

Case No. 4,748.
[6 Ben. 473.]¹

IN RE FERRIS ET AL.

District Court, S. D. New York.

April Term, 1873.

MARSHAL'S RETURN—SERVICE OF NOTICE ON CREDITORS.

1. In a proceeding in involuntary bankruptcy, the marshal returned to the warrant that he had sent notices to the creditors named on a schedule delivered to him by the attorney for the petitioning creditor. *Held*, that the return was defective, and must be amended.
2. The 12th section of the bankruptcy act [of 1867 (14 Stat. 522)] and the 13th general order must be complied with, as to the manner of serving such notices.

In this case, which was a proceeding in involuntary bankruptcy, the marshal returned to the register the warrant, with a return thereto that he had published notice by advertisement and that he also, within fifteen days after the date of the warrant, sent written or printed notices to the bankrupts [Josiah S. Ferris, Jr., and Florence Mahony], "and to the creditors named on the schedule delivered to me by the attorney for the petitioning creditor, and herewith returned." Objection was made to the sufficiency of the return, in that it did not show that the marshal had fully obeyed the mandate of the warrant, in the matter of notifying the creditors whose names should be given to him by the bankrupts, or, in default thereof, had not shown why he had not done so, and that it did not appear that the statements on which his return was made were in writing, and sworn to by the parties making them. The register thereupon adjourned the first meeting of creditors to a subsequent day, that the marshal might amend his return, so as to show why he had not procured a list of creditors from the bankrupts, or prepared a list from the books and papers of the bankrupts (concerning which he had made no statement), or served the creditors from a sworn statement made. The warrant was sent back to the marshal, who returned it on the adjourned day, declining to make any further return. Objection was made to proceeding under the warrant and return, whereupon the register again adjourned the meeting, and certified to the court the question whether the return was sufficient, giving his opinion that it was insufficient; that the 12th section of the bankruptcy act, and the 13th general order, pointed out clearly the manner in which service should be made on creditors, and of conducting the proceedings, if due service was not had; and that he could not determine, on the return, whether the marshal had pursued the regular and necessary course.

BLATCHFORD, District Judge. The marshal's return is defective in the particulars stated by the register, and must be amended.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]