial of the discharge and certificate. The unpopularity of the law with the creditor portion of the community is such that, as far as I have been enabled to judge, all hope of obtaining such consent, except but in a very few cases, would be precluded. This would be particularly so in all cases of voluntary bankruptcies.

5th. It should be desired that the means of having the law uniformly administered should be provided. The judges sometimes differ in construing the act, and no means have been provided by which those differences may be settled. A judge may, to be sure, adjourn a question into a circuit court for its opinion, or, in certain events, appeals may be taken there, but the decision of such court would only settle the question in its particular circuit. It is likewise true that in cases of a difference of opinion between the judges the points of difference *might*, *perhaps*, under the broad phraseology of the 6th section of the act of the 29th of April, 1802, be certified to the Supreme Court to be finally decided; but this, at best, would afford but a partial, a precarious, and circuitous means of obtaining the opinion of that court upon many important questions which might arise under the act. The *parties*, too, to the proceedings in bankruptcy might be without remedy where the judges did *not* differ, or might not *agree* to differ for the sake of taking the point up. Practical illustrations of the defect of the law in the particular just stated might be cited. I will mention one, and only one, which has occurred in Virginia. It has been decided by the court here that a person owing a debt in a fiduciary capacity can not voluntarily become a bankrupt so long as he is owing such fiduciary debt. In other circuits different decisions have been made. Each of the courts ap-

pear to be satisfied with their respective decision, and, as far as I have been informed, it has not been thought necessary to attempt to obtain the opinion of the Supreme Court upon the question. In that respect, therefore, the law is not uniform.

6th. The ambiguity of the act in regard to the right of a person owing a debt in a fiduciary capacity to avail himself of the benefit of the act might be removed by an amendment.

7th. The meaning of the 2d section of the act, where it speaks of certain payments, &c., made "*in contemplation of bankruptcy*" being void, &c., might be rendered more explicit. Some of the judges have construed those words to mean in contemplation of a *state* of bankruptcy or insolvency, and not in contemplation of *taking the benefit of the act.* Other judges are inclined to suppose that the language of the second proviso to the section, to wit: "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 the act*," shows the meaning of the words "in contemplation of bankruptcy" to be in contemplation *of taking the benefit of the act.* Perhaps it would be well enough to remove the difficulty by an amendment. That section of the law is very important, and should be as explicit as possible.

8th. The "written dissent of a majority in number and value of the creditors who have proved their debt" in the 4th section spoken of appears, upon a careful examination of the whole section, to effect nothing *for* the *creditors* or *against* the *bankrupt*, and that its only effect is to confer a privilege upon the bankrupt of having a trial by jury in advance of a decision by the judge. It is believed that such was not intended to be the effect of such "written dissent" when made, or the meaning would have been more clearly expressed. Some of the judges in construing the act have made that "written dissent" the foundation of most important inferences, when it is obvious, from the whole of the section, that it is a phrase without any practical meaning. As it stands in the act it has no practical effect, and is only calculated to perplex and mislead.

9th. The judges have differed upon the question, whether a creditor who has not "proved his debt" in the manner in which "proof of debt" is required to be made by the act, can come in and contest the right of a bankrupt to his discharge and certificate. On the one hand, it has been supposed, that the words in the fifth section of the act—"and no creditor or other person coming in and proving his debt or other claim, shall be allowed to maintain any suit at law or equity therefor, but shall be deemed thereby to have waived all right of action and suit against such bankrupt," &c.—expressly recognise the right of a creditor to make his *election* to come in under the bankruptcy, or to pursue his remedy at law; that a creditor, who has *not* proved his debt, may, consistently with such right of election, come in and contest the petition for a discharge, *for the purpose of making his remedy at law effectual, by defecting the discharge*, disclaiming, at the same time, any right to participate in the *distribution* of the bankrupt's effects, as was permitted to be done in many instances in England. (1st Atk. 220, 221; 1st Bac. Abr. by Gwillim, 414.) On the other hand, it was supposed, if a creditor comes into the bankrupt court for *one* purpose, he must come in for *every* purpose, and that he could not come in to contest the petition, without proving his debt, as he would be required to prove it, before he could partake of the assets of the bankruptcy. The law in this respect, also, is not uniform in its operation throughout the country.

10th. In the fourth section of the act some five or six reasons are mentioned, either of which would prevent a bankrupt from obtaining his discharge, to wit: 1. Fraud or wilful concealment of property. 2. Preference to creditors contrary to the provisions of the act. 3. Wilfully omitting or refusing to comply with any order of the court, or to conform to any other requisites of the act. 4. Admitting, in the proceedings under the act, a false or fictitious debt against the estate. 5. If of the trading class, the not having kept proper books of accounts since August 19, 1841. 6. The having, since the passage of the act, applied trust funds to his own use. Suppose the bankrupt to have obtained his discharge, was it intended, that if any one of those reasons should afterward be discovered to exist, that the creditor might reply to the bankrupt's plea of discharge (if he should be afterward sued, and plead his discharge), any one of such facts, in avoidance of the discharge? If so, it is conceived that such meaning is not clearly impressed. The fourth section says the discharge may be pleaded as a full and complete bar, &c., "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," &c. From this, it would appear that *fraud* or *wilful concealment* of property only, might be replied by such creditor. It will be for the Senate to say whether this section requires amendment in this particular, or not.

11th. It may be a question under the act whether debts due the Government by a bankrupt will not be affected by the discharge and certificate. In England such debts would not be affected by the certificate. The reason there is, that the king, by reason of his prerogative, is not within an act of parliament, unless expressly received, and not being named in the British acts of bankruptcy, he is not within their provisions. With us it is said that such a rule of construction does not exist. 1st Tucker's Blackstone 262, note 31. This seems to be supported by the 62d section of the bankrupt act of 1800. That seemed to have been considered necessary to prevent the certificate, under that act, from barring the Government of its debts. There is no such provision in the new act, and if it was intended that the debts due the Government should not be barred, it would perhaps be well enough to amend the act in that respect.

12th. It perhaps may be a question under the present act, whether the United States judges could by *habeas corpus* discharge bankrupts who have obtained their certificates from imprisonment under *state process.* There is no express authority to do so given by the act, and the question might be whether such authority would result by implication. It is true that the 6th section of the act gives the courts "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;*" but the question still would be to what extent might a circuit court go in issuing such writ. It would seem to be confined to issuing the writ in cases only where the persons were confined under, or by color of, the authority of the *United States*, &c., and not of *State authority.* (See the 14th section of the act of the 24th September, 1789, and the 7th section of the act 2d of March, 1833, and the cases of exparte Cabrera 1 Wash. C. C. R. 232, and of the United States *v.* French, 1st Gallis. C. C. R. 2.) There is no doubt but that the United States judges would have the power, in such cases, to grant relief by *injunction;* but if it should be thought desirable that they should

grant the same relief upon habeas corpus, it would be well enough, perhaps, to amend the act so as to give them authority, expressly, to do so. It might, perhaps, also, not be amiss to declare, at the same time, that upon showing cause, upon the habeas corpus, why the debtor should not be discharged, the creditor might show any fact which would have been sufficient to prevent the discharge from having been decreed by the court, if the fact had been made known.

I believe, sir, I have now stated all that I deem worthy of communicating to the Senate. I have hastily committed my views to paper, and having been much pressed for time by other engagements, I must ask your indulgence for the very imperfect manner in which I have discharged the task imposed upon me.

I have the honor to be, very respectfully, your obedient servant,

J. S. PENNYBACKER.

Hon. DANIEL WEBSTER,
Secretary of State.

CHARLESTON, KANAWHA COURTHOUSE,
Virginia, December 24, 1842.

SIR: In answer to the inquiry from the Department of State of 15th instant, in relation to applications made under the bankrupt law, I have to say that no application, either by persons desirous to be made bankrupts or by creditors, has been made in the United States district court at this place since the passage of the law, and that, having had no experience in the matter, I am not prepared to suggest any modification of the law.

Respectfully, your obedient servant,

WILL. HATCHER.

Hon. DANIEL WEBSTER,
Secretary of State.

DISTRICT CLERK'S OFFICE,
South Carolina district, Charleston, Dec. 27, 1842.

SIR: I have the honor, in reply to your communication of the 15th instant, to transmit to you the following statement of applications for the benefit of the bankrupt act made in this district since the law went into operation and brought down to the present date.

There have been two hundred and five voluntary petitions and only one compulsory on the part of petitioning creditors. There have been sixty discharges granted, including one in which the court at first refused the discharge; but, the petitioner applying for a trial by jury, the jury found that he was entitled to it, and the court accordingly decreed it. There are two cases left unsettled, questions having arisen upon them, which were adjourned over to the circuit court for a hearing and determination. All of these applications were made to the district court. All of the other applications in which discharges have not yet been granted, are proceeding to, and some have almost reached, maturity.

RECAPITULATION.

Whole number of applications, including 1 compulsory - -	206
Number of discharges granted - - - - -	60
Cases unsettled - - - - - - -	145
Compulsory, which stopped upon obtaining a decree of bankruptcy - - - - - - - -	1
	206

I have the honor to be, sir, with much respect, your obedient servant,

H. Y. GRAY,
District Clerk.

Hon. DANIEL WEBSTER,
Secretary of State.

CLERK'S OFFICE OF THE DIST. COURT OF THE U. S.,
District of Kentucky, December 22, 1842.

SIR: Your communication of the 15th instant was received on yesterday, and I now transmit the information required.

There have been petitions presented to the court under the voluntary clause of the bankrupt law which have been received 1,800. Applications have been made by creditors to force debtors into bankruptcy 18. In 10 of the above cases the creditors succeeded in forcing the debtors into bankruptcy. They failed in 5 cases, and there are 3 cases before the court under advisement. Two hundred and thirty-five have been discharged. This leaves still pending 1,578.

But one discharge has been finally denied in the district court, and in that an appeal was taken to the circuit court, when (the matter having been placed upon a different ground) the discharge was granted by the circuit court.

There were two original petitions presented for the benefit of the act which were not allowed to be filed because of the smallness of the amount of indebtedness.

Yours, respectfully,

JNO. H. HANNA,
Clerk for the district of Kentucky.

DANIEL WEBSTER, Esq.,
Secretary of State.

NASHVILLE, TENNESSEE,
December 23, 1842.

SIR: Your letter of the 14th instant, enclosing a resolution passed by the Senate of the United States on the same day, was received yesterday evening.

The clerk of the district court of the United States informs me that he has yet received no communication from the Department of State. It

may not, therefore, be improper to reply to that part of your letter in which information is sought of that officer.

The whole number of voluntary applicants for the benefit of the bankrupt law, from the time said act of Congress went into operation, up to this day, is nine hundred and ninety. There have only been five cases of *involuntary* bankruptcy. The number who have already obtained certificates of discharge, is four hundred and fifty-five. No application for the benefit of the bankrupt law has yet been successfully resisted; and, I imagine, in ALMOST EVERY ONE of the nine hundred and ninety applications, a certificate of discharge will be granted.

Probably in no other districts of the United States have there been fewer contested cases than in the district of Middle Tennessee. The individuals who have made application for the benefit of the bankrupt law, were generally hopelessly insolvent; or, at all events, it was impossible for creditors to make anything out of them by execution. In not a few instances, however, young men, who, though at the time unable to discharge all their liabilities, yet not so much in debt that, by reasonable industry, economy, and energy, they could not satisfy all their creditors, if common indulgence had been (as it most probably would have been) extended by the latter, have seriously wounded their credit and future usefulness, *by paying honest debts with a stroke of the pen.* Such cases I do not include in the category of *hopelessly insolvent.* I think it would not be going too far to say, that, of the whole number of applications, one third were not indebted over $3,000—many so little as $1,000, and even $500. The indebtedness of applicants from the out counties is generally small. Very little property, indeed, has been surrendered for the benefit of creditors; if any at all is surrendered, it usually consists of notes and obligations on non-residents and insolvents.

As few cases have been contested, it has not fallen to the lot of our district judge to decide many of the nice questions which have arisen in other districts; and his opinions, I believe, have uniformly given satisfaction.

Truth requires me to say, that it is my firm conviction, the repeal of the bankrupt law is desired by a majority of the people of this district. But neither the country, generally, nor even, in my opinion, any individual creditor, *has suffered* by the operation of the act—for almost every one of these bankrupts was proof against the process of the law. Had the law never passed, these creditors, who so much complain, would not have been the least better off; bonds and obligations due from insolvent men who defy the process of the law, or scarcely so valuable as the paper on which they are written; and the possession of such worthless instruments would have added nothing to their pecuniary ability or credit. Some honest men (not a few, I trust), have been released from thraldom and oppression—men who failed in fair business transactions, or loaned their names, in an evil hour, to friends who consummated their ruin.

One amendment (should the law be continued in force) seems to be desired by all parties—a provision to include corporations. This opinion finds favor in the minds of all whom I have heard converse upon the subject.

Very respectfully,

JOHN M. LEA,

United States District Attorney.

Hon. DANIEL WEBSTER, *Secretary of State.*

SOUTHERN DISTRICT OF ALABAMA,
December 26, 1842.

SIR: The number of discharges under the bankrupt law, in the Southern district of Alabama, amount to one hundred and eighty-one. Twenty four have been stopped for the present, but the cases are yet pending. The number of applications are five hundred and ninety-eight, leaving four hundred and seventeen yet pending. The number of voluntary petitions is five hundred and ninety-five; and the number of petitions by creditors is three.

I have inquired of the members of our bar as to the effects of the law, and the opinion among them appears almost *unanimous*, that it has been beneficial.

Very respectfully, your obedient servant,

DAVID TILES,
Clerk Circuit and District Courts
Southern District of Alabama.

Hon. DANIEL WEBSTER,
Secretary of State.

To be appended to Doc. 19.

REPORT

FROM

THE SECRETARY OF STATE,

In further compliance with a resolution of the Senate, in relation to the operation of the Bankrupt law.

JANUARY 10, 1843.

Read, referred to the Committee on the Judiciary, and ordered to be printed.

DEPARTMENT OF STATE,
Washington, January 9, 1843.

To the Senate of the United States:

I have the honor to transmit to the Senate several further answers to the letters from this Department, written in compliance with a resolution of the Senate of the 13th of December.

DANIEL WEBSTER.

AUBURN, NEW YORK,
December 26, 1842.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, requesting me to point out such alterations or amendments to the bankrupt law as my observation and judicial experience may have enabled me to suggest, and to communicate such other information as I may deem important in regard to the effects and operation of the act. In proceeding, as I do, without loss of time to answer this call, I am influenced rather by a sense of the respect due to the source from which it emanates, than by any opinion I have the vanity to indulge of the importance likely to be attached to the few suggestions which I propose to make.

What has always appeared to me the great and all-pervading defect of the act, is the extreme generality of its provisions. This has not only rendered the task of interpreting it very difficult, but has obliged the courts to exercise extra-judicial powers in executing it. But these difficulties having from necessity been already encountered, and now at length measurably overcome, it may not be expedient to interfere with the existing regulations established by the courts, unless it should appear to be necessary for the purpose of correcting what may be deemed objectionable in the existing systems, or for the purpose of securing uniformity of procedure.

There are, however, two highly important provisions of the act upon which conflicting decisions have been made by the district courts, and, in regard to one of which, by the circuit courts also.

1. The first is that contained in the first section relative to public officers, executors, &c. Some of the courts treat this provision as an exclusion of the *persons* designated from the benefit of the act, and others as merely an exception of the *debts* described from the operation of the discharge. As the act makes no provision for bringing questions arising under it before the Supreme Court for decision, I think it would be well to settle this question by an explanatory act; and in the event of the latter construction being affirmed, there ought to be some provision to define the rights of those to whom debts of the specified character are owing. Some of the courts who have adopted this construction have said that it is optional with creditors of this description to prove their debts and take a dividend, or not; and that if they elect to do this that their debts are discharged. But the act is wholly silent upon the subject, and nothing short of the supposed necessity of the case can warrant the courts in exercising a power so purely legislative in its nature.

2. The other enactment to which I have referred, is in the first clause of the 14th section. Its object was to authorize a joint decree of bankruptcy embracing all the members of a firm; the antecedent parts of the act relating in terms only to single individuals. The words "become insolvent," there used, are appropriate when applied to voluntary applicants, because *iusolvency* is the ground on which they are authorized to petition. But when applied to debtors proceeded against compulsorily by creditors, these words can not receive a literal construction without introducing a principle of great comprehensiveness and importance new in itself, and, as it appears to me, of at least very questionable justice and expediency; nor without, also, establishing a wide distinction, where none ought to exist, between individuals and joint traders. If a newspaper report which I have seen is to be relied on, this provision has, nevertheless, been held in one of the courts at least, to warrant a compulsory decree of bankruptcy against parties in trade on the ground of insolvency alone. Other courts have felt constrained to assume the weighty and distressing responsibility of deciding that the terms "become insolvent," when applied to proceedings *in invitum*, are to be interpreted as equivalent to the words *shall commit any one of the acts of bankruptcy herein before specified.* I am of opinion that this latter construction ought to be affirmed by a declaratory act.

3. The next amendment to which I have the honor to invite your attention, relates to a provision contained in the 2d section of the act. The clause "and the person making such unlawful preferences and payments, shall receive no discharge under the provisions of this act," is understood to embrace both voluntary and involuntary bankrupts, and to be unaffected by the subsequent provision in the same section, requiring the assent of creditors in the case therein specified to entitle the bankrupt to a discharge. In other words, the clause in question is understood to be an absolute prohibition of a discharge to a bankrupt who has committed any one of the acts specified in the first and second clauses of the second section.

With respect to the acts specified in the second clause, which were fraudulent as against creditors by the antecedent law, independenly of the bankrupt act, this prohibition may be unobjectionable, but with respect to the acts of mere preference, enumerated in the first clause, I am of opinion that the act requires amendment. It was originally a difficult and, until within a few months past, a very doubtful question, whether this clause was applicable at all to transactions occurring between the date of the act and the

time prescribed by the last section of it for it to go into plenary effect. This depended on the construction to be given to the word "*future.*" This term is now, I believe, generally interpreted as referring to the time of the passage of the act, though the opposite construction actually prevailed to a greater or less extent until very lately. The consequence is, that a preference given at any time after the 19th of August, 1841, is an absolute bar to a discharge. But it is to be remembered that preferences were permitted by the antecedent law in all the States, and being sanctioned by law, were not deemed immoral. It seems to be unjust, therefore, absolutely to debar a man of his discharge on account of a preference given by him before it was generally known that preferences were forbidden by the bankrupt law.

But there are other considerations bearing upon this point. The giving of a preference is not in terms declared to be an act of bankruptcy, but the courts have, nevertheless, held it to be so; and in their adjudications to this effect have taken an important step in advance of the English courts, and of the decisions of the American courts, in cases arising under the act of 1800. Heretofore it has always been considered that, in order to render a conveyance or security unlawful on the ground of preference, it must in general be shown to have been purely *voluntary*. But Congress, in expressly adopting the general principle (which before had been but a judicial doctrine) condemnatory of preferences given in contemplation of bankruptcy, omitted the limitation above mentioned, by which their legality is made to depend on the question whether they were voluntary or not; and the courts, as far as I am informed, have held that this limitation does not attach. On these accounts the effect of the provision in question is still more rigorous, and its justice more questionable. I, therefore, suggest the propriety of so amending it as to place all those who may have only given preferences between the date of the act and the 2d of February last, which, but for this act, would have been legal, on the same footing as voluntary applicants, who have given preferences before the passage of the act, are placed, by the subsequent provisions of the same section already alluded to, and, to render the amendment effectual, it should in terms embrace cases in which discharges have already been denied on this ground.

4. The conveyance or assignment by a trader of *all* his property, *though in trust for the benefit of all his creditors*, has long been held to be an act of bankruptcy by the English courts, and their decisions have been followed by our courts in executing the present law. The utility of the doctrine established by these decisions has been much questioned in England; and, by the late consolidated English bankrupt act (6 George IV., c. 16, sec. 4), it is limited and modified in a manner which appears to me highly judicious and worthy of imitation. I have the honor, therefore, to suggest the propriety either of abolishing the doctrine altogether or of limiting it and regulating its application.

5. By the first section of the act, any person who may be decreed a bankrupt on the petition of a creditor is entitled to demand a trial by jury; and where he resides at a great distance from the place of holding the court, the trial may be had in the county of such person's residence. Experience has shown, in this district at least, that this right is likely to be frequently exercised; and it is supposed that after a trial by jury has been demanded, the question can only be determined by the verdict of a jury, whatever number of trials it may require to obtain such verdict. The trial, moreover, especially in the larger districts, will generally be had, not before the district

court, but in the county where the alleged bankrupt resides; and considering that the persons proceeded against are commonly those who have extensive business connexions; that cases of this nature are calculated to excite considerable feeling in the neighborhood where they occur; and that many of the provisions of the bankrupt act are by men in general but obscurely apprehended, it was to be expected that juries would not unfrequently find themselves unable to agree. One such case has already occurred in this district, in which the commissioner, before whom the trial took place, and which lasted five or six days, was obliged to discharge the jury for want of ability to agree. Delays thus produced, besides leading to heavy expenses, tend in other respects to defeat the main object of the act in giving this remedy to the creditor. I have the honor, therefore, to suggest the expediency of limiting this right to a single trial, by a provision similar to the one contained in the insolvent acts of this State, declaring that, when on the first trial the jury can not agree, the decision of the judge shall take effect as if no jury trial had been demanded.

6. By the first section of the act, a person being a merchant, &c., may be declared a bankrupt on the petition of his creditor whenever such person shall conceal himself to avoid *being arrested*, or shall willingly or fraudulently procure himself *to be arrested*. These clauses are borrowed from the English act, and in those States, where suits are required to be commenced by *capias*, they are appropriate and sufficient. But it is supposed that the first of these acts was made an act of bankruptcy because it tended to defeat or delay the creditor in his attempt to obtain satisfaction of his debt by judgment and execution; and the second because it was likely to be resorted to for the purpose of securing a preference to a particular creditor over the general creditors of the debtor. In this State, however, the right to arrest a debtor for debt on mesne, as well as final process in ordinary cases, is abolished; and actions for the recovery of debts are generally commenced by the service of a declaration. And although a debtor who should here conceal himself to avoid being sued, or should procure himself to be sued, would commit substantially one of the acts designated, yet, according to the doctrine of the English courts that there can be no *constructive* act of bankruptcy, it is doubtful whether the courts would be warranted in declaring him a bankrupt on this ground. I therefore suggest the propriety of an amendment for the removal of this doubt. The mere addition to each of the claims in question of the words *or sued*, I presume would be sufficient.

7. The only directions in the act relative to the mode or principle of distribution of the estate and effects of the bankrupt among his creditors are those contained in the fifth and fourteenth sections. The latter section extends in terms only to cases of the joint bankruptcy of all the parties of a firm. The former, in general terms, prescribes a distribution of the bankrupt's property, *pro rata*, among all his creditors, and is doubtless to be considered as having chiefly in view ordinary cases of individual bankruptcy, though its terms are comprehensive enough to embrace the remaining description of cases also, viz: those in *which one of several partners is separately declared a bankrupt*. The rule of distribution, and also the mode of carrying it into effect, in the last description of cases, have been fluctuating in the English courts, and have been found very embarrassing. A full explanation of the subject would far transcend the limits proper for a communication of this nature. The history of the rule in England and the present state of the law on the subject in that country, may be found in the various English treatises

on partnership and bankruptcy; in Story's Law of Partnership, and in the case of Murray *vs.* Murray, in fifth of Johnson's Chancery Reports, p. 60. I am of opinion that some explicit legislative direction on the subject is required.

8. The opinion is understood to be, to some extent, prevalent in this State, that the right of the bankrupt to a discharge ought to be further restricted, by making it dependant to a greater extent on the will of the creditor. I doubt whether, in the actual condition of the country at the time the law was passed, such a modification of it would have been wise; but it appears to me well worthy of consideration whether, with a view to the more satisfactory and beneficial prospective operation of the act, an amendment to this effect would not now be expedient. I am of opinion, on the one hand, that the facility with which a discharge may be obtained ought to be sufficient to inculcate caution in giving credit; and on the other hand, that the obstacles to be overcome by the debtor should be so considerable, as to have a strong tendency to repress the spirit of rash speculation. I therefore suggest the propriety of so amending the act, as that upon the filing of a dissent in writing by any creditor, who shall have proved his debt amounting to not less than dollars, the bankrupt shall obtain no discharge without the assent of a majority in interest of all his creditors who have proved their debts.

9. I would also suggest the propriety of prescribing the period within which the debtor shall obtain the assent of creditors in the case specified in the 2d section of the act, and also in the case provided for by the last proposed amendment, should it be adopted. Where the creditors are widely dispersed, a considerable period will generally be necessary.

The foregoing are all the particular alterations or amendments to the existing law which I deem it my duty to suggest.

With regard to the remaining branch of your inquiry touching the effect and operation of the law, I desire to be understood as disclaiming any pretension to an ability to furnish information superior to that possessed by enlightened and observing citizens in general. In relation however to the voluntary applications which have come before me, I am constrained to state, that I have seen less evidence than I expected to meet with, of abuse of the privileges secured by the act, and that I believe its beneficial effects have been very great. Some unworthy men have undoubtedly availed themselves of it, who, individually, had little claim to its benefits. It may well be doubted, however, whether in any considerable proportion, even of these cases, creditors have lost anything of value to them by the discharge of their debtors; while, generally speaking, the unoffending families of the debtors (who ought not to be regarded as beneath ihe care of the law) have been essentially benefited.

But it is to be considered that these cases are only rare exceptions to the general effects of the law; that they were fully anticipated (and, as I imagine, to a greater extent than has been verified by the event thus far) and that among the fruits of nearly all general legislation, some evils are inevitable. The great body of those who have sought and obtained relief under the act, are unquestionably of that description of persons for whose relief it was designed. With the exceptions already stated, therefore, the operation of the act appears to me to have been in accordance with those great principles of justice and public policy on which it rests, and to which it was designed to give effect. So far, then, as relates to the past operation of the

voluntary principle of the act, my opinion is, that within the limits of my particular sphere of observation, it has produced all the good that was expected from it, at the expense of less evil than was generally anticipated.

With respect to the effects and operation of those provisions of the act which authorize compulsory proceedings by creditors against their debtors, I am of opinion that they have upon the whole been salutary. It is true that under the construction which the courts have given to the first and second sections of the act, whereby all preferences, whether voluntary or not, given in contemplation of bankruptcy, are held to be acts of bankruptcy, and under the construction which the phrase "in contemplation of bankruptcy" has received, in connexion also with the absolute inhibition by the act of any discharge to bankrupts of both classes who have given such preferences, the operation of the act has been in some instances harsh and severe against the debtor. But as far as I am informed, there is among enlightened and impartial men in this district, a general, if not universal concurrence in the opinion that these provisions have been highly efficient and useful, both as an antidote and as a remedy against injustice and fraud.

Touching the probable future effects and operation of the act, should it remain in force, in addition to its direct effects in securing a just application of the property of insolvent and fraudulent debtors, and in affording relief to debtors when it can no longer be either just or useful to withhold it, my conviction is strong that it would have a highly salutary influence in preventing the occurrence of those evils which would require a resort to the remedies it provides.

Acting, as it has hitherto done, almost exclusively on the numerous cases already existing at the time when it took effect, no opportunity has yet been afforded to observe its regular operation as a permanent measure of prevention as well as relief. The clamor that appears in some parts of the Union to have arisen against it, doubtless had its origin with the more sensitive part of the numerous creditors whose debtors have obtained discharges under it, upon their own voluntary application; and to say the least of it, it is a very uncertain, if not a wholly fallacious exponent of sound, impartial public sentiment. No inference on which it would be safe to act can be drawn from it, until time shall have been given for the feelings from which it sprung to subside. The proposal to abolish imprisonment for debt in this State met with the most violent and determined opposition; and when, a few years since, the act for that purpose was finally passed by a small majority, it was so loudly complained of as to lead to a strenuous, and, if I remember rightly, all but successful effort for its repeal. But at this time it would probably be difficult to find a single man who doubts the propriety of the measure. What then appeared to many persons to be an unwarrantable interference with what they had been accustomed to consider as the rights of creditors, is now clearly perceived to have been but a measure of unquestionable justice too long delayed. And now that the course of dealings among men has become adapted to the change, no one is prejudiced by it. To deprive the creditor, under proper limitations, of all further power of coercion over his debtor when the latter has no longer the means of payment, and so long as this power remains, is not likely to have, appear to me to be but a slight extension of the same principle of humanity and sound policy that dictates the abolition of imprisonment for debt.

Such an extension of it is recommended by the example of the most enlightened nations. I need not remind you that the late English consolidated

bankrupt act (6 Geo. IV. c. 16, §§ 6, 7,) contains provisions authorizing voluntary applications by debtors (in addition to the insolvent laws), in effect nearly as ample as those contained in our act. I am persuaded that time alone is wanting to demonstrate the wisdom and expediency of the law to the satisfaction of the American people.

I have the honor to be, with great respect, sir, your obedient servant,

A. CONKLING.

Hon. DANIEL WEBSTER.

UTICA, *December* 26, 1842.

SIR: In compliance with the circular from the Department of State, received on the 19th instant, I have the honor to submit the following report.

The whole number of applications, both voluntary and compulsory, made under the bankrupt act, in the northern district of New York, to the 21st instant, is 4,076. The number of voluntary applications is 4,016. The number of compulsory cases, or cases in which proceedings are instituted by creditors, is 60. The number of discharges granted is 2130. The number of cases in which discharges have been absolutely refused, is 3. The number of cases voluntarily discontinued, is 8. There are 6 voluntary cases in which discharges are denied, unless the applicants obtain and furnish to the court the written assent of a majority of their creditors. The number of cases still pending is 1,935.

The small number of cases in which discharges have been refused, is partly owing to this fact. At the commencement of operations under the bankrupt law, the judge of this district examined and closely scrutinized each application; and unless the applicant presented a case containing on its face every requirement of the law, it was rejected. Under this strict supervision, very few cases were received in which the law did not fully and clearly authorize a discharge.

Another fact is, that of the number of cases still pending, a large number of them are cases in which objections have been interposed, and time given to substantiate such objections, by proofs. Whether discharges will be granted or refused in those cases, on a final hearing, it is difficult now to say.

Of the cases pending, many of them are among the early applications.

No applications have been made in the *circuit court*, for the obvious reason that the law does not authorize them to be made there.

Respectfully, yours,

ANSON LITTLE,

Clerk of the northern district of New York.

Hon. DANIEL WEBSTER,

Secretary of State of the U. S.

NEW YORK, *December* 30, 1842.

SIR: Your letter of the 16th instant, enclosing a copy of a resolution of the Senate of the United States relative to proceedings under the bankrupt law, has been received; and, in answer to the inquiries made by the resolution, I have to state that, as the circuit courts have not cognizance of the

proceedings under that law, except on points or questions adjourned by the district judge into the circuit court, I have not the means in my possession of giving you any details as to the execution of the law, or any particular information as to the number of applicants for the benefit of the act, or the number discharged; and with respect to any amendments or modifications of the law, embraced within the inquiry by the resolution, I have no particular suggestions to make. The act is certainly very inartificially drawn, and in many parts somewhat difficult of interpretation, which, I presume, has arisen from the various amendments introduced and adopted in the progress of the bill, to meet the views of the different members of Congress, but which could not be beneficially altered, without remodeling the law to a very considerable extent. The construction which has been given by the courts to the doubtful parts of the act, has, I believe, settled down pretty generally in the same way; and any amendments now made, might give rise to new questions of interpretation.

These suggestions are, however, very respectfully submitted to Congress, and made only in compliance with the resolution, a copy of which you have sent me.

I am, with great respect, your obedient servant,

SMITH THOMPSON.

Hon. DANIEL WEBSTER,
Secretary of State.

MEADVILLE, *December* 30, 1842.

SIR: In reply to your communication of the 14th instant, I have it not in my power to state the number of applications or discharges under the bankrupt act of 1841—few cases have arisen where points have been adjourned, or appeals taken to the circuit court from the districts composing the third circuit, which has prevented me from obtaining much information as to the effect and operation of the act. All the questions which have been submitted to, or have arisen before me, have grown out of voluntary applications. The greater part have been on single points adjourned by the district judges, so that very few cases have occurred which required me to examine their merits in detail; and these depended so much on their peculiar circumstances as to afford no information which could be in any way useful to the Senate. In taking a general view of the effects and operation of the act, my opinion is, that they have been salutary. A peculiar state of things existed before, and at the time of its passage, which called for appropriate provisions to meet the exigency of the times, by incorporating into a system of bankruptcy the new and anomalous feature of a proceeding on the application of the debtor, whereby he could obtain a discharge without any movement on the part of the creditor. Such a provision is inconsistent with the policy of bankrupt laws, and ought not to be retained in a system intended to be permanent. An existing and pressing emergency was deemed to exist, calling for relief to a debtor, as well as providing a remedy to the creditors of a specified class of debtors; but the time has probably arrived when the causes which led to the adoption of a provision for voluntary applications have ceased—the evident object having been rather to afford a relief for the past, than to confer a right for the future debts of the applicants, by their discharge. On this subject, my opinion is, that the effect of the act

has been favorable, so far as relates to transactions before its passage; but that it will be otherwise as to debts contracted in future; that so much of it as refers to voluntary applications ought to be repealed, with a saving clause as to those which may be depending at the time of the repeal, or on some given day; or, if the repeal is absolute, there should be a provision that the property, and rights of property, which were vested in the debtor before the decree of bankruptcy, and which passed to the assignee by such decree, should be restored to the debtor in the same right in which he held it before the petition was filed by him.

One good consequence has followed the bankrupt act—the putting an end to voluntary assignments, &c., with preferences, though not tainted with actual or legal fraud by the principle of the common law, or of any statute adopted or passed by the State, on which subject there ought to be one uniform law throughout the Union. As the power of Congress is alone competent for the purpose, and it can be exercised only by a law on the subject of bankruptcy, I am well convinced that the present law ought to remain, so far as it embraces the cases within the second clause of the first section, in relation to involuntary bankruptcy.

As the law now stands, an assignment, &c., with preferences, by any bankrupt, &c., is void; though that is not one of the acts of bankruptcy enumerated in the first section, it will, therefore, be necessary to add to their numeration (in order to put an end to such preferences by merchants, &c.) those cases which are embraced in the enacting part of the second section, when the act has been committed subsequent to the passage of the amended law.

In the practical operation of the present act, there has been a great diversity of opinion among the judges in its construction, to such an extent that it can not be said to be uniform throughout the United States. It is impossible for me to state the points on which this conflict of opinion and judgment exists, and would be extremely difficult to point out a remedy; but there are some which are important, which ought to be settled at once, and can be done without difficulty.

1. Whether a decree of bankruptcy shall relate back to the act of bankruptcy, or the filing of the petition, so as to affect liens, &c., existing at the time of the decree, and valid by the law of the State.

2. Whether the district court can issue an injunction to stay proceedings in a State court, by a creditor who does not claim under the bankruptcy, or make himself a party to the proceedings in bankruptcy.

3. What effect the bankrupt act shall have on proceedings in State courts, under the insolvent laws of the respective States.

It would not be proper for me to state my opinion on the true construction of the existing law on these subjects, or to suggest what changes ought to be made in its future operation. The course of decisions in the different circuits will be doubtless known to the Senate, who, with a full view of the whole ground, can pass upon it, by a declaratory act, as to what the law was, is, and shall be taken to be in future, or make such provisions to operate prospectively as they may deem proper.

There are many matters of detail on which the present act might be modified to advantage; but the better mode of suggesting them would be, in my opinion, a conference between the members of the judiciary committee and the judges at the ensuing term. This mode would lead to more

uniformity of decision than by acting on the suggestion of the judges separately.

Very respectfully, yours, &c.,

HENRY BALDWIN.

Hon. DANIEL WEBSTER,
Secretary of State.

DISTRICT OF MICHIGAN.

Number of applications under the bankrupt law.

Voluntary - - - - - - - - -		482
Involuntary - - - - - - - -		3
		485
Number of discharges - - - - -	234	
Number of cases where discharges have not been granted -	13	
Number of cases still pending - - - -	238	
		485

Stated by JOHN WINDER, *Clerk.*

DETROIT, *December* 26, 1842.

SIR: Your official circular dated December 14, 1842, and covering a resolution of the Senate of the United States adopted on the 13th instant, was received on Saturday morning. A severe dispensation of Providence disables me at the present time from bestowing that attention to the resolution to which it is entitled, from the importance of the subject matter of investigation, and the high source from which it emanates.

After the passage of the act, and, as I thought, a careful study of its provisions, and before commencing its administration, I was led to apprehend great difficulty in guarding against fraud, and even that it would be impracticable for the court, pressed with other business, to carry it into effect. I must say I have been happily disappointed. It has now been in operation since February last, and some hundreds of the enterprising citizens of this district have been discharged, and restored to usefulness to themselves and families, without, as I have reason to believe, working any serious injury to their creditors who never could, from the character of the cases, have realized their debts had the law never been enacted. No one case has yet occurred where fraud and concealment of property have been made manifest, and I am satisfied that with both creditor and debtor the law gives very general satisfaction in the district. Every day's experience in its administration produces in my mind the conviction that it requires but little amendment or modification. I feel it my duty, however, under the resolution of the Senate, respectfully to suggest that all moneyed and other corporations,

if deemed consistent with the sovereignty of the States, under an admirable Constitution, be included within the involuntary provisions of the act.

I have the honor to be your obedient servant,

ROSS WILKINS,
Judge District Court U. S. for the district of Michigan.

Hon. DANIEL WEBSTER,
Secretary of State.

INDIANAPOLIS, *December* 30, 1842.

