Case No. 5,407.

IN RE GIES.

{12 N. B. R. 179; 7 Chi. Leg. News, 379; 21 Int. Rev. Rec. 310; 1 N. Y. Wkly. Dig. 101.}[1]

District Court, E. D. Michigan. 1875.

BANKRUPTCY—ATTORNEYS OF BANKRUPT AS PREFERRED CREDITORS.

Attorneys of a voluntary bankrupt are not entitled to payment from the assets as preferred creditors for their services in preparing petition and schedules, but may prove their debt in the usual manner.

{Cited in Re Thompson, Case No. 13,938; Re Carstens, Id. 2,469.}

{In bankruptcy. In the matter of Frederick Gies.}

Petition for allowance from the bankrupt's estate of an attorney's fee of one hundred dollars for services in preparing debtor's petition and schedules in a case of voluntary bankruptcy; also for reimbursement of thirty dollars and seventy cents marshal's fee, advanced by petitioner.

BROWN, District Judge. The primary object of a debtor's petition being to obtain a discharge, the expenses of preparing petition and schedules have not been usually allowed as a preferred debt. Such seems to be the settled practice in most of the districts.

Bump, Bankr. (7th Ed.) p. 225. It was so held in an early case in the Southern district of New York (In re Hirschberg [Case No. 6,530]), and the same principle was afterward applied to claims for services in preparing schedules in a case of involuntary bankruptcy (In re Bigelow [Id. 1,397]). See, also, In re New Lamp Chimney Co. [Id. 10,168]; In re Evans [Id. 4,552].

The question was fully discussed by the late Judge Hall in the case of In re Jaycox [Case No. 7,240], in which it was held that attorneys of the bankrupt were general creditors, and must prove their debt in the usual form for all services rendered prior to adjudication.

A contrary rule seems to have been adopted in Be Kennedy [Case No. 7,700]; but I am unable to say upon what ground this decision is placed, as the authority is not obtainable here. I have no doubt that an attorney may demand and receive a reasonable compensation before rendering his services, and that the payment therefor would be valid. I think he may also take a mortgage or other security for the payment of his fees, notwithstanding the contrary decision in the case of In re Evans [supra], provided that the claim be reasonable in amount and the security be taken before or at the time the services are rendered. In the case of In re Comstock [Case No. 3,074], the learned judge of the Western district decided that the debtor had a right to appear and defend himself against a petitioner in bankruptcy, and although unsuccessful in his defense the court had a right to allow him such expenses as might be just and proper, including attorney's fees, to be paid from the assets; but with the single exception of In re Kennedy, above cited, I know of no case where it has been held that the attorney of a voluntary bankrupt was entitled to payment from the estate for his services in preparing petition and schedules. So far as I am acquainted with the practice in this and other districts such claims have been almost universally disallowed. The clerk informs me that in two cases in this district an attorney was allowed his charges from the estate with the written assent of the assignee, but as these are the only instances, among some hundreds of voluntary petitions, and no decision was rendered upon the question, I do not think they ought to be regarded as precedents.

Whatever doubts, however, might have existed prior to the adoption of the new rules, with respect to such allowance, I think the practice is now put at rest by general order No. 30, which expressly states that "no allowance shall be made against the estate of the bankrupt for fees of attorneys, solicitors, or counsel, except when necessarily employed by the assignee, when the same may be allowed as disbursements." This rule is very broad, apparently embracing involuntary as well as voluntary cases, and I think should be applied to cases pending at the time of its adoption as well as claims thereafter accruing. Meigs v. Parke, 1 Morris (Iowa) 378; Ellis v. Whittier, 37 Me. 548; Billings v. Segar, 11 Mass. 340; MeMasters v. Vernon, 4 Duer, 625. I am compelled, therefore, to disallow the claim for attorney's fees, although it is conceded in this case to be reasonable in amount.

I think, however, the court may make an order for the reimbursement of the amount paid to the marshal for his fees in giving the notices required by law (Bump, Bankr. p. 226), and it is so ordered.

[1] {Reprinted from 12 N. B. R. 179, by permission. 1 N. Y. Wkly. Dig. 101, contains only a partial report}