

Case No. 5,810.

IN RE GRIFFEN.

{2 Ben. 209;¹ 1 N. B. R. 371 (Quarto, 83); 1 Am. Law T. Rep. Bankr. 120.}

District Court, S. D. New York.

March 11, 1868.

WITNESS FEES—BANKRUPT'S WIFE.

1. The wife of a bankrupt, attending under an order, and being examined as a witness, is entitled to witness and travel fees, calculated according to the third section of the fee bill act of February 26, 1853 [10 Stat. 165].
2. If a witness in bankruptcy proceedings is, by the adjournments of the examination, obliged to attend at intervals, and it is reasonable for him to return home during the intervals, he is entitled to travel fees, at five cents a mile, for going and returning each time, and to \$1.50 for each day's attendance.
3. The fees of a witness must be paid or tendered at the time of the service of the summons or subpoena.
4. If there is an adjournment, he is entitled to be paid his attendance fee for the adjourned day, and travel fees, if it is reasonable for him to return home, of which the register is to judge.
5. If the fees are not paid and the witness attends, the fees are to be collected as in ordinary actions.

{In this ease Register [Charles L.] Beale certifies to the judge, that in the due course of proceedings the following questions, pertinent to the same, arose, and were stated and agreed to by the counsel for the opposing parties, to wit: air. John P. H. Tallman, who appeared for the bankrupt [William Griff en], and Mr. Alland Anthony, who appeared for Henry Bostwick, one of the creditors of said bankrupt. The bankrupt's wife was required to attend before the court to be examined as a witness under section 26 of the act [of 1867 (1 Stat 529)], at the request of the opposing creditor; she thus attended once a week for five weeks, and was sworn on the last day. It appears she resides fourteen miles from the place of trial, and travelled this distance each time, requiring seven days. The payment of the following bill is asked in her behalf, as a witness, to wit: Attended court 5 times; 7 days necessary absence from home, at \$1.50, \$10.50; travelled 28 miles 5 times, 150 miles, at 5 cents, \$7.00. The creditor refuses to pay the bill. Question 1st. Is the wife of the bankrupt entitled to any pay as a witness under section 26? Question 2d. If so, on what principle? Is she entitled to fees for more than one day's attendance and travel? Question 3d. How is payment in such case to be enforced? And the said parties requested that the same should be certified to your honor for your opinion thereon.

{On these questions the register also certifies his opinion. First That the wife of the bankrupt although appearing in obedience to an "order" instead of a "summons," still being "examined as a witness," is entitled to fees the same as any other witness. Second.

I am of opinion that such fees should be at the following rates: Travelling fees five cents per mile from her residence to the place where the examination was conducted, and \$1.50 per diem for each day's actual attendance as such witness, until such examination

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shall have been completed. Third. I am of opinion that the payment of such fees is to be enforced as in ordinary actions, and according to the practice of the court.]²

BLATCHFORD, District Judge. 1. The wife of the bankrupt is entitled to witness fees for attendance and travel, the same as any other witness.

2. Such fees are to be those prescribed for witnesses by the third section of the fee bill act of February 26th, 1853. General order No. 29 provides that the fees of witnesses shall include their travelling expenses to and from the place at which they may be summoned to attend. This means no more than the travelling fees allowed by the act of 1853. But, if the witness was, by adjournments of the examination, obliged to attend at intervals, and it was reasonable for her, during the intervals, to return to her residence, she is entitled to travelling fees, at five cents per mile, for going and returning, as often as she went and returned, and to \$1.50 for each day's attendance before the register.

3. By general order No. 29, the fees of a witness must be tendered or paid to him at the time of the service of the summons or subpoena. The fees, so to be tendered or paid at the time of such service, are the fees for going and returning once and for one day's attendance. If there be an adjournment the witness must be paid for another day's attendance, before he is bound to attend on the adjourned day; and, if it is reasonable for him to return to his residence, to be judged of by the register, he is entitled to be paid his travel fees for going and returning a second time, before he is bound to come a second time. If the fees are not so paid, and the witness nevertheless attends, the payment of the fees is to be enforced as in ordinary actions and according to the practice of the court therein.

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

² [From 1 N. B. R. 371 (Quarto, 83).]