SIR: Your printed letter of the 15th instant, in relation to the bankrupt business in the district court for Indiana district, was received this morning. In reply thereto, I have to say that there have been nine hundred and fifty-seven applications for the benefit of the bankrupt law. Four of the cases, however, have been dismissed on motion of the petitioners. There have been only two cases of involuntary applications, and both of these are yet undetermined. Two hundred and seventy discharges have been granted. Discharges have been refused in no case as yet. There are, however, some three or four cases contested which are yet undecided. As to any modifications of the law, I have no suggestions to make, believing it to be, as I do, both salutary and popular throughout the west.

I am, sir, yours, very respectfully,

H. BASSETT,
Clerk Indiana district.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE OF U. S. DISTRICT JUDGE OF INDIANA,
Terre Haute, December 28, 1842.

SIR: Your letter of the 14th instant, enclosing a copy of a resolution of the Senate of the United States, directing you "to communicate, with all convenient despatch, with the judicial officers of the United States who have had the execution of the bankrupt law, and ascertain from them the number of applications under the act, both voluntary and involuntary, the number of discharges, the opinions of the judges as to any amendments or modifications of the act, and such other information as you may deem necessary, to show the effects and operation of the act," has been received.

As you have required a statement of the number and character of the applications, and the discharges under the act in this district from the proper clerk, it is unnecessary that I should answer that part of the resolution. So far as my experience will enable me to judge, there is no difficulty in executing the law as it now stands; and if it is not repealed, I doubt whether any substantial "amendment or modification" would improve its operation upon the class of cases to which it applies. Out of some nine hundred and fifty applications which have been presented in this district, only *two* have been made by *creditors*—the others have been cases of *voluntary* bankruptcy; and in none of these, with perhaps half a dozen exceptions, has any opposition been made. That part of the act which authorizes voluntary applications (whatever may be its general tendency), is certainly liable to abuses

which no "modifications or amendments" could guard against. In many cases, persons who have received their discharges have again entered into business with renewed hopes and industry, determined, apparently, to retrieve their fortunes, and honestly discharge their old debts; but it can not be concealed, that in a very large majority of the cases, no such spirit is evinced. This remark does not apply to those cases of heavy and inextricable bankruptcy generally the result of large trading or mercantile adventures; but to those whose debts were comparatively small, and who, under the pressure of the times, have resorted to the law as the easiest mode of wiping out their engagements and getting rid of sheriffs and constables.

The law has, however, been in operation so short a time, that no very accurate opinion it seems to me can now be formed of its effects as a permanent measure.

The operation of the other branch of the law can not, I think, fail to be salutary. It puts it in the power of *creditors*, in certain cases, to compel a fair distribution of a debtor's effects, and to defeat that most iniquitous principle of the common law recognised in most of the States, which authorizes an insolvent debtor to prefer one creditor over another of equal or even superior merit. It is a power, too, which will rarely if ever be abused; for a creditor will generally consult his own interest, and while there is a prospect of getting his whole debt, he will not prosecute his debtor to bankruptcy, and thereby defeat for ever such a hope. If this part of the act should not be repealed, there is one class of debtors who, in my opinion (if no constitutional objections interpose), should be made subject to its operation. I allude to banking and other moneyed corporations. I believe that such a provision would be acceptable to a large majority of the people and business men of the State, and would reconcile even the enemies of the law to its existence as a permanent measure. It could not fail to exert a beneficial influence upon the local currency of the country; for in the proportion that it would restrain the issue of bank paper, it would add to its general credit.

In conclusion, allow me to request, that if in the expression of any of the foregoing views I have travelled beyond the inquiries contained in your letter, you will regard such views as withdrawn.

I have the honor to be, with great respect, your obedient servant,

E. M. HUNTINGTON.

Hon. DANIEL WEBSTER,
Secretary of State.

P. S.—Since writing the above, I have learned from the clerk that the cases of voluntary bankruptcy are 944; involuntary, 2. Discharges up to this time, 270.

E. M. H.

Rules, regulations, and forms of proceedings in matters of bankruptcy, in the district court of the United States for the Kentucky district, prescribed by the court in conformity to the act of Congress establishing a uniform system of bankruptcy throughout the United States.

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AN ACT to establish a uniform system of bankruptcy throughout the United States.

SECTION 1. *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 a 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, temements, goods or chattels, credits, or evidences 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 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 de-

crees 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 effected 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 assignment 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, 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 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 said 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 beforementioned, 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 particular 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 provable 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 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 continnance 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 herinafter prescribed, the same being bonafide 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 first be 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 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 debt 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 circut 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, 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 courts 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 affirmation 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 established 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 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 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 afterward, be paid into the court, subject to its order respecting its future safekeeping 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 ensure 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 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.

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 net proceeds of the joint stock shall be appropriated to pay the creditors of the company, 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 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.

SEC. 16. *And be it further enacted*, That all 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 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.]

Rules of proceedings in bankruptcy.

I. The petition of the debtor for the benefit of the law, shall be addressed: To the District Court of the United States for the Kentucky District. And the matter thereof shall be set forth, in substantial conformity to the annexed forms.

II. The petitioner shall therein show that he is a resident of the United States, and state that he then resides or has his place of business in the district of Kentucky, and in what county thereof; that he owes debts, showing, here, about the aggregate amount thereof, which have not been contracted in consequence of his defalcation as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity; and set forth, to the best of his knowledge and belief, in accompanying papers referred to and made part thereof, a true list of his creditors, with their respective places of residence, and the amount due to each; together with an accurate inventory of his property, rights and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof; and exhibiting a catalogue of his books and papers of business, which he shall state are ready in the proper county to be delivered over to such commissioner as the court may appoint; declare that he is unable to meet his debts and engagements; and thereupon pray that, by the proper decrees of the court, he may be declared a bankrupt, and have the benefit of the act of Congress of the United States, establishing a uniform system of bankruptcy.

It shall be dated, subscribed by the petitioner himself, and verified by his affidavit or solemn affirmation, thereto annexed and certified in the subjoined form.

III. Where the petitioner is not able to set forth, in his list of creditors and inventory of effects, every article, with the particulars required by the statute and rules of the court, the petition may be modified accordingly, and the cause of such defect stated in a separate affidavit.

IV. The list of creditors, inventory of effects, and catalogue of books and papers, shall each have the caption found, and the matter thereof shall be set forth in the manner shown in the subjoined forms.

V. The list of creditors shall contain the full names of the several creditors, with the Christian names of the several members of the firms and un-

incorporated companies, and the full corporate names of the banks and other corporate bodies without the district. Where the demand has passed by either assignment, or death and representation, it shall give the names of both the original and present holders, and show, in every case, the State or Territory, and town, or proper post office, of the present creditor. It shall show how the petitioner is bound—whether by judgment or decree, giving the court where, and year when, rendered, and the grounds of the recovery—whether by bond, note, or bill, or what other written or parol contract, giving the consideration of the contract, the date and when payable, or the time from which it did or will bear interest; and whether as sole or co-contractor, as principal or surety, giving in the latter cases the names of the other parties, with their residence, and showing what security, if any, either party holds of the other for his indemnity. It shall set forth the partial payments, together with the less demands against his creditor for the greater amount* in each case, and make deduction thereof; and thus ascertain and show the true amount, with all costs, damages, and charges, including interest, or after deducting the discount where the demand is not due or bearing interest, of each demand, at the date of the petition.

VI. The unconditional demands of each creditor shall be placed together on the list, but each separately stated, and the amounts thereof carried forward. They shall be successively numbered, in a column on the left, 1, 2, 3, and so on throughout, without regard to the plurality of claims of any creditor, or on what they may be founded; and by their addition on the right the aggregate exhibited.

VII. The contingent or uncertain claims against the petitioner, with the conditions and facts on which they depend, shall be separately stated and numbered, in like manner as the unconditional debts, with the like exhibition of their aggregate amount.

VIII. Every security the creditor may hold for his demands, by mortgage or other lien on any of the effects of the petitioner, shall be mentioned in the statement of such demand, with a reference to the subject of the lien to be found on the inventory.

IX. The suits pending on any demand stated in the list of creditors, shall be stated in connexion with such demand; and if more be claimed than the petition admits to be just, his defence, and how it may be sustained, shall be stated.

X. In the inventory of effects, the several parcels of the petitioner's immovable property, whether corporeal or incorporeal, shall be separately set forth, and so described that, by means of the calls for notorious objects and accessible documents, each of them may be found, on reasonable inquiry and proper examination, and their boundaries and extent certainly ascertained. His title, whether legal or in equity, and the evidences thereof, with his estate or quantity of interest in the property, and how and in whose possession it is held, shall be stated, with the names of his co-tenants, and of the owners of the other estates therein. Where the title is controverted, it shall be stated, with what the petitioner understands to be the grounds and evidences of the adversary claim. The improvements shall be described and valued, and the annual rents, or value of the use and occupancy, with the value of the entire unconditional estate, shall be shown; and where the petitioner does not own the entire estate unencumbered, the value of each particular estate shall be estimated, and every encumbrance, by mortgage or other lien, and the value

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* See rules 17 and 18.

and weight thereof, shall be set forth; and, finally, every fact necessary to show the value of the petitioner's estate, and right in and to the property, and to facilitate the sale thereof for its value, shall be fully represented.

XI. The several articles of movable property shall be also described, separately set down, and the value thereof given in the inventory, except the household and kitchen furniture, and stocks of merchandise, consisting of a great number and variety of articles. These and such parcels of property may be contained in separate bills, showing each article, with the number or quantity, and price, and total value thereof; and thus inserted in the inventory by general description, with a reference to the bills, and stating their respective amounts. The names of every part-owner, and his place of residence; where the property is; in whose possession; how it is held; and to what liens, and the nature and weight thereof, shall appear: and where the petitioner's right is controverted, his title, and the grounds of the adversary claim, shall be set forth.

XII. The several kinds of property shall be stated on the inventory in the above order, and numbered on the left, 1, 2, 3, and so on throughout, but shall be classified by placing the estimated value of the articles in adversary possession, or in litigation on adversary claims, in the first of the three right hand columns of the page; the value of such as are subject to encumbrance in the second, with amount of the encumbrance under it, and the balance, if in favor of the property, carried out into the next column; and the value of what may be in the possession of the petitioner, unencumbered, in the last column.

XIII. The contingent rights of the petitioner to property shall be separately stated on the inventory, with the present value of the *property*, and the facts necessary to show on what events the right yet depends.

XIV. Every suit pending in relation to the property, movable or immovable, contained in the inventory, shall be mentioned in connexion with such property, and a separate brief thereof, signed by the petitioner or his attorney, or solicitor in the cause, shall be furnished.

XV. The demands active of the petitioner, shall each be stated, showing the names of all the persons bound, whether originally and directly, or subsequently, or collaterally, by contract, by representation, or otherwise; with their respective places of residence, and whether solvent or not.

XVI. In cases of judgments and decrees, it shall be shown in what court recovered, the date thereof, and the amount of the principal, interest, and costs; and an accouut given of the subsequent proceedings thereon, with the names of such persons as have become bound in replevin, appeal, injunction, and other such bonds; or by their acts or neglect of duty.

XVII. Where the demand is on a bond, promissory note, bill or other writing, the date, nature of the instrument, and character and amount of the demand, shall be stated: showing when due, when the interest did, or will commence, in cases of demands for money, and in other cases, the amount of damages, or value of the property to be conveyed or delivered, or duty to be performed by the contract.

XVIII. In the statement of the several demands on record and writings, the partial payments with their respective dates shall be stated; and the demands of less amount held by the party against the petitioner,* shall be be set forth, estimated and applied as credit on his demands: whereupon these credits being deducted from the total amount of principal, damages, costs, and charges, with the interest added, or the discount deducted, up to

*See rule 5 and 18.

the date of the petition, the remainder shall be carried forward as the proper demand or true debt.

XIX. The demands of the petitioner, on account or parol contract, shall be each stated in a separate account current, or bill of particulars: Herein shall be set forth the several articles of debit and credit, and so much of the transactionsas may be necessary to explain the grounds thereof: Each of these demands, so stated, shall be placed in the inventory by stating the names of the parties, and giving a general description of the claims, with a reference to the account or bill, setting down the amount, or balance thereon. Where in such case there exists a demand of the other party, against the petitioner of a less amount,* on whatever, or however founded, it shall be set forth on the *Inventory*, the amount thereof estimated and deducted, as in other cases, and the remainder carried forward as the true debt.

XX. These accounts current or bills, and also the bills of furniture, stocks of goods, and the like, shall be in the usual form of such papers; but for the purpose of identifying them with the record, they shall have this superscription to their caption: Part of the petition in bankruptcy of——[insert petitioner's name]——of this date, to the Kentucky District Court United States: And shall be dated at the foot and subscribed by the petitioner.

XXI. The several unconditional demands of the petitioner, shall be stated on the inventory in the above order those evidenced by record first, those by writings next, and lastly those founded on simple contract; but they shall be all classified, without regard to such dignity, into bad, doubtful, and good, according to the circumstances of the debtors and securities which may be held, and the amounts of the first class carried out into the first of three columns on the right, the amounts of the second class into the second, and amounts of the third into the last column: and their respective aggregates shown.

XXII. The several contingent demands of the petitioner, shall be stated in the same order as the conditional; and classified into bad, and doubtful, by assigning to the first those wherein the persons bound are all insolvent and no security is held, leaving the residue in the second class, and carrying forward their respective amounts into the proper columns.

XXIII. Every security the petitioner may hold, or believe himself entitled to, for any demand—whether on a judgment, on a written, or on a parol contract—by mortgage, pledge, or other lien, or by the obligation or commitment, in whatever form, of another person, or arising out of the transaction, shall be set forth, in connexion with such demand, with every fact necessary for the investigation and enforcement thereof.

XXIV. Wherever a suit is pending on any demand of the petitioner, stated in his inventory, whether on a record, or on a written, or parol contract, it shall be stated in connexion with the demand; and a statement given of the defence set up with a reference to the means of matntaining the demand: And

XXV. There shall be subjoined on the inventory a statement of every suit not thereon before mentioned, or noticed on his List of Creditors, to which he is a party, or in the subject, matter whereof he is interested, including cases in which a judgment has been rendered unfavorable to him but supposed to be erroneous and reversable, with a brief of the facts thereof and questions involved, signed by himself or his attorney in the case.

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*See rules 5 and 17.

XXVI. The several causes of suit in *tort*, whether at law or in equity, in either *personam* or *in rem*, the petitioner believes he has, at the date of his petition, which would survive to his representatives, shall be stated on his inventory; with a reference to the means of investigating their merits.

XXVII. The catalogue of books and papers, shall contain the several books of accounts of the petitioner, described in the words by which such books are usually labelled or known; and all his deeds of conveyance, mortgages, bonds, bills, promissory notes, and every other paper necessary, for either the investigation of his transactions, or the administration of his estate. In the description of the papers relating to any item or article, in either the list of creditors or inventory of effects, reference shall be made thereto, by the proper number; and wherever practicable, the papers relating to the same item shall be placed together: they shall all be successively numbered in the margin.

XXVIII. The affidavit to the petition, and every other affidavit required by the rules of court, may be made before any Judge or Justice, of any court of record of any State or Territory of the United States, before the commissioner appointed in the case, or before the clerk of this court.

PETITION.

To the District Court of the United States for the Kentucky District:

A——. B ——. states that he is a resident of the State (*District or Territory*) of ——, and now resides, (*or has his place of business*) in the county of —— in the District of Kentucky, and owes debts, now amounting to about the sum of ———— dollars, which have not been created in consequence of his defalcation as a public officer; or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity; and he here sets forth, in the accompanying papers subscribed by him, of even date herewith, a true list of his creditors, with their respective places of residence, and the amount due to each; together with an accurate inventory of his property, rights, and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion; and exhibits a catalogue of his books and papers of business, now in the said county of , ready to be delivered over to such commissioner as the court may appoint; and *declares* that he is unable to meet his debts and engagements: wherefore he prays that, by the proper decrees of this court, he may be declared a *bankrupt*, and have the benefit of the act of the Congress of the United States establishing an uniform system of bankruptcy.

FEB. , 18 . A. B., *petitioner.*

I, A. B., do solemnly *swear* [or solemnly *affirm* as may be his case], that the statements in the above petition, including the matter contained in the list of my creditors and inventory of my property, rights and credits, subscribed by me of even date therewith, and made part thereof, are true, to the best of my knowledge and belief.

A. B.

Commonwealth of Kentucky, *county, sct:*

This day appeared before me, a justice of the peace of said commonwealth for said county, the above A. B., petitioner, personally known to me, and on *solemn oath* [or *solemn affirmation*, as may be his case], made and subscribed the above *affidavit* or *solemn declaration.*

Given under my hand, at the county aforesaid, this day of 18

C. D., *J. P. F. C.*

CREDITOR LIST.

The list of creditors of ———, [Here insert petitioner's full name,] *constituting part of his petition in bankruptcy, of the present date, to the district of the United States for the Kentucky district.*

No.	Examples of the matter of the creditor list.	Amount.
1	J. S. P. & Co., *i. e.* J. S. P., K. T., and L. U., K. T. the only survivor, now of ———, judgment of ——— court, ——— term, 18—, $——, interest from ———, 18—, costs $——, on my note for merchandise, bought of them. Cr. By $——, made on execution ———, 18—. Sum now due...	$10,000
2	Same, my promissory note to them for merchandise purchased $——, interest from —— day of ———, 18—. Sum now..... $500	
	Set off, their note to ———, assigned me, $——, dated ———, 18—, interest from ———, 18—. Sum now..... 400	
	Balance or true debt..... ——	100
3	Same, on account current, in packet on Catalogue No. 12.....	100
	Secured by mortgage, recorded in office of ———, on house and lot on Inventory No. 2.	
4	R. P., of ———, replevin bond in ——— court, on R. P. and myself surety, $——, interest from ———, 18—. Cr. By $100 made on execution, by sale of my land, Inventory No. 1. Sum now.....	9,100
	I hold as security of my principal, P. R., a mortgage on 100 acres of land, on Catalogue No. 16. Suit by R. P., in ——— court, to subject this land, worth about $1,000.	
5	U. C., of ———, judgment of ——— court, ——— term, on my note, in consideration of his agreeing to forbear bringing suit on a note of myself to him for $——, then bearing interest for the term of ———, which he performed, when that debt was paid, with the interest thereon, principal $——, interest from ———, 18—. Suit to subject rent. Inventory No. 3. See brief. Sum now.....	200
6	Same, my note to him for the extraordinary interest on money borrowed of him and repaid with the 6 per cent. thereon, $——, dated and payable ———, 18—. Cr. By $100, paid on ——— day of ———, 18—. Sum now	100
7	G. C., of ———, my note to him, dated and due ———, 18—, in consideration of $100 loaned to me at ———, and of my note to F. B., dated and due ———, 18—, for $100, lost on a wager upon ———, and by him assigned to G. C. Sum now.....	230
		19,830
	Contingent liabilities.	
8	On my covenant of warranty in deed of conveyance of a tract of land to W. E., of ———, which, by successive conveyances, ran with the land to ———, of ———, now in possession, and defendant in a suit in ——— court, by ———, on an adversary claim, whereof I have notice. Recovery apprehended. Principal and interest of the consideration now.....	$2,000
	As surety in the official bonds of—	
9	P. D., late ——— of United States, at ———, insolvent, ——— of ———, insolvent, and ——— of ———, solvent, co-sureties. Whether condition of bond broken or not uninformed. Penalty.....	10,000
10	S. T., late sheriff of ———, dead. —— of ———, his administrator. —— and —— of ———, his heirs. —— and —— co-securities. Estate of S. T. and all the parties solvent. Penalty of bond.....	3,000

FEBRUARY --, 18—.

A——— B———, *Petitioner.*

INVENTORY.

The inventory of the property, rights, and credits of ———, constituting part of his petition in bankruptcy, of the present date, to the district court of the United States for the Kentucky district.

Numbers.	Examples of the matters of the inventory.	Disputed property.	Encumbered property.	Clear property.
1	One tract of land, undivided moiety of —— acres, in ———, on ———, in co-tenancy with C. T., of ———. Title by deed (on Catalogue, No. 8) from J. P., his co-partner, to me, and patent to ———, their ancestor, unimproved. Title contested by E. P., elder patentee of a tract of —— acres, in possession of improvements *within his*, as alleged, but *without our* lines. Suit in ——— court, by him, against C. T. and myself. See brief. Sold under execution from ——— court, on rep. bond, R. P. against ——— and myself (Creditor list, No. 4), for $100, less than two thirds of its value, on ———, 18—, and so redeemable. My undivided moiety, with good title, worth I suppose about.....	$1,000	.....	.....
2	One house and lot in ———, on ———. Title by the several deeds of G. L. and G. M. to me, for several parcels of the ground now covered by the house, and constituting an advisable property (on Catalogue, Nos. 6 and 7). Estate of reversion after a term of —— years, granted by me to ———, to be ended —— day of ———, 18—, in possession of ———, assignee of the term. Improvements ———, worth I suppose about $——. No rent reserved on my lease. Use and occupancy now worth about $——; term of years about $——; estate in fee about $——; and my estate in reversion, unencumbered, I suppose.....	.....	$2,000	.....
	Encumbered by mortgage for the debts to J. S. P. & Co. (Nos. 1, 2, 3, on Creditor list), and sale of the equity of redemption, under execution from ——— court, on their judgment against myself (on Creditor list, No. 1), on —— day of ———, for $100.			
3	Rent charge of $100 per annum, payable ——— forever, reserved on and issuing out of lot of ground in ———, on ——, reserved by R. V., the owner of the ground, in his deed of conveyance thereof to A. L., recorded in the office of ———. Title by the bond of O. G. (Catalogue, No. 9), the owner, by the grant of A. L., registered in the above office. Improvements ———, worth about $——; entire estate in the ground about $——; use and occupancy about $——. Present value of my estate in fee, in the rent, supposed to be about	.....	1,000*	$800
	Suit by U. C., in ——— court, against myself and O. G., to subject my right to the payment of his judgment (demand No. 5, on Creditor list). See brief.			Qu?
	Moveables.			
4	Slave P., about — years old, and W., about — years old. Title by bill of sale from S. D. (on Catalogue, No. 10), in adversary possession of ——— Suit against him in ——— court. See brief. But both fugitives in State of ———. See letters of ———, in packet No. —, on Catalogue. Worth each I suppose about $500.....	1,000	.....	.....
5	Merchandise, assortment of ———, per bill.....	.....	.....	900
6	Household and ——— furniture, per bill.....	.....	.....	300

INVENTORY—Continued.

Numbers.	Examples of the matters of the inventory.	Disputed property.	Encumbered property.	Clear property.
7	Grain, provender, and provisions, per bill, but all necessarily in the course of consumption for the sustenance of the cattle and family.....	.....	.....	$200
		$2,000	$3,000	2,200
	Unconditional demands.			
8	J. M., of ———, administrator of ———, of ———, judgment of ——— court, ——— term, on note of his intestate, assigned me by S. A., of ———. Principal $——, interest from ———, 18—, but all afterward included in rep. bond, amounting to $——, with interest from the —— day of——, 18—, with S. A. surety. Cr. thereon by $100, made on execution on ———, 18—. Sum now due.....	.....	.....	$600
	J. M. and S. A. both insolvent, but J. M. had and wasted assets, and S. B., his surety in adm'n. bond, now of ———, is said to be solvent, and J. B., surety in an injunction bond, now absolute (see below) is solvent			
9	J. M., same person, decree of ——— court, dismissing bill of injunction against above judgment, damages, and costs. J. B., of ———, surety in injunction bond, solvent.....	.....	.....	100
10	M. P., late of ———, but removed with his property to ———, it is believed, merchandise sold him, per bill.....	$600	.....	.....
	M. M. & Co., *i. e.* M. M. and N. M., late of ———, responsible on their letter of credit to me of ———, 18— (in packet No. 11, on Catalogue), but all gone together.			
11	N. & M. C., of ———, sales of ———, and ——— balance thereof, per account current.....	2,000	.....	.....
	Their account current, &c., in packet (on Catalogue, No. 13.) Mine, I insist, is correct; but firm failed and both parties insolvent, and removed I know not where.			
12	Small debts, due me on small bills and accounts, of sums below $2 each, from numerous persons, per list of small debts..	.....	$30	.....
		2,600	30	700
	Contingent rights to property.			
13	One tract of land in ———, on ———, devised by ———, in his will, recorded in ——— court. In remainder on death of T. L., without children, to C. R. and myself, or the survivor. T. L. yet unmarried, and C. R. dead. Estate in fee now worth about	.....	$4,000	.....
	Contingent demands.			
14	On the covenant of warranty of J. P. for the tract of land on Inventory, No. 1, dependant on ——. Consideration money and interest to this date. Insolvent and dead.....	$700	.....	.....
15	Distributive share of my wife in ———, &c., withheld, &c..	.....	500	.....
	Causes of suits for torts.			
	Steamboat ———, against her for ———, &c.....	.....	.....	.....
	F. V., of ———, for fraud in the sale to me of ———, &c....	.....	.....	.....
	T. V. A., of ———, for ———, and carrying off ———, &c..	.....	.....	.....

FEBRUARY —, 18—. A——— B———, *Petitioner.*

CATALOGUE.

The catalogue of the books and papers of business of —— ———, part of his petition in bankruptcy, of the present date, to the district court of the United States for the Kentucky district.

(Some examples of the matters of the catalogue.)

No. 1. Leger A, or number 1, commencing———, 18—, and ending the — day of ———, 18— .
2. Journal, from ———, 18—, and ending ———, 18—.
3. Bill book, commencing ———, 18—, and ending ———, 18—.
4. Invoice book, from ———, 18—, and ending ———, 18—.
5. Letter book, from ——— day to ———, 18—.
6. Deed of conveyance from ——— to myself for part of lot of ground in ———, inventory, number 2.
7. Deed of conveyance from ——— to me, for the other part of the ground of the house and lot, inventory, number 2.
8. Deed of conveyance to me for 400 acres of land, on inventory, number 1.
9. Bond of O. G., for the rent charge on the lot of ground in ———, found on inventory, number 3.
10. Packet containing the bills of sale by ——— and ———, for the slaves; ——— and ———, and ——— letters in relation to them, and the controversy about the title in the suit of myself *vs.* ———, inventory, number 2.
11. Promissory note of J. S. P. & Co., mentioned on creditor list, number 4.
12. Mortgage of R. P., on creditor list, number 4.
13. Packet of accounts current and bills, with the letter of M. M. & Co., recommending M. P., inventory, numbers 10 and 11.
14. Packet of accounts and bills, showing the particulars of small debts, stated on inventory, number 12.
15. Copy will of ———, with letters, in all ——— papers in relation to the devise therein to me.
16. Packet receipts, in all —— in number.
17. Book of receipts, containing —— receipts.
18. Packet containing obligations, void by their conditions and the events, and of notes, &c., fully discharged and so endorsed.
19. Packet of letters of the years ——, in relation to transactions supposed to be all closed.
20. Packet of letters of the years ——.
21. Packet title papers of property purchased and afterward sold and conveyed.
22. Packet miscellaneous papers, not supposed to be of value.

A——— B———, *Pet'r.*

FEB. —, 18—.

XXIX. In cases of partners in trade, whether the petition is by one or all united, there shall be a distinct inventory and creditor list of the joint stock and liabilities of the company, of the separate effects and liabilities of the petitioner or several petitioners, with separate catalogues of their respective books and papers.

XXX. The list of creditors, inventory, and catalogue, shall be each in duplicate; or two complete originals, each in like manner headed, dated, and subscribed by the petitioner.

These several instruments, the petition, and every other paper writing to be presented in court, or filed with the clerk, commissioner, or assignee of the bankrupt, shall be all in legible and fair manuscript, on durable fools-cap paper of the common size, divided into half sheets, and *upon the pages* in the mode practised by the clerks of the courts of Kentucky, in making transcripts of records for their appellate court, with ample blank borders left around the writing—at the *head* of the first and *bottom* of the *second* pages of each half sheet, for the purpose of thereby connecting or binding them and the other papers of the cause altogether in the manner of such transcript—on the left hand for the proper marginal notes, and, on the right hand and bottom of the pages, for the protection of the manuscript; and with sufficient blank left after the conclusion, for the certificate of the clerk; no half sheet divided; but left entire however short the writing upon it; and where the instrument is on more than one leaf, each shall be subscribed by the party; no paper endorsed, and all left in roll, or folded crosswise only of the leaf; so that all the papers of each case may be carefully filed and kept in one uniform roll, and be safely preserved.

XXXI. The petition may be presented by the party himself, by his solicitor, or attorney in fact, constituted in the usual form.

XXXII. Every member of the bar of the court admitted, on the common law, or admiralty side, will be considered a solicitor and counsellor of this court in bankruptcy; and any member of the bar of the court of appeals, the general court, or any circuit court of the State of Kentucky, may be admitted upon his taking the usual oaths in open court.

XXXIII. On the presentation of the petition, its reception will be considered of, and will depend upon the conformity of it, together with the papers, made part thereof, to the rules and regulations prescribed, and, in case of variance, the cause of the defect and non-conformity, apparent on the papers or which may be shown by the separate affidavit. But the allowance of the filing and setting down the matter for hearing, may not conclude the question in any subsequent stage to which the case may progress.

XXXIV. On the filing of the petition being allowed, the court will thereupon fix the day for the adjudication; appoint the commissioner to receive the books and papers of the petitioner for the inspection of his creditors; and where, from the residence of the parties, or other circumstances, a publication in papers beside those designated by rule of court, may be required, will name such papers; and thereupon there will be made in the order book, the following entry, with the names of the additional newspapers designated, if such be named affixed at the left thereof:

A. B. his petition for the benefit of the bankrupt law filed, and the adjudication set for , the day of next.

C. D., Commissioner.

XXXV. The filing of the petition, and of every other paper allowed to be filed by the court, or which it may be the duty of the clerk to receive in recess, or at his office and file, shall be noted by him at the *foot* of it, and of the papers constituting part thereof, in the usual form, and by writing his name at the foot of each anterior leaf.

XXXVI. Immediately on the petition being filed, the clerk shall compare the duplicate list of creditors, inventory of effects, and catalogue of books and papers, and having found them of the same tenor, shall certify at the foot of one part of each :

Compared with the counterpart, found correct, and counterpart delivered to the petitioner for the commissioner :

And upon the other:

Compared with the counterpart, found correct, and hereby certified to the commissioner : And

The clerk shall deliver the latter part of these instruments with his signature to his certificates, together with a copy of the order made on the filing thereof, to the petitioner, his solicitor, or attorney.

XXXVII. This copy of the order of the court the petitioner shall forthwith deliver to the commissioner: whereupon, he shall take the oath prescribed in the following certificate, and have the same certified at the foot of the copy of the order, in this form :

Commonwealth of Kentucky, *County, sct :*

The above appeared before the undersigned, a justice of the peace of said commonwealth, for said county, and took the oath that he would faithfully, and to the best of his ability, perform the duties of commissioner in the above case of A. B., petitioner in bankruptcy.

J. P.

XXXVIII. The petitioner shall thereupon deliver one copy of the above papers received of the clerk, together with the books and papers named in his catalogue, to the commissioner; and take from him, and return to this court, the following acknowledgment, written at the foot of the copy of the order of the court :

The list of creditors, inventory, and catalogue of books and papers, certified to me by the clerk, and which appear to have constituted part of the abovementioned petition, together with the books and papers in the catalogue mentioned, have been this day deposited with me by the abovenamed petitioner, for the inspection of his creditors.

Commissioner.

March , 18 .

XXXIX. The commissioner shall thenceforth keep said papers, so certified to him by the clerk, together with the books and papers delivered to him by the petitioner, at his house, or other place of business, in his county, subject, at all seasonable hours, to the inspection, in his presence, of any creditor mentioned on the list of creditors, or other person who shall represent himself to be a creditor, and file with the commissioner a statement of his demand, verified by his affidavit, until the matter shall be heard, and a decree passed, declaring the petitioner a bankrupt, or dismissing his petition;

to be, then, in the first case, delivered over to the assignee, or, in the latter, restored to the petitioner.

XL. The notice of the petition, and of every other matter set for hearing, whereof notice is required by law, or the rules of the court, to be published in a newspaper, shall be given by a publication of a copy of the order of court, showing the matter of which the notice is required in the papers designated.

XLI. The clerk shall, immediately the orders of court are entered and read, deliver one copy of every order required to be published, to the publisher of each of the papers designated by the rule of court; and where other papers are also designated for their publication, one copy of each of them to the petitioner, to be by him furnished to the publishers of such papers.

XLII. These publications of notice shall be made in the Commonwealth and Kentucky Yeoman, published in Frankfort, and in every case without any special order.

XLIII. The publication of the notice of the petition, the entry thereof, and the order fixing the day for the adjudication, shall be made in each of the regular numbers of the papers designated between the fifth day after date of the order, and fifth day before that for which the hearing is fixed.

XLIV. The orders of the court shall be all published under one common head—"*Bankruptcy;*" and where a plurality of them of the same form have their first insertion in one number of the paper, there shall be but one common caption of the style of the court, with the date of each order prefixed on the right, when made on different days, and but one attestation of the clerk at the conclusion.

XLV. The proof of the publication of any order of court may be made by the affidavit of the printer, publisher, or editor, or any regular subscriber to the paper, subjoined on the copy of the order, in this form:

Published in [insert the title of the paper, with the affix of daily, or the like, where there is such distinction; and where the affidavit is by a subscriber, insert, *received by me, as a regular subscriber*], on , [insert the dates of the several numbers of the papers], being all the regular publications of the paper between the fifth day after the date of the above order, and the fifth day before that fixed for the adjudication; [or as may be required in consequence of the rule of court applicable to the particular entry.]

Sworn to before me, by the said , at the of , Kentucky, this day of , 18 .

J. P. *County.*

Adopted February 8–11, 1842.

XLVI. Opposition to the petitioner being declared a bankrupt, may be made, and cause against it shown, at any time before the adjudication, by any creditor named on his list of creditors, or by any other person who may represent himself to be a creditor, and present in court a statement of his demand, verified by his affidavit, or otherwise show himself interested in such manner as to entitle him to interpose.

XLVII. The opposition, and the cause of grounds thereof, may be stated in this form:

A. B.'s case: C. D., mentioned in the creditor list [or who presents, herewith, a statement of his demand, or , as may be his case], opposes the petitioner being declared bankrupt, and shows the following cause:

1st. The said A. B. is not a resident of , [or such other matter as the party may believe is true in fact and sufficient in law].

C——— D———.

XLVIII. This opposition being allowed and filed, each party may proceed to take his proof, without further order: when necessary, the hearing will be postponed, and another day fixed.

XLIX. The proofs, on the hearing of any contestation before the court, or on the trial of any issue by a jury, may be by witnesses examined orally, in court, or by their depositions, taken according to the rules prescribed (except where an order has been made for the examination of a witness in open court), and by other competent documentary evidence.

L. Either party, at his election, may have subpœnas for his witnesses, of course; but, unless the court has required, or the party show sufficient cause for having preferred the examination in open court, the costs thereof will be limited, in any taxation against the adverse party, to the amount of the usual taxable costs of taking depositions.

LI. Depositions may be taken before the commissioner, or before any judge or justice of any court of record of any State or Territory of the United States, on reasonable notice* to the adverse party, his agent, or solicitor, preferring them in this order—wherever either of them may reside, or it is known may be found within thirty miles of the place of taking the deposition, in the following form:

The deposition of , taken before [insert the name of the judge or justice], one of the judges or justices of court, of the State of , on the day of , 18 , at [insert the name of the house, and town, and county, or city], in the State of , to be read as evidence in the case of A. B., petitioner in bankruptcy, in the district court of the United States for the Kentucky district, on the behalf of [insert the name of the party taking the deposition], upon the adjudication, or upon the hearing of the petition of the said A. B. for his discharge and certificate, or [insert whatever else may be the matter of controversy, upon which the evidence is taken and intended to be offered].

The said deponent being first carefully examined, cautioned, and sworn, *or affirmed*, to tell the whole truth, and nothing but the truth, doth depose and say—

[Here set down the evidence of the witness, in which, by the form and effect of his oath, he is bound to state everything he knows touching the controversy, whether interrogated or not; at the conclusion of which, the witness will subscribe his name.]

I, , one of the judges of , [insert as in the caption, adding], duly commissioned, sworn, and acting as such, do certify that the said [insert deponent's name], being before me, and personally known to myself, was, at the time in the caption stated, by me duly cautioned and sworn, [*or affirmed, as in the caption,*] and carefully examined, then and there to testify the whole truth, and nothing but the truth; and that thereupon, he gave

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*See rule 52.

evidence above set down, and no more; that the said deposition was wholly reduced to writing by me, in the presence of the witness, or, by the witness in my presence, after he had been so cautioned and sworn, *or affirmed;* and that thereupon, the same being truly read by me to him, he subscribed it in my presence; that I am not counsel or attorney of, or of kin to, either of the parties, or interested either in the event of the controversy or the estate of the petitioner: all which is certified to the court.

Given under my hand, at the time and place stated in caption.

J. P.

LII. Notices to take depositions, or the like, unless where otherwise provided, may be served by the State officers, who perform such duty in proceedings in its tribunals, and their returns thereof, in like manner, will be sufficient.

LIII. Where a deposition of a witness has been taken, without notice, it may be afterward retaken by the adverse party, of course, either for the purpose of cross examination, or to obtain testimony in chief: where notice had been given, cause must be shown and leave obtained.

LIV. Amendments to the petition may be made at any time before the adjudication, supplying any particulars, such as dates, residence, given names, and the like, as to which the list of creditors or inventory of effects may be incomplete, according to the forms prescribed: and, for cause shown, in any other respect. But

LV. Every amendment, whether of the petition or any other instrument, shall be made by a statement thereof on a separate paper—not by interlineation or erasure of the original—on the margin of that, the clerk will note the amendment.

LVI. The letter of attorney, or appointment of an agent, shall be filed in the clerk's office of this court, with the commissioner, or with the assignee, as the matter wherein he is authorized to act may be pending before, or may have to be acted on by, one or the other: otherwise, no other party shall be required to notice the appointment.

Adopted February 15, 1842.

LVII. On the adjudication, the case being found within the statute, and in sufficient form, the decree of the petitioner's bankruptcy will be pronounced, the assignee appointed, the penalty of his bond, with the number of the sureties, fixed, and all entered in the following form:

The prayer of the petitioner, that he be declared a bankrupt, having been heard and fully considered, it is adjudged and declared that he, the said of , is a *bankrupt.*

is appointed the assignee, and required to execute bond in the penalty of dollars, with sufficient sureties.

LVIII. The assignee, being furnished with two copies of this decree, to be made by the clerk, shall execute bond, before the commissioner, in the penalty prescribed, with the sureties, to be approved by him, the commissioner, in the following form:

We, and , acknowledge ourselves bound to the United States of America in the penal sum of dollars, and bind ourselves, our heirs, &c., jointly and severally, to the payment thereof.

The condition of this obligation is, however, such, that whereas, the said has been, by the district court of the United States for the Kentucky

district in bankruptcy, appointed assignee, in the case of , on his petition declared a bankrupt, by the decree of said court: now if the said shall duly and faithfully perform all the duties of assignee, and comply with all the orders and directions of the court, in said case, then this obligation shall be void, otherwise remain in full force. Witness our hands and seals this day of , 18

[L. S.]
[L. S.]

Attest:

Commissioner.

LIX. The assignee shall, thereupon, take and subscribe before the commissioner the following oath, written, and to be certified at the foot of one of the copies of the decree:

District of Kentucky, to wit:

I do solemnly swear, *or affirm*, that I will faithfully, and to the best of my abilities, perform the duties of assignee in the above case of , bankrupt.

Assignee.

Sworn to and subscribed before me, at the district aforesaid, this day of , 18

Commissioner.

LX. Whereupon the commissioner shall deliver the inventory of effects and catalogue of books, &c., together with the books and papers therein mentioned, to the assignee—*retaining himself the list of creditors*—and take from him his acknowledgment thereof, at the foot of the same copy of the decree, and transmit it, together with the bond of the assignee, to this court: And

The assignee shall take the possession and control of the estate, and proceed to the administration thereof.

Adopted March 14, 1842.

LXI. The appointment of the assignee will be, generally, of a resident of the county of the bankrupt; but where it shall appear, from the location and situation of the claims and property, and residence of the debtors of the estate, or it may seem from other cause, that the duties may be more advantageously executed elsewhere by another, the appointment will be of a person in the most eligible position in the district; and in such case the bond may be executed, and the oath of qualification taken, either before the commissioner, as prescribed by the above rules, or in court, or before any State judge or justice of Kentucky; the court approving the sureties: and the commissioner, in the latter case, shall deliver over the books and papers to the assignee, on the certificate of the clerk that the bond and certificate of qualification have been filed here.

LXII. The exceptions or allowance of the bankrupt out of the estate, shall be first made and designated. In order to this, the assignee shall inquire of the condition of the bankrupt, the number, circumstances, and condition of his family, and whatever else may be proper for the government of his discretion in the matter; and thereupon designate and set apart to him the household and kitchen furniture, or such amount thereof, in articles to be

selected by the bankrupt, but valued by the assignee, as he may have determined to allow; and such an amount of other articles and necessaries, in like manner selected and valued, as he may consider fit and reasonable; including, however, the articles found in the inventory, which shall have been consumed by their use in the family, estimated according to the quantity stated in the inventory; and not to exceed in all the value of three hundred dollars, including the furniture.

LXIII. The assignee shall make a statement of the condition of the bankrupt, whereon he acted, in fixing up his allowance out of the estate, and likewise a bill of the several articles so allowed and set apart, and referring therein to the inventory and bills constituting part thereof, show the numbers whereby the several articles therein are designated—each in triplicate, signed by both himself and the bankrupt; and leave one part thereof with the bankrupt, shall file one with the papers, and transmit the other part immediately to this court.

LXIV. The bankrupt, or any creditor named on his list, or who may have proved his debt, may file in court, exceptions to the assignee's allowance to the bankrupt, at any time after the statement thereof has been filed, and before the decree on the petition for the discharge and certificate has passed. On such exceptions, the statement of the assignee, of the fact on which his determination was made, will be regarded as *prima facie* correct: and where it is not proposed by the party excepting, to controvert either the statements or estimates of the assignee, and the court is satisfied with the allowance, the exceptions may be at once overruled, otherwise such order will be made in relation to the hearing and notice thereof, as the case may require.

LXV. The assignee, after his assignment of the bankrupt's allowance, shall take possession of all the residue of the property, both movable and immovable, which was of the bankrupt—whether found stated on his inventory of effects or not, making an account of such as shall not be found thereon, and noting any article embraced thereby, whereof he does not obtain possession; and shall thereupon, without unnecessary delay, proceed to sell every part thereof, found unencumbered and with uncontested title.

LXVI. The sale of the assignee, under his general authority, shall be always of the proporty itself—not of a chance for it—and whenever, after offering the property, he discovers a defect or doubt of the title, calculated to affect, or in fact affecting the price of the property, he shall desist, even pending the biddings, and postpone the sale until the cloud shall be removed, or a special direction shall be given by the court.

LXVII. The sale of the property shall be at public auction; the immovable on a credit of four months, for one fourth, and twelve months for the remainder; and the movable property on a credit of four months for all sums above ten dollars. But—

LXVIII. Where there is a large amount of movable property, and the assignee shall be of opinion that a sale upon longer credit would be more advantageous to the creditors, it may be sold on a credit of four and eight, or four, eight, and twelve months, in his discretion. And,

LXIX. Where there is a great amount of immovable property, not susceptible of division, which, in the opinion of the assignee, can not be sold on the credit prescribed, without extraordinary sacrifice, he shall consult such of the creditors as he conveniently can, and report the matter to the court: whereupon, such directions will be given as the case may require.

LXX. The property, within the district, shall be all sold according to public notice, posted at the courthouse door, and at three or more public places in the county, and in printed bills, and advertisements in one or more newspapers, wherever, in the opinion of the assignee, the costs thereof will be justified, for at least ten days before the sale.

LXXI. The immovable property within the district, shall be sold at the door of the courthouse of the county in which it is situated, on the first day of a circuit or county court, between the hours of eleven in the morning and one in the afternoon, and between two and three o'clock in the afternoon.

LXXII. The movable property within the district, shall be sold at such places within the district as the assignee shall deem the most advantageous, regarding the costs of transportation and charges of sale, and on such days and hours as he may consider the most fit.

LXXIII. The property without the district, immovable in its nature, and such as can not be advantageously moved into the district, shall be all sold in the *city of Louisville*, at such hours and such place in the city, as the assignee may consider most advantageous, according to notice published in two of the newspapers of the city, and, if deemed expedient by the assignee, in one or more newspapers published in the place or vicinity of the property, and in printed bills, for at least twenty days before the sale.

LXXIV. If, upon the occasion of any public sale, the assignee shall find, that in consequence of the non-attendance of, or combination among bidders, or from any other cause, the sale of an article of property, of any considerable value, can be effected, only at an extraordinary sacrifice, he may, in the exercise of his sound discretion, for the benefit of the creditors, interpose his bid and postpone the sale; and appointing another time, give the like public notice thereof, and thus proceed until a fair sale shall be effected.

LXXV. The assignee shall, on every sale of property, take from the purchaser a bond for the purchase money, with one or more sufficient sureties, which shall have the force and effect of a decree of the court in equity, in the following form:

We bind ourselves, our heirs, &c., jointly and severally, to pay to A. E., assignee of B. R., bankrupt the United States, Kentucky district court, the sum of dollars, with interest from this date; in consideration of the purchase of property of the bankruptcy, this day made, at a sale thereof, by the assignee. Witness our hands and seals this day of , 184 .

[L. S.]
[L. S.]

LXXVI. These bonds, taken for the sale of the property, shall be held by the assignee, for collection, until their maturity; not being then paid, he shall immediately afterward transmit them to the office of this court, and have issued upon them the usual process of the chancellor in such cases, to enforce the payment thereof, directed to the marshal of the district.

LXXVII. There may be a motion to set aside a sale, and quash the bond, by either the purchaser or any creditor, on behalf of himself and the others; but every such motion shall be made within sixty days after the sale, and not afterward; except where a special and sufficient cause of the delay is shown; but after the distribution of the proceeds of the sale, no such motion will be heard for any cause.

LXXVIII. Where the principal in any sale bond is a creditor of the estate, he may apply to the assignee, and have a conference between him and

the commissioner, for the purpose of having a set off, wherein they shall ascertain, as nearly as they conveniently can, the sum to which such applicant will be *certainly* entitled, on the next succeeding distribution of the assets, as the dividend on his debt and such as he then holds by assignment from other creditors; and the assignee and commissioner having stated this sum under their hands, the assignee shall file the statement with the bond; and if the remainder of the amount of the bond, shall be paid on or before the day it falls due, the assignee shall return such statement, with the bond; and no execution shall issue thereon, unless specially ordered by the court, until such dividend shall be declared; when the set off will be adjusted, and such order made as the case may require.

LXXIX. The title to the immovable property sold by the assignee, shall be withheld, in every case, until the purchase-money is paid; thereupon, a deed of conveyance shall be executed to the purchaser, by the assignee then holding the appointment, in the form prescribed by the statute, at the proper cost of the purchaser.

LXXX. The assignee shall, with all convenient despatch, exert every proper means for the collection of every debt and demand—adopting his means, however, to the circumstances of each case, and instituting suits and otherwise incurring costs and charges, only where there are some reasonable grounds to expect success, as a discreet and vigilant man would do, in his own affairs.

LXXXI. He shall, without unnecessary delay, inquire of the other rights and credits, and of the distant incumbered and disputed property, and whatever else was of the bankrupt at the date of the decree; and ascertain, as fully as practicable, the material particulars of every article of such property, and of every demand, and of the circumstances and condition of the several debtors of the estate, necessary to determine his action.

LXXXII. The assignee may, from time to time, call on the bankrupt, or may, by note in writing, or parol message, require the bankrupt to attend him at his office or other proper or convenient place, and there, as occasion may require, aid and assist him in his inquiries and investigations, and furnish to him, either in writing or *ore tenus*, all the information in his possession or within his reach, which the assignee may deem necessary, touching the affairs of the bankrupt; and where the assignee shall not be satisfied he has obtained, in this mode, all the information in the power of the bankrupt, he may cause him to attend before the commissioner, and interrogate and examine him, on oath, for this purpose, in the mode hereinafter prescribed. But, where the attendance of the bankrupt, from his home, is required for such purposes, the means of his travel and his necessary personal expenses, shall be furnished by the assignee, out of the assets of the estate.

LXXXIII. The assignee being, not only entitled by the decree, to all the rights of property, which were of the bankrupt when it was passed, but being also thereby invested with the right, and charged with the duty, of claiming and recovering, for the benefit of the general creditors, any property, money, or such rights, previously transferred, conveyed, paid, or released, by the bankrupt, in violation of the statute, and in fraud of such creditors, and of annulling any security, agreement, or other act, so given, entered into, or executed, it shall be his duty to examine and inquire into the facts of every case having such appearance, and to regard the suggestions of any creditor, touching such transactions; and thereupon to institute suit for the recovery of such property or money, wherever sufficient grounds shall appear, and the

assets of the estate shall afford, or the creditor furnish the means of defraying the charges. See rules 87, 90.

LXXXIV. The several articles of property, claims, or demands, discovered by the investigations of either the assignee or any creditor, and which he shall have determined to claim, and for the recovery thereof to prosecute suits, by means of the assets of the estate, or the advances and on security of a creditor, shall be stated, with every material circumstance, and reported to the court:

LXXXV. At the end of each six months, from the day of adjudication, the assignee shall make a brief and formal statement of all such effects, so discovered and claimed, under the head of *Assignee's further inventory of the bankruptcy of* ———, in duplicate; and having added thereon any once abandoned and afterward prosecuted claim, he shall file one part thereof with the original inventory, and immediately transmit the other to this court.

LXXXVI. The assignee, having noted the result of his investigations, in a brief statement of the circumstances of the several articles of disputed and encumbered property, and conditional claims, and of every uncertain demand, shall, at the end of each six months from the adjudication, make up a brief report thereof, and show, in a schedule, the several articles of such claims and demands; referring thereon to the statement of them, on the original inventory, by their proper Nos., which he shall have concluded are, and ever will remain, altogether unavailable, and therefore not the proper subjects of any further cost or care; and such report and schedule of abandoned claims and demands, being in duplicate, one part thereof shall be filed by the assignee with the inventory, and the other transmitted immediately to the court. After which—

LXXXVII. No further costs shall be incurred, in the pursuit of any such abandoned claims or demands, unless, upon further information, the opinion of the assignee shall be changed, or a creditor shall require the prosecution thereof; and, furnishing the means of defraying the immediate expenses, shall execute a bond to the assignee, as in cases of other suits instituted and prosecuted at the cost and risk of a creditor.—See rules 88, 90.

LXXXVIII. When on a proposition of a creditor, that the claim or demand of the estate shall be prosecuted, the assignee shall not be of opinion that the probabilities of success, justify the costs and charges, he shall require of the creditor the advance of the means, then necessary, and a bond, with surety, if deemed necessary, to furnish the further means, which may be from time to time required, and to pay all the costs to which the assignee may be subjected, together with a reasonable compensation for the services; and without such advances and bond he shall not proceed, unless by special directions of the court.—See rule 90.

LXXXIX. Where an investigation or prosecution of a claim, by suit, or otherwise, is commenced and conducted by the assignee, on his own judgment, and the costs shall have been advanced and secured by a creditor, he shall be reimbursed his money, with interest, out of the assets, or *pro rata* with other cost creditors, whatever may be the event of the prosecution: But—

XC. Where the prosecution of a claim shall have been exclusively at the instance of a creditor, and by his means and security for the cost and charges, if the result be unsuccessful, the assets shall not be charged there-

with; but if the prosecution be successful, he shall be fully reimbursed his money, with interest thereon, out of the first net proceeds thereof; and he may be also allowed, in like manner, by the assignee, a reasonable compensation for any personal service he may have rendered in the matter.—See rules 83, 87, 89.

XCI. Where the land of the bankrupt, or his right, or equity of redemption of any property had been sold under execution, and it shall be found by the assignee that the term allowed the debtor for redemption remains unexpired, and that the right of property is of far greater value than the sum required to preserve it, he shall promptly apply the assets and effect the redemption; if necessary he may sell so much of the movable property, on shorter credits, or even for cash, and on shorter public notice, if in his opinion the loss thereby will be compensated by the object: Or—

XCII. If the assignee shall be unable to obtain the money out of the assets, by any justifiable means, to effect the redemption of any valuable property, or right, he shall confer with the creditors, or such of them as he can in proper time; and if, thereupon, any of them advance the money to effect such redemption, it shall be reimbursed him, with interest, out of the general assets of the estate, next after the payment of the costs previously incurred, and the proceeds of the property, so redeemed, without respect to the advances, or costs of proceedings on other claims. These matters shall be reported specially.

XCIII. The assignee shall make a regular account of his sales of property stating the price for which each article, designated by its proper No. on the original inventory was sold, with the name of the purchaser, and showing whether sold for cash, or a sale bond was taken.

XCIV. He shall, for all money of the estate by him received, give to the proper person a receipt, written on either the evidence of the demand, or on a separate paper, expressing the full amount received, in dollars and cents. And—

XCV. He shall keep a regular and exact account of all such moneys which shall, in any manner come to his hands, showing the day when received, the original demand or article of property, described by its No. on the inventory, or the sale bond for, or on account of, which it was paid, or however else it came to his hands; stating in every case, separately, the principal, interest, and cost, with the total sum received.

XCVI. He shall keep a like account of his disbursements of money; stating thereon the name of the officer or other person whose fee bill or claim is paid, and in what matter the service was rendered; and have the fee bill or receipt for every such payment, except for the charges of his travel and necessary support, while from home on the business of the estate; and these he shall state, showing the occasion and mode of his travel, and the time he was abroad, and shall always make his entry thereof, on his account, at the time, or the next day after his return to home.

XCVII. The accounts of sales, receipts, and disbursements, shall be, at all times, open to the inspection of any creditor; and being made up in triplicate, at the end of each sixty days, in which any transaction occurs, and the amount of money deposited in bank, and the sum retained for small expenses and costs, with a specification of such purposes, being stated thereon, one part thereof shall be filed by him with the papers of the case, one furnished to the commissioner, and the other immediately transmitted to the court.

XCVIII. The money which shall come to the hands of the assignee, as assets of the estate, shall be all deposited in the bank designated by the court, immediately, or at farthest, within sixty days after it is received, except such small sums as may be indispensable for the payment of the current charges of the proceedings.

XCIX. The designation of the bank of deposite will be by merely affixing the name of the institution on the left, at the foot of the entry of the assignee's appointment—any change thereof by special order.

C. The deposites shall be all made to the credit of the *United States Kentucky District Court in Bankruptcy*, with a specification in each entry of the name of the assignee by whom deposited, as *In A. B.'s case, by C. D., assignee.* And—

CI. The money, so deposited, shall be paid out on the check of the clerk of this court, made always payable to the order of the person entitled to receive it, annexed to or preceded by a copy of the order of the court directing the disbursement or withdrawal of the money, and not otherwise.

CII. No assignee shall, on any pretext whatever, use for his own purposes, or loan to any other person, with or without interest, any portion of the money, or paper in representation thereof, or any evidences of a demand of the estate, which shall come to his hands or control; but in every case the identical money received originally, or in making change, shall be disbursed or deposited, except where the assignee may, at his own risk, receive bank notes commonly passing as money, at about their current discount; and in such cases, he shall immediately convert them into lawful money, and account for any gain which may happen thereon.

CIII. The assignee shall hear the proposition of any debtor, mortgagee, or obligor of a bond for the conveyance of land for which the purchase money remains unpaid, or other encumbrancer, or the adverse party in any matter of controversy, for a final settlement thereof; and having himself ascertained all the material facts and circumstances, if it shall seem to him that it may be for the interest of the creditors that the proposition be considered, he shall make up a duplicate statement of the matter, setting forth the material facts, and concluding with a distinct statement of the terms proposed by the other party, and his own calculations and conclusions; and having filed one part thereof with the papers of the case, shall transmit the other to the court; thereupon, the matter will be set for hearing, and a publication of the notice thereof directed.

CIV. Wherever it shall seem to the assignee, either on the suggestions of a creditor, or on his own consideration of the matter, that it is necessary and proper to have an examination of the bankrupt, touching his transactions, or the affairs of the estate, he may apply to the commissioner and obtain it.

CV. When a creditor, desiring an examination of the bankrupt, does not choose to apply to the assignee, not succeeding in such application, or not being satisfied with the examination so had, he may apply to the commissioner, and have a meeting of the creditors, and an election of a solicitor or agent of the creditors, to obtain and conduct the examination.

CVI. On the application of a creditor, desiring an examination of the bankrupt, the commissioner shall call a meeting of the creditors, and fixing the time and place, shall give at least ten days' notice thereof, in one or more newspapers, in his discretion. On such meeting, the commissioner shall preside, and hold one or two elections: on one, the first election, a

solicitor shall be chosen, by the votes of a majority in number of all the creditors attending in person or by proxy; on the other, if another be desired by any creditor of the larger amounts, the vote of each creditor shall be stated according to the amount of his debt, and the greater amount of the votes, so estimated, shall decide the choice—the same person may, however, be chosen on both elections—and such solicitor or solicitors, or either of them, may proceed to have and conduct the examination.

CVII. On the application of either the assignee, or the solicitor of the creditors, the commissioner shall appoint a convenient time and place within the county, and by a note in writing, to be delivered to the bankrupt in a reasonable time, require him to, then and there, attend and submit to his examination. If the bankrupt fail to attend upon such requirement, or attending, refuse to be sworn and submit to his examination, the commissioner shall make an order that he show cause before him, at a time and place to be in like manner fixed, why his neglect to attend as required, and submit to his examination, shall not be reported to the court; and a copy of this order being served on the bankrupt, in reasonable time, in case of his absence when it was passed, if he still fail to attend, or appearing, does not show sufficient cause, and then submit to his examination, the commissioner shall report the facts to the court.

CVIII. The bankrupt being before the commissioner, shall be, by him, thus solemnly sworn, or affirmed:

You do solemnly swear, or *affirm*, that you will true and perfect answers make to every question which shall be propounded to you on this occasion, in relation to your bankruptcy; and give, to the best of your recollection and belief, a full and true account of all your acts and doings, in relation to your late property, claims, demands, and other rights of property, and of every payment, transfer, conveyance, sale, release, or other disposition thereof, or agreement in relation thereto, to which your attention shall be called by such questions—so help you God.

CIX. The examination may be oral, or upon written interrogatories, or both, in the discretion of the parties, controlled by the commissioner, having in view to obtain a full and complete discovery of every fact and circumstance, in any wise material in the matter, and a fair and perfect statement thereof; and may be conducted by either the assignee or solicitor of the creditors, or both, giving the precedence to him on whose application it was ordered; and by the commissioner himself, whenever he shall see fit, especially for the purpose of satisfying himself of the facts in question, and to enable him to make a full report of any question arising in the proceeding.

CX. Demurrers, or objections, to interrogatories, and exceptions to their answers, shall be decided by the commissioner: when the objection to the interrogatory is overruled, the bankrupt shall answer: when the exception to his answer is sustained, he shall make farther and full answer: if he refuse to make a full answer to the interrogatory, or the objection be sustained, or the exception to the answer be overruled, the interrogator, in either case, may demand that the matter be noted; and thereupon have an immediate statement and report of the question, or he may progress for the time, and afterward have the statements made up, on the adjournment, and the question reported to the court.

CXI. When the adjournment for such purpose has been concluded upon, the commissioner shall make a full statement of the examination then had,

supplying whatever may have been oral in its progress, and therein set forth the question propounded and not answered, or the question and answer, where an exception to the answer is overruled, stating the reasons of his decision, if he see fit; and having engrossed the same in duplicate, shall file one part with the papers, and transmit the other to the court; and thereupon the examination shall be adjourned to such day as the commissioner may fix for its resumption, after the decision of the court.

CXII. If, upon any such examination, or any other such occasion, any party or other person commit any disorder in the presence of the commissioner, he shall immediately require the offender to show cause why the matter shall not be reported to the court: and cause, satisfactory to him not being shown, he shall immediately make a statement of the fact, and report thereof to the court; he may, thereupon, desist in the business before him, and await the action of the court on his report, or progress, as he may see fit.

CXIII. On a report of the commissioner, of the failure of the bankrupt to attend, and submit himself to his examination, or of his refusal to make full answer to any question propounded to him, or of an exception to any decision given by him, the commissioner, on such examination, or of any disorder committed before him on such occasion, the court will, on the motion of either party or any creditor, or of its own accord, determine upon the matter; and where proper, make an order for the examination, or further examination of the bankrupt, before either the same or a special commissioner, or in court; and if necessary, give directions therefor, and award an attachment to enforce such orders, and to punish the offender for any attempt, which may appear to have been committed.

CXIV. There may be three examinations of the bankrupt; of course, two on the application of the assignee, and one on behalf of the solicitor of the creditors, and one or two additional ones, on the application of the solicitor, in the discretion of the commissioner; others may be directed by the court on sufficient cause shown; but in either case the examination may be adjourned for not exceeding ten days, to enable either party to examine papers, or investigate transactions, unexpectedly drawn in question, in the discretion of the commissioner.

CXV. Each examination of the bankrupt shall be engrossed in duplicate immediately it is closed; and both parts being signed by him and the bankrupt, one shall be immediately transmitted, by the commissioner, to the court, and the other filed with his papers of the case.

CXVI. In all proceedings before the commissioner, the assignee, or in court, the bankrupt's list of his creditors shall be *prima facie* evidence that a person in whose name a debt is stated thereon is a creditor, except where the privilege is given by the statute, or rules of court to those only who have proved their debts; and such person may be represented by the agent or attorney having in charge the collection of the debt.

CXVII. The proof of the debts against the estate may be made immediately after the decree declaring the bankruptcy has passed, without any special order. It shall be by deposition in writing, and an authenticated copy of the judgment or decree, or original deed, bill, or other writing—or in a proper case, proof of the contents thereof—whereon the claim is founded, or an account current or other such statement in cases of that character; or in case of a debt to the United States, or any State, by the testimony competent in a suit against the bankrupt.

CXVIII. The deposition may be made by the creditor himself, or in case of a corporation, by the president, cashier, treasurer, or other officer appointed, over the seal of the corporation, or by an order of the board of the office where the debt is payable, signed by the president and attested by the cashier thereof.

Where the evidence of another may be proposed, the court will determine on its propriety.

CXIX. These depositions shall be taken, where the creditor resides in the county of the bankrupt, before the commissioner; where he resides elsewhere in the United States, before the commissioner, or a disinterested judge of the State, Territory, or district where the creditor lives. Or—

CXX. When the creditor is a resident of a foreign country, the deposition may be taken before either the commissioner or such State, territorial, or district judge, or before an Ameriean consul, in the country of the creditor, or such other commissioner as the court may appoint for the special purpose.

CXXI. The deponent being sworn, or affirmed as may be his case, in the form prescribed below, shall produce the original deed, or other writing, or state the cause of its non-production, in conformity to the general rule in such cases, or a certified copy of the necessary part of the record, or an account, with a specification of the items of the demand, in the usual form, according to the nature of the claim; and thereupon state the consideration of the original demand, and give the amount thereof, and then stating the several payments, credits, counter claims, and set offs, if any, justly applicable in diminution thereof, shall ascertain with as much certainty as in his power, the sum then justly due thereon, upon valuable and lawful consideration.

CXXII. Where a debt is claimed as absolute, on a claim originally conditional or uncertain, and where there has not been a judgment or decree, whereby the facts upon which it became absolute, have been ascertained, and the amount adjudged, the deponent shall set forth those facts; and where the amount of the demand does not yet certainly appear, he shall show the means and criterion, whereby he ascertains the sum then due.

CXXIII. Where the demand is still contingent, or remains uncertain, the deponent shall set forth the things upon which it depends, with every particular thereof, with his estimate of the probabilities, and give his own conclusion thereon, in a present sum.

CXXIV. When the party would claim that his debt, or any part thereof, shall be preferred and paid in full out of the assets, the facts relied on shall be all set forth with certainty: in the case of an operative, the species of labor, and the time and place, and on what contract it was performed, shall be distinctly stated.

CXXV. The deponent shall, in every case, set forth all the securities, by mortgage, deed of trust, lien, pledge, or the obligation or commitment of another person, held for the debt, or any part thereof, if any such be held, and aver that he knows of no other; or he shall declare that he does not know or believe that there exists any such security.

CXXVI. In case of debts by record, it shall be sufficient to produce a copy of the entry of the judgment or decree, preceded by a copy of the process and return of the service thereof, when such entry does not show his actual appearance, with copies of such subsequent entries, returns of executions or other endorsements upon them, or other papers of the cause, if

any, which show any credit or part satisfaction, or other diminution of the debt so adjudged, with the certificate of the clerk, that these are true copies of all such entries, returns, and endorsements.

CXXVII. The deposition may be in this form:

The deposition of taken before the commissioner, [or insert one of the judges or justices of the court of the State of] at [insert the name of the house and town, or city] in the State of , to be read in support of the debt claimed by against the bankrupt estate of a bankrupt of the United States Kentucky district court.

The said deponent, being first duly sworn or affirmed to state fully, all he knows or believes of the claim now made by against the bankrupt estate of , of the original consideration, and amount of any payments thereon, and of all set offs or other grounds for a diminution thereof, and to give as exactly as in his power, the sum justly due upon it, with interest up to the day of 184—, [insert the day petition was filed.]

He doth depose and say:

[Here set down the evidence with all the particulars thereof, concluding in every case with this clause:]

and the deponent avers that he does not hold or believe there exists any security by mortgage, deed of trust, lien, pledge, or the personal obligation of another person, or otherwise, for the said debt, or any part thereof, [adding where a security has been stated,] except as above set forth.

[At the conclusion of this the deponent will subscribe his name, and the commissioner or justice will add the following certificate and subscribe it.]

Deponent.

I, , commissioner, [as it may be in the caption,] one of the judges, [insert as in caption,] duly commissioned and acting as such, do certify that the above named , appeared before me, and being to me personally known, was solemnly sworn, as above stated, and thereupon gave the evidence above set down and no other; that the said deposition was wholly reduced to writing by me in the presence of the witness, or by the witness in my presence, *after* he had been so sworn *or affirmed*, and that thereupon the same being truly read by him, or by me to him, he subscribed it in my presence; that I am not of counsel or attorney, or of kin to any of the parties, or interested, either in the claim, or the said bankrupt estate.

Given under my hand at the time and place stated in the caption.

C. or J.

Where the deposition is not taken by the commissioner of the case, the officer who has taken it will seal it up with the documents produced and made part thereof, and direct it to,

Commissioner.

In the bankruptcy of , *Kentucky.*

CXXVIII. On the depositions so taken before, or certified to, the commissioner, and the documents thereby, or otherwise proved and filed, all compared with the statements of the bankrupt, in his original list of creditors, the commissioner shall determine on the claim against the estate; and having allowed it, in whole or in part, and deducted all credits and set offs,

he shall add or deduct the interest up, or down, to the day the petition was filed, as the case may require, and thus ascertain, and state the true debt of that day.

CXXIX. These determinations of the commissioner shall be made in every case, immediately the proofs are received; and a statement thereof shall be made, showing, in every complex matter, the process whereby the conclusion was obtained, and filed with the proofs: These papers shall be, at all times, open to the inspection of the creditors.

CXXX. Any creditor, discontent with the decision of the commissioner, on his own or any other claim, or the assignee, believing the decision erroneous, may state his objections to the commissioner; whereupon the commissioner shall hear the parties, on the same and any farther proof either party may produce, stating at full length all the parol evidence received, and again make his determination, and, if necessary, re-state his decision: If with this, either be discontent. his objections shall be filed: whereupon the commissioner shall immediately transmit to the court all the proofs with his decision and the objections alleged; and the court will hear the parties, and decide, or provide for the decision.

CXXXI. In such contests before the commissioner, the bankrupt or creditor may be examined by the other, or either of them by the assignee.

CXXXII. The contingent and uncertain claims shall be examined by the commissioner, and estimated on all the facts, and the present sum on which he concludes, given, with the process by which he attained it.

CXXXIII. At the end of each six months from the adjudication, the commissioner shall make up an account of the debts so proved against the estate under this head:

Debts proved against the bankrupt estate of within the first six months after the adjudication.

CXXXIV. On this account, the names of the creditors, whose claims are proved and allowed, and each of their debts, so allowed, shall be stated in the report in the same order they stand, on the original list of creditors, with the corresponding numbers; but with a designation and note of the preferred debts, whereof the creditors are entitled to be first paid in full; and a separate representation of the contingent and uncertain demands. To this shall be annexed a statement of the commissioner's costs for his services, chargeable to the estate, in that six months. And—

This account, being all in duplicate, one part thereof shall be transmitted, with all the proofs to the court, and the other filed by the commissioner with his other papers of the case.

CXXXV. Proofs to establish debts, taken before the report of the commissioner, but offered to him afterward, shall be immediately forwarded to the court, so that the matter may be incorporated before the declaration of the dividend.

CXXXVI. The assignee shall, on his report due at the end of each six months from the adjudication, annex an account of his costs and charges within that period, stating separately the aggregate of those paid within each of the preceding periods of two months and before reported; and give the particulars of those paid within the last two months; and furnishing his vouchers for all which have been paid, shall add a statement of the claims unpaid and properly chargeable on the money then in court.

CXXXVII. This semi-annual report of the commissioner, together with the proof previously taken and subsequently filed here, the reports of the assignee, and the clerk's report of the taxation of the costs of the proceedings here, shall be all referred to a master in chancery. He shall examine the charges of the several officers and agents, and ascertain and state the sum due to each, and the aggregate of the costs, the amount of the money of the estate in bank to the credit of the court; and having deducted the costs from the amount of the money so in court, and ascertained the amount of the several debts proved before the commissioner, and established by the proofs subsequently filed here, not secured by any mortgage or lien on any of the effects of the bankrupt, and the aggregate thereof, and found the amount of the debts to be paid in full, and so obtained the *per cent.* of the dividend which may be then declared, will make a full statement thereof; concluding with a brief account of the exact sum due to each officer and agent of the court, and each creditor of the estate.

CXXXVIII. Where the master finds in the papers of any case anything which may seem to require that a portion of the money in court should be reserved from distribution, he will make an interlocutory report of the matter, and obtain the special direction of the court, and afterward, if the reservation be directed, make up his report accordingly.

CXXXIX. On the report of the master being received and filed, an order *nisi* will be made that a dividend and distribution of the assets among the creditors will be made here, on a day which will be fixed in the order, according to such report.

CXL. This may be the form of the entry:

A. B.'s case. The master's report on the reference for the purpose of a dividend, having been made and filed, it is ordered that a dividend and distribution of the assets now in money on deposite will be made here among the creditors who have proved their debts on the day of , according to the report, *unless* cause against it be shown before that day.

CXLI. This entry shall be published in the same newspapers in which the former publications of the case were made for at least ten days before the time fixed for the distribution, unless otherwise specially ordered.

CXLII. No cause to the contrary being shown, the dividend will be accordingly declared on the day fixed; and, this report of the master having remained without exception, or affirmed or rectified on exceptions, an order will be made that the clerk make his check on the bank, payable to the *order* of each person for the sum to which he is entitled thereon.

CXLIII. These checks the clerk will deliver to the drawees or their agents, taking their short receipt therefor, on a paper referring to the pay list reported by the master whereon they were drawn, and place it on the files of the papers of the administration of the estate.

CXLIV. The clerk will keep a bank and deposite book, and enter therein, to the credit of an account for each bankrupt estate, the sum reported as having been deposited therein by the assignee, and charge the same in an account against the deposite bank; and upon drawing his checks, will credit the bank, and charge the estate with their amount. The accounts in this book shall be always kept up, so as to show the true state of the deposites.

CXLV. In the second, and each succeeding six months from the adjudication, the creditors who had not before offered their proofs may prove their debts; those whose claims had been suspended for further proof may offer it, and where the contingency or condition on which the demand depended

had not before occurred, the subsequent happening thereof may be shown. And—

CXLVI. Where in the proofs of a debt before reported it had appeared the creditor held a security for it on effects of the bankruptcy, and a sale or other disposition of such effects having been afterward made by the assignee in the mode prescribed by the court, a report thereof is made to the commissioner, he shall state the matter, deduct the net proceeds of the incumbered effects from the debt, and report the remainder.

But no claim once rejected by the commissioner shall be again heard by him without the direction of the court.

CXLVII. The several reports of the commissioner shall show the claims offered and rejected, those suspended for further proof, and such whereof the ground is shown, but which result in no present absolute debt, and distinguish those for which the creditors hold a security by a lien on effects which were of the bankrupt.

Cases of annuity shall be specially reported, and the value thereof ascertained here by the master, under the direction of the court.

CXLVIII. On the reference to the master at the end of the second and each succeeding six months, he will ascertain the amount of the debts proved subsequent to the last distribution, including those which had in the meantime become absolute, and the remainder of those to the credit of which the commissioner has in the meantime rightfully applied the proceeds of a security, which had before excluded it from a dividend account; and having found the rate per cent. previously divided, shall first provide for the payment of that rate on such after-proved debts; and afterward make and state a division of the remainder of the money subject to distribution among all the creditors, and in his concluding pay-list give the sum so ascertained payable to each person.

CXLIX. The punctuality expected in all the other proceedings being especially necessary in these semi-annual reports of the commissioner and assignee, whenever materials are not found for a formal report, *this* fact shall be reported to the court, so that there may be no unfounded suggestion of default until the affairs of the estate shall have been closed.

Proceedings by Creditor vs. *Involuntary Bankrupt.*

CL. The *creditor*, in his petition to have his debtor declared a *bankrupt*, shall distinctly and positively set forth the several facts necessary to show the case within the statute. He may charge defendant is of two or more of the occupations to which the statute extends, and that a plurality of the acts of bankruptcy had been committed by him; but such allegations shall not be in the alternative.

CLI. The statements of the petitioner shall be verified by the affidavit of the petitioner, or, in case of his absence from the district, his agent having in charge the collection of the debt. It shall be subscribed by the petitioner or his attorney constituted for the purpose, or by a solicitor of the court.

CLII. The petition and verification thereof may be in this form, changing what should be changed, where more than one creditor unites in the petition, or where the proceeding is against partners in trade or other occupation subject to the proceeding:

To the district court of the United States for the Kentucky district, in bankruptcy:

C. D. (insert the town and county and State of the petitioner's residence), represents that B. K., a resident of, or *having his place of business in*, the county of and district of Kentucky, is indebted to your petitioner the sum of *five hundred dollars* (add) *and upward* (if the fact be so), and being a merchant (or) *using the trade of merchandise*, (or) *being a retailer of merchandise*, a *banker*, a *factor* a *broker*, an *underwriter*, (or) a *marine insurer* (as may be the fact), and owing debts to the amount of not less than two thousand dollars, did, on or about the day of , since the 1st day of February, 1842, depart from the State, district, or territory of , whereof he was then an inhabitant, with intent to defraud his creditors (or insert any other of the acts of bankruptcy specified in the statute), and did thereby become a *bankrupt:* Hereof the petitioner offers due proofs, and prays that, on the proper proceedings had, this court declare that the said B. K. is a *bankrupt*, and that thereupon such further proceedings may be had as the case may require.

, 184 . *petitioner.*

I do solemnly swear, *or affirm*, that I verily believe the statements in the above petition are true in substance and in fact (adding, where the affidavit is by an agent), and that the petitioner is, I verily believe, absent from the district of Kentucky, and I have in charge, by his authority, the collection of the debt in the petition mentioned.

——— ———.

Jurat—as in the form prescribed in the case of the petition of a debtor. (See Rule 28, &c.)

CLIII. On the presentation of the petition, its sufficiency will be considered; on its approval, and before the filing thereof, a bond shall be executed in court, to the defendant, with one or more sufficient sureties, in a penalty which the court shall fix in its discretion, with the condition found in the form here prescribed.

CLIV. This may be the form of such bond:

We, C. D. and , jointly and severally bind ourselves, our heirs, &c., to pay to the sum of dollars.

The condition of this obligation is, however, such, that whereas the said C. D. has presented his petition in this United States Kentucky district court in bankruptcy, praying that the said B. K. may be declared a bankrupt, which, on the execution of this bond, is filed.

Now if the said petition shall be prosecuted with effect, or in case of its dismissal for want of prosecution, on the adjudication, or otherwise, if the said C. D. shall pay to the said B. K. all the damages and costs which he shall have sustained and incurred by the filing and prosecution of said petition, then this obligation shall be void; otherwise, remain in full force.

Witness our hands and seals, this day of 184 .

[SEAL.]
[SEAL.]

CLV. The execution of the bond by the petitioner himself will not be indispensable; but in case of the breach of the condition, the defendant may have his other appropriate remedy against the petitioner: and the obligation of the sureties shall be the same as if the petitioner were bound with them in the bond.

CLVI. This bond will, however, be always under the control of the court; and in case of a breach, or alleged breach of the condition, the matter may be determined, and the remedy afforded here; or the bond delivered to the assignee, that he may proceed at law, in the discretion of the court.

CLVII. Where the petitioner is a nonresident of the district, he shall also give a bond with sufficient surety for the costs, in the form required by the rules and practice of the circuit court.

CLVIII. On the filing of the petition, this shall be the entry:

C. D., of , *vs.* B. K., merchant, (or) of .

The petition of C. D., of , as a creditor of the defendant, praying that he the said B. K. may be declared a bankrupt, filed, and the adjudication set for , the day of next; and the defendant and all others, enjoined from removing, or otherwise disposing of the property now of the defendant, or which, on the decree, the assignee may be entitled to reclaim and recover, or of any of the evidences thereof, so as to defeat or embarrass his remedies.

CLIX. A publication of a copy of this entry shall be made in the same newspapers, for the same time, and in the same manner required in the case of a voluntary proceeding by debtor for the benefit of the statute; and a copy thereof, with a copy of the petition annexed, shall be delivered to the defendant, if found in the district, or left at his usual or last place of residence or business, in his absence, at least twenty days before the hearing.

CLX. The opposition of the defendant to a petition for a declaration of his bankruptcy, may be made at any time before the decree: it shall be by demurrer, plea, or answer; or the matter may be combined in one general answer.

CLXI. The filing of a demurrer will be in the discretion of the court: when filed, it shall stand for argument instanter, and defendant counsel will be heard immediately: petitioner's counsel will be allowed time, if necessary; or he may obtain leave and amend. The amended petition shall be met immediately, or in the time the court will prescribe.

CLXII. The propriety of the plea will be considered when offered, and will be received only when it admits every other allegation, and presents an issue on a single fact alleged in the petition, or alleges a single fact, the general traverse whereof (which will be always understood without being filed) will form such an issue: other defences must be set up in the answer.

CLXIII. The answer must be responsive, in every respect, to all the material facts alleged in the petition, and verified by the affidavit of the petitioner.

CLXIV. Exceptions to the answer may be in parol, unless when the court requires them in writing. They will be heard immediately, and being sustained, a further answer shall be made at once, or in the time the court may fix.

CLXV. No replication to answers will be necessary. The petitioner will be understood as denying the affirmative allegations of the answer, and the defendant must prove them.

CLXVI. When the issue is formed it will stand for the proofs, without a special order: a commissioner of depositions will be appointed, in the county of the defendant; and, to afford time for taking them, and producing other proofs and witnesses, the hearing may be then postponed, and a trial by jury, of the issues of fact, may be ordered, and directed to be had, before either the court, or a commissioner in the county of the defendant.

CLXVII. Where, on the filing of this petition, or at any time afterward, before the adjudication, it is shown to the court, by affidavits stating the facts and circumstances, that there is just ground to apprehend the property of the defendant will be eloined, or otherwise so disposed of as to defeat the object of the proceeding, in the event of the petitioner's success in obtaining the decree, an order will be made, in the nature of an attachment, directing the marshal to take possession of all the movable property of the defendant, and hold the same, subject to the further order of the court, unless the defendant or those in possession execute before him a bond, with two or more sufficient sureties, payable to the petitioner, for the use of him and the other creditors of the defendant, in a penalty equal to double the value of such property, with condition that, in the event of a decree being rendered declaring the defendant a bankrupt, the said property shall be all delivered over to the assignee.

CLXVIII. On the decree of bankruptcy being rendered, the assignee and a commissioner will be appointed, as in cases of a voluntary proceeding by the debtor; and the assignee having taken the oath, and given the bond, he shall immediately take possession of all the property, with the evidences thereof, which were of the bankrupt, and passed by the decree, wherever found. And—

CLXIX. The bankrupt shall immediately attend before the commissioner, and submit himself, upon the oath prescribed, to his examination by the assignee. The assignee shall, thereupon, acting with the bankrupt, in view of the property, and in the presence of the commissioner, attending for the purpose, if necessary, in any part of his county, take an account of all the liabilities and effects of the bankrupt. On the facts so obtained, the assignee, with the assistance of the bankrupt, before the commissioner, shall make up a list of the creditors, an inventory of the effects, and a catalogue of the books and papers of the bankrupt, in the same order, and with the same specifications, and in the same form (changing only what should be changed), as required in these papers, in the petition of the debtor for the benefit of the statute; and the same being in duplicate (with an additional copy for the bankrupt, if he desire it), and signed by all the parties, both parts shall be transmitted to the court; and the examination of the bankrupt, so had, being also engrossed in duplicate, one part thereof shall be transmitted to the court, and the other filed by the commissioner.

CLXX. In this proceeding, the assignee will determine on, and set apart to the bankrupt, the furniture and other necessary articles excepted by the statute, and make a bill and report thereof, as in other cases.

CLXXI. On the return of the list of creditors, inventory, and catalogue, to the court, they shall be examined and filed; whereupon, one part of the list of creditors will be certified and returned to the commissioner, and one part of the inventory and catalogue to the assignee. Thenceforward, the administration of the estate will progress, and the case be conducted, changing only what should be changed, as in case of a proceeding instituted by the debtor.

CLXXII. The defendant, in his petition (presented after the decree had passed) for a trial of the facts by a jury, shall, after setting forth very briefly the proceeding had, make a full answer to all the material allegations of the orginal petition of the creditor, and ask, at the conclusion, for the trial by jury.

CLXXIII. On this answer being filed, the plaintiff may, for cause apparent or shown, have leave to amend his petition: thereupon, the case shall progress, as when the defence was made, before a decree had passed, except that a trial of the issues of fact shall be by a jury; and the court will make the necessary orders therefor.

Proceedings for the discharge.

CLXXIV. The petition of the bankrupt for his discharge and the certificate, may be presented at any time after twenty days from the adjudication, and (the bankrupt's portion having been determined on and set apart) the residue of the estate has been delivered over to the assignee.

CLXXV. The bankrupt, in this petition, shall set forth, briefly, the decree of the bankruptcy and subsequent proceedings; aver his compliance thus far with the requirements of the statute, and orders and directions of the court, and declare his willingness and readiness to continue his conformity thereto.

CLXXVI. It shall be accompanied by a list of his creditors, their assignors, and others interested in the several debts, or their proper representatives, with their respective places of residence, made as perfect as practicable, by all the information obtained after the filing of the original.

CLXXVII. In this *notice list of creditors*, the names of the present holders, whether the debt be absolute or contingent, or in cases of the Government or other corporations, of their proper representatives, shall be stated in the same order they stand in upon the original list, with the corresponding numbers in a column on the left. Under these names, and in connexion with the same number, shall be set the names of every other person interested in the debt or demand, or so situated, with respect to it, that his right or liability would be affected by the discharge and certificate—with the place of residence of every party (wherever it was known, or has been ascertained by the petitioner) affixed to his name. But—

In cases of partnership, where it is known the firm is still conducting business in the same place, under the same name, it will be sufficient to give the partnership name, and place of its business. Where it is not known the house remains in business, the full names of the several partners shall be given, so far as ascertained by the petitioner.

CLXXVIII. Where the bankrupt is bound in an official, or other such bond, payable to the commonwealth, or other corporation, for the use of itself or others, or both, kept in a public office; or, in a bond for the costs of a suit, the official name of the keeper of the office shall be stated, with an addition indicating the purpose of the notice, as found in the form. This paper shall be of the same date of the petition, and subscribed by the petitioner.

CLXXIX. This shall be the form of the petition, and *notice list of creditors*, and of the verification thereof, omitting what is inapplicable, and changing what should be changed:

To the District Court of the United States for the District of Kentucky:

A——— B———, of the county of , and district of Kentucky, represents, that, on the day of , 184 , on his petition, or *on the petition of* , *his creditor*, and regular proceedings had thereof, he was, by the proper decree of this court, declared a *bankrupt;* that he surrendered all his property, and rights of property, and has delivered over to the assignee of his estate, all the effects thereof in his possession or control, with the exception of the articles specified in the statute, and determined on and set apart to him by the assignee; that he has thus far, as he verily believes, fully complied with, and obeyed all the orders and directions which have been, from time to time, passed by the court; *has submitted himself to an examination before the commissioner*, and conformed to all the other requirements of the statute, and now remains ready and willing to submit himself to any *further* examinations, and to comply with any further orders of the court, and to conform, in all other respects, to the requirements of the statute.

Wherefore, the petitioner now prays that, on due proceedings being had, this court adjudge him fully *discharged* of all his debts, and grant him a certificate thereof.

A more perfect list of his creditors, and of those interested with them in the several debts, with their respective places of residence, subscribed by the petitioner of even date with the present, is herewith presented.

184 . *Petitioner.*

I do solemnly swear, *or affirm*, that the statements in the above petition are true, to the best of my knowledge and belief; and that the notice list of the names of my creditors, and other persons so interested as to be entitled to notice, according to the rules of the court, is, as I am informed, advised, and believe, as perfect as I have been able to make it, after my earnest endeavors to make it entirely complete.

Petitioner.

Jurat—as in case of the affidavit to the original petition.

NOTICE LIST.

Notice list of the names of the creditors of A. B., bankrupt of the United States Kentucky district court, and of the "other persons in interest," or their proper representatives, and entitled by the rule of the court to notice—part of his petition for his discharge and certificate, of the present date.

Nos.	Examples of the matters of the notice list.
1	Solicitor of the Treasury United States, Washington city, D. C. In all cases of debt to the United States, other than those to the Post Office Department. Attorney United States, Kentucky district, Louisville (or other place of his residence), Kentucky. Wherever the debt is to the United States, with whatever department contracted.
2	Solicitor of the Post Office Department, Washington city, D. C. Where the debt is for the use of the Post Office Department. Attorney United States, Kentucky district, Louisville, Kentucky.
3	Attorney General Kentucky, Frankfort, Kentucky. Wherever the debt is for the use of the Government for any purpose. Second Auditor Public Accounts, Frankfort, Kentucky. In all cases where the obligation is by a bond in the auditor's office for the security of the Government and others, so that the notice may be to him for all concerned.
4	Governor and Attorney General of Maine, Augusta, Maine. Wherever the debt is to another State of the United States, or any Territory thereof, insert for the place, the seat of government.
5	Mayor and Attorney of Louisville, Louisville, Kentucky. Where the debt is to the coporation of a city or town, or the obligation is by a bond for the security of the corporation and others, required to be filed in an office of the city or town.
6	Clerk of the ——— county court, ———, Kentucky. This is where the bankrupt is bound in a sheriff's, constable's, executor'e, or other such official or fiduciary bond, or any other bond payable to the commonwealth and kept in the clerk's office, whereon any person, injured by a breach of the condition, may sue for his own use.
7	The clerk of ——— circuit court, Frankfort, Kentucky. As above, including cases of bonds for the costs of a suit. In the two last, and other such cases, where neither the officer nor his State has any interest in the matter, the party must furnish the money to pay the postage of the letter, so that it may be taken out of the post office, and filed, or shown for notice to all concerned. P——— J——— (person injured by breach of the condition of any of the abovementioned bonds), G's Cross-roads, ——— county, Pennsylvania. Give the county in cases of country post offices. C——— S——— (post office not being known), ——— county, Kentucky. Surety or joint obligor in such bonds as the above.
8	Bank United States, Philadelphia, Pennsylvania. In all cases where a bank is the creditor, give the place of the principal bank, except where the debt was contracted and payable at a branch still in operation. In such case see below.

NOTICE LIST—Continued.

Nos.	Examples of the matters of the notice list.
	Bank United States, their assignees, Louisville, Kentucky. Where the branch has been discontinued, and it is believed the debt was passed by assignment, in law or equity, to a resident, give the name of the bank, with the former place of the branch, as here. Or if the name of the assignee be known, give it as below.
9	S——— D———, assignee Bank United States, Lexington, Kentucky.
10	President Louisville Br. N. Bank Kentucky, Louisville, Kentucky. Where the branch bank is still in operation, this will be sufficient.
	P——— T——— & Co.; [Insert place of business,] city New York. Where it is known the house is still in business, this will be sufficient; otherwise add the names of the partners and their residence.
	C——— P———, [State, but neither the post office or county being known, insert the principal town in the region of the State where it is probably the party resides,] Jefferson city, Missouri.
11	B——— M———, Liverpool, England.
12	G——— T——— T——— (part of the foreign country not being known, give the name of the principal city), Houston, Texas.
	In the two latter cases, the party must furnish the money to pay the postage of the letters to the American port, so that they may be shipped.
13	——— N., care of ——— (given name being unknown, add this affix, with bankrupt's name, or other such very brief description), New Orleans. Where nothing else is known of the creditor's residence, fill up with the name of the place where it is understood he was last resident, commorant or itinerant, or may have an attorney or factor.
	The names of every *contingent* creditor, such as a surety, partner, or other co-contractor, assignee, vendee, or grantee with warranty, and the like, having been given; the names of every person against whom the demand may accrue in consequence of the discharge of the petitioner, such as assignor of his promissory note or other obligation, on whom a demand would recoil upon his discharge, must be added.
14	A——— R——— (assignor, immediate or remote, of obligation on bankrupt, give place of residence, as in other cases), Cincinnati, Ohio.
	It will be observed that the body of the paper, which these examples and notes are intended to enable the petitioner to make up correctly, will consist of *exactly* what is to be put upon the back of the letters of notice, which are to be transmitted by mail. The numbers on the left are intended, among other things, for a convenient comparison of this notice list with the original list of creditors, and this comparison will be had after the paper is filed here, on any suggestion of an error or omission. Imperfections are to be carefully avoided, both because the correctness of the list is verified by the petitioner's affidavit, and because the discovery of them may occasion costs and delays.
15	D——— M——— (where the representatives of a deceased party are unknown, still give his name and last residence), ———, Alabama.

COUNTY OF ———, 184 .

——— ———, *Petitioner.*

CLXXX, On this petition being filed, the court will fix the day for the hearing, so that the notice thereof will be given, according to the succeeding rules, at least seventy days before it.

The entry thereof will be made in the following form; and the court designating the newspaper for the publication, its name will be annexed on the left:

A. B's case—The petition of of , declared a bankrupt here, on the day of last—for the discharge from his debts, and for a certificate thereof, filed and set for hearing on the day of next.

CLXXXI. A copy of this entry shall be published, in each of the regular publications of the paper so designated, between the fifth day after the date of the entry, and the fifth day before that fixed for the hearing: and this shall be the publication of the notice of the bankrupt's application for his discharge.

CLXXXII. The clerk will make one copy of this entry for the printer, with the names of both the commissioner and assignee annexed on its left, to be there printed in small type, with the printed blank for the affidavit and *jurat*, to be made of its publication, subjoined; and annex another copy to the notice list of creditors so filed, and furnish *this paper* to the crier and tipstaff of the court.

CLXXXIII. These persons, the crier and tipstaff, having filled up the proper number of printed blank forms of such entry, obtained on the best terms in their power, shall fold them into letters, and seal them; and having, here in the court rooms, directed one to each of the persons mentioned on such notice list, by the name there given, at the place annexed to it, with the prefix to the name, of the number it follows on the list—one of them shall deliver these letters into the post office at Frankfort, at least seventy days before the day fixed for the hearing of the petition; and make the affidavit thereof before the clerk subscribed at the foot of the list and copy of the entry so used, in this form:

Copies of the above entry, folded into letters, and sealed, and one directed to each of the persons named on the foregoing notice list of creditors, to which I have subscribed my name, at the place annexed to his name thereon, were delivered by me into the post-office at Frankfort, for transmission by the mail, on

—— ——.

Sworn to before me the day of , 184—.

——, *Clerk.*

CLXXXIV. This affidavit, so annexed, shall be placed on the file; and will be the proof of the notice by letter to the creditors of the bankrupt, of this application for his discharge: no personal notice will be required.

CLXXXV. The cost of the paper and printing of these letters, and a reasonable compensation for the labor of the crier and tipstaff, shall be paid to them by the bankrupt, in each case, according to the number of his creditors and other persons interested, at a rate per letter the court will adjust and prescribe.

CLXXXVI. Opposition to the granting to the bankrupt the discharge from all his debts, and cause against it, may be shown by any creditor, who has proved his debt, or other person in interest, at any time before the decree has passed. It may be in this form:

A. B's case—O. C. who has proved his debt against the bankrupt estate, *or who shows himself interested in the matter thus* (state how) opposes the discharge of the petitioner from his debts, and shows the following causes:

1. The said A. B. is guilty of a wilful concealment of his property, in this that (here state the particular facts).

2. The said A. B. being a merchant, in business since the passage of the act of Congress establishing a uniform system of bankruptcy, has not, since then, kept proper books of accounts.

3. The said A. B.——— (state any other ground found in the statute, with the specifications and certainty usually required in chancery proceedings).

CLXXXVII. On this opposition being filed, the case will stand for the proof, of course; and may progress to the hearing as in case of an opposition to the prayer of a petitioner for the declaration of his bankruptcy—(see rules 48 and 53).

CLXXXVIII. The dissent of the majority of the creditors of the bankrupt to the allowance of his discharge, may be presented at any time before the hearing of his petition. It may be in this form:

A. B's case—These creditors of A. B. bankrupt of the United States Kentucky district court, constituting as they aver, a majority in number and amount, of the creditors who have proved their debts, *dissent* to an allowance to him of the discharge from his debts.

(Annex their names.)

CLXXXIX. It shall be signed by each of the parties, or by their solicitor; and will be entered in this form:

A—— B——'s case. The dissent of C—— D——, and others, as a majority of the creditors, to the discharge of the petitioner, filed, &c.

CXC. When this entry is made, or at any time afterward before the hearing, the bankrupt may demand a trial of the facts by a jury, and it will be allowed and entered in this form—omitting the first clause where this entry immediately follows that of the dissent:

A—— B——'s case—The *majority of the creditors of the petitioner having dissented from the allowance of his discharge and certificate:* the petitioner demands a trial by jury, of the facts whereon his prayer therefor is founded.

CXCI. If the bankrupt would contest, that those dissenting to his discharge, are a majority in number and amount of those who have proved their debts, he must first interpose his traverse of that averment; when the matter will be referred to the master, and that question first settled.

CXCII. The report of the commissioner of the bankrupt's examination, shall be filed, in every case, before the hearing of his petition for a discharge, or the trial of any facts involved in it is had; and it must show that the examination had been completed—*or*, if no examination had been had, or applied for, by either the assignee or any creditor, a report of *this* fact must be obtained from the commissioners and filed: on this, while nothing appears to the contrary, it will be understood that no examination had been considered necessary, and that the right to have it had been waived by the creditors.

CXCIII. Where upon the hearing—whether an opposition had been made or a dissent had been filed or not—it seems to the court that the bankrupt is not entitled to the discharge, it will be so pronounced and entered in this form, changing what should be changed:

A. B's case.—The prayer of the petitioner for the discharge from his debts, and a certificate thereof having been heard, together with the opposition of O. C. and others on their grounds filed, and of the dissent of a majority of his creditors, who had proved their debts; and the allegations and proofs having been fully considered, it seems to the court, that he, the said A. B., is not entitled to the discharge from his debts, and it is denied.

CXCIV. On this entry being made, or at any other time within ten days after, the bankrupt may appeal to the circuit court, or demand a trial of the facts by a jury.

CXCV. The appeal may be taken in open court, or before the clerk in his office, and noted upon his minute book; but in either case it will be entered on the order book of the court, in this form, and placed on the files:

A. B.'s case.—The petitioner appeals to the circuit court, for the discharge from his debts and certificate, denied him by this court.

CXCVI. The demand of a trial by jury, in such cases by the petitioner, will be entered in this form:

A. B.'s case.—The discharge of the petitioner not having been decreed to him, he demands a trial of the facts whereon his prayer therefor is founded, by a jury.

CXCVII. On the demand of a trial by a jury being allowed, on any occasion or stage of the case, or on its being directed in the exercise of the discretion of the court, for its information of any contested fact, the place of the trial, in court or in the county of the bankrupt, will be fixed. In the latter case, a special commissioner will be appointed to preside on the trial, and the proper directions given for the conducting it; in all cases a proper statement of the fact, or several facts whereof the jury are to inquire, will be prepared, under the direction of the court, and filed in proper time.

CXCVIII. No demand of trial by jury having been made, or appeal entered within the prescribed time, or a trial by jury having beeu had, and the facts found against the bankrupt, the final decree, dismissing his petition for the discharge, will be entered and placed on the file.

CXCIX. When it seems to the court, either on the original hearing, had with, or without opposition, or dissent of creditors, or after the verdict of a jury, that the bankrupt is entitled to the discharge and certificate, the decree will be rendered, and entered in this form, *mutatis mutandis:*

A. B.'s case.—The petition of A. B. , of the county of , for the discharge from his debts, and the certificate thereof having been heard (together with the opposition of , his creditor, and the dissent of , majority in number and amount of his creditors, who had proved their debts), upon the allegations and reports (and proofs, and the verdict of the jury), returned and filed herein (with the cause shown for the opposition), and having been fully considered, it appears, and is found by the court, that on the petition, sufficient and in due form, of him (or of against him), the said A. B., resident of this district, filed here on the day of , and regular notice and proceeding had thereon; he, the said A. B., was afterward, on the day of , by the decree of this court, adjudged and declared a bankrupt; that he *bona fide* surrendered, for the benefit of his creditors, all his property and rights of property, with the exceptions mentioned in the statute, the amount and particulars whereof were determined on and set apart to him as therein directed (that he submitted himself to examination, and thereupon gave full and satisfactory answers to all questions propounded to him, *or*); that while no examination has been required of him by either the

assignee or any creditor, he has fully complied with, and obeyed all the orders and directions, which have been from time to time passed by this court; and has otherwise conformed to all the requirements of the act of Congress, "to establish a uniform system of bankruptcy throughout the United States;" and that due notice and regular proceedings have been had herein. It is therefore adjudged and decreed, that the said A. B., be, and he is hereby, discharged fully and completely of all his debts, contracts, and other engagements, provable under the statute against his bankrupt estate, by that decree vested in the assignee thereof; and this is his *discharge*, now allowed; and the *certificate* thereof is hereby granted; and *these* being in duplicate, one part, with the attestation of the clerk and seal of this court affixed, is the *certificate* of the discharge, and is so delivered to the party; the other is here registered and filed, and is the record thereof.

COSTS.

CC. These shall be the fees and compensation of the several officers and agents of the court:

SOLICITORS.

In cases of the voluntary proceeding by the debtor, no solicitor's fee will be taxed, except for their services in matters of contest.

Whenever, on the decision of any contest in the course of the proceedings, costs are adjudged by the court in favor of either party, and a solicitor had appeared for him in the matter, a solicitor's fee shall be taxed:

This shall be the fee in all cases - - - - $5 00

But with the addition of one dollar for each five thousand dollars of the amount of the indebtedness of the petitioner, or bankrupt; or of the particular debt or debts in contest, as the one or the other may be involved, not, however, exceeding for any contest - - - 20 00

In cases of proceeding by the creditor to subject his debtor, a solicitor's fee will be taxed on the decree declaring the defendant bankrupt:

Where there is no opposition - - - 10 00

Where opposition had been made - - - 20 00

On the decision of every other contest the same fee as in like cases in the voluntary proceeding.

NEWSPAPERS.

For the publication of each notice, consisting of the entry of the matter in court, whereof the printer is furnished with a copy by the clerk, not exceeding one square, whether inserted once or more - - 1 00

Each notice or advertisement, by the commissioner or assignee, published in the newspapers wherein the publication of the notice directed by the court had been made; according to the same rate.

These publications, of the assignee and commissioner, will all be made in one or the other of the selected newspapers, for the object of economy and that the public may know where all such information may be found, and in no other, except where an assignee shall be satisfied that an advertisement in an additional paper will advantage a sale.

COMMISSIONERS.

For receiving the papers, list of creditors, &c., certified to him by the clerk, and the books and papers, if any, delivered to him by the petitioner, and making his receipt for them and returning it to the court - $1 00

For comparing the books and papers of business, delivered to him by the petitioner, with the catalogue thereof, for each number thereon, and for each paper in any packet, and found referred to in either the creditor list or inventory - - - - - - - - 02

Allowing the inspection of the above books and papers to any creditor two hours, if required, to be paid by the creditor - - 10

Filing the statement of a demand of a creditor not named on the list of creditors - - - - - - - .10

Taking depositions in a matter of contest, where but one is taken for the party on the same occasion - - - - 1 00

Where two or more depositions are taken on the same occasion and certified together, within the same five hours, one dollar for the first, and fifty cents for each additional one.

Delivering over the inventory with the books and papers and catalogue thereof, if any, to the assignee and taken from him, and returning to court, his receipt therefore - - - - - 50

Comparing the books and papers on this occasion, the same as on his receiving them.

Taking from an assignee his bond with the sureties - - 50

Approving the sureties, for each one hundred dollars of the penalty of the bond - - - - - - - 05

Administering and certifying the oath required of the assignee - 25

Fixing upon an election of a solicitor of the creditors for the examination of the bankrupt, and preparing the notice thereof, exclusive of the cost of publication - - - - - 50

Holding such election or elections, with his certificate thereof - 1 00

Notice to the bankrupt to attend and submit to his examination, where he does not attend - - - - - 25

Rule upon the bankrupt to show cause why he shall not be reported to the court for failing to attend, or for his refusal to be sworn and examined 25

Report in either of the above cases - - - 1 00

Examination of bankrupt, including the notice to him to attend, when not continued over one day - - - - 3 00

For each additional day - - - - 2 00

Engrossing in duplicate the examination, with the question arising thereon, including his filing of one part and transmission of the other to the court, per folio of 100 words, in both parts - - - 20

Statement of any question decided upon the examination, whereof a report is required - - - - - 25

Rule upon either party, or any other person guilty of disorderly conduct, to show cause why the matter shall not be reported to the court, including the hearing of the answer thereto - - - 25

Report in such case - - - - - 1 00

For taking the proof of any debt of a creditor against the estate, to be paid by the creditor, but added to the amount of the debt - 1 00

Making and stating his decision on each claim against the estate, whether made on proof taken before him or another, including the return of his reports thereon, whether allowed, suspended, or rejected - 25

With the addition of five cents for each credit or set-off deducted, or security stated, or contingent claim included in his report.

Appointing the time for hearing and deciding a contest of a claim against the estate - - - - - - - $1 00

Stating the questions occurring on such contest, engrossing the testimony with the proceedings and decision thereon, and making his report thereof, when required, the same as in cases of the examination of the bankrupt.

Subsequent statement of a claim, originally contingent, and so proved and reported, but now by the proof of the contingency happened, shown to be absolute; or of the appropropriation of the proceeds of a security which had been held by a creditor, and thus showing the remainder of the debt - - - - 50

Each subpœna for a witness, or notice to a party, not specified herein 25

Making up and engrossing the matter of his semi-annual report, filing and returning the same to court, per folio of 100 words, in both parts - - - - - - - - 20

Conferring with the assignee, on the application of a creditor and obligor in a sale bond, for the purpose of having a set off, with the statement thereof, to be paid by such creditor - - 1 00

Report to the court that no examination had been required of the bankrnpt, by either the assignee or any creditor - - - 25

Administering an oath in any case, with the certificate thereof - 10

ASSIGNEES.

For receiving the inventory, with the books and papers of business of the bankrupt and catalogue thereof, if any, and acknowledging their receipt - - - - - - - - 1 00

For the comparison of these papers, where there are books, or papers, and catalogue—the same as allowed the commissioner on the same occasion.

Stating the condition of the bankrupt's family, setting apart his allowance out of the estate, with the making, filing, and returning to court his report thereof - - - - - 2 00

Applying for and obtaining examination of bankrupt, when not continued over one day - - - - - - 3 00

Each additional day's attendance on such examination - - 2 00

Advertising sale of the property of the bankrupt, exclusive of the costs of newspaper publication or printing - - - 50

Attending sale, exclusive of the fees of the auctioneer, and of the costs of the assignee's travel - - - - - 1 00

Taking and returning a bond for the sale of property, with the addition of five cents on each $100 of the amount thereof, to be taxed on the bond in case of its return to the clerk's office, otherwise not be charged - - - - - - - - 50

Returning each bond in such a case - - - - - 25

Conferring with the commissioner, for the purpose of a set off, including his other services in the matter, the same commission as if the moneys were collected. one half to be paid by the party obtaining the set-off.

Each report to the court, including as well those at the end of each sixty days and each six months, as his special reports - 50

Making up the matter and engrossing each report, per folio of 100 words, in both parts - - - - - - - 20

Attending the examination of an involuntary bankrupt, collecting and noting the matters to constitute the list of his creditors and inventory of his effects, for each day, so necessarily engaged - $3 00

Engrossing in duplicate, in such cases, the list of creditors and inventory of the effects of the bankruptcy, per folio of 100 words, in both parts - - - - - - - - 20

Report thereof, returned to court - - - - - 1 00

Preparing and executing a deed of conveyance to the purchaser of immovable property, to be paid by the purchaser - - 2 00

With the addition of 50 cents for the second, and each other parcel of property conveyed by one deed.

Preparing and having executed and acknowledged by the bankrupt a deed of conveyance of immovable property situated in a foreign country - - - - - - - - 5 00

Commission on the amount of money made and collected out of the assets contained in the bankrupt's inventory, and deposited in bank to the credit of the court within each sixty days:

On the first one hundred dollars, ten per cent.

On the sum above one hundred, and not exceeding five hundred dollars, eight per cent.

On the sum above five hundred, and not exceeding one thousand dollars, per cent.

On the second thousand dollars, or any part thereof, four per cent.

On the excess above two thousand dollars, two per cent.

With the addition of six per cent. on all debts of less than ten dollars, and of three per cent. on all debts of ten dollars and not exceeding fifty dollars, collected without other cost or charges.

On the net proceeds of all property and rights of property, not found on the bankrupt's inventory, but recovered by the assignee, on a claim made and prosecuted on his own judgment, and not at the risk of the costs and charges by a creditor, the assignee may be allowed by the master a further commission, not exceeding ten per cent. in addition to that regularly charged on the deposites.

His travel by land on the business of the estate, when necessary or justified by the object, ten cents per mile each way, in full for the work and of the costs of his conveyance. But,

When a trip is on business of two or more bankrupt estates, or other affairs, the travel, and other expenses of the absence from home, shall be charged but once, and apportioned between the estates and such other affairs.

The assignees of the different bankrupt estates throughout the district, acting as the agents of each other, occasion for such travel will not so often occur; and the charges must never exceed the advantages.

No charge for *constructive services*, or compensation by the day, except as specified, will be allowed; but wherever any *actual* service is performed, not provided for by this tariff, and not compensated by the commission, the assignee will state it in a separate account, with the particulars thereof, and the master will allow for it an adequate sum.

CLERK.

No per-diem compensation will be allowed the clerk for his attendance in court, without the regular or adjourned terms; but for his attendance

within such terms, he will be allowed for each day the court may be in actual session, the compensation fixed by the statute, in whatever jurisdiction occupied.

These shall be his fees—For

Entry of the filing of the petition and fixing the day for the adjudication, or of the postponement thereof, includiug the appointment of the commissioner - - - - - - $0 25

Administering the oath to the petitioner, or swearing a party to an affidavit, on any other occasion, either in court or the office, with the jurat thereof - - - - - - - 10

Filing the petition, including his notes at the foot of it, and the papers constituting parts thereof, - - - - - 25

Docketing the case, with the name of the commissioner and day fixed for the adjudication - - - - - - 10

Examination of the petition, and comparison of the two parts of the list of creditors, inventory of effects and catalogue of the books and papers, constituting parts thereof, with his signature to their leaves, for each page, calculated on the part remaining in court 02

But, with the addition hereafter of five cents for each discrepancy found between the two parts of the papers, and noted on the margin, to be paid immediately by the party, and not afterward included in any taxation of costs.

Each certificate of the comparison - - - - - 10

Each copy of the entry of the filing of the petition and of fixing the day for the adjudication, or of the postponement thereof, with the blanks subjoined - - - - - - 10

Filing commissioner's receipt and certificate of his qualification, with the entry thereof on the docket - - - - - 05

Each entry appointing another commissioner or assignee, in the place of a former one, with the entry thereof on the docket, and the additional copies thereby made necessary - - - - 50

Filing each affidavit of publication, and entry thereof on the docket 05

Entry of each amendment to the petition, and for the service following thereon, the same fees as for the like services on the original.

Note on the margin of the original paper, of the amendment thereto 10

Entry of opposition of a creditor to the decree of the bankruptcy - 25

Filing the grounds of the opposition, with the entry thereof on the docket - - - - - - - - - 10

Entry of the decree of the bankruptcy, with the appointment of the assignee, and other notes at the foot thereof - - - 25

Each copy of the entry of the decree of the bankruptcy, including the blanks subjoined - - - - - - 10

Filing assignee's bond, certificate of his qualification, his report of the bankrupt's allowance, and each of the other reports of the assignee, of the commissioner, or master in chancery, und each other paper, whereof a note is required, including the entry thereof on the docket - - - - - - - - 05

Opening an account with the deposite bank, in each case - - 10

Entering on the bank book the sum contained in each report of the assignee - - - - - - - - - 10

Entry of the order for the distribution and payment of money - 25

Copy of this order, to be furnished the bank for its authority to pay checks - - - - - - - - - $0 25

But with the addition of two cents for each name and sum on the list of payees, referred to in the order, and required thereby to be subjoined to such copy.

Making and delivering each check on the deposite bank, and taking the receipt therefor—not however exceeding one per cent. on any one check - - - - - - - - 05

Taxing costs on each occasion, when required ,or any purpose - 20

Each rule, upon any officer or agent of the court, or other person, to show cause, to be paid by the party obtaining it, or found in default - - - - - - - - - 50

Order for attachment - - - - - - - - 50

Attachment, and entry of its return - - - - - - 50

Filing bond for the sale of property, returned by the assignee, attachment thereon, and for each article of subsequent service in the matter, the same fee as allowed by the laws of the State to the clerks of its circuit courts.

Copies for parties, or other persons, of any entry of the proceedings, or other part of the record, not required to be made by any rule or practice of the court, the same as allowed by the laws of the State to the clerks of the circuit courts for the like copies.

Each search, and allowing a party to the proceeding an inspection of the papers two hours, if required - - - - - 10

Stating each case on the calendar, for the use of the bar and suiters, with the entries thereon, down to the close of the proceepings, for each case - - - - - - - - 50

Each article of service, not specified, the same fee as allowed the clerks of the circuit courts of Kentucky for similar services.

Entry of the filing the petition for the discharge and setting down the case for hearing, or of the postponement thereof, with the notes at the foot thereof - - - - - - - - 25

Each copy of the entry, with the blanks subjoined - - - 10

Filing the petition with the notice list of creditors - - - 10

Docketing the petition for the discharge - - - - 05

Taking the affidavit of the transmission of the letters of notice to the creditors, and filing and entering it on the docket, in each case - 10

Filing proof of this publication, and entering the same on the docket 10

Entry of opposition to the decree of discharge - - - 20

Filing grounds thereof, with the entry on the docket - - 10

Entry of postponement of the hearing on the docket - - 05

For each subpœna for witnesses to attend in court - - - 20

For each subpœna, in blank, for witnesses to be summoned to attend before a commissioner - - - - - - - 05

Filing depositions, for each packet within one caption and certificate 10

Swearing each witness to give evidence to the court - - 05

Entry of an appeal, or demand of a trial by jury - - - 15

Entry of an order denying the discharge - - - - 20

Every trial by jury, including the swearing of the jury and witnesses and entering the verdict, or discharge of the jury - - 1 00

Entry of an order dismissing a petition - - - - 20

Entry of the decree of the discharge - - - - 50

Making the decree and certificate of the discharge for the files, with the filing thereof - - - - - - 25
Certificate of the discharge with the seal of court, for the bankrupt 25

MARSHAL.

He, also, will be allowed the per diem compensation fixed by the statute, for his own attendance in court, setting within the regular and adjourned terms, on whatever matter the court may be occupied; and for his personal attendance, without such terms, on the day for which a trial by jury may be fixed and during such trials, and the actual session of the court, but on no other occasion.

The deputy of the marshal, attending the court, and appointed likewise under the 7th section of the act of 1799, and in fact performing those duties, will be allowed the compensation per day fixed by the statute, for each day the court may be in actual session.

For his services in the execution of process, and the like, and for all other services in the proceedings, the same compensation as allowed by law or the like services on the common law and equity side of the court.

LETTERS OF NOTICE.

For each letter of notice to a creditor, of the bankrupt's petition for his discharge and certificate, to be paid by him to the person making affidavit of their delivery to the post office, including the stationery - - - - - - - - 04

WITNESSES.

For their attendance in court and for their travel, the same as allowed on the common law side of the court.

For their attendance before a commissioner, the same as allowed for their attendance in the circuit courts of the State.

JURIES.

Jurors, selected and summoned according to the rules of the court, in the mode prescribed by laws of the State, changing what should be changed, will be allowed for their attendance before the commissioner, the compensation fixed by the laws of the State, and for their attendance in court, the compensation allowed by the laws of the United States: and the same will be certified accordingly.

PAYMENT OF COSTS.

CCI. This shall be the division, and mode of the payment of the costs of the several parts of the proceedings:

The cost of the filing the petition of the debtor for the benefit of the act, and of the proceedings thereon, including the decree of the bankruptcy, shall be paid out of the assets thereof, if sufficient.

Those of the petition and proceedings, by a creditor against his debtor, shall be paid by the petitioner, up to, and including the adjudication: but

the bankruptcy being then declared, his costs, so expended in the prosecution, shall be reimbursed him out of the assets.

The subsequent costs and charges of the proceedings, in both the court and country, of the sales, collection, and distribution of the estate, shall be paid out of the proceeds thereof.

The bankrupt's cost of his petition, and the proceedings thereon, for his discharge from his debts, and the certificate, must be paid by him out of his subsequent acquisitions.

But on the decision of any matter of contestation, or in the progress thereof, either party, including the assignee as the trustee of the assets, may be adjudged and ordered to pay the other his costs therein expended; or the court may divide or apportion them between, or among the parties, the partnerships, or individuals concerned, according to the circumstances of the case, and order the payment accordingly: But,

Every order for the payment of costs, shall be for the benefit of the several officers and agents of the court, whose fees and compensation are therein taxed and remain unpaid, or of the persons respectively by whom they may have been paid: and the clerk shall endorse the copy of the order, and every process thereon, with his taxation of the costs, and show the sum to which each person is entitled.

Every paper, such as a deposition, report, affidavit, process, notice, proof of publication, or the like, made, attested, or returned, by any officer or agent of the court, or other person, to be filed by the clerk, commissioner, or assignee, showing the performance of service, for which costs are allowed to be taxed, shall have at the foot thereof the amount, with the items of such costs, with the addition of *unpaid* or *paid* by ———, giving the name of the person who made the payment.

Where in any case, one or more partnerships are involved, *which by the 14th section of the statute requires separate accounts of each concern*, after charging on the account of each the costs peculiar to it, such costs as are common to two or more of them shall be apportioned between or among them, and so stated on the account and reports of the commissioner or assignee; and in like manner adjusted by the master in his account for the dividend and distribution.

Costs occasioned by amendments will be taxed against the party making the amendments.

Cost of attachments, and the like, will be regarded as civil process, and will be taxed and shall be paid accordingly.

The officer, agent, or other party entitled to costs, otherwise than out of the assets, may, on a proper statement thereof, demand payment of the party bound, when if not paid, on an affidavit thereof, the court will order the payment, and award an attachment, *nisi*, or absolute, as the case may require.

The costs payable out of the assets will be paid here, by checks on the deposite bank, at the time of the semi annual distribution.

This tariff of costs, being fixed with the view to have all the services well performed, as the best economy for all concerned, wherever the master finds by the reports, or other papers returned, that the business has not been well done, he will disallow the compensation, in whole or in part, and report the matter to the court.

In order to have the files of the papers properly made up here, and bound, for their safety and preservation, every instrument, however short, or of whatever character, must be in the form described in rule XXX.

Directions to assignees in relation to incumbrances, suits, partnerships, and reports.

INCUMBRANCES.

In order to effect a speedy settlement of every case of bankruptcy, and bring it to a final conclusion as speedily as practicable, as required by the act of Congress, rules and regulations have been prescribed by the court for the speedy settlement for the several classes of incumbrances. These are here furnished in proper order, with the forms which may be used in each case.

"RULE CIII. (found in the original rules). The assignee shall hear the proposition of any debtor, mortagee or obligor of a bond, for the conveyance of land for which the purchase money remains unpaid, or other incumbrancer, or the adverse party in any matter of controversy for a final settlement thereof; and having himself ascertained all the material facts and circumstances, if it shall seem to him, that it may be for the interest of the creditors, that the proposition be considered, he shall make a duplicate statement of the matter, setting forth the material facts, and concluding with a distinct statement of the terms proposed by the other party, and his own calculations and conclusions, and having filed one part thereof with the papers of the case, shall transmit the other to the court; thereupon the matter will be set for hearing, and a publication of the notice thereof directed."

Adopted 25th May.

"1. On the proposition of a mortagee, or other incumbrancer, to have a settlement of the matter under rule CIII., by a release on his part, of his claims against the estate, on condition of a release to him of the assignee's right in the incumbered effects, such party shall attend the assignee before the commissioner, and there submit himself to an examination in relation to his demand, and the bankrupt shall also be examined, and both such examinations shall accompany the assignee's report of the proposition.

"2. In every case of the report by the assignee of a proposition for such a settlement of a matter, whether of an incumbrance, or of a controversy of any character, the master having examined the whole matter, will make representation thereof, *ore tenus*, to the court, and having so had its directions, will prepare an order *nisi*, that the matter may be closed as proposed, which will be entered in the order book.

"3. This order *nisi*, having been published in a newspaper, designated at its foot, for the time prescribed for other publications, and the proof thereof filed, and no sufficient cause to the contrary being shown, or otherwise appearing to the court, will be made absolute, and a copy thereof certified to the assignee, with the costs of the proceedings then incurred endorsed."

FORM OF MUTUAL RELEASES.

United States Kentucky District.

No. . B. K's case in bankruptcy: Report No. :

4. The undersigned, A. B. having a lien on (here insert a brief description of the property, with a reference to the deed of trust or

mortgage on record in such cases,) part of the effects of the bankrupt estate of the said B. K. mentioned on the inventory, No. , for the payment of the sum of $ due, &c., together with the interest thereon—mentioned on his list of creditors of No. , doth hereby, in consideration of the release of the assignee which here follows, release to him, the assignee, his said debt, and all other demands against the said estate. And the undersigned, F. B. assignee of said bankrupt estate, in consideration of the foreging release of the said A. B., doth hereby release, and convey, all his right and title, in, and to the above described and so incumbered property, but without any warranty whatever of the title thereof. Witness the hands and seals of the parties this day of , 18 .

[SEAL.]

(Signed triplicates,) [SEAL.]

Adopted 4th and 29h August.

"5. Where the parties do not concur in closing the matter as above, the assignee and incumbrancer may make an agreement—the form whereof the master will prescrbe if required—that the property be sold by the assignee, and the proceeds collected and deposited, as in other cases, while the incumbrancer may prove his debt and lien before the commissioner; and on his report thereof, and such other testimony as may be offered, have the judgment of the court; and, in this mode, the benefit of his lien in the distribution of the money—and it will be ordered accordingly.

"6. In every such case, the bankrupt must be examined specially in relation to the premises; and, unless specially ordered by the court, the incumbrancer shall be interrogated, on oath, before the commissioner at the time he proves his debt, or on some other occasion, touching the consideration and just amount thereof, the grounds upon which he claims a lien therefor, and all the circumstances thereof; and these proceedings shall be reported by the commissioner before the hearing of the matter.

"7. Wherever, in such case, the sale of any real estate is provided for, the title to which is not in the assignee, the instrument shall be, in effect, a conveyance to him of the title, for the pnrposes of the agreement; and, when the title is in a trustee, or other third person, such holder of the title must be a party; and the instrument, in either case, acknowledged and recorded in the proper office, in the manner required by the laws of the State in relation to the conveyances of land—so that the conveyance of the assignee to the purchaser may vest a perfect title.

"8. Where a suit is pending on such incumbrance, the parties may add to their agreement, that the suit be dismissed; and that, on the validity of the lien being established in this court, the costs shall be added to the costs of the proceedings in bankruptcy, and paid in like manner.

"9. On the sale of the incumbered property, if the mortgagee or creditor or other person provided for in a deed of trust, become the purchaser of the whole or any part thereof, bond will be taken from him as of another purchaser; but upon the establishment of the debt and validity of the lien by this court, the debt so established, and bond for the purchase money will be set off, and the proper order made for the difference. Or,

"10. If such bond should be falling due before the decision of the court is had, the obligor may have a conference of the assignee and commissioner, as provided by rule 78; wherein they shall ascertain as nearly as they con-

veniently can, the sum to which the applicant will be entitled out of the proceeds of the sale of the incumbered property, instead of the next dividend, as provided by the rule 78; and thereupon the like course will be followed, changing only what should be changed, as prescribed by that rule."

AGREEMENT FOR THE SALE OF INCUMBERED PROPERTY.

United States Kentucky district.

No. . B. K's case in bankruptcy: Report No. :

J. R., claiming a lien on certain property of the bankrupt estate of B. K., by deed, dated day of , 18 , recorded in the clerk's office of the county court—(or otherwise as may be the case—with a statement of how the lien exists)—agrees that the assignee may sell the property according to the rules of the court. (In cases where the real estate is included in a *mortgage*, insert the following clause):

And for this purpose, and in consideration of the agreement of the assignee which herein follows—he, the said J. R., doth hereby convey and release to the said assignee, and his successor, all his title and right, in, and to the said property; and covenants that he will warrant and defend the same against the claim or claims of all persons claiming by, through, or under him, but not against the claim of any other person whatever.

(Or where real estate is included in a *deed* of *trust*, whereby the legal title is vested in a third person, insert this clause in the stead of the above):

And for this purpose, and in consideration of the agreement of the assignee, which herein follows, he, the said J. R., together with the undersigned, T. E , trustee in the said deed, hereby convey and release to the said assignee, and his successor, all their title and right in, and to said property; and covenant that they will warrant and defend the same against the claim of all persons claiming by, through, or under them, but no other person whatever.

And the assignee agrees that the said J. R. may prove his debt and furnish the testimony to establish his lien before the commissioner, and that on the report thereof and any other testimony either party may offer, the court in bankruptcy shall decide upon the validity of the lien, and amount of the debt or debts so secured, and for the amount of such debt the said J. R. shall have the exclusive benefit of the proceeds of the property so found incumbered, after the payment of the costs of the proceedings and sale, as prescribed by the rules of the court.

(In case a suit is pending, add this clause):

The suit pending in the circuit court by *vs.* on the mortgage or deed of *trust* (or as the case may be) will be dismissed and *on* the establishment of the lien, the costs of such suit shall be added to the costs of the proceedings in bankruptcy, and paid in like manner.

In witness whereof the parties have hereto set their hands and seals, this day of , 18 . [SEAL.]

(Signed triplicates,) [SEAL.]

In every case, whether real estate is included or not, the agreement will be in triplicate; one for the incumbrancer, one retained by the assignee, and the other reported by him to the court—with the certificate of its registration by the proper officer endorsed, where real estate is included.

SUITS.

It will be, of course, in the election of the incumbrancer, whether he will enter into either of the above agreements: the consideration on his part will be the economical and expeditious conclusion of the matter; but he may be governed by other considerations, and must judge for himself. Wherever such arrangement is declined, and a suit is pending on the incumbrance, the assignee will, of course, look into it; but where he finds no relief is sought by the party, but such as he is certainly entitled to, and that a defence could in no wise benefit the general creditors, he will incur no costs in making it, but allow the matter to be rightly closed by such suit.

It is apprehended that the general assets ought not to be charged with the costs of such suits (by incumbrancers in the State courts to enforce their liens), but that they will be made first out of the proceeds of the incumbered and subjected effects: on any residue of principle which may remain, the party may be entitled to have a dividend in the mode prescribed.

Where there is no such suit, and any interest of the general creditors require a suit, the assignee will, of course, institute one, for the purpose of enforcing his rights as the representative of the creditors.

In the bringing such suits, he will have his election between this district court, the circuit court of the United States, and the circuit courts of the State. The courts of the United States will be, in most cases, preferable—because the records of the cases are here, and their mode of proceeding is such that there will be no unnecessary delay, especially in the district court. In *this* court the costs will be exactly the same as in the circuit courts of Kentucky; but the distance of the parties, and remoteness of the scene of the transactions and property in question, or other circumstances may, in some cases, be sufficient considerations to induce a preference of a State court, *in which a speedy decision may be expected.* The court in bankruptcy will not control the assignee in the selection of the tribunal.

PARTNERSHIPS.

In cases of bankruptcy involving the affairs of partners in trade, the particular attention of the assignee to the rights of the several parties concerned, and a strict observance of the mode of proceeding and keeping the accounts will be indispensable.

Where all the partners have been declared bankrupts, by either a joint decree or several decrees of this court, or the bankrupt partner is the survivor of all the other members of the firm, there can be no difficulty—the assignee or assignees will have the exclusive control of all the affairs. But—

Where other partners survive, and are not bankrupts of *this* district, nor *insolvent*, the assignee can claim no exclusive control in the administration of the effects. His rights and remedies will be only joint and concurrent with the other partners or their assignees in bankruptcy of other districts.

It is, however, supposed that, in such cases, the assignee has all the power which the bankrupt had, before his bankruptcy, over the partnership effects, for the purpose of administering them under the statute; and that he may, therefore, act alone in selling the moveable property and collecting the debts of the firm, and do any other such acts without the *actual* concurrence of the others; while the other solvent partners, or their assignees in bankruptcy, may exercise the same power.

Actions at law, however, in such cases, it is supposed, must be in the name of all the partners or their assignees, in whatever district the bankruptcy may have occurred; and this will be generally the case in chancery proceedings, though, in these tribunals, the matter of parties depends more upon the peculiar law of the court.

On these principles, it is expected such affairs may be generally closed without litigation between the assignees and the other partners, or their assignees; but, should difficulties arise, the assignees will have the same remedy as one partner against another, in case of *their* disagreement.

It is not, however, supposed that a necessity for any such litigation can often arise—where the bankruptcy is insolvent, while the outstanding partner is solvent; but there can be no surplus of the partnership effects for distribution among the separate creditors of the bankrupt—nothing can be lost or gained by any party to the bankruptcy; the solvent partner, and the creditors of the partnership, to whom he, of course, remains liable, will be the only persons materially concerned. When the affairs of the other partner are in bankruptcy in another district, each assignee may reduce into money such effects as may fall within his province; and thereof, each court will make the same equal distribution. But—

Where the outstanding partner is *insolvent*, but not a bankrupt of *any* district, then the following rule will be applied:

Adopted August 29.

"Where the decree of bankruptcy includes only one, or any less than all, of the several partners in trade, and the outstanding partner (one not declared a bankrupt in either this or any other district) is insolvent; in order that the effects of such partnership may not be misapplied by such outstanding partner, or otherwise unjustly subjected or applied, but collected for equal distribution among all the creditors, the assignee shall claim the exclusive right of sale, disposition, and collection of all the partnership effects, wherever situated; and if he meet any obstruction in the exercise of such rights, he shall report the matter specially to the court."

The joint stock of every insolvent firm of partners in trade, being subject to the payment of the partnership debts, and the assignee representing both the bankrupt partner and creditors, and so having a *quasi* lien for this purpose, it is his duty to use all proper means to prevent their misappropriation, and to obtain them himself, that they may be all included in the equal distribution among all the creditors, as required by the statute.

If any outstanding and insolvent member of any of the partnerships involved in a bankruptcy, attempt to collect any of the partnership debts, or in anywise to obstruct the assignee in his proceedings to collect them, or refuse to deliver him any of the partnership effects, or evidences of its debts, or other rights, the assignee may have his bill on the equity side of this or or other proper court, for an injunction or other appropriate remedy.

It will be observed that, in every case including a partnership, in order to proper appropriation of the assets, as required by the 14th section of the statute, the accounts of all the effects of each firm, with the cost and charges hereof, however many may be included in, or connected with, the bankruptcy, must be kept distinct, and neither of them confounded with the separate affairs of the bankrupt, or any of his partners.

It is particularly necessary, in the reports of deposites in bank, to show an account of what firm the money was obtained.

It will be sufficient for the entry in the books of the *bank* to show in what *case* of bankruptcy the deposite is made.

REPORT OF CONFORMITY OR NON-CONFORMITY.

The following rules, recently adopted, it will be observed, will require of the assignee a report under one or the *other* of them, in every case:

Adopted August 22.

"1. The assignee shall report, of course, any failure of the bankrupt to surrender all his property, or right of property, with all evidence of any such omission or wilful concealment of his effects, or of his having preferred any creditor, contrary to the provisions of the statute; or any refusal or wilful neglect of the bankrupt to assist him in the investigation of the affairs of the bankruptcy, or other non-conformity to the provisions of the statute; or to the rules and directions of the court, or any other cause against his discharge, with the particulars thereof, found by him in his investigation as assignee.

"2. Where no matter for such report as the above is found by the assignee, the bankrupt shall obtain from him, and file here, before his petition for the discharge from his debts will be heard, a report, bearing date within ten days before the hearing, that he is satisfied the bankrupt had bonafide surrendered all his property and rights of property, with the exception of that designated and set apart to him, according to the statute; and that he had afforded all the assistance required in the investigation, prosecution, and defence of the rights of the bankruptcy according to the rules of the court; and, where the bankrupt was a merchant, banker, broker, factor, marine insurer, or underwriter, that he had since the passage of the statute kept proper books of accounts; and that no other cause had been found in his investigation against the decree of discharge."

The report under the first of these rules ought always to be full and particular in every respect, and, therefore, and because in such matter there must be so great diversity, no form is prescribed for it.

This form for a report under the latter rule is prescribed, which will be generally found sufficient:

UNITED STATES, KENTUCKY DISTRICT:

No.—. A. B.'s case in bankruptcy: Report No.—.

No examination has been required of the bankrupt by me, nor has any creditor applied to me for examination of him. I am satisfied he has made a bonafide surrender, and has delivered to me all his property, and rights of property, with the exception of that designated and set apart to him according to the statute. No assistance has been required of him in the investigation of the rights or management of the affairs of the bankruptcy which he has failed to render, and no other cause has been found against the decree of discharge and allowance of the certificate.

Duplicate signed this —— day ——, 184—. C. D., *assignee.*

Every report is required to be as brief as practicable, not only for convenience but economy; and, therefore, the costs will not be calculated on unnecessary *introductions* or redundances hereafter found in any such papers, but the amount of the costs of such a report of the proper length only will be allowed.

In addition to the proper number of each *case*, which ought to be placed on every paper, even communications to the master commissioner, or other officer of the court, it is desired that the reports of each case be numbered, by placing on that first made No. 1, on that next made No. 2, and so on throughout, in the order they bear date. This numbering, by affording the means of reference, greatly contributes to brevity.

This form of the report of the bankrupt's allowance, with those which have gone before, is an example of the brevity in which every such paper may be constructed:

UNITED STATES, KENTUCKY DISTRICT:

No.—.B. K.'s case in bankruptcy: Report No.—.

I, the assignee, find the bankrupt is about — years old, *without a family or other dependents*, a *stout*, or *feeble* man, *or* with a family, consisting of a wife, about —— years old, *stout*, or *feeble*, and —— children, the oldest —— and the youngest —— years old, &c., &c.; by occupation ——; and that his family is dependant on his and their labor or exertions for a support; or, *I find his wife* or *children have a separate estate, consisting of* ——, *producing an income of about* $—— *per annum* (add any other fact deemed material in the matter).

In this "condition and under these circumstances" of the bankrupt, *I have allowed him no part of the bankrupt estate; or* I have designated and set apart to him the following property, to wit:

No. on inv.			
1.	One bay horse, value - - - -		$30
7.	Grain, provender, and provisions (amount not being *more* than stated in the original bill), valued at - - - -		20
6.	Household and kitchen furniture, viz:		
No. on bill.			
1.	Bed and bedstead, with its furniture, valued at -	$20	
2.	Dining-table, &c., &c., &c. - - - -	80	
		——	100
	Total amount allowed - - -		150

The bankrupt has delivered to the assignee the residue of the property contained in the inventory.

AUGUST —, 184 .

(Signed triplicates.)

C. D., *assignee.*
B. K., *bankrupt.*

The statute having directed that the proceedings in bankruptcy shall not be required to be recorded at large, and the court having, therefore, provided that all the papers shall be bound in volumes of uniform dimensions, it is

indispensable that the directions of the original rules XXX., recurred to in the concluding paragraph of rule CCI., in relation to costs, be observed.

No report not in conformity to these rules will be received except where there is some peculiar necessity for its being filed; and, in such case, no fee will be allowed thereon. Very little attention is necessary to conform to this regulation, and a departure from it occasions great inconvenience, besides rendering the papers less secure.

These rules extend to every paper, including depositions and their appendages, which has to be placed on the files; and it is desired that even the letters to the master commissioner be in the same form, for they, with the replies to them, are generally placed on the file.

J. C. HERNDON,
Master Commissioner.

RULES OF PROCEEDINGS IN BANKRUPTCY.

(Continued.)

[See several rules in relation to incumbrances, partnerships, suits, reports of conformity or non-conformity, and forms in the preceding chapter of eight pages, entitled "Directions to Assignees."]

COSTS.

Adopted 25th July.

CCII. The costs of such proceedings, when had for the purpose of mutual releases, by the assignee of his right in the encumbered effects, of the other property of all further claim against the estate, shall be borne by the encumbrancer, and paid by him to the assignee before the execution of the release. In all other cases, the court will make such further order touching the costs as equity may dictate.

Adopted 19th December, 1842.

CCIII. The commissioner shall be allowed, for taking the proof, a creditor of his *lien* on effects of the bankruptcy and debt thereby secured, for the purpose of mutual release, or of an agreed case between him and the assignee, the same as for taking the proof of such debt in other cases $1 00
For the examination of the bankrupt for this purpose only - - 1 00
With the addition of the regular fees for the engrossing the depositions of both parties.

CCIV. The assignee shall be allowed—
For attending the examination of the creditor and bankrupt for either of the above purposes, for each of them - - - - 1 00

Adopted 29th August, 1842.

CCV. Where the assignee has deemed an examination of the bankrupt

necessary, but is unable to attend to it in person, he may furnish the commissioner with his written or private interrogatories, in duplicate. And—

CCVI. On these interrogatories, and such questions as may occur to the commissioner in the course of the proceeding, the examination may be had without the attendance of the assignee.

CCVII. In such cases the assignee shall be allowed, instead of the three dollars fixed by the tariff, and there intended to include his personal attendance on the first day of the examination, the sum of one dollar.

CCVIII. These interrogatories, so prepared and furnished to the commissioner, shall constitute part of his report, one for his file, and the other transmitted here, without being transcribed. But—

CCIX. The compensation of the commissioner *per folio*, for the engrossment of the proceedings will be calculated on only his own manuscript, excluding the interrogatories so furnished him.

Adopted 8th November, 1842.

CCX. Every case, wherein there is money on deposite, will be considered referred, of course, to the master commissioner, at the end of each six months from the date of the decree of the bankruptcy: and he will act upon it without any special order; and report an account for the payment of the costs and a distribution.

CCXI. When the money is *not more* than sufficient to pay the costs chargeable upon the assets, after the master's report has been made and filed for the space of five days, it may be called up. Whereupon an order will be made that the clerk make his checks to each officer and agent, for the sum to which it shall appear that he is entitled.

CCXII. When the money on deposite is not sufficient to pay the costs remaining unpaid, the assignee shall have the priority for the amount of his costs above the sum to which he would have been entitled, had there been no assets besides the property allowed the bankrupt; and the residue shall be divided among the other officers and agents, *pro rata;* allowing the assignee dividend on what remained of his costs.

CCXIII. When in such case, of insufficiency of assets, an officer has received a portion of his costs, he shall be allowed his dividend on the whole, not exceeding the remainder.

CCXIV. When the money on deposite is sufficient to pay all the costs accrued and likely to accrue, and the bankrupt, or any one for him, has paid any portion of the costs chargeable upon the assets, the amount so paid shall be allowed by the master; and the check therefor will be made to the order of such payor.

CCXV. The master shall, in every case, immediately after the decree of discharge, ascertain the costs unpaid, and the sum remaining due to each officer and agent of the court to be paid by the bankrupt, as well those of the proceeding on the original petition, where there are no assets, or the remainder thereof after the application of the assets, as those of the proceedings for the discharge and certificate, and having made a statement thereof, place it on the file.

CCXVI. The certificate of the discharge shall be retained by the clerk, in his office, until he is satisfied that all the costs to be paid by the bankrupt, as well those for which the effects are insufficient as those chargeable against him only, have been discharged. If any would complain, or have an ex-

ception of his case, he may apply to the court; but neither such withholding, nor the delivery of the certificate, shall affect the right of those entitled to such costs, to have the process of the court to enforce their payment.

Adopted November 17, 1842.

CCXVII. Where the fees of the clerk, marshal, master, and those for the publication and transmission of the notices, are paid, the clerk may deliver the certificate of discharge to either the assignee or commissioner, to be by him held until they shall be paid.

Adopted November 8, 1842.

CCXVIII. The proceedings against the bankrupt for costs, after the same have been stated by the master as above, may be joint, in the name of all whose fees remain unpaid; and a several proceeding will be allowed only upon sufficient cause shown.

Adopted December 10, 1842.

CCXIX. Where the assignee is not a lawyer, or has a controversy in a court in which he does not practice, he will be allowed the reasonable fees paid by him to counsel necessarily employed; but whether such fees are stipulated or not, the amount will be subject to the revision of the court, and will depend upon the labor and skill with which it shall appear the services were performed, the amount in controversy, the number of such cases, in which the counsel may be engaged for assignees, and the events of the several cases.

CCXX. The assignee, being a lawyer, will of course act as his own attorney and counsel in all cases to which he shall be able to attend, and may be competent to manage; and will be allowed a reasonable compensation for the service, according to the above principles, diminished, however, by the consideration of the facility with which he must perform the service in consequence of his familiarity with the law and facts of his cases, acquired in the performance of his other services, compensated by his regular fees, together with a regard to the *amount* of his compensation for such other services.

Adopted December 12, 1842.

CCXXI. Every report of either the commissioner or assignee shall exhibit at the foot of *both* parts, that filed with his papers of the case, and that transmitted here, a taxation of all his costs thereof, and of the services which it shows had been performed, showing *each item* thereof, whether the same had been paid or not, and shows what had been paid, and by whom, and what remains unpaid.

CCXXII. These taxations of costs shall be revised by the master commissioner; where none is made he shall make it; and in every case of the omission orr erroneous taxation by the assignee or commissioner, the master will make his taxation in triplicate, and file one copy here, on which to make the account to be by him reported, transmit one to the assignee, and the other to the commissioner, to be by each of them filed with the papers of the case.

CCXXIII. When a greater sum, in the form of such costs, has been paid, than is allowed by the master, the exact amount of the overplus shall be returned by him to whom it was paid, to the person who paid it; and when less has been charged than allowed by the tariff, the master shall, nevertheless, allow the full amount for the service the report, or other such paper, shows had been performed.

CCXXIV. In returning such over payments, the assignee or commissioner, or other agent of the court, shall take a receipt therefor in proper form, and transmit the same to the court, to be filed; so that the record may show that the party had been, finally, subjected to only proper and legal costs.

INVOLUNTARY BANKRUPTCY.

Adopted July 19, 1842.

CCXXV. In the proceeding by the creditor to have the debtor declared a bankrupt, the bond or bonds required of the petitioner may be executed in court by an attorney in fact, constituted by an instrument in the usual form, with a seal acknowledged before a justice of the peace, and so produced here to be placed on the files.

CCXXVI. In such cases a commissioner will be appointed on the filing of the original petition, or in a convenient time afterward.

CCXXVII. Immediately the copy of the entry and petition in such cases are served on the defendant, either party may proceed to take the proof before such commissioner, or any proper State officer as heretofore prescribed.

Adopted November 25, 1842.

CCXXVIII. In a case of involuntary bankruptcy, where the attendance of the bankrupt before the commissioner cannot be obtained for the purpose of making the inventory, catalogue, and list of creditors, the assignee shall make up the inventory and catalogue on his own inspection, and the best information he can obtain, and report them *without* a list of creditors.

CCXXIX. In such cases, where effects, or books, or papers of the bankruptcy, are obtained from another person, the assignee shall leave with such person a statement thereof, and show in his report, of whom, and how the possession of each article, was obtained.

Adopted December 10, 1842.

CCXXX. In cases of involuntary bankruptcy, the assignee shall not sell the immoveable property nor slaves of the estate, until he shall have ascertained by the examination of the bankrupt in the mode prescribed, or in case of his absence from the district, so that his attendance before the commissioner can not be obtained, by proper inquiries and investigations of his affairs, that the debts to the estate, and the other moveable property thereof will not be sufficient to pay the just debts against it. And

CCXXXI. Where in such case the assignee decides that a sale of either the slaves or immoveable property is necessary, the bankrupt, or in his absence, any person by him authorized, or acting in good faith in his behalf, may interpose the allegation that the other effects are sufficient to pay the

debts, and thereupon object to the sale of this property; and the assignee shall not sell, but report the matter to the court. These objections shall be in writing and delivered to the assignee, otherwise he shall not be bound to notice them.

CCXXXII. On the report of the objections to the sale of such property, either immoveable or slaves, the court will hear the parties, including any creditor, and thereupon, or afterward when the facts are more certainly ascertained, make such order for the reservation or sale of such property, or any part thereof, as the case may require.

CCXXXIII. When it shall seem to the assignee, that a sale of part only of the slaves or immoveable property may be necessary, and no objection to the sale of any part is interposed, he shall, nevertheless, sell only so much as will be sufficient to pay the debts, and shall sell first, the slaves, and then such part of the immoveable property as it shall appear to him can be most advantageously sold, and reserve what he shall believe it will be most for the interest of the bankrupt to retain. Or,

CCXXXIV. Tha bankrupt in such case may exercise the right of selection and designation of the property to be first sold, which a defendant, in a *fieri facias*, has by the laws of the State, and the assignee shall sell accordingly, until a sufficient amount has been made to pay the debts.

CCXXXV. No departure from either of the above rules shall, however, affect the validity of any sale by an assignee, unless the purchaser does in fact know that the sale is made in violation of the rules of the court.

CCXXXVI. Where it shall appear to the assignee that even the movable property, exclusive of sales, is not necessary for the payment of the debts, he may forbear temporarily, or finally, to sell it or any part thereof, which it may seem to him is the more necessary for the bankrupt or his family, or which he may designate and desire to retain.

PRACTICE.

Adopted May 25, 1842.

CCXXXVII. The proof of publication, and other papers necessary to be filed before the hearing, shall be furnished the clerk on or before the day preceding that for which the case is set for hearing, otherwise the case will not be heard until the day after these papers are furnished.

The clerk will, in the forenoon of each day, make out upon paper, a short calendar of all the cases set for the succeeding day, or which shall have been laid over, wherein the proofs of publication are filed, and which are ready in other respects for hearing, and furnish one to the court and another to the bar, in the afternoon.

CCXXXVIII. The commissioner's receipt, proofs of publication, assignee's bond, and every other such paper, to be returned to the clerk, shall be always entered on the docket and placed on the proper file immediately it is received; and no case shall be placed on the calendar for the court until such papers are on the files, so that they must be all inspected by the court with the original papers.

Adopted July 19, 1842.

CCXXXIX. Special reports from commissioners or assignees, will be laid before the master by the clerk immediately they are received, and filed;

whereupon, the master having made them known to the court, and obtained its action and directions therein if necessary, the proper answer will be returned to the assignee or commissioner.

Adopted July 30, 1842.

CCXL. Assignees desiring the directions of the court will make their inquiries of the master commissioner, by whom the matter will be presented to the court, and the answers returned.

CCXLI. The postage of such communications to and from the master, will be paid by the assignee, and charged as a part of the expenses of the case in which the directions are required.

FOREIGN PROPERTY.

Adopted June 30, 1842.

CCXLII. Wherever the assignee finds on the inventory, or otherwise ascertains that the bankrupt owned or claimed, at the time of his petition filed, or at the time of the decree of his bankruptcy, any property or right of property, situated out of the United States and their territories, or held any demand upon any non-resident thereof, he shall require such bankrupt to convey and assign to him, the assignee, all such property, rights, or demands; and for this purpose to execute such deeds or instruments, with such covenants and powers as may be deemed necessary and proper for the accomplishment of the object. And,

CCXLIII. In every such case the report of the assignee that deeds, assignments, or other instruments, satisfactory to him, have been executed, shall be filed here before the petition for the discharge of the certificate will be heard.

ENCUMBRANCES.

Adopted 30th September, 1842.

CCXLIV. The case, made by an agreement of the assignee, and a person claiming a lien on property of the bankruptcy, by mortgage or otherwise, as provided by the rules of the 29th August, may be brought up and heard by the court, before the sale. And

CCXLV. When, in such case, the validity of the lien is adjudged, and the creditor afterward becomes a purchaser of any of the property, no bond will be required for the amount of his purchases, *within the amount of his debt*, so adjudged upon the property; but the amount thereof shall be credited upon his debt. But

CCXLVI. When such creditor becomes the purchaser of all the encumbered property, for the sum of his debt and the cost, or less than the amount thereof, he must pay the costs; and the assignee will receive them, before delivering the possession, or executing the conveyance.

RENT.

Adopted 14th December, 1842.

CCXLVII. The landlord of the bankrupt tenant of immovable property, who had reserved on his lease a rent in money which had fallen due before

the petition for the benefit of the act was filed, may have the benefit of his "*lien* on the *produce* of the *farm* or place rented or leased, and upon the *household furniture* in cases of *houses in town*" by a priority of payments out of the proceeds of the sales thereof.

CCXLVIII. In such cases, the assignee shall sell such property in the same manner as the other, but show in his account and report, the articles and their proceeds on which such lien is claimed. The landlord shall prove his debt before the commissioners with the facts which constitute his lien; and the assignee shall examine the bankrupt upon the matter. On this proof and examination returned here, and the report of the assignee, the court will decide the matter, and make the necessary order.

OPPOSITION.

Adopted 20th December, 1842.

CCXLIX. Where the creditor opposing, or desiring to oppose, the discharge of the bankrupt, suggests this purpose to the State judge before whom he proves his debt, the proof shall be directed by said judge, and transmitted immediately to this court. Or,

CCL. Where the proof is taken before, or has been filed with the commissioner, he shall, after having made his entry thereof on his account of debts proved against the estate, immediately enclose and send up here the the depositions, with the documents made part thereof.

CCLI. "Any other person in interest," not properly a creditor, who would oppose the discharge of the bankrupt, may prove the fact to establish his interest, and right to interpose, before either the commissioner or any State judge, as in case of the proof of a debt for a dividend, and have his proofs certified and directed to the court.

CCLII. "Any creditor or other person in interest," who would oppose the decree of the bankruptcy of the petitioner, may prove his debt or such interest in the matter, before either the commissioner, or any State judge as above, and have his proofs in like manner transmitted here.

CCLIII. These proofs will be open, however, to contest here, as heretofore provided in such cases.

CONFORMITY—NON-CONFORMITY.

[See rules requiring such reports of assignee, on page 134, in "Directions to Assignee."]

Adopted 28th June, 1842.

CCLIV. The report of the commissioner, that no examination of the bankrupt had been applied for, by either the assignee or the creditors—required to be obtained by the party, where no report of an examination has been returned, by the 192d rule—must bear date within ten days before the hearing of the petition for discharge.

Adopted 22d August, 1842.

CCLV. The commissioners shall, of course, report before the hearing of the petition for the discharge, any evidence found in the proof of debts or examinations before him, that the bankrupt had admitted a false or fictitious

debt, or committed any other fraud, or had refused or wilfully omitted to conform to the requirements of the statute and rules of the court, or was not, on any other ground, entitled to the discharge from his debts.

CHANGE OF COMMISSIONER.

Adopted August 23, 1842.

CCLVI. When a commissioner is appointed in the place of one who had acted, he shall make a duplicate statement of the papers received of his predecessor, or other person having them in possession, in this form:

United States, Kentucky District.

A. B.'s case in bankruptcy.

Papers of the bankrupt received by C. D., appointed in the place of E F., of the said E. F., or of ———:

1. Original list of creditors.
2. Examinations of bankrupt.
3. Deposition in support of the debts of ———.
4. Report, &c., &c., &c., specifying thus briefly each paper.

This shall be signed by the new commissioner and his predecessor, or other person delivering the papers, and one part transmitted to the court and the other filed with the papers of the case.

CHANGE OF ASSIGNEE.

Adopted December 27, 1842.

CCLVII. When an assignee is appointed in the place of another who had acted, he shall, after having given bond and qualified, make a statement in triplicate of the papers of the bankruptcy, received of his predecessor or other person, in the same form, changing what should be changed, as in the case of the change of a commissioner.

CCLVIII. He shall, in like manner, make an inventory of the effects of the bankruptcy by him received, by reference to the original inventory, as to all the articles remaining in kind, by reference to the prior reports for all which are there stated, and a due account of the residue, so as to show, briefly, but intelligibly, all which come to his hands.

CCLIX. One part of these statements of papers and inventory of effects so received, the assignee shall file with his papers of the case, transmit another to the court, and deliver the third to his predecessor, or other person of whom the articles were received.

FRANKFORT, *December* 23, 1842.

SIR: I have the honor to acknowledge the receipt, on this morning, of your circular of the 14th current, with the resolution of the Senate of the United States to which it refers, in relation to the bankrupt law—but I do not know how to go about preparing what may be expected in answer.

The statute has certainly had my attention, and a small portion of its operations have been witnessed; but this attention has been principally directed to comprehending the law, as it was found, in devising and constructing the machinery for the execution of the novel system thereby established, and in conducting its operations in such manner as to obtain the proper results. It having been supposed that this was the only duty of one in my position, and *it* affording me sufficient employment, the matter of what else the statute ought to have been, or, how it might be advantageously amended, had not been considered with the view to any such purpose as the present. It is certainly too early for any one to form an opinion of the effects and operation of the law in Kentucky, by experience only. You will find from the report of the clerk that, out of eighteen hundred and odd cases of bankruptcy on this docket, only about two hundred and thirty citizens have been discharged and restored to the liberty intended for them by the statute: while the other branches of the proceedings are in comparatively about the same stage.

It is supposed that what is desired by the Senate ought to be produced and prepared after reflection, and with a deliberation, which, it is impossible for me to bestow on the subject in my present situation, and within the time in which the answer seems to be expected. I may add something on to-morrow.

—

December 25, 1842.

I was unable to return to this matter until to-day.

It occurs to me that an examination of the rules, regulations, and forms of proceeding, with the tariff of fees, fixed for the administration of the law in the several districts, would afford some information of both what is, in fact, the system established, and in practice, and what are, and probably will be its operations; and may suggest and aid the Legislature in deciding upon the propriety of amendments. The statute having been of necessity the establishment of only the general principles of the system, with the outlines of the machinery for its execution, to be carried out by the judicial courts, the details of the law and mode of its execution, established by the courts, must discover much of its probable operation, and aid as much as almost any thingelse, at this early stage, in forming an opinion of its probable effects. There will be, therefore, forwarded to you herewith a copy of the rules of the court of this district, with certain general directions to assignees, by the master commissioner, but of the same force with the rules established here, from time to time, as directed by the statute. It is not supposed that this system is near complete; on the contrary, it is apprehended that much remains to be done to meet every branch of the subject, and to cover every case which will occur; but as all the proceedings in this district, thus far, have been had in the mode prescribed, and governed by these rules, they will afford all the information which can be furnished from here by such means.

This system of rules has been found to work well. It was and is being put into operation with less inconvenience than was expected; and, in the progress of the business, success in the several objects of their construction is witnessed, while their operations are becoming still more facile and satisfactory. One of the objects had constantly in view in all the work—to prevent frauds of every description—will be accomplished, it is believed, as nearly as it would be possible to attain it, by any mode of proceeding consistent with the main purposes of the law. It is supposed that the details and particularity required, and guards provided, are calculated to discourage, and do prevent attempts at the perpetration of wrongs, while the means designed for their detection, found already in some cases successful, will generally prove efficient.

The economy of both money and time, with the faithful administration of the bankrupt estate, so important in a system of bankruptcy, are, it is believed, attained in Kentucky, and will be improved. In consequence of the novelty of the affair, and therefore, necessity on every commissioner and assignee, to learn the law of his duties, and the mode of performing them—and because of its being necessary to call to this service such a number of persons, of whom so many could have but a small amount of business to do—it was necessary to fix the compensation of these agents higher, than it would have been otherwise done, in order to obtain gentlemen fit and qualified for the duties. But it is believed that both these ends, economy and obtaining qualified commissioners and assignees, have been generally accomplished. It is expected, if the law remains, that when the causes which induced the higher compensation shall have measurably ceased, a greater economy may be adopted without prejudice. But according to the present tariff, there is no doubt but that the affairs of the bankrupt in this district, will be administered and closed with much less cost, of both time and money, than is generally expended in the proceedings of the ordinary tribunals—after the races between creditors for preferences, and the litigation between them and their debtor and the debtors of their debtor and themselves.

It has been found that the sales of the property of the bankrupt estates, by the assignees, according to the rules of the court, have been greatly more productive, than the sales of the State officers under the ordinary process of execution.

The recovery by the assignees of moneys paid by the bankrupt as unlawful interest, and the exclusion of the usury from the demands of such creditors against the estate, will in some cases considerably increase the dividend among the fair creditors. It would not be unexpected if, in some cases, wherein the victims of usurious exactions had abandoned their entire estates to the extortioners, the assignee should by his operations discharge the entire amount of all the just debts against the bankrupt estate, an operation of which there is seldom a parallel in the proceedings of the ordinary tribunals. Creditors not being allowed, by the laws of the State, to sue for and recover the unlawful interest paid by their insolvent debtors, and apply it in satisfaction of their lawful debts, the usurers generally retain their control over the victims of their extortion, thereby avoid all such investigations, and remain secure in their unlawful and often exorbitant gain, while the fair creditors suffer a total loss. In this respect the bankrupt law has a most advantageous operation, and must have the most salutary effects.

Information of *very* few cases of the abuses by agents, which are incident to all such proceedings have reached the court; and *these* it is expected will appear to have been unintentional. But prompt and efficient redress being afforded in all such cases, their frequent occurrence is not apprehended.

It can not, then, be doubted, that the effects of the proceedings in bankruptcy is more advantageous to the fair creditors, when considered all together as *one party*, than the result of the proceedings in the common law and chancery courts; by which the affairs of the wrecked and insolvent debtors had been generally concluded.

This much having been said of the mode of the operation of the law in these respects, and of its effects, a different division and view of the subject will be now noticed.

The long standing of the debts against the petitioners has been frequently remarked, and their antiquity has some times even led to the considerations of what must be the age of the party. On its being remarked upon one such case, that the petitioner might expect in a few years to have his accounts settled in another mode, it was answered that he had considered of that, but had expressed a wish that he might die a free man, and therefore asked the aid of the court.

It has been, however, noticed, that the liabilities of the petitioners have been generally found dated about the periods of the great reductions, and afterward continued depression, of the prices of the great staples of export from the southern States, which, controlling the value of the principal exports of Kentucky, regulates the value of land, and everything else employed in their production.

The large amount of the debts of the applicants have been remarkable, varying from upward of half a million regularly down to the minimum, below which it has been supposed a case was not within the intention of the statute. It was expected that, after a few months, the magnitude of the cases would be found diminished, though they might be increased in number; but it is not supposed that such has been the fact. While the number of new cases each month has gradually increased, and is still increasing, the amounts of the indebtedness of the petitioners have not, it is believed, materially varied. Numerous cases of large amount are now every day presented.

The amounts of effects of the bankrupts have varied, like those of their liabilities, from sometimes an amount, in figures, including their mortgaged and otherwise encumbered property with their claims against *their* insolvent debtors, equal to their indebtedness, down to "no property or rights of property whatever." The property in possession of the bankrupts is generally found encumbered by debts far exceeding its value. There are, however, many cases, in which there appears to be a considerable amount of available assets, varying from perhaps thirty thousand dollars downward.

The number of the debtors of the petitioners found in the column of "bad debts," has frequently attracted attention. Here, in the dates of the creation of these debts, are also to be found the several periods of the rise and fall of the staples of exportation; while, by the number of the names of insolvent debtors of the present petitioners, is seen an indication of the number of voluntary bankruptcies to which it is probable the dockets may be swelled, before even the present purpose of the statute will have been accomplished;

while new cases of acknowledged insolvency are continually occurring, and being added to the number of the chronic bankruptcies.

The exhibitions on the papers, the reports of the assignees and commissioners, and the examinations of the bankrupts, with the whole proceedings, conducted in remarkable conformity to the rules, have produced an impression decidedly favorable to the general fairness of the applicants for the benefit of the law. It is believed their cases are generally fair, and that they make full surrenders, and according to their best information conform to the provisions of the statute. There has been but few cases of opposition to the discharge and certificate; some of them have been upon technical grounds; several have been unsuccessful, and none having ultimately prevailed, no discharge has been yet finally denied. There are perhaps twenty cases suspended by the opposition of creditors, and by the court, on facts found in the reports and other papers; but the difficulties in the principal part of these cases are in consequence of acts of the bankrupts, in no wise inconsistent with either the laws of the State or common honesty, in the absence of the bankrupt law.

It is not supposed that the provisions of the British bankrupt law, which puts it in the power of a portion of the creditors of the bankrupt to have his certificate denied him, ought to be adopted in the American system. No principle is perceived on which a minority, of a fraction above one third of the creditors, consisting in many cases of a single person, can claim to give law to the majority of their co-creditors, to the bankrupt, and to the court, and thereby prevent his liberation, after he has surrendered and been divested of all his rights of property, and, in the judgment of the court, conformed to all the provisions of the law enacted by the public authority. Nor is it supposed the discharge ought to depend upon either the will or the judgment of any portion or all the creditors: its allowance is either an act of grace, or of justice: if the former, then, unless one man may be gracious of the rights of another, it ought not to be allowed without all concurred; if the latter, then no creditor ought to be allowed to participate in the decision, nor ought the united determination of all, against the bankrupt, conclude him and bar his right, unless a man may sit in judgment in his own case.

It is supposed that the American statute has rightly prescribed the terms on which the bankrupt may be discharged; and that having authorized *any* creditor to make his opposition, and by testimony as well as the examination of the bankrupt, show that the case of his debtor is not within the provisions of the law, and that he ought not to be discharged, it has, then, rightly referred the controversy so made to the determination of a public tribunal. It is believed that this is not only more consistent with principle, but more just to even the creditors than the arbitrary rule of the British system. The rights of the creditors not concurring in the discharge of the bankrupt from the debts, ought not to be subjected to the arbitrary decision of any given majority, neither bound by the rules of law, nor required to hear any testimony whatever; nor ought the declaration of their will be allowed to control the court in its determination of either the law or facts, still less ought the fate of the bankrupt to be allowed to depend upon the will of a minority of his adversaries in the court.

This British rule does, perhaps, better consist with their whole system, but is unfit to our system or country. It is not only supposed that the rule is wrong in itself, but after all that has been witnessed here, it is apprehended that the arbitrary power it allows creditors over their bankrupt debtor would be often abused, and tend to great injustice and much oppression. No suffi-

cient cause has been found in the operations of the law in Kentucky to induce the suggestion of any other alteration of its provisions prescribing the conditions and directing the mode of allowing the discharge.

It having been supposed by some that our system of bankruptcy ought to be confined, like that of England, to the *traders*, in exclusion of the agriculturist, more attention has been directed to the proceedings in this court in reference to that question than to any other, and the conclusion is that the opinion is certainly erroneous. The error is the consequence of its not being considered that Britain is an old island, while this is a new continent, or of no effect being given to the consequences of this difference of condition, but applying the same rule, regardless of the diversities between the physical, business, and political conditions and affairs of the two countries, and, in fact, existing between the two people. When these things are considered, it will be found that the American agriculturist, especially in the new States, [is] within the very principle upon which the bankrupt system of England is now based, and that he is equally, if not better, entitled to the benefit of such a law than the ordinary shopkeeper, included in such system by every Government. It is not proposed to even enumerate the facts referred to, which are accessible to all, and much less to make an argument upon them, but in the records of the bankrupcies of this court are read their consequences. The agriculturist of Kentucky employs his credit in the acquisition of lands for cultivation, in its improvement, and in carrying on his operations to an amount often exceeding the commitments of those denominated merchants; and calculating and dependant on the sales of his productions, whose vendible value is ever governed by the fluctuating prices of the great staple of export from the southern States, he oftener encounters disappointment, and suffers more by the sudden depreciation in the foreign value of such staples, than any inland trader in foreign merchandise does by the vicissitudes of commerce; and the records of the bankruptcies here show that they have been as often overwhelmed by such uncontrollable events. When in this country the lands shall have been improved and in cultivation for ages, and having been parcelled out into small farms, and occupied by the tenants upon short leases; less capital and no credit shall be employed by the farmer in their cultivation; and their productions shall be not only all consumed at home, but shall be protected against the influences of foreign trade, and kept at a steady vendible value by *corn-laws;*—then it may be affirmed of the farmer that his occupation neither requires nor justifies his use of any credit—that he is subject to none of the hazards of trade, and therefore neither a proper subject or beneficiary of the bankrupt law.

There would seem to be propriety in excluding some of the occupations, which never require above a very small amount of credit; but it would be difficult to discriminate, there is such a confusion of the occupations, and all have anticipated their means. It is, therefore, concluded that it is more just and expedient to suffer all the old debtors to surrender everything they possess, which their creditors had any right to subject by the remedies of the old law, and discharge them. Hereafter, if the law remain in any form, it may be proper to exclude those who, having only unnecessarily anticipated their ordinary income or earnings, ought to remain bound to discharge their debts by their continued exertions and future income.

The statute having prescribed no minimum of indebtedness of the petitioner for the benefit of the law, the propriety of an amendment, for the purpose of excluding cases of amounts so small that the petitioner could not ultimately obtain any benefit by his discharge, had been consider-

ed; but it was concluded that such cases were not within the intention of the act, and the court has refused to have such petitions filed, and thereby protected the party from costs. If this exposition be correct, no amendment is necessary in this respect. There have been but two cases within this opinion, and but few approximating it.

The mode adopted by the statute, of allowing the voluntary bankrupt to proceed openly upon his own petition, is decidedly preferable to defining an act of bankruptcy for a debtor to commit, and then requiring that another person shall, thereon, institute and conduct a proceeding against him, as if contrary to his will, which having come into use in England in cases voluntary in fact, before the sanction of such bankruptcies by Parliament, was adopted by their statute merely because it was convenient to adhere to their old forms; and whatever change may be made in the subjects or beneficiaries of the law, it will certainly be better that all the proceedings be conducted in forms consistent with the facts.

The remedy provided by the statute for the creditor against his debtor, will, doubtless, have a most just and beneficial effect upon all fair creditors. There has not been much witnessed here of the operations of this division of the law; only about twenty petitions have been filed, and eight or ten decrees yet rendered; but the reports are that the sales of the estates are greatly more productive than the sales under the common law execution; and that by the settlements with the usurers by the assignees, the fair creditors will be greatly advantaged. In one case it is said that the assignee hopes he may be able to discharge all the just debts out of an estate the bankrupt had totally abandoned to the usurers. There can not be a doubt of the beneficial effects of this branch of the law to all concerned.

It being the opinion here that every insolvent merchant ought himself to become bankrupt, or be subjected to the proceedings by his creditors, and that the earlier after his embarrassments commence, the better for all concerned, it is supposed that such an amendment as would have that effect would be expedient. It has not, however, been sufficiently considered to give it form; and it would require some care to frame it in such manner, that while the affairs of the merchant going to ruin might be immediately wrested from him, those who are able to overcome their difficulties would be left undisturbed.

There are obscurities and even ambiguities in some of the provisions of the statute, which have given rise to different constructions, and there will be other contrary decisions. But instead of attempting to remove the cause of such diversity of judicial opinion, it is submitted that it were better to provide a convenient and expeditious mode of having the final decisions of every such question by the Supreme Court. By this means a uniformity in the operations of the law will be obtained, which can never be effected by legislation. It is not known that that court will entertain the questions which have been adjourned into it by the circuit courts; if it should not, the jurisdiction ought to be conferred. It ought to be provided that when a question occurs in a district court at such time, that no circuit court will be in session in the district before the next term of the Supreme Court, or within it, so that the case may be presented there for hearing before its adjournment, the district judge may adjourn it directly to the Supreme Court; then give such questions the precedence of other business on the docket, and direct that the opinions of the court shall be published in a newspaper at Washington immediately they are delivered; and the statute will speedily become a uniform, well-known, and safe rule of action.

It is the opinion here formed by observations of the proceedings in court, and reported by its agents, and the facts which they discover, with every reflection upon them; that the establishment of the whole system was wise; and that its operation will produce the most beneficial and valuable results. It is not supposed that it is expected a calculation will be here made of the evils, social, business, or political, which will necessarily result from the holding so large a portion of the members of the community in the humbling and degrading bondage of debt; nor that the value to society, or the importance to the republic, of preserving, as far as possible, the independence in mind and action, of every citizen, will be here discussed; but the fact that the freedom of such a number of the citizens of these States had been suspended for so many years; and that so many were being annually added to their number, having been witnessed here, the continuance of such a state of things upon the general welfare has been the subject of reflection; and the conclusion is, that a general bankrupt law not materially different from that now in force, ought to be a fundamental law of the republic.

There is nothing in the objection that frauds will be committed in the proceedings. It is believed there is nothing hazarded in affirming that the number of cases of successful frauds, or attempts at their perpetration, will be generally less in the courts of bankruptcy, where the law is properly administered, than in the cases between such debtors and their creditors in any other courts. Not only does the mode of proceeding present greater obstacles to their success, but the provisions of the law are such that the strongest temptations to dishonesty are removed, and a reward offered for honesty. No temptation is greater than the combination of necessity and resentment, by which the debtor is often excited, when harshly pursued by a creditor whom he can not satisfy by a surrender of the last of his property. This is not encountered here, but for a full and fair surrender by the debtor, he is offered a full discharge from all his debts, and complete independence of every creditor. And the strongest motives are presented to him to perform the conditions with strict fidelity. The excellent provision of the statute, which allows the certificate of such discharge, however formally obtained, to be afterward impeached and rendered wholly ineffectual against the actions and remedies of any creditor, against which it shall be pleaded, by his allegation and proof that the bankrupt had not surrendered all, but fraudulently concealed a portion of his effects, while it affords to every creditor the best means of defeating the final success of all such frauds in prejudice of his rights, presents the most efficient motive to every bankrupt, against all attempts to commit such frauds, however confident he might be of success in the concealment thereof, for the time.

It is, therefore, believed, not only that there will be less fraud committed in the proceedings in bankruptcy, than in any other of the like character, but that their operation in the liberation of the citizen, and restoring him to this independence, and thereby exciting him to new industry and self-respect, must improve the public morals; and, in this mode, the law must advance, and contribute to maintain, the general welfare, to every intent.

If it should be inquired whether it would not be expedient (after this law has remained in force a sufficient time to afford the remedy for all existing evils) to repeal it, with the expectation of its being re-enacted when the evils of its absence shall have accumulated to such magnitude as to demand its restoration, the answer is, that every observation and reflection upon what has been witnessed here, is against such a policy. The introduction of the

new law upon the transactions of men, in which they had no view to such a system—the adoption of it upon the habits of action and customs of business of the community, formed and established under the influence of other laws, occasions its principal inconvenience; is the ground of the only just complaints against it; and, with the want of information of its provisions and operations, is the main cause of all the dissatisfaction against it in portions of the country. Everything witnessed here fortifies the opinion that the system of bankruptcy, affecting the affairs of all the people, and influencing their actions and customs, ought to be uniform and steady in its operations. It is, moreover, believed that its continued operation will have the effects of improving the fairness of the transactions of men, and preserving a more healthy action in all our business and commercial operations—will diminish the number and magnitude of insolvencies, and thus diminish the occasions for its own action, which its absence would multiply.

It had been supposed, before this law took effect, that, although a bankrupt law applicable to merchants ought always to be in operation in every commercial country, it ought to be extended only at certain periods, and temporarily, to the whole people; but the experience of the operations of this law, and the investigation it has occasioned of the whole subject, have led to the conclusion, that, in this country, there is no grounds for such distinction; and that, for it and our government, the system ought to be uniform, embracing all occupations, and be perpetual.

But, if there is a disposition to favor this periodical system, and information is wanted of the time in which the law will answer its present purpose, the answer is, that the action of the approaching year will not be more than sufficient. It would be tedious to state the data upon which this opinion is founded; but it is not believed the present applicants for the benefit of the law amount to one fourth of the insolvents in Kentucky; and, in the present state of things, their number must be continually increased for some time to come. There is no difficuly in accounting for the tardiness of the applications, on the facts which appear here. The regular progression of the number on the docket has conformed, with remarkable exactness, to the calculations made at the commencement of the proceedings; and the present calculation is, that the number in the next will exceed those of the now closing year.

I have the honor, &c.

THOMAS B. MONROE.

Hon. Daniel Webster,
Secretary of State of the United States, Washington.

Clerk's Office U. S. Court, District of East Tenn.,
Knoxville, December 29, 1842.

Sir: By the last mail I received your circular of the 15th instant, propounding certain inquiries relative to the operation of the bankrupt law. In July last, the first term of said court for the hearing of petitions in bankruptcy was held in our district. There were 250 applicants; of these 7 were withdrawn, and the remainder declared bankrupts. At the next term, last month, being the term at which releases were granted, 239 were released, 1 refused, and 3 suspended, for the purpose of answering interrogatories before

the clerk. There were 173 new applicants at the last term (November), 2 of whom withdrew their petitions, and the remainder, 171, were declared bankrupts. Since the last term there have been 110 petitions filed. So that there have been

Released - - - - -	239
Refused - - - - -	1
Suspended - - - - -	3
Still pending - - - - -	281
	524

The above applicants were all voluntary. There has been no case of *involuntary* bankruptcy in this district.

I may be permitted to add, that this law has met with more favor among the people of our district than was supposed. I think it has gained friends rapidly since it went into operation. Many persons, who before had their energies paralyzed, have engaged actively in business, and afford every appearance of being more useful citizens; their families, also, will have the means of acquiring an education, which has hitherto been denied them.

I am, very respectfully, your obedient servant,

JAMES W. CAMPBELL, *Clerk.*

Hon. DANIEL WEBSTER.

RICHMOND, *January* 2, 1843.

SIR: Your circular of the 15th ult. was received while I was confined to a bed of sickness, or would have been attended to at once; I now take the very earliest opportunity of furnishing you with the information desired.

Since the bankrupt act went into operation, there have been filed in my office, nine hundred and forty-four cases of voluntary petitions; three hundred and four of whom have been discharged, leaving for final action six hundred and forty cases. Of cases of involuntary bankruptcy, seventeen petitions have been filed, only two cases which have been decided, and those against the petitioners.

I can perceive no reason for a modification of the law as it now stands, its involuntary feature is invaluable, and the mischiefs arising from the retrospective portion of the law, although very objectionable to all us southern people, are becoming less and less daily.

Very respectfully,

HENRY GIBSON,
Clerk U. S. Dist. Court, E. Va. Dist.

Hon. DANIEL WEBSTER,
Secretary of State.

WASHINGTON, *December* 28, 1842.

SIR: I have the honor to acknowledge the receipt of a copy of your circular letter, with which was a copy of a resolution of the Senate of the United States in relation to the execution of the bankrupt law.

The cases which have been brought before the circuit court of the District of Columbia, under that law, are as follows:

In Washington county:

3 involuntary cases, of which 2 were abandoned by the creditors, and the 3d prosecuted to bankruptcy.

186 voluntary cases.

Discharges refused	2
Discharges granted	85
Cases still pending	66
Cases in which the parties neglected to prosecute their application, or failed to comply with the orders of the court	33
	186

In Alexandria county:

1 involuntary case, abandoned by creditors.

26 voluntary cases.

Withdrawn	2
Discharges granted	18
Cases still pending	6
	26

The construction of many parts of the bankrupt law has, as you are aware, been a subject of frequent controversy in the several courts which have been called on to administer it. A new law on a complex subject naturally leads to disputes about its meaning; and I am not prepared to make any suggestion for modifying the bankrupt law so as to give increased precision to its enactments.

It is, I believe, the general opinion of the bar in this District that there ought to be a limited right of appeal, in cases of bankruptcy, from the circuit court to the Supreme Court.

I am, sir, yours, very respectfully,

P. R. FENDALL,
U. S. Attorney, D. C.

Hon. DANIEL WEBSTER, *Secretary of State.*

CIRCUIT COURT OF THE UNITED STATES,
Raleigh, December 26, 1842.

SIR: I have the honor to acknowledge the receipt of your favor of the 17th instant, accompanied with a copy of the resolution adopted on the 13th instant by the Senate of the United States, seeking information as to the number, &c., of applicants made under the bankrupt law. The act of bankruptcy does not give to this court original jurisdiction, and, of course, I am not able to afford the information asked for.

I am, sir, very respectfully, your obedient servant,

W. H. HAYWARD,
Clerk C. U. S. Dist. North Car.

Hon. DANIEL WEBSTER, *Secretary of State.*

FAYETTEVILE, NORTH CAROLINA,
January 3, 1843.

SIR: My absence from home while holding a special court in bankruptcy, is my apology for not answering your circular of the 14th ultimo sooner. The discrepancies of the bankrupt law, which caused for a time such discordant decisions, are so far reconciled by a concurrent practice in the several States, based on a liberal construction of the act, that there are not now many material points which require legislation, explanation, or provision.

But the peculiar structure of *my* courts rendered the execution of the law extremely inconvenient and difficult to me; and that difficulty can not be removed by any fair interpretation of the act.

This State, as you know, is divided into three districts, each having a court and a clerk. These courts are at a considerable distance from each other, and from my residence. The court in bankruptcy is to be always open, and the proceedings are to be carried through in each district respectively in which they originate. Thus it will be perceived that the *letter* of the law implies a judicial ubiquity. To overcome this apparent absurdity, and to approach, in some good degree, the *intention* of the Legislature, I opened a court at chambers, appointed a special clerk in bankruptcy, to keep a calendar and record the proceedings, received petitions, ordered publications, appointed assignees and commissioners, received reports, &c., for the whole State, and in the district in which I reside, I granted interlocutory decrees, embracing decrees of bankruptcy, or what are called the first decrees. In this I thought, and still think, I was correct; but, to test my authority, a case was carried up to the circuit court, where my decision was reversed. Since then I have adjourned all the cases for the first as well as the last decree, to the stated courts respectively. This caused much delay and complaint. But to remedy the evil as far as I could, I resolved on holding special courts at the *stated* places; this I have done and am in the progress of doing.

I can perceive no good reason why the proceedings for the whole State might not be prosecuted at chambers, and there prepared for the final hearing at the stated courts respectively. To do this the court should have power to appoint a clerk specially for this purpose, to be allowed perquisites of office. Such a measure would greatly facilitate the proceedings, and give general satisfaction.

By the last clause of the first section an involuntary bankrupt is entitled to a trial by jury in the county in which he resides, at the discretion of the judge. This provision I think needs amendment. Either the jury trial in the county should be dispensed with, or the *commissioner* should be authorized to have such trial before him, and to report the verdict to court. The discretion given to the judge may be abused, or he may be censured without cause. The trial may be required several hundred miles from the court, and the matter in controversy may be but a trifle.

In the second section, after the second proviso, these words are employed: "And in case it shall be made to appear to the court, in the course of the proceeding 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," &c.

The distinction here is too nice, and the sense too obscure; so much so, as to produce a diversity of construction among the most learned of the pro-

fession. It ought to be made clear. And I think the latter part of the same clause should be so amended as that the assent of creditors should be of those who have *proved their debts*, thereby corresponding with the language of the fourth section.

By the fourth section a discharge and certificate is a bar to all suits, &c., "unless the same be impeached for some fraud," &c. I think this provision in favor of creditors too loose and general in terms, and may be too oppressive on bankrupts. Any matter apparent on the proceedings, which have been, or might have been, a subject of controversy between the parties, should not be revived and made the instrument of arresting or annulling the discharge. Such fraud and concealment should be *dehors* the record, and should be clearly explained.

Where proof is ordered to be taken by a commissioner, I suggest the propriety of giving him power to issue subpœnas for witnesses, directed to a sheriff, constable, or other person, at his discretion, and to record defaults, and report them to the court. For the want of some such provision there is much delay and inconvenience where the clerk and marshal are at a great distance from the commissioner.

In the seventh section all the proceedings are located in the district in which the petitioner resides. Where there are several districts in the same State, doubts have arisen whether the word there employed means the whole State or a subdivision. I think the latter is the true construction, but others think the whole State is intended. It would be well, therefore, to be more explicit.

I do not think it necessary at present to go into detail any further. Every movement in Congress seems to indicate a repeal of the law. As to that measure it is neither my province nor my wish to say anything. But I do hope, for the sake of common justice, that no distinction will be drawn between the early and the latter petitioners, but that all who shall have filed their petitions previous to the passage of the repealing act, may be permitted to go through with the proceeding.

All which, with much deference and respect, is respectfully submitted; and I have the honor to be, sir,

Your obedient humble servant,

H. POTTER.

Hon. DANIEL WEBSTER,
Secretary of State.

HUNTSVILLE, *Alabama*,
Saturday night, *December* 24, 1842.

SIR: By this evening's mail I have received your letter of the 15th inst., accompanied with a copy of a resolution adopted on the 13th instant, by the Senate of the United States, and requesting me to "state the number of applications made under the bankrupt law, both in the circuit ahd district courts, for the northern district of Alabama," &c., and in reply thereto, I have to state the number of applications made under the bankrupt law in this district, up to this time, is six hundred and fourteen. There is no circuit court in this district. All of the foregoing applications are made by persons desirous to be made bankrupts, except one, which is by a creditor; the number of discharges is one hundred and thirty-two; discharges have been granted in all causes in which the necessary publication has been made,

except in four causes, and in those four causes decrees of bankruptcy have been entered and they are still pending; a discharge has not been absolutely refused in any cause ready for final hearing; but in one cause (and that an application for voluntary bankruptcy) a non-suit was entered. The number of causes still pending is four hundred and eighty-one, fifty-five of which have been filed since the first of November last, and not in time for publication to the last term of this court which was in November last.

I do not know that my observation has enabled me to suggest any modifications of the law which may be thought useful. Your letter was not received in time for me to reply before the closing of to-night's mail, and my reply can not be mailed until to-morrow night.

I am, sir, very respectfully, your obedient servant,

B. T. MOORE, *Clerk.*

Hon. DANIEL WEBSTER,
Secretary of State, Washington City.

OFFICE U. S. ATTORNEY, DISTRICT WEST FLORIDA,
Pensacola, December 26, 1842.

SIR: Your letter of the 14th instant, enclosing a copy of a resolution passed by the Senate of the United States on the 14th, and desiring me to communicate any suggestions which might be the fruit of my observation of the operation of the bankrupt law in this district, was received by yesterday's mail.

This judicial district consists of the counties of Escambia, Santa Rosa, and Walton. In Escambia there have been six discharges under the bankrupt act; there are five cases now in progress, and in one instance a discharge has been refused upon the ground of fraud in the applicant.

In Santa Rosa county there has been no discharge; there are four cases in progress, and one application has been withdrawn.

In Walton county there have been two discharges, and there are now no cases in progress.

There has been no case of involuntary bankruptcy in this district.

You will perceive from this statement that my opportunities of forming any opinion of the benefits or evils of the law, based upon experience, have been very limited, and I presume it is not expected that I should express any opinions on the subject unsupported by such experience.

I have learned from the assignee in this court that he has not received one dollar for distribution, out of all the cases occurring here; the property returned, in every instance, falling below the amount which he felt justified in allowing the applicant to retain. This fact shows, conclusiveiy, (to the extent of our experience) that the law does not operate for the benefit of the creditor, however effectually it relieves the debtor.

I have only to add that the general sentiment of the community here is opposed to the moral propriety of taking advantage of this law, and that many have been deterred from seeking the relief it affords, either by their own conscientious scruples, or by the force of public opinion.

I have the honor to be, sir, with much respect, your obedient servant,

WALKER ANDERSON,
Attorney of the U. S. for the district of West Florida.

Hon. DANIEL WEBSTER,
Secretary of State, Washington.

To be appended to Document 19.

REPORT

FROM

THE SECRETARY OF STATE,

In further compliance with a resolution of the Senate in relation to the operation of the Bankrupt law.

JANUARY 18, 1843.
Read, and ordered to be printed.

DEPARTMENT OF STATE,
Washington, 18th January, 1842.

To the Senate of the United States:

I have the honor to transmit to the Senate such further communications as have been received at this Department on the subject of the bankrupt law.

DANIEL WEBSTER.

OFFICE CLERK U. S. COURTS,
N. H. District, Portsmouth, January, 1843.

SIR: I avail myself of the earliest opportunity allowed me by the pressure of business in this office, to communicate the information relative to the applications in bankruptcy in this District, called for in your letter of the 15th of December ult.

The whole number of applications in bankruptcy, 1,549, to December 31st.

Number of applications by creditors under the provisions for involuntary bankruptcy,	9
Number of involuntary cases where decree of bankruptcy has passed,	4
Number of voluntary applications,	1540
Number of petitions withdrawn,	29
Number discharged up to December 31,	744
Number declared bankrupt,	568
Number of petitions now set down for hearing on petitions for decree of bankruptcy,	205
Whole number of cases pending,	773
Number of cases in which objections have been filed,	28
Number of cases where discharges have been refused,	3
Number of trials by jury,	2

As I am required to furnish any other information which may tend to show the effects and operation of the bankrupt law, I have thought proper to present some statistics drawn from the schedules of debts and property on file in this office, which will tend to show the amount of indebtment, and the hopeless insolvency of those relieved by this law.

I have examined the schedules in 365 cases, which may be taken as a fair average of the whole; a certain number having been selected from each hundred of the petitions filed from the 1st of February, to the 31st of December.

It appears that the whole amount of indebtment represented by the schedules in 365 cases is, $1,149,583.

Amount of assets as represented by schedules $3,937,763.

In 239 of the above cases, where discharges have been allowed, amount of debts $594,511; nominal amount of property by schedules, $143,649.

Number of creditors,	6,808
Number of debts proved,	81
Amount of money paid into court on the above cases,	$671 46

In 365 cases the average proportion of assets to debts according to schedules, is about 34.25 per cent. But the returns of the assignees, and the amount paid into court, show that the actual value of property is very far short of that represented.

It is difficult to conceive that so large an amount of indebtment, with so small a proportion of available assets, could ever have been cancelled by any other operation than that of the bankrupt law.

Of the later cases the proportion of property to the debts is larger. In 63 of the above cases, which were among the latest filed, the amount of debts is $318,019; assets $119,002.

In many of the later cases the amount of assets apparently estimated as their actual value, is nearly or entirely equal to that of the indebtment.

In judging of the operation of the bankrupt law, it is important to consider the facility of its execution. I may safely say that no legal proceedings could surpass those under this law, as administered in this district, in despatch, cheapness, and facility of execution.

All the proceedings have been completed upon an average, within five months from the time of their commencement.

The costs of court, including the fees of the clerk, marshal, printer, assignee, and commissioner, have not generally exceeded twenty-five dollars.

The proportion of petitions filed in each month, as exhibited below, shows that the numbers of those who desire to avail themselves of the benefits of this act, do not yet diminish.

The number of petitions filed in February,	187
March,	281
April,	168
May,	129
June,	89
July,	78
August,	114
September,	83
Number filed in October,	96
November,	140
December,	184
To January 14,	27

I can communicate no other information than that above presented, which I deem important as tending to show the effects and operation of the bankrupt law. My observation has not enabled me to suggest any modifications of the law, which I think would be useful.

I am, very respectfully, your obedient servant,

JOHN L. HAYES,
Clerk courts U. S., N. H. District.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE UNITED STATES ATTORNEY,
District of New Hampshire, Conway, January 6, 1843.

SIR: Your letter of the 14th ultimo, together with a copy of a resolution passed by the Senate of the United States on the same day, is before me. Absence from home has prevented an earlier reply.

My attendance upon the district court of this district, while setting in bankruptcy, has not been required, except in cases where the United States were interested, and as no such case has occurred in this district, I have not generally attended the court while setting in bankruptcy, and, consequently, have not seen sufficient practice under the bankrupt law to enable me to make any useful suggestions touching its amendment or modification.

Permit me, however, to remark, generally, that much of the clamor which is raised against the law, is not, in my opinion, the result of an enlightened conviction, that its effects and operations are injurious. I feel confident that the law is gradually gaining favor with the people; and the opinion is very general among the reflecting portion of the community, that it ought to bear the benefit of a fair trial.

I am, with regard, your obedient servant,

JOEL EASTMAN,
United States Attorney.

Hon. DANIEL WEBSTER,
Secretary of State of the United States.

SIR: I have the honor to acknowledge the receipt of yours of the 17th ultimo, enclosing the resolution of the Senate, requesting my opinion as to any amendment or modification of the bankrupt act; and, also, such other information as I may deem necessary, to show the effect and operation of the act. By this resolution, I understand that I am not called upon to express my opinion as to the policy of the act, or of any particular feature of it; and, therefore, shall limit my remarks to the points directly suggested by the resolution itself. As to the first branch of the inquiry, I refrain from expressing my opinion as to the propriety of any particular amendments of the existing law; because, after a careful examination of the act, I am fully satisfied that it should be so entirely modified that the two systems of voluntary and compulsory bankruptcy should be kept separate and distinct. For these two systems are so directly opposed to each other in principle—the one being for the benefit of debtors, and the other of creditors—that great difficulty of construction must necessarily grow out of the union of provisions

of law applicable to such discordant materials in the same section; and it appears to me that much of the doubt and difficulty in the construction of the present act is to be attributed to that cause.

It is manifest that the present act was framed with reference, principally, to cases of voluntary bankruptcy, upon which cases it has heretofore operated almost exclusively. But it may fairly be presumed, that, hereafter, the compulsory principle of the act will be more frequently called into action, and cases of voluntary bankruptcy become more rare. This will render it necessary to give construction to the act, as applicable to the great variety of cases of compulsory bankruptcy which must necessarily arise. And, as this act does not provide very particularly for that class of cases, I am of opinion that much greater doubt and difficulty will arise in giving such construction, than in cases of voluntary bankruptcy. I would, therefore, respectfully suggest, that, in modifying the act, it should be drafted with reference to cases of compulsory bankruptcy, embracing, in the first place, such provisions of the English bankrupt laws, or of our bankrupt law of 1800, as may be considered applicable to the present situation of the country, and adopting the language of those acts as nearly as possible. By which means, much litigation would be avoided, as the construction of those acts has been already well settled.

And the voluntary principle may readily be engrafted upon the act, with such provisions and limitations as may be applicable peculiarly to that system. And upon that subject I would suggest that no good reason seems to exist, why a volunteer should give notice of his intention to apply to be decreed a bankrupt. On the contrary, much difficulty would be avoided by providing that any person upon petition, without notice, should forthwith be decreed bankrupt, upon his assigning all his property for the benefit of his creditors. By this course all the difficulty which now arises by reason of liens intervening between the time of filing the petition, and the decree of bankruptcy, would be obviated. And the rights of the creditors would be as effectually secured, by regulating the proceedings of the bankrupt after the decree of bankruptcy and before the discharge.

As to the second branch of the inquiry, I would remark, that sufficient time has not elapsed to develop facts sufficient properly to test the practical effects and operation of the act. And, therefore, most of the information upon the subject must be confined to circumstances immediately connected with the execution of the laws, from which its effects and operation may be inferred.

In this district the proceedings under the act have been confined almost exclusively to cases of voluntary bankruptcy. And I am satisfied that in almost every case the applicants were hopelessly insolvent, and in a very large proportion of them so entirely destitute of property, that they will make no dividend among their creditors.

As to the effect of the act upon solvent creditors, I do not think it will be so disastrous as appears to have been feared. Because in a great majority of cases, the proceedings of the bankrupts have been anticipated by their creditors, who have made up their minds to submit to the loss, and already adapted their business to such a state of things. This impression is so general, that there are very few cases in which the creditors give any attention to the proceedings of the bankrupts, but suffer them to receive their certificates without examination or question.

The effect of the system of voluntary bankruptcy upon the community at large, will naturally be, on the one hand, to induce enterprising speculating men to extend their business and credit as far as possible. On the other hand, it will induce capitalists to withhold their money and credit. These results, if produced at proper times, and upon proper occasions, would be highly beneficial to the business of the country. But my impression is that it will operate upon the enterprising speculator most forcibly and effectually in times of general prosperity, when money is plenty, and upon capitalists in times of adversity, when money is scarce.

I am yours, very respectfully,

PH. DICKERSON,
U. S. Judge District of New Jersey.

Hon. D. WEBSTER,
Secretary of State.

OFFICE CLERK U. S. COURT DISTRICT OF OHIO,
Cincinnati, January 10, 1843.

SIR: In compliance with your circular of the 15th of December, 1842, enclosing a copy of a resolution of the Senate of the United States, requesting the number of applications made under the bankrupt law in the district of Ohio:

Number of voluntary applications.	Number of involuntary applications.	Number of discharges.	Number of cases in which discharges have been refused.	Number of cases still pending.
1,487	3	483	3	1,004

Very respectfully,

W. MINER, *Clerk.*

P. S. Since the date of your circular the number of applications have increased about 200.

N. B. This statement would have been made at an earlier day, had not a portion of the books and papers from which it is taken been in another part of the State, where a court in bankruptcy was in session.

MADISON, INDIANA, *December* 31, 1842.

SIR: I had the honor to receive your communication of the 14th inst., enclosing me a copy of a resolution passed by the Senate of the United States, on the subject of the bankrupt law, and asking my attention to the subject. In reply, I have to say that my practice in the courts has not enabled me to suggest any amendments or modifications of the law, which have not already been suggested in Congress.

I concur with those who are in favor of so amending the law as to make corporations, issuing paper money, subject to compulsory bankruptcy; this

would not only exert a salutary influence upon those institutions, but also render the law more acceptable to the people.

The effects and operation of the law, so far as I have observed them, seem to me beneficial and salutary.

I am, very respectfully,

C. CUSHING, *U. S. Att'y.*

DANIEL WEBSTER,
Secretary of State.

OFFICE OF U. S. ATTORNEY,
Missouri District, St. Louis, January 5, 1843.

SIR: I received on the 26th ult., your circular letter of the 14th, enclosing the resolution of the Senate of the United States on the subject of the bankrupt law, and desiring me to suggest such modifications or amendments of that law as from my practice in the courts I may think to be useful. No cases under that law have been acted upon in this district, except in the district court in which, in consequence of the distance of Jefferson city, the place of holding its sessions, from my residence, I have not practised. I have never proceeded farther in the cases in which I am employed, than to prepare the petitions and schedules, and to forward them to a gentleman of the bar residing at Jefferson city, to be managed by him in court. My knowledge of the operations of the law derived from practice in the courts is therefore too limited to enable me to suggest modifications or amendments of it. Opinions otherwise formed you do not ask of me, and I will not give them for that reason, and because you will doubtless receive the same from other persons who have formed them on their own practice and experience.

I should have made this reply on the day of the receipt of your letter, but then thought it unnecessary to make any, as I was unable to furnish the suggestions sought for: but lest my omission to answer may delay your communication to the Senate, I have thought it proper to make this to you.

I have the honor to be, sir, very respectfully, your obedient servant,

M. BLAIR,
United States Attorney.

Hon. DANIEL WEBSTER,
Secretary of State.

DISTRICT COURT OF THE UNITED STATES,
Dis. of West Tenn., Jackson, Tenn., Dec. 27, 1842.

SIR: The information you desire on the subject of the bankrupt law, so far as connected with this district, you will find annexed.

I have no information to communicate showing the effects and operation of the act, other than such as may be found in the annexed statement.

I have been unable to detect the impracticability of any section of the law.

Yours, respectfully,

JAMES L. TALBOT.

Applications, &c., under the act to establish a uniform system of bankruptcy throughout the United States, district court of West Tennessee.

Applicants in the district court - - - - - -	400
Applicants in the circuit court - - - - - -	none

All of the above applicants are *voluntary* except *three*, which are *involuntary.*

Discharges granted - - - - - - -	126
Discharges refused - - - - - - -	8
Cases pending - - - - - - - -	266
	400

JAMES L. TALBOT,
Clerk District Court of West Tennessee.

NASHVILLE, *December* 30, 1842.

SIR: I have the honor to acknowledge the receipt of your circular letter of the 14th instant, with its accompaniment, being a resolution of the Senate adopted on the 13th instant, and I proceed to comply with the request contained in the former, by communicating my opinions as to some amendments and modifications of the bankrupt law, which I feel justified, both by my own observations of the particular operations of the law, and by the views expressed by intelligent persons with whom I have conversed, would render it more conducive to the ends of justice and sound policy, and more acceptable to the community. I also submit some observations relative to the operation of the law thus far, and as it now exists.

I have endeavored, during my judicial labors, to collect such information as would tend to satisfy my own judgment as to the effects of the law, and the general policy of its enactment and continuance. The result shall be fully communicated.

Under the voluntary feature of the law, frauds have been attempted in some instances; but I know of no case in which the fraud could, with propriety, be imputed to the law. On the contrary, it had been attempted, or actually committed, so far as my observation goes, before the enactment of the law, and without reference to it. In some cases, also, I have reason to believe that fraud existed, although there was not sufficient evidence of it to prevent a discharge. In most cases, however, when opposition has been made to the discharge of an applicant, it has arisen from unkind feelings between the debtor and some one or more of his creditors, and rather with a view, on the part of the latter, to inflict personal annoyance, than with any reasonable hope of establishing a fraud, or preventing a discharge. I therefore give it, as my opinion, that this part of the law has not given rise to any greater number of frauds than existed before. On the contrary, I believe it has induced many to come forward, and honestly surrender what they had to be distributed among their creditors, who, but for the inducements held out by the law would have been led to, or persevered in, the most fraudulent concealment of their property and means. Many, I doubt not, who had resorted to fraudulent concealments of their property before the existence of the law, have been prevented from availing themselves of its benefit, owing to their possession of considerable means, and consequent inability to take the required oaths; but who, had such a law been in existence when their

embarrassments commenced, would gladly have made full disclosures of their means, and accepted of its provisions.

I have also endeavored to ascertain how far the law may have operated injuriously to the rights and interests of creditors. I speak still of the voluntary feature. From the best information I can obtain, and from my own observation, I am convinced that little or no loss has been sustained. There has hardly been a case where creditors had any good ground for supposing, or did in fact expect, that any part of their debts could be collected, or would be paid. This has, in most instances, been the evidence of creditors themselves; and in all, it has been obvious to others, that such was the case. So that the amounts realized by creditors under the operation of the law, however small they may have been, have generally been greater than could reasonably have been expected, but for its intervention. It may be here remarked, that it is only under the operation of such a law, that a fair and equitable distribution of the effects of an insolvent man *ever* takes place. Either the debtor himself makes preferences which should not be allowed, suggested by his own feelings of partiality or notions of justice; or he does so to buy his peace from the importunities and harassments of the more urgent and unfeeling of his creditors; or such preferences are obtained by the eager diligence of some in more promptly resorting to legal compulsion. This view of the subject is applicable to a bankrupt law generally.

The only amendments I would suggest to the voluntary portion of the law, if it be permitted to remain, is, that none be allowed to avail themselves of it whose indebtedness does not amount to one thousand dollars, or at least to five hundred dollars. This amendment is recommended on a few obvious grounds. First, it is presumable that any man, with reasonable exertions, may be able to pay this amount within a reasonable time; and it would prevent a resort to this method of throwing off indebtedness of trifling amount, and troubling the courts of the country with cases of a frivolous character. Second, it would operate beneficially upon the poorer classes, by enabling them to obtain credit for small amounts, on the faith of their personal exertions, when it should be known that debts so contracted were not liable to be discharged by a proceeding in bankruptcy. It would also operate beneficially to creditors, by causing them closely to scrutinize the pecuniary condition of those applying for credit.

The operation of the involuntary provisions of the law, has, so far as my experience and observation extend, been of the most beneficial character, both in preventing fraud and in securing the interests of creditors; and I may say, without qualification, that it has been advantageous and satisfactory to all parties concerned in its administration, and to the community generally.

It may be said that professional and public opinion is unanimous in favor of this portion of the law. Still, it is believed to be susceptible of some amendments, which I proceed to suggest.

I am of opinion that this feature of the law should be rendered more comprehensive, and made to embrace all cases of traders, &c., as well individuals as partnerships, who become insolvent, or are in failing circumstances. I am also of opinion that it should be so enlarged as to subject to its operation all corporate bodies, without exception; all banks and banking companies, who may become insolvent, or fail to meet their engagements; and that certain proper rules and provisions be prescribed for ascertaining such insolvency or failure to meet engagements. I would also recommend that all corporations be made liable to be proceeded against in bankruptcy, who shall make any

fraudulent conveyance, fraudulent assignment, or give any fraudulent preference; in short, that the provisions of the first and [second] sections of the existing law, relative to compulsory bankruptcy, be extended to them, so far as they can be made applicable to such bodies. I am satisfied that the amendments here suggested will furnish the best preventive that can be devised against fraudulent conveyances, assignments, and preferences, by merchants and trading companies in failing circumstances; that they will better secure the rights of creditors than any other plan that can be adopted, and, at the same time, put them all upon an equal footing.

Many reasons could be urged in support of these amendments; but they are, for the most part, such as will readily occur to every reflecting mind, or man of experience in business or legal proceedings. With reference to banks and joint stock companies, generally, I will say, that the experience of the last few years furnishes, I should suppose, considerations enough to satisfy all, of the propriety, not to say necessity, of subjecting them to some such restraints as are here proposed. One additional consideration has, however, occurred to me, which I do not remember to have previously seen adverted to. It is, that in almost every instance of the insolvency or failure of banks or other trading companies or corporations, the affairs of the concern are committed for settlement to persons interested alone on behalf of the banks, &c., and whose interests and feelings are all antagonistic to those of the creditors. This whole subject can be embraced in a slight amendment to the fourteenth section of the present law.

And it may not be improper here to mention, that there has been some difference of opinion, and some conflict of decision, on the fourteenth section of the act, which it is desirable should be removed by further legislation. Here, this provision of the law has been decided to apply to all cases of *insolvency* of a trading or mercantile partnership, although no act of bankruptcy, as specified in the first section of the act, had been committed. In short, the obvious meaning of the words of the law has been adopted, which are as follow: "*That when two or more persons who are partners in trade become insolvent, an order may be made, in the manner provided in the act, either on the petition of such partners or any one of them, or on the petition of any one of the partners*," &c. Upon these words, the fact of insolvency has been deemed and adjudged a sufficient ground for a decree in bankruptcy. If this be not the proper construction of the law, I am convinced that such should be its provisions and operation; and that it should be made to extend to the class of cases here suggested.

There have been conflicting constructions of other parts of the law, the recurrence of which should, as far as possible, be removed by further legislation. Among them, I would mention the various decisions which have been made, with reference to the provision in the first section, concerning defaulters, and persons indebted in a fiduciary capacity. Here, it is understood to exclude such from any benefit under the act, as expressly excepted from the description of those who may be declared bankrupts upon their own application. In other parts of the Union it has been understood, and so determined, to exclude them only from the benefit of a discharge from debts of a fiduciary character, while they may be declared bankrupts and released from all other engagements.

I would also suggest the importance of forming a system of practice for the more speedy settlement of bankrupts' estates, furnishing to assignees a more summary mode of proceeding against those indebted to them in that

capacity, and for the more prompt settlement of rights of property in such cases. The rules heretofore adopted, under the authority of the law, relate only to proceedings preparatory to the discharge of bankrupts.

In conclusion I would remark, that the law is now more favorably regarded by the community than at first. This change in public sentiment has been brought about from the removal of much prejudice against the system, by experience of its operation, and from the fact that the most unpopular and objectionable feature in it will henceforth almost entirely cease to have further application. I allude to its retrospective character. This view of the subject I believe to be entertained by the people generally.

I have the honor to subscribe myself your obedient servant,

M. W. BROWN.

Hon. DANIEL WEBSTER,
Secretary of State, Washington city.

CLERKS'S OFFICE SOUTHERN DISTRICT OF MISSISSIPPI,
Jackson, December 28, 1842.

SIR: In reply to your communication of the 15th instant, I respectfully submit the following statement of cases in bankruptcy:

1. The number of *voluntary* applications in this district, under the bankrupt law; is - - - - - - - 671
2. No petitions have been filed by creditors.
3. The number of discharges granted by the courts - - 169
4. In *one* case only has a discharge been refused, and that was submitted to a jury, and the issue found against the petitioner.
5. The number of cases still pending is - - - 501

Very respectfully, your most obedient servant,

WM. BURNS,
Clerk Southern District of Mississippi.

Hon. DANIEL WEBSTER,
Secretary of State, U. S.

CLERK'S OFFICE, DISTRICT COURT, U. S.
District of Arkansas, Little Rock, December 31, 1842.

SIR: In answer to the resolution of the Senate of the 13th, and your letter to me of the 15th instant, I lay before you the following statement, giving the information desired by the Senate, at the earliest moment:

The number of *voluntary* applications made under the bankrupt law, in the district court up to this date, are - - - - -	98
Involuntary applications - - - - -	None
The number of discharges - - - - -	19
Cases in which discharges have been refused - - -	None
Number cases still pending - - - - -	79

No cases have been taken to the circuit court in this district.

Respectfully, your obedient servant,

A. H. RUTHERFORD,
Deputy clerk.

PENSACOLA, *January* 3, 1843.

SIR: I have the honor to acknowledge the receipt of yours of the 15th ultimo, requesting a statement of the number of applications under the bankrupt law, which have been made in the district court of West Florida. In compliance with your request, the following statement is respectfully made:

Voluntary	20
Involuntary	None
Discharges	9
Refused	1
Still pending	10

I have the honor to be, most respectfully, your obedient,

CHARLES N. JORDAN,
Clerk U. S. court of West Florida.

Hon. DANIEL WEBSTER,
Secretary of State, Washington city, D. C.

SUPERIOR COURT, CLERK'S OFFICE,
Eastern district of Florida, St. Augustine, East Florida.

SIR: In compliance with the resolution of the Senate, and your request, under date of December 14th, which has but this day come to hand, I send the following statement:

Number of applications filed in this office, from February 1, 1842, to January 1, 1843, on voluntary bankruptcy, is	16
Number of petitions, filed within same period, involuntary, is	None
Number of discharges granted	3
Number of cases dismissed	None.
Number of cases withdrawn	None.
Number of cases still pending	13

I, George R. Fairbanks, clerk of the superior court of the United States for the eastern district of Florida, hereby certify that the above is a true statement of cases in bankruptcy.

In witness whereof, I have hereunto placed my hand, and seal of said [L. S.] court, this 5th day of January, 1843.

GEORGE R. FAIRBANKS, *Clerk.*

DISTRICT ATTORNEY'S OFFICE,
St. Augustine, January 4, 1843.

SIR: Your letter of the 14th ult., enclosing to me a copy of a resolution passed by the Senate of the United States on the same day, to which you asked my immediate attention, arrived here during my absence on the circuit from which I returned last evening.

In compliance with your request, I have the honor to state that the whole number of applications in this district under the bankrupt law is sixteen, *all voluntary;* the number of discharges three: the residue are still pending. None of these cases have been contested, or excited any interest, and the three discharges mentioned were but lately granted. I have, therefore,

had little opportunity to witness the effects and operation of the law, nor does my practice enable me to suggest an amendment or modifications thereof.

With great respect, I am, sir, yours, &c.

THOMAS DOUGLAS.

Hon. DANIEL WEBSTER,
Secretary of State.

CLERK'S OFFICE, LEON COUNTY,
U. S. Dist. Court, Middle Dist. of Florida, Jan. 8, 1843.

SIR: I have had the honor of your communication of the 15th December last, annexing resolution of the Senate of the United States, intended to ascertain "from the judicial officers of the United States who have had the execution of the bankrupt law the number of applications under the act, both voluntary and involuntary, the number of discharges, the opinion of the judges as to any amendments or modification of the act, and such other information as may be deemed necessary to show the effects and operation of the act," and reply thereto at the earliest time allowed from my engagements in the court of appeals now in session.

The number of voluntary applications in this court is thirty-nine; cases contested, eight; discharges granted, twenty-three; cases still pending, thirteen; adverse petitions under the involuntary provisions of the act, one.

I have the honor to be, respectfully, sir, your most obedient servant,

R. S. BIRCHETT, *Clerk.*

Hon. DANIEL WEBSTER,
Secretary of State.

To be appended to Document 19.

REPORT

FROM

THE SECRETARY OF STATE,

In further compliance with a resolution of the Senate, in relation to the operation of bankrupt law.

JANUARY 24, 1843.
Read, and ordered to be printed.

DEPARTMENT OF STATE,
Washington, January 23, 1843.

To the Senate of the United States:

I transmit to the Senate further communications received at this Department in answer to its circular letters on the subject of the bankrupt law.

DANIEL WEBSTER.

RHODE ISLAND DIST., CLERK'S OFFICE, DIST. COURT,
Providence, January 12, 1843.

SIR: In answer to the communication of the 15th ultimo, relative to the number of applications made under the bankrupt law in this district, I have the honor to inform you that the whole number of petitions, *voluntary* and *involuntary*, filed in this office up to this date is - 303

Of which there were voluntary - - -		288	
In invitum - - - - - -		15	
Of the voluntary petitioners—			303
There have been discharges granted and certificates given to - - - - - -	80		
Entitled to be discharged upon payment of costs -	76		
		156	
There have been declared bankrupt whose petitions for discharge have not come up for hearing -	50		
Who have not filed petitions for discharge - -	46		
Whose discharges are opposed by creditors - -	5		
		104	
There are petitions not yet heard to the number -	23		
Where decree of bankruptcy is suspended for informality - - - - - -	2		
Whose decree of bankruptcy is opposed by creditors	3		
Petitions discontinued - - - - -	3		
		31	
			288

Of petitions in invitum—		
There are discontinued - - - - -	2	
In hearing - - - - - - -	10	
Not yet come up for hearing - - - -	1	
Decrees of bankruptcy rendered in - - -	2	
	——	15
Since and including the 5th of December, 1842, there have been filed in this office voluntary petitions - -	40	
Petitions in invitum - - - - - -	6	
	——	46

Of the estates of the voluntary petitioners it is not probable that more than twenty-five will pay any dividend at all, and of those not more than thirteen will pay over ten per centum upon the indebtment.

I am, very respectfully, your obedient servant,

JOHN T. PITMAN,
Clerk District Court Rhode Island District.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE UNITED STATES ATTORNEY,
Wisconsin Territory, Madison, January 2, 1843.

SIR: Annexed I hand you a copy of a communication to-day received at this office, from the Hon. Daniel Webster, Secretary of State of the United States, calling for information, under a resolution of the United States Senate passed on the 14th ult. (a copy of which I also annex) of the number of cases in bankruptcy now pending in the court of which you are clerk. Also the number of discharges which have been granted by said court under the general bankrupt law. State under each head the number of voluntary and involuntary cases. Please give your early attention to the subject, and report to me as early as possible, and in conformity, as near as may be, to the spirit of said letter and resolution.

With great regard, your obedient servant,

ALEXANDER L. COLLINS,
Acting U. S. Att'y, for Wisconsin Territory.

LA FAYETTE KILLOGG, Esq.,
Clerk of the Superior Court, Wisconsin Territory.

OFFICE UNITED STATES ATTORNEY,
Wisconsin Territory, Madison, January 2, 1843.

SIR: In obedience to your letter of the 14th ultimo, asking for information as to the operation and effects of the general bankrupt law, according to the requirements of a resolution of the Senate of the United States of the same date, a copy of which was enclosed, I have the honor to submit the following correspondence which, to a certain extent, will afford the desired information.

I would beg leave to state that, owing to a difference of opinion between the judges of our Territory, as to the jurisdiction of our courts under the

bankrupt law, the supreme court of the Territory, composed of the district judges, or a majority of them, and also the district court of the first judicial district, are both entertaining applications for relief. The judge of the first judicial district holds, that the district courts of the Territory have jurisdiction in cases of bankruptcy, and is practising accordingly within his district. The other two judges, being of the opinion that the *supreme court alone* has jurisdiction, have held terms of said court at Madison, the seat of government of the Territory, especially for the hearing of cases in bankruptcy. As to the question of jurisdiction, I have no doubt but that both courts have jurisdiction.

The report of the clerk of the supreme court is herewith enclosed. I have written to the clerks of the court in the several and respective counties of the first judicial district, communicating the substance of your letter, and have requested them, in order to save time, to forward their reports directly to your Department.

From the circumstance tbat not a case in bankruptcy has been seriously contested, the strength of the law has not within my knowledge been tested, and no defects discovered, and therefore have no alteration or amendment to suggest.

In Mr. Sutherland's temporary absence on business, I am acting for him.

I have the honor to be, your obedient servant,

ALEXANDER L. COLLINS,
Acting Attorney U. S. for Wisconsin Territory.

Hon. DANIEL WEBSTER,
Secretary of State.

OFFICE OF CLERK OF SUPREME COURT,
Wisconsin Territory, Madison, January 2, 1843.

SIR: In answer to your letter of this day, asking for information under a resolution of the United States Senate, passed on the 14th ultimo, relative to the number of applications under the general bankrupt law of the United States, passed August 19, 1841, I would beg leave most respectfully to report:

That the whole number of applications in this court, under the said act, is 272.

Of this number 160 have been discharged, 80 have passed a first hearing, 3 have been dismissed, and 29 are new cases.

I would also report, that the above applications are all voluntary.

I have the honor to be, very respectfully, your obedient servant,

LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin Territory.

THOMAS W. SUTHERLAND, Esq.,
United States Attorney for Wisconsin Territory.

CLERK'S OFFICE, DISTRICT COURT OF THE U. S.,
District of Illinois, Springfield, January 3, 1843.

SIR: In compliance with the requisition contained in your communication of the 15th ultimo, requesting me to "state the number of applications

made under the bankrupt law, both in the circuit and the district courts for the district of Illinois, distinguishing applications made by persons desirous to be made bankrupts from applications made by creditors, the number of discharges, the number of cases in which discharges have been refused, and the number of cases still pending;" and that if my observation enabled me to "suggest any modification of the law" which I thought useful, of if I had "any other information" which I deemed important, "as tending to show the effects and operations of the law," I would "state such modification, and communicate all such information:" I have the honor to submit the following statement:

1st. There are no applications under the bankrupt law made or pending in the United States circuit court for this district.

2d. The whole number of applications under the bankrupt law made in the district court of the United States for this district, up to the first day of January, 1843, is 1,433.

3d. Of the above number of applications, but two are applications made by creditors, or involuntary cases.

4th. Of the above number of applications, discharges have been granted in 464 cases, and two have been withdrawn.

5th. The number of applications still pending is 967.

6th. No decrees of final discharge have yet been refused in any case; but objections to discharges have been filed by creditors in eight cases, which objections are still pending and undetermined.

7th. I am unable to suggest any modification of the law, or communicate any information as to its effects and operations which I deem important.

I have the honor to be, very respectfully, your obedient servant,

JAMES F. OWINGS,
Clerk District Illinois.

Hon. DANIEL WEBSTER,
Secretary of State.

CITY OF JEFFERSON,
Missouri, January 5, 1843.

SIR: On last evening I had the honor of receiving your favor of the 14th ultimo, communicating a resolution of the Senate of the 13th ultimo, which is as follows:

"*Resolved*, That the Secretary of State communicate, with all convenient despatch, with the judicial officers of the United States, who have had the execution of the bankrupt law; and ascertain the number of applications under the act, both voluntary and involuntary; the number of discharges, the opinions of the judges as to any amendments or modifications of the act, and such other information as he may deem necessary to show the effects and operation of the act; and that he report to the Senate, from time to time, as soon as the information shall be received.

You inform me that statements of the number of applications and discharges have been requested from the clerks, so that I need not be called on to perform any duty of that kind. But if my observation and judicial experience have enabled me to suggest alterations or amendments of the law, or if I am able to give information which I may deem important in regard to its effects and operations, you would be obliged to me to communi-

cate such suggestions or information as soon as convenient, to be laid before the Senate.

By the above resolution, and by your letter, it is desired that I should suggest alterations or amendments, and give information to show the effects and operation of the bankrupt act.

I am deeply and solemnly impressed with the opinion that the bankrupt act, or at least that part which provides for cases of voluntary bankruptcy, is clearly unconstitutional, is unjust in the highest possible degree to creditors, is mischievous in its tendencies and effects, and is shockingly demoralizing. It has produced in almost every neighborhood the most implacable hatred, and destroyed all confidence. I can not, therefore, suggest or recommend any amendment to be engrafted on such a system, which, in my opinion, would materially better it; but I will respectfully submit for the consideration of the Senate, my opinion as to the principle errors and defects of the act, leaving it to the wisdom of Congress to supply the remedy.

1. It authorizes a violation of contracts, and a discharge from their obligation at the mere option of one of the parties. The district court of the United States for this district, decided this part of the act to be unconstitutional, and refused to grant the discharges. For the reasons on which the court made the decision, I refer to a printed copy of the opinion, herewith sent.

2. The debtor is allowed to select his own time to commence proceedings—when he may have entirely squandered or secreted his property. He need no longer use industry and economy; he may as well live in idleness and extravagance; for he will be discharged from all his debts, contracts, and engagements, whenever he shall have spent all his property.

3. The debtor is allowed to select the State and county in which he will commence proceedings. For this purpose he can change either his residence or business, to any place he may think most favorable. He can thus go where no person will be likely to detect his frauds—and where his creditors can not afford to follow him.

4. He may have spent all his property and contracted his debts by idleness, riotous living, debauchery, or gambling in stocks, or the wildest speculations. It will not affect him, and he will be entitled to his discharge, equally with the most prudent, industrious, and economical debtor.

5. If a majority of his creditors should object to his discharge, it would only give him an additional privilege—that of demanding a jury and taking the cause away from the court. Or, he may appeal even before the cause is tried, and is allowed ten days to appeal in.

6. After the court disposes of the matter, or decides the cause against him, and refuses the discharge, he can then have it referred to a jury. This is new in judicial proceedings, and if allowable, the privilege should be extended to both parties. The creditor, in such case, is concluded by the decision of the court if against him.

7. An appeal is allowed the debtor—none is allowed the creditor. Thus, if the court commits an error injurious to the debtor, it must be corrected; but if there be an error injurious to the creditor, it must stand.

8. If an appeal be taken to the circuit court, the debtor can demand either another trial by jury, or a trial by the court. No such privilege is allowed the creditor.

Indeed, any decision against the *creditor* is to be final and conclusive—and scarcely any against the *debtor* is to be final or conclusive.

9. There is no punishment for making out fraudulent lists of property or creditors; and although sworn to, yet the oath, if false, is not, I think, made perjury.

As to the operation of that part of the act which authorizes voluntary bankruptcies, the operation is, and must almost necessarily be, to enable any person who may choose so to do, to avoid the payment of his debts, no matter what may be the objections in law or fact against it.

What creditor, under all the disadvantages the act presents to him, and seeing all the advantages it gives the debtor, would enter into a contest? To do so, he must go to court, perhaps for several terms, and travel some 50, 100, or 200 miles; whether he succeeds or not, he will lose his time, and pay his expenses, and lawyer's fee. And if he fails, he will, in addition, have the costs of both parties to pay. If he should succeed, he will be allowed no advantage over some hundred creditors who did not trouble themselves: and the debtor will go unpunished for his frauds.

All this is so obvious that creditors rarely interfere.

In regard to the provisions of the act for cases of involuntary bankruptcy, I can only say that there are so few cases in court under those provisions, that I have not been able to form any opinion of their operation. Eleven hundred and forty-three petitions have been filed—of these four only were under the provisions for involuntary bankruptcy, and three of these were dismissed.

I have the honor to be, with high respect, your obedient servant,

R. W. WELLS,
Judge of the U. S., for the district of Missouri.

Hon. DANIEL WEBSTER,
Secretary of State, U. S.

Opinion of the District Court of the United States, for the District of Missouri, on the constitutionality of the bankrupt law; delivered by Judge Wells, September term, 1842.

IN THE MATTER OF EDWARD KLEIN.

This was a petition in bankruptcy, by a debtor, under the act of Congress, entitled, "An act to establish a uniform system of bankruptcy throughout the United States, approved 19th August, 1841." The petitioner was declared a bankrupt, and the final hearing of his petition set for this term; and now upon the final hearing, the petitioner asks a decree of this court, decreeing him a full discharge from all his debts; and a certificate thereof, as provided by said act.

It now becomes necessary for the court to decide a very grave and important question—important, as it regards the number of persons interested, the amounts in controversy, and the principles involved in the decision. It is the authority of this court to make the decree asked, discharging the petitioner from his debts; and, this makes it necessary to decide upon the constitutionality of the act, or the power of Congress, under the constitution, to pass the act, and require the court to make the decree.

A preliminary question is to be disposed of. Whether it is the duty of the court to decide on the constitutionality of an act of Congress, when the question arises in a cause before it; and if, in the opinion of the court, the act be repugnant to the constitution, it should so decide. The constitution of the United States is declared to be the supreme law of the land. All the power which the Congress possesses is derived from it. If an act be repugnant to the constitution, it would seem, it could not become a *law;* if a *law*, it must be obeyed; if it be repugnant or in opposition to the constitution, and you obeyed it, you would violate or disregard the constitution; which, then, could not be regarded and obeyed as the supreme law. The judges are sworn to support the constitution—and, of course, to support it as the *supreme law.* If they decide against its requirements, they could hardly be said to support it as the supreme law. They must, therefore, obey the constitution, and disregard an act that is repugnant to it.

To illustrate this: A is the owner of a tract of land. An act of Congress is passed by which the land is granted to B. B brings suit for the land, and claims under the act granting it to him. A defends, under the constitution, alleging that Congress had no authority, under the constitution, to pass the act, granting his land to B. The court must decide the cause.

Again, A is the owner of a tract of land, and sells it to B. B gives his bond to A for the purchase money. An act of Congress is passed, declaring that B shall be wholly released and discharged from his debt; and, that a certain court shall, on his application, grant the discharge—and that no suit shall be brought or maintained in any court to recover the debt. Here, again, either of the courts before whom the questions arise, must decide on the authority of Congress to pass the act, by which A is deprived of his debt. If the constitution provides that the land of A shall not be granted to B—and that a debt B may owe A shall not be discharged without payment—any act to the contrary, the constitution being the supreme law, must be invalid—and the court must decide the cause, and must support the claim or defence which the constitution maintains, and disregard the act.

These were the principles intended to be established by the framers of the constitution; and are in accordance with established judicial principles. Fed. No. 44—78-Morbury vs. Madison, 1 Con. Rep. 268. Vanhorn's Lessee vs. Dorrance, 2 Dall. 304—1 Kent's Com. 313.

Is this act of Congress, under which the petitioner claims a discharge from his debts, authorized by the constitution? In order to determine this, it will be necessary to notice several of its provisions.

It provides, in substance, that any person, whether a trader or not, who is indebted, except in a few enumerated cases, may file his petition in the district court of the United States, for the benefit of the act, at any time he may please, without the consent or action of any of his creditors, and obtain, by a decree of the court, a discharge from all his debts. This decree is to be had without the consent of any of his creditors being required, even if they do not participate in the proceedings or receive a dividend from the property. The decree is to be deemed a full and complete discharge from all his debts, contracts, and engagements, proveable under the act, whether contracted *before* or after the passage of the act. If he has property, he surrenders it, if he has none, it is the same thing as it regards his discharge.

In examining this question, we should ascertain, if possible, what was

the object the convention had in view by inserting the provision. The phraseology adopted would indicate a part of the object: "To establish *uniform* laws on the subject of bankruptcies throughout the United States." It was apprehended, at least, that they would not be uniform, unless Congress had the power to make them so. In addition to this, we are told by Mr. Madison (Fed. No. 42) that "the power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties, or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn in question." To have a system that would be uniform and would prevent frauds, &c., seems to have been the object, The proposition was referred to the committee of detail, of which Mr. Rutledge was chairman, and reported as it now stands in the constitution. In ascertaining what were the mischiefs to be remedied, or the objects to be effected, the convention. doubtless, looked to the condition of things, and of course to the institutions and laws of the various States. But for a *definition* of that or any other legal term, or to ascertain the nature and extent of the powers they were about to grant, by particular words or phrases, they would hardly look to the laws of the States. There was far less intercourse in those days than at present. There were no steamboats, railroads, or Mc-Adamized roads.

The laws of the several States could not have been generally known to the members of the convention from the different States; even the best lawyers could not have been acquainted with the laws of the States in which they did not practise. They are not so, even at this day. If they had been acquainted with the laws of all the States, to which would they have referred in preference to all the rest, for definitions, or the meaning and extent of legal terms? The convention well knew it was making a constitution for the whole Union; that the terms they might use should be known and understood, and must be interpreted and explained in every State. They were, therefore, exceedingly exact in the use of words and phrases—every word of legal import, every phrase, was weighed and considered; and a phrase of only a few words was frequently referred to a committee, as was done in this case, and examined and reported on. They were frequently obliged to use legal terms—they were making a law—this was a legal term—bankrupt laws—what was to be done to prevent confusion and uncertainty; and above all, to mark exactly and with legal precision, the extent of the powers they were about to grant; that neither more nor less power might be granted than was desired.

Our ancestors had removed from England; the United States had then lately been English colonies and part of the British empire. The English laws and system of jurisprudence had been substantially adopted in every State in the Union. Every person, at all conversant with legal subjects, and every lawyer, of course, was acquainted with the English laws. This knowledge was equally extensive in every State. It is so to this day. Here, then, was a law with which all were acquainted, and to which all could refer. There could be no mistake, if reference was made to it for the meaning of terms. And to it they did accordingly refer. We do so to this day. Ask a lawyer the meaning of a legal term, and where does he look for an answer? To the statutes of Massachusetts, or Georgia—New York, Pennsylvania, or Virginia? Certainly not. In most instances he would look in vain.

The proposition in regard to bankruptcies was made by Mr. Charles Pinckney, of South Carolina, in the words we now find in the constitution; it was referred to the committee of detail, consisting of Mr. Rutledge, of South Carolina, Mr. Randolph, of Virginia, Mr. Gorham, of Massachusetts, Mr. Ellsworth, of Connecticut, and Mr. Wilson, of Pennsylvania; and they reported it in the words in which it was referred. Now, several of these States never had anything like a bankrupt law. To which then did they refer, or could they refer, to ascertain the meaning and extent of the terms they were employing? The lawyer, if he is not familiar with the term, will refer to Blackstone's commentaries, or to an English law dictionary, where he will readily find it. If he referred to the statutes of the different States, he might get as many definitions as there were States, supposing they had any law on the subject.

The first Continental Congress, in 1774, declared, among other things, "that the respective colonies were entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they had by experience found to be applicable to their several local and other circumstances."—Journal of Congress, vol. 1, page 28, Phila. ed. of 1800.

Many of the States had adopted, in a body, the English statutes, only excepting such as were local to that kingdom, or not applicable to their situation.

The Supreme Court of the United States, in Patterson *vs.* Winn, 5 Pet. R. 233, say that "the English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constituted a part of the common law of the country."

We know, as matter of history, that the members of the convention who took part in debate, were intimately acquainted with the English laws. The committee abovementioned possessed several of the most eminent lawyers in America, and who have held the highest legal stations. Reference was often made by them to the English laws for the meaning of terms or phrases they were using. Thus, when it was proposed to define and limit treason against the United States, Mr. Randolph and Mr. Ellsworth (two of the committee) Mr. Madison, Mr. Mason, and Mr. Governeur Morris, all referred to the act of Parliament of 25th Edward 3d; and the convention at last adopted the precise phraseology of that act.—Madison papers, 1770. Again, when the phrase "*ex post facto*" was under consideration, Mr. Dickerson stated that on examining Blackstone's commentaries, he found the term related to *criminal* cases only.—Ibid, 1,450. And the Supreme Court has since confirmed the signification of the terms to the definition given by Blackstone. Mr. Hamilton, who was a member of the convention, in speaking of the "habeas corpus" provision in the constitution, refers to and quotes Blackstone's commentaries.—Fed. number 84.

This general principle being established, we may go a step further, and show that, in point of fact, the convention had the English statutes in view, in determining the nature and extent of the power they were granting to Congress, when the bankrupt clause was under consideration.

Mr. Sherman observed "that bankruptcies were, in some cases, punishable with death by the *laws of England*, and he did not choose to grant a power by which that might be done here."—Mad. P., vol. 3, 1481. It thus appears that the laws of England were the laws referred to in regard to the definition and nature of the powers they were conferring.

It may also be remarked, that Blackstone's commentaries were in the hands of the members, and frequently referred to. This book contained a definition of a bankrupt, and a summary of the English laws on the subject.

What then was the English law to which the convention referred when they adopted the clause in regard to bankrupts? The English system, when the convention sat, had been in operation for several generations, and provided in substance: A proceeding by a creditor against a debtor, who was a trader; distribution of bankrupt's effects equally among his creditors. A discharge to be obtained by the debtor from his debts, upon obtaining the consent of a given majority of his creditors.

It was a proceeding for the benefit of creditors, as are all laws for the collection of debts, of which this was one; but with liberality toward the debtor, who by misfortune so frequently attending trade, became unable to pay his debts, in allowing him a discharge from those debts, upon obtaining the consent thereto of a given majority of his creditors. Even this provision for a discharge, we are told by Blackstone, was intended for the benefit of creditors, as it influenced debtors to act with economy, industry, and honesty, and make a full surrender of their property, without which they could not hope to obtain the consent of their creditors.

The whole system was founded on the principle that a trader, who owed debts in various parts of the country, and was fraudulently making way with his property, instead of paying his debts with it, should have that property taken away and placed in the hands of trustees or other officers, with which his debts should be paid; and each of his creditors, whether absent or present, have his fair dividend.

We are told by Mr. Madison, who has, not inaptly, been called the father of the constitution, that a uniform system of bankruptcy "would prevent so many frauds, when the parties, or their property, may lie or be removed into different States, that the expediency of it seems not likely to be drawn in question."—Fed., number 42. This reason for the adoption of the clause in regard lo bankrupts, was published by Mr. Madison after the constitution was proposed by the convention, but before it was adopted by the States; was intended to explain the grant of power to Congress, and to induce the States to accept the constitution, and no doubt had its effect. The frauds of whom, the removal of whose property, are here spoken of? Certainly the frauds of the debtor, the property of the debtor.

We have another almost cotemporaneous exposition of this grant of power to Congress. It is the act of Congress of 1800, "to establish a uniform system of bankruptcy throughout the United States." It is altogether, in its principle and material features, like the English system; a proceeding by creditors against debtors who are traders; distribution of bankrupt's effects equally among creditors; a discharge of the bankrupt from his debts, on the consent obtained of a given majority of his creditors.

I have now, I think, shown that the bankrupt system intended by the framers of the constitution, and to establish which power was given to Congress, was a system for the benefit of *creditors*, to enable them to collect their just debts, and to prevent the frauds of debtors who might remove their property and themselves into different States.

I will now show that the act we are now considering is solely and entirely for the benefit of debtors, and to enable them to avoid their debts, and therefore opposed to the whole intent, spirit, and object of a bankrupt law. For this purpose I will here further notice some of its provisions.

1st. The debtor selects his own time to commence proceedings, when he may have entirely squandered his property, and when nothing can be found. It is not even necessary that he should have been sued, or threatened with a suit, or even asked for the debt.

2d. He is allowed to select the State and county where he will commence proceedings. For this purpose he can change his residence or business to any place he may think most favorable. He can thus go where nobody is likely to detect his frauds.

3d. He may have spent all his property in idleness, riotous living, debauchery, or gambling in stocks, or wild speculations. It will not affect him; and he is entitled to his discharge equally with the most prudent, industrious, and economical person.

4th. If he does not surrender to his creditors one cent's worth of property, he may have property reserved to him, to the amount of $300, for his own use; and also his wearing apparel, and that of his family, which has been held, by some, to include jewelry.

5th. If a majority of his creditors should object to his discharge, it will only give him an additional privilege—that of demanding a jury, and taking the cause away from the court. Or he may appeal, even before the cause is tried, and is allowed ten days to appeal in. No such privileges are given to creditors.

6th. After the court disposes of the matter, or decides the cause against him, and refuses the discharge, he can then have it referred to a jury, although already tried and decided by the court, which, heretofore, has never been allowed in any case, either in law or equity. The creditor is allowed no such privilege.

7th. In such cases, no provision is made by the act to allow the creditors a trial by jury.

8th. An appeal is given to the debtor; none is allowed by the act to a creditor.

9th. When the cause is removed into the appellate court, the debtor can demand either a trial by jury, or a trial by the court. The creditor has no such privilege.

10th. The debtor may take the chance of a decision in his favor, by the court; if in his *favor* it will be conclusive. If the court decides against him, then he may demand a jury, and have another chance. If the court decides against him, he can have another chance by *appeal.* In the appellate court, if he thinks the court is likely, from previous decision, to be against him, he can take the chance of a jury. If he thinks the jury is likely to be against him, he can take his chance with the court. If some of these chances do not hit, there is no "uncertainty in the law." The creditor has no choice; any decision *against* him is to be final, and scarcely any in his *favor* is allowed to be final or conclusive.

11th. The English bankrupt law, and the act of 1800, gave the appointment of the assignee to the *creditors*, because they alone were interested. No such privilege is given by this act.

12th. The commissioner is to be appointed in the county where the *bankrupt* lives.

13th. There is no punishment for frauds.

14th. To conclude, the debtor is to get a discharge from all his debts, without the consent of any creditor. It applies to debts contracted *before*

the passage of the act, and of which creditors could have had no idea at the time they gave the credit.

May I not here inquire, whether it is fair to construe this grant of power, intended for the *benefit of creditors*, and to enable them to collect their just debts, so as to authorize the passage of a law *solely* for the benefit of *debtors*, and to enable them to *avoid and discharge* their debts?

Again: A clause had been introduced into the constitution, prohibiting the States from passing any law, impairing the obligation of contracts, because, as was said by the members of the convention, it was immoral, contrary to the first principles of justice; and a power that ought not to be exercised by *any* legislative body. Would the States have ratified the constitution, and submitted to such a prohibition on themselves, *for such reasons*, if they had understood that Congress could, at its pleasure, under color of bankrupt laws, authorize the abrogation of all contracts?

It has been said, that the debtor required by the act to surrender his property; and, therefore, it would seem, it is not a violation of contract. I will presently show, on the highest authority, that a discharge, on the application of the debtor, from his debts, without the consent of his creditors, is not the less a violation of the contract because there is a surrender of property, supposing the debtor to have any. But I wish now to inquire, whether there is anything in any system of bankruptcy, known to the convention, which more required the surrender of property, than the consent of creditors to a discharge from debts? And if Congress can authorize a discharge from debts, and dispense with the consent of creditors, why may it not authorize a discharge, and dispense with a surrender of property.

A question of much importance remains yet to be disposed of, *whether the act violates contracts: and if so, whether the Congress has authority, under the constitution, to pass a bankrupt act, which violates contracts.* The first branch of this question can not be difficult to answer. With the mere *moral* obligation, however sacred, we have nothing to do; it is a matter *in foro conscientia*, which Congress could not destroy if it would; Ogden *vs.* Saunders 12; Wheat 258, 318, 337. It is the *legal* obligation which the laws have to do with. What is the legal obligation of a contract? It can be nothing else than the obligation of performance which the law imposes and enforces. An act, therefore, which declares that a person shall be discharged from all his debts, contracts, and engagements; and that no suit shall be maintained thereon; and this to apply to contracts entered into *before* the passage of the act; and also without performance or payment of the debt, and without the consent of the other party, would appear to be as clear a violation of the contract as could be imagined. It has been said that the surrender of property is a compliance with and fulfilment of the contract; and, therefore, when that is done, there can be no violation of the contract. If A gives his note to pay B a sum of money on a certain day, it is difficult to conceive how the surrender of property, which does not pay the amount of the note, or perhaps one cent in the dollar, can be a compliance with the contract. But the common sense, the experience, and understanding of the whole community is opposed to this notion. The law, existing at the time the contract was made, authorized no such thing. And do we not all know, that thousands get credit on account of their industry and capacity for business, their supposed honor and integrity, and on the hitherto well-founded opinion, that the law would compel the payment of just debts; and not merely, and frequently not at all, on the property they may happen to possess. Indeed, what

signifies the requirement to surrender property, when it has already, in many cases, been spent in wild and visionary speculations (differing but little from common gambling) and extravagant living; and where, in nine cases out of ten, nothing is set forth in the schedules, but what the same act authorizes them to retain?

The Supreme Court of the United States has decided this matter. In Sturges *vs.* Crowninshield; 4 Cond. Rep. 415, the court says: "A contract is an engagement in which a party undertakes to do or not to do a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. In the case at bar, the defendant has given his promissory note to pay the plaintiff a sum of money on or before a certain day; the contract binds him to pay that sum on that day; and this is its obligation. Any law which releases a part of this obligation, must, in the literal sense of the word, impair it; much more must a law impair it, which makes it totally invalid, and entirely discharges it. It has been contended, that, as a contract can only bind a man to pay the full extent of his property, it is an implied condition, that he may be discharged on surrendering the whole of it. But it is not true that the parties have in view only the property in possession when the contract is formed; or that its obligation does not extend to future requisitions. Industry, talents, and integrity, constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs the obligation." The same principle decided in McMillon *vs.* Niell, 4 Cond. Rep. 424; and in Farmers and Mechanics' Bank of Pennsylvania *vs.* Smith, 5 Cond. Rep. 35.

The other branch of the question remains: Has Congress authority to pass a bankrupt law, impairing or destroying contracts?

It has been said that, although there is a provision in the constitution of the United States, which forbids any *State* to pass laws impairing the obligation of contracts, yet there is no such restriction on Congress. This view of the subject makes it proper to look a little into the nature of the State and federal Governments. The government of the United States was constituted for certain specified purposes; it can exercise no power that is not granted in the constitution; and, therefore, when Congress attempts to exercise a power, it should be able to point out the grant of that power in the constitution. The States, or the people of the States respectively, have all the power not delegated to the General Government. This was the opinion entertained by the makers of the constitution before the adoption of the 10th amendment, and arises from the very nature and object of the General Government.

By Mr. Madison, before the constitution was adopted by the States—"The powers delegated by the proposed constitution to the Federal Government, are *few* and *defined;* those which are reserved to the State Governments, are numerous and *indefinite.*" Fed. 233, and Fed. No. 84.

But, out of abundant caution, the 10th amendment was adopted—"The powers not delegated to the United States by the constitution, nor prohibited by it to these States, are reserved to the States respectively, or to the people."

By the Supreme Court of the United States—"The Government of the United States can claim no powers which are not granted to it by the constitution; and the powers actually granted must be such as are expressly given, or given by *necessary implication.*" Martin *vs.* Hunter's lessee, 3 Cond. R. 583.

It is, therefore, apparent there is no need of any *restriction* on Congress in regard to the power to impair contracts. If the power is not *granted* in the constitution, it does not exist. A restriction on the *States* was necessary, and was inserted in the constitution (art. 1, sec. 10): "No State shall pass any law impairing the obligation of contracts." It is not pretended there is any express grant of power to Congress to impair or annul contracts; it must, therefore, if it exist, be *necessarily implied* from the grant of some other power, and can only be so implied, and is only claimed, as far as regards this case, from the "power to establish uniform laws on the subject of bankruptcies." Does, then, the power to establish uniform bankrupt laws, *necessarily imply* a power to annul contracts?

So far from a bankrupt law necessarily implying a breach of contract, it surely does not imply it at all. I have already shown that the bankrupt laws of England, in existence for many generations before the convention set, were laws for the *benefit* of creditors—intended to enable them to collect their debts from those who were squandering their property, instead of paying their debts, or were practising frauds; and that they required the written assent of a majority (four fifths) of these creditors to a discharge, and that it should also appear that the debtor had acted fairly; and that the bankrupt law passed by Congress in 1800 was substantially the same in effect. Bankrupt laws never were considered in England as violating contracts. They authorized a proceeding *by* the *creditors*, and for the *benefit* of the *creditors;* and *they* could not complain. The bankrupt was only required to perform his contract; and he could not complain. Where, then, could there be a violation of contract?

If it be said that a creditor, not consenting to a discharge, might complain of a breach of contract when his debt was discharged, it can readily be answered—that the proceeding being by the creditors for the common benefit, a majority in their case, as in all cases where those having a common interest act for the benefit of all, must govern. This principle lies at the foundation of our government. It is a government of the people—the people make the laws—yet all may not consent. Taxes are laid only by consent of those to be taxed; yet every individual does not give his consent. "Government derives its just powers from the consent of the governed;" yet all do not consent. If a majority of the creditors were not allowed to act in a proceeding for the benefit of all, the interest of *all* might be sacrificed by the obstinacy of a *single* creditor. The act of the *majority* is, therefore, considered the act of *all.* Nor was there a hardship on any creditor; for the English law required four fifths to consent, and the act of Congress of 1800 required three fourths.

I repeat, therefore, that the bankrupt laws of England were never considered as violating contracts; and it is believed no writer or judge can be named who so declared. Indeed, this, I believe, is conceded. (See opinion of Mr. Justice Johnson in Ogden *vs.* Saunders, 12 Whea. 287.) There is another view of this part of the subject. The Supreme Court of the United States have decided, and declared it to be the settled opinion of the court, that a bankrupt law which applies only to contracts made *after* its passage, does not impair the obligation of contracts, on the principle that those who enter into contracts have an eye to the laws under which they are made, and are to be executed. (Ogden *vs.* Saunders, 12 Whea. 213.) How, then, can it be said that the power to pass a bankrupt law *necessarily* implies a power to violate contracts?

I will go further, and show that the grant of power to Congress to establish uniform bankrupt laws, could not have been *intended* either by the convention which framed, or the States which adopted the constitution, to authorize Congress to pass a law to violate or annul contracts. That such a power was viewed by them as immoral, unjust, and mischievous, in the highest degree—a power that could be exercised only for evil, and never for good; and that *no legislative body* ought either to possess or exercise it.

The Congress of the old Confederation adopted, on the 13th July, 1787, a constitution or ordinance for the government of the Territory of the United States northwest of the Ohio river. In this they ordained and declared certain great moral and political principles, "which shall be considered as articles of compact between the original States and the people, and the *States* in said Territory; and for ever remain unalterable, unless by common consent." Among which, is the following: "And, in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with, or affect private contracts or engagements *bona fide*, and without fraud previously formed."

Here was a great principle established by the people of the United States. It is also well known that many of the most distinguished members of the convention were members of Congress. In the same year, the convention which formed the constitution sat; and, on the first September, the clause in regard to bankruptcies was inserted in the constitution. Can it be supposed that the people of the United States would declare this great principle, which was "for ever to remain unalterable, unless by common consent;" and, then, in one month and a half, authorize Congress to pass bankrupt laws to violate contracts? And this, too, by the constitution which, in the second line, they have assured us was made "to establish *justice*," and in violation of what they had declared was "the *just* preservation of rights and property!" And for what was this great and sacred principle to be overturned? To enable Congress to establish uniform laws on the subject of bankruptcies! a thing deemed of so little consequence itself, that it was not even mentioned until all the plans and principles had been submitted, debated, and voted on; and not until the principles to be inserted in the constitution had been established by votes of the convention, and referred to a committee of detail, and reported on by that committee. (See Madison Papers.)

May I here stop to inquire whether that compact has ever been altered by the common consent of the original States, and the people and States in said Territory—now four States and a Territory?

Fortunately for the character of the august body that framed the constitution, we are not left to conjecture as to their intention on the subject. A clause was introduced into the constitution, declaring that "No State shall pass any law impairing the obligation of contracts." Was this clause introduced because the States could not be trusted, or because it contained a great principle of justice which no legislative body should violate? The answer is this: It was a great principle of justice which no legislative body should be permitted to violate; and an express provision to restrain the *States* was introduced, because they would retain all the power which was not granted to Congress, or in regard to which they were not limited; and the prohibition was not extended to *Congress*, because Congress would only possess the powers which were granted by the constitution. No power had been granted to impair contracts; and, therefore, any limitation of, or re-

striction on, such power, would have been useless, and, perhaps, mischievous, as the *limitation* might imply the *grant* of the power.

Hear Mr. Madison, *the father of the constitution*: "Bills of attainder *ex post facto* laws, and *laws impairing the obligation of contracts*, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that *additional fences* against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark, in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments, as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public counsels. They have seen with regret, and with indignation, that sudden changes, and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative act is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society." Fed. No. 44, p. 224. This was written after the adjournment of the convention, but before the constitution was adopted by the States, and is the cotemporaneous exposition of the constitution by the *father* of the constitution. I have given the whole of this passage—for every word and sentence should be weighed and understood.

"A law impairing the obligation of contracts," is declared to be "contrary to the first princples of the social compact, and to every principle of sound legislation," and additional fences and a constitutional bulwark in favor of personal liberty and *private rights* were added. And yet it is contended that this very convention inserted into the constitution a provision to authorize Congress "to impair the obligation of contracts," and Mr. Madison himself voted for it! See Madison papers, 1448, 1481. Very singular "additional fences and bulwarks in favor of *private rights!*" Their "regret and indignation at legislative interferences affecting private rights" had suddenly evaporated! They forgot their fears of "jobs in the hands of enterprising and influential speculators." Can these opinions be tolerated for one moment? And this, too, of a body of men distinguished beyond all which ever existed, by wisdom, patriotism, and disinterestedness?

We have, also, the opinion of the Supreme Court of the United States, as to the intention of the convention in inserting the clause that no State shall pass any law impairing the obligation of contracts. In Sturges *vs.* Crowninshield, 4 Cond. R. 420, the Supreme Court says: "To restore public confidence completely, it was necessary not only to prohibit the use of particular means by which it might be affected, but to prohibit the use of any means by which the same mischief might be produced. The convention appears to have intended to establish a *great principle, that contracts should be inviolable.*" Again: "These words prohibit the passage of any law discharging a contract without performance."—Ibid 421.

Where was the *establishment* of the *great principle*?—and how were contracts to be *inviolable*, if the power had been granted to Congress, to violate them, or impair their obligation under color of a bankrupt law? What is meant by the inviolability of contracts? The court has told us, it is the prohibition of "any law discharging a contract without performance."

In principle there can be no difference between the right to a piece of property and the right to the price of that property when sold. I have a right to my land, and an equal right to the price of that land, should I sell it. Indeed, the right to either generally depends on *contract*, and they are both considered rights of property. In Wilkerson *vs.* Leland and others (2 Pet. R. 659), the Supreme Court of the United States says: "That government can scarcely be deemed to be free, where the rights of property are left solely to depend upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in this country would be warranted in assuming, that the power to violate and disregard them, a power so repugnant to the common principle of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well-being, without very strong and *direct* expressions of such an intention."

Those who claim this terrible power for Congress—a power which, if it exists, would, according to the above opinion, prove us to be scarcely free, and which is declared to be contrary to the fundamental maxims of a free government—are obliged to claim it, not as lurking under any general grant of legislative power, or as being implied from any general expressions of the people, but as derived from a grant of power which I have already shown has been exercised in the country from which we borrowed our system of jurisprudence and laws, for many generations, without ever there being understood as implying any such power. From a *general* grant of legislative authority, the power to pass laws which would impair the obligation of contracts, might be inferred; but from a grant of power in *favor* of contracts, and to *enforce* and *carry them into effect*, it would, I think, be monstrous to imply a power to *destroy* them.

The people of the several States were content that their Legislatures should be prohibited from passing odious and tyrannical laws, and hence they adopted the constitution with the clause in favor of personal liberty and private rights—that "no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." They were assured, and no doubt believed, that the acts therein prohibited "were contrary to the first principles of the social compact and to every principle of sound legislation," and were prohibited *for that reason*. But suppose, when the conventions in the several States assembled to consider of, and accept or reject the constitution, thus offered to them, they had been informed that this power of doing mischief had been prohibited to *them*, but had been granted to the *Congress*, by which the evils apprehended might be extended, in one hour, all over the Union; and that it was *only the States* which could not be trusted in regard to private rights: what would they have said, and what would they have done? It is well known that in many, if not all of the State conventions, there were numbers of powerful and vigilant opponents to the constitution. Would they have adopted the constitution, and

that without one word of comment or objection on account of such glaring inconsistency on the part of the federal convention, and such implied insult to the States?

The truth, however, seems to be, it was reserved for modern times to make the discovery, that the power to violate contracts was a necessary incident to the power to pass a bankrupt law, and was alike unknown in the United States and in England, at the time of the adoption of the constitution; and that when the convention permitted the States to retain the power to pass bankrupt laws, and prohibited to them the power of violating contracts, and gave the power to Congress to pass bankrupt laws, and did not also grant the power to violate contracts, it was believed the one power was neither necessary or proper to the exercise of the other.

It was said by Mr. Madison, in the passage above quoted, that "one legislative act (interfering with contracts) is but the first link in a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding." If the present act be sustained by the judiciary, and tolerated by the American people, we may expect to see, on the part of *Congress*, bankrupt laws which will discharge contracts *without* a surrender of property; and, if the present act be constitutional, no court can say the *other* will not be so. And on the part of the *States*, we may see their debts generally repudiated, there being no reason why the people of the States in their *collective* capacity, should not be discharged from their debts, as well as the same people in their *individual* capacities. If it be right in the latter, it must be so in the former case. In a moral point of view, perhaps, there is in some cases, less objection to the discharge of the debts of the community, than to those of individuals; for, in the former case, the generation called on for payment, may not be the one which incurred the debts, and may have received little or no advantage therefrom; whereas, an individual is never called on to pay a debt, which *he* did not contract, unless it be the debt of an ancestor, who not only obligated him to pay, but left abundant means so to do. A State frequently has nothing but its future acquisitions, arising from taxes, the fruits of the industry of its citizens, to pay enormous debts contracted by another generation. The individual, even if he surrenders his property, has *his* future acquisitions, also, arising from his industry. Thus, if the present law be justifiable and constitutional, so would laws be justifiable on the part of Congress and the several States, repudiating their "debts, contracts, and engagements." But one of the remarkable inconsistencies of the times is, that those who are loudest in *denouncing* repudiation by the *States*, are the loudest, also, in approving *repudiation* by *individuals*.

I have not said anything in regard to the distinction between bankrupt and insolvent laws; not but what there is a plain and obvious distinction; and, not but what the act of Congress has many of the features of an insolvent law, the power to pass which, I think, is reserved to the States; but because the present act, take it altogether, according to my view of the subject, is neither a bankrupt or insolvent law; but simply an act to discharge debts without payment. If the Congress, instead of entitling the act, "An act to establish a uniform system of bankruptcy," had given it a title corresponding with its provisions, "An act to discharge debts without payment," but little difficulty would have arisen. We are told by the Supreme Court of the United States, in Craig *vs.* the State of Missouri, that the constitution was intended to prohibit *things*, not *names;* and that the giving *a new name* to an *old thing*, would not take it out of the prohibition of the constitution. If

the giving a *new name* to an old thing would not change the case, I presume the giving an *old* name to a *new* thing would hardly charge it.—4 Pet. R. 433.

We have been sometimes told that the constitution referred to the colonial laws, when it adopted the provision in regard to bankruptcies. Again, we are told that every civilized nation had its bankrupt laws; and that the convention did not confine itself to the English law. In the examination I have been able to give the laws of the colonies, and the laws of the States up to the year 1787, in which year the convention sat, I have not been able to find any law like the act under consideration. They have not told which of the colonial acts they refer to—by what colony passed, or when passed. But suppose we were able to find a solitary act like the one under consideration. I have already shown that, as it impaired the obligation of contracts, it was, according to the oft-repeated decisions of the Supreme Court, condemned by the constitution. An act condemned by the constitution, is, then, the act to which the convention referred as a pattern. The convention brands such an act, as "contrary to the first principles of the social compact, and to all the principles of sound legislation," prohibit it to the States, and at the same time adopts its principles for legislation by Congress.

Again, as to the bankrupt laws of civilized nations; they can not, certainly, refer to the great and wise system of laws called the civil law; the basis of the laws of most of continental Europe. The "cessio bonorum" of the Roman or civil law, allowed a discharge from imprisonment, but the future acquisitions of the debtor were liable for his debts. The civil law had no other system. Cooper's Justinian, 348, § 40. This was also the law of France, Germany, and Holland, and generally of continental Europe. The English insolvent system, act of 32 George II., commonly called the Lords' act, and the more recent English statutes of 33 George III.; 1 George IV.; 3 George IV., and 5 George IV., have gone no further than to discharge the debtor's person. So of the insolvent laws of Scotland. 1 Kent's Com., 422. Thus we find no law to which the convention could have had reference, like the present act of Congress.

The truth seems to be, that this rejection of a certain and known standard of meaning, found in the English bankrupt laws, and referring the question to laws, God only knows when and where passed, or where they exist, is only intended to give unlimited power to Congress over all the contracts and business of the country. And we have been told by Junius, and the present act will illustrate it, that persons are never very anxious to secure power, who do not intend to use it.

I will here notice a different view of the powers granted to Congress by the constitution, in regard to bankruptcies, taken by an eminent jurist. In 3 Story's Com., 13, 14, in note 3, it is said: "Perhaps, as satisfactory description of a bankrupt law, as can be framed, is, that it is a law, for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or *unwilling* to pay their debts. And a law on the subject of bankruptcies, *in the sense of the constitution*, is a law making provisions for cases of *persons failing to pay their debts.*"

It will be apparent to the most superficial thinker, that the definition or description, like many of the doctrines and opinions of that eminent jnrist, would infallibly draw into the vortex of federal power, the whole business of the country. Every case of the non-payment of a debt, is a proper subject for a law of Congress and for the jurisdiction of the federal courts. No ac

of bankruptcy—no insolvency—no act of fraud or removal of property, is necessary to give Congress and the courts of the United States jurisdiction. Any "person failing to pay his debts," is the subject of a bankrupt law. A citizen worth a million, who lets a day pass over, after the debt of one dollar becomes due, is a bankrupt, and the subject of a bankrupt law; the whole of his property may be taken and given to an assignee. Congress can thus regulate all the business of the country and the collection of all debts. And whenever it pleases, discharge all debts, without the consent of the creditors or the surrender of property; for neither are necessary according to the definition. What an immense train of criminal law may also follow! I have already shown that the grant of power in regard to bankruptcies, was not considered of any importance by the convention; and that, notwithstanding the violent objections to parts of the constitution, and the great jealousy entertained of many of its provisions affecting the rights of the States, yet no one seemed to consider the bankrupt clause of sufficient importance to merit an objection. As Mr. Madison said: "The expediency of it seems not likely to be drawn in question." Yet, this spot in the heavens, no bigger than the "ox's eye," has *now* become a vast and portentous cloud, from which a tornado may issue, that will bury in ruins, all the reserved rights of the States.

We have often been told that a constitution can not go into *detail;* it can only contain *principles;* and therefore, in the interpretation of it, we must look at its *intention* and *spirit.* He that will thus interpret the constitution of the United States, will hardly be able to come to the conclusion of the learned jurist, that his description of a bankrupt law, in the sense of the constitution, "is as satisfactory as any that can be framed." Indeed, the Government of the United States, with such interpretations, would shortly be a government without limit.

Surely if the convention had intended to give the United States jurisdiction in *all cases of indebtedness*, it was idle to define with such precision the powers of the judiciary; and worse than idle to specify only *one* class, and that a very *small* class of debtors, to wit, bankrupts. Nor can I imagine that the States would have adopted the constitution, without objection to a power so unnecessary to the government of the United States, so unlimited and so portentous.

I confess, however, that I am no latitudinarian in my construction of the powers granted to the Government of the United States. I believe it should be confined within the grants of power; and if more power be necessary, let it be granted by amendments, and not usurped; for one usurpation will be but a link in a long chain of usurpations, until, at last, the Government of the United States will be as unlimited as that of Turkey or Russia.

I have thus given, generally, my views on this subject, and it now only remains to notice some of the objections to those views, presented by the very able argument at the bar. It is said that "the word bankruptcy, has a *legal* and also a *common* signification." It seems to be admitted, that we are to look to the English law, as it existed at or before the time of the convention, for the *legal* meaning. But, "it is said the convention used the word in its *common* meaning; and that the *common* meaning is insolvency, bankruptcy—inability to pay debts," &c.

The answer to this seems not very difficult. The convention were applying the word to a *legal* subject—the making *laws* in regard to bankruptcies. They were defining the nature and extent of the *laws* in regard to

that matter, which might be made by Congress. Now, the term had a *certain, precise*, and *fixed legal meaning*, and had been thus certain, precise, and fixed, for nearly 200 years. This was well known to the convention. The book which contained the law and the definitions, and was then and is yet of the highest authority, was in the hands of the members, and was frequently referred to by them. It was not only in the hands of the members, but of every person of the least pretension to learning. It appears that the members were exceedingly anxious to select words which would mark with certainty and precision the grants of power they were making: the chairman of the committee (Mr. Rutledge) to which the subject was referred, and who reported the phrase now in the constitution, received his legal education at the Temple (London). Can we suppose for a moment, that the *legal* signification was rejected and the *common* signification taken? This common signification was uncertain and indefinite, and nearly as various as the different lexicons.

By adopting the *legal* signification, you preserve the inviolability of contracts, which has been shown to have been a great object with the convention; you avoid uncertainty; you leave the States in possession of their just and necessary powers in regard to contracts and the collection of debts, and leave the United States in possession of all power necessary to be used by a *general or national* government; which of course can be only power of a *general or national* character.

It is said, also, that "bankruptcies include insolvencies; and, of course, that Congress has power over both."

I have already shown that Blackstone's Commentaries, a work of the highest possible authority, was in the hands of the members of the convention, and frequently referred to. I will here give the definitions of both words, as contained in that work. "Bankrupt, a trader who secretes himself or does certain other acts tending to defraud his creditors."—2 *Blackstone's Commentaries*, 285.

"Act of insolvency; which is an occasional act frequently passed by the legislature, whereby all persons whatsoever, who are either in too low a way of dealing to become bankrupts, or not being in a mercantile state of life are not included within the laws of bankruptcy, are discharged from all suits and imprisonment, upon delivering up all their estate and effects to their creditors, upon oath."—2 *Blackstone's Commentaries*, 484.

Here it will be seen that insolvency, which is inability to pay debts, has nothing to do with bankruptcy. In fact, bankrupts are frequently far from insolvent. It is the commission of acts tending to defraud creditors, which makes bankrupts, and no such act is required to make an insolvent. Insolvents are only discharged from *imprisonment*.

Here, then, is jurisdiction given to Congress over a small—a *very small*—class of debtors: "traders who secrete themselves, or do certain other acts tending to defraud their creditors;" and the attempt is now made to take jurisdiction, or assume power over *all insolvents*. Let us notice the relative numbers of each class. There are now, in this court, near about nine hundred cases. Of these, two are involuntary bankrupts, or bankrupts proper, and the remainder are insolvents; that is, one bankrupt to four hundred and fifty insolvents. But Mr. Story proposes to extend it, or maintains that it is already extended, by the constitution, to all cases of persons failing to pay their debts, without regard to insolvency even. This would extend the power of Congress and the federal judiciary, in ordinary times, over, I pre-

sume, two thousand cases, for every case of bankruptcy proper; and, of course, diminish the power of the States in the like proportion. The power, if it exists at all in the Congress and United States courts, is *supreme*, and can annul all the laws of the States, as to property and suits. It is already declared, we are told from the bench of some of the United States courts, that the insolvent laws of the States are wholly abrogated, and everything done under them, since the bankrupt act went into effect, is a nullity. Thus, all the business of the country, and of course the property, is to be drawn into the vortex of federal power.

If the constitution intended to give the jurisdiction in all cases of *insolvency*, as well as *bankruptcy*—or, as Mr. Story would have it, in all cases of *failure to pay*, without either bankruptcy or insolvency, it would have been as easy to say so as to say what it did say. But would the States have submitted to a power so unnecessary in Congress, so dangerous, and so prodigious in extent? Look at the consequences. Here is a State of upward of 70,000 square miles in extent; all the business in regard to insolvents, as well as bankrupts, is to be transacted in the United States court at the city of Jefferson. All who have an interest in a case, either as petitioners or creditors, must go to that court, and there remain, perhaps with a number of witnesses, delayed by the accumulation of business in the one court, for months. How would it be if, according to Mr. Story, the power extended to all cases of failure to pay a debt, as well as to cases of insolvency and bankruptcy. In a few years we would see half the people of the State attending court at the same time; and suits, by the accumulation of business, would be delayed in that court, as they were in the court of chancery in England, for fifty or sixty years. In the meantime, the laws of the State, like those of a colony or territory, would be, as far as concerned these subjects, entirely abrogated. Is this like having ten or fifteen State circuit judges, one of whom travels into each county three times a year (a county court also in each county, and justices of the peace in each township), bringing justice to every man's door?

It is said, that "the power to annul contracts between individuals is a necessary power; and, unless the Congress possesses it, it has been annihilated."

If what the Supreme Court of the United States and Mr. Madison have said, in the passage already quoted, be correct, it would follow that the convention were of opinion the power to annul the contracts of individuals might well be annihilated. I do not, however, say, that the United States, under the treaty-making power, might not, for great national purposes, impair the obligations of, or annul certain contracts. But it would be done for the good of the public, and the United States would be bound to make good the loss to individuals. The fifth amendment to the constitution provides, that private property shall not be taken for public use, without just compensation; and certainly under this general phrase would be included the rights of contracts. And this may be another cause for there not having been inserted into the constitution an express prohibition on Congress, in regard to impairing the obligation of contracts. If the Government of the United States, in the time even of its greatest need, can not take private property for the public use without just compensation, is it to be believed that it may take private property, or the price of that property, from one, and give it to another, without any compensation, and without any benefit to the public? I think, therefore, that the power to take one man's property and give it to another,

and to absolve a man from his just debts and contracts, without compensation, is, and should be annihilated, in these United States.

It is said: "That if the power be given, it is no answer to object that it may be abused, or rather, that because it may be abused, does not prove it was not granted, for that any power may be abused." That is granted. But when we are inquiring what power was *intended* to be granted by certain words, and if we attach a particular meaning to the words, it will amount to a grant of power both unnecessary to that Government and dangerous, and inconsistent with the nature and objects of the Government, contrary to the sentiments expressed by the founders of that Government, and such as would lead to consolidation, we should reject such interpretation if another interpretation may be given which is unexceptionable.

It is said: "The people of the United States would not have adopted the constitution if it had been understood; that we were bound to the English system of bankruptcy as it existed at and before the time the convention sat, and which could not be altered or amended."

No one, I believe, has maintained that the English system of bankruptcy was adopted in regard to *details*. It is provided in the sixth amendment to the constitution that, in criminal prosecutions, the accused shall enjoy the right to a trial by jury, and the seventh amendment provides for the trial by jury in suits at common law where the amount in controversy exceeds $20.

Now, no one has contended that we were bound to summon and empannel a jury as in England, or that the qualifications of jurors must be the same. But all agree that the substance of a trial by jury, as known and established in England for several hundred years, must be preserved. Could Congress direct a trial by jury, and provide that the jury should consist of three men, and that a majority should convict? No person will assert the affirmative. If the *Parliament* should change *their* trial by jury, and provide that a jury should consist of three men, and that a majority should convict, would *Congress* be at liberty also to change *our* trial by jury in the same way? No person will assert the affirmative.

If Congress can not change the system of jury trial in substance, can it change the system of bankruptcy in substance? As gentlemen think a much better system of bankruptcy is discovered than that known to our ancestors, and which was adopted by the convention, so, no doubt, they will discover a much better system of trials than that by jury. But I think we are deprived in both cases of the benefit of their discoveries by the provisions of the constitution.

It is said: "That any bankrupt law which is retrospective, impairs the obligation of contracts where there is a minority not consenting to the discharge." This may be the case, and candor obliges me to say I entertain doubt on the subject; yet it does not affect the argument. As a bankrupt law is intended, like all other laws for the collection of debts, for the benefit of creditors, and, as *in this case*, they have to act *together* for the benefit of all, and some three fourths or four fifths are to consent to a discharge, which is still for their benefit, has any one creditor a right to complain of a mere *technical* disregard to his contract? The proceeding is in truth and in fact for his benefit; a given majority must consent, and it must fully appear that the bankrupt has acted honestly. The constitution was intended to establish *principles*, not *technicalities;* and where the *substance* was taken care of, it might well disregard the *shadow*. But if it be a violation of contract, it can be only to the extent known to a system of bankruptcy, which is merely

technical, and can not be made, by any just interpretation, to extend to a substantial violation and entire abrogation of the contract, to the ruin of all the just hopes and expectations of the creditor.

It has been said: "That *all* the power in regard to bankruptcies is given to Congress with only one exception—that of uniformity, and that we are not at liberty to make another exception—that it shall not violate contracts." It is admitted that the power is given with only the one exception, but still it is only the power to pass a uniform *bankrupt* law. What constitutes a bankrupt or bankruptcies is the question we are considering. If a bankrupt law, within the meaning of the constitution, does not substantially violate contracts, then the power to violate contracts is not given. It is not an exception or thing taken out of the grant, but never was included in it.

This, however, is an exceedingly technical interpretation, is unworthy of the subject, and can never be applied to a *constitution* which can only embrace *principles*. We must look at the *spirit* of the instrument and the *intention* of its authors.

It has also been said: "That, as Congress had authority to pass bankrupt laws and thereby violate contracts, every person who made a contract must have made it with an eye to this power in Congress; and the act, when passed, can not, therefore, be considered retrospective." Now the doctrine of the Supreme Court on that subject, as already shown, is that a law in existence when a contract is made becomes part of that contract. But how a power not exercised, or a law not in existence at the time a contract is made, can become part of that contract, is beyond my comprehension. But it is also a begging of the question. The question is, Whether Congress has power, under color of a bankrupt law, to violate contracts. The gentlemen *assume* that Congress has the power (the matter in dispute), and then say every one who contracts must be presumed to contract with an eye to that power.

It is further said: "That the convention in New York which ratified the constitution for that State, proposed an amendment, limiting bankrupt laws to traders; and that it was not adopted." This only proves the convention in New York believed the system ought to be limited to traders, but that there was doubt whether it was so limited, and should be placed beyond doubt. That it was not adopted by the necessary number of States; that is, three fourths, only proves that they did not think there was any doubt, or that it should be left as it was, whatever it might be. If they had adopted the amendment proposed, it would have been taken as an admission that the English system had not been adopted by the constitution, which, I presume, they would neither have admitted then nor would they do so now.

I have deemed it necessary to a correct understanding of the subject to examine generally the doctrine in regard to bankruptcies, but intend to confine the opinion to the case now before us. The court regrets exceedingly that an imperious sense of duty compels it to declare that the act of Congress, so far as it undertakes to discharge a debtor from debts contracted before the passage of the act without payment, and to discharge his future acquisitions of property from liability to those debts, without the consent of a given majority of his creditors, is unconstitutional.