

Case No. 18,295.

{10 N. B. R. 141.}¹

FEES FOR REGISTERING.

District Court, E. D. Michigan.

June 27, 1874.

FEES OF REGISTER IN BANKRUPTCY.

1. The fee of the register for taking an ordinary proof of debt, since the recent amendment went into operation, is one dollar and eighty-seven and a-half cents.
2. For examining and filing a proof of debt taken before any other officer, fifty cents is the proper fee to be charged.

When the bankrupt act first went into operation, the tariff of fees for proving debts was construed to authorize the charge of about one dollar to the officer who took the proof, and twenty-five cents in addition to the register by whom it was received and filed, making the usual charge, for proofs of the usual length, one dollar and twenty-five cents, or thereabouts. This tariff was changed by the supreme court about two years ago, so as to authorize a charge for the same service of at least double that existing before. The change was so great that very few, if any, registers in bankruptcy charged the whole amount allowed by the law. Some made no change at all in their charges; others advanced at varying rates, with so little uniformity, that, in some places, more than twice as much was charged as in others. The recent amendment of the bankrupt act, by which certain fees are to be reduced to one-half, has made it necessary to ascertain what fees are now allowable for taking and filing proofs of debt in bankruptcy. The register of bankruptcy in Detroit submitted to Judge Longyear, for his consideration and determination, the following question and opinion thereon: "What fees are taxable for taking proofs of debt in bankruptcy, assuming that the deposition which presents the proof contains more than five hundred and fifty words, and that not to exceed one hour was consumed in taking the proof?"

Opinion by HOVEY K. CLARKE, Register in Bankruptcy:

Proofs of debt in bankruptcy must be "verified by a deposition in writing." Section 22 of the act as originally enacted. Section 47 provides "for taking depositions the fees now allowed by law." The fees "allowed by law," were fixed by the act of 1853, under the head of "Commissioner's Fees," "For administering an oath, ten cents," and "for taking and certifying depositions to file, twenty cents for each folio of one hundred words;" and the same act provides that an excess of fifty words shall be counted as one folio. The fees, then, for taking a proof of debts, as fixed by the act for a deposition containing more than five hundred and fifty words, would be one dollar and twenty cents, and for administering the oath, ten cents,—one dollar and thirty cents. By general order 30, as promulgated by the supreme court at the December term, 1871, it is provided that, "in addition to the fees expressly allowed by the bankrupt act, there shall be

FEES FOR REGISTERING.

allowed the following: * * * To registers * * * for each examination in proof of debt, under section 22, twenty cents for each folio, and one dollar for each hour actually engaged, and for certifying each affidavit or deposition in proof of debt as satisfactory, twenty-five cents." These fees are expressly declared to be cumulative to those allowed by the act, and for the assumed six folios of the deposition, amount to one dollar and twenty cents, for the time consumed in taking, one dollar, and for the certificate, twenty-five cents, making the fees allowed "in addition," by general order 30, two dollars and forty-five cents, which, added to the fees allowed by the act, one dollar and thirty cents, make the whole sum, before the passage of the recent amendatory act, for taking a proof of debt of over five hundred and fifty words, and not consuming over an hour in taking and approving it as satisfactory, three dollars and seventy five cents; which sum, by section 18 of the amendatory act, which requires certain fees to be "reduced to one-half," must be divided, making one dollar and eighty-seven and a-half cents as the sum now taxable for taking a proof of debt in bankruptcy, when taken before the register to whom the cause is referred and by whom it is filed.

In the case of a deposition sworn to before some other officer than the register to whom the cause is referred, the proof of debt is not complete until the deposition has been presented to such register and accepted as satisfactory, and filed by him. This supervisory power is plainly implied in the form of the notice to creditors to prove their debts in a court of bankruptcy (section 11), at which a designated register must preside (section 13); but it is expressly conferred by the amendatory act of July 27, 1868, which subjects all proofs taken by commissioners, etc., to the revision of the register. General order 34 prescribes certain duties to the register on the presentation of such proofs to him, and, moreover, expressly authorizes him to decline to file any deposition until the fee for filing the same is paid. What is this fee? This must be answered by reference to the duty involved in the filing of a proof of debt and the inquiry whether that duty is fairly within any descriptive terms for which a fee is provided. For, of course, no such thing as a quantum meruit allowance can be made, unless the service is within the terms which allow fees.* The service must be rendered without compensation. The register is allowed "for each examination in proof of debt * * * § 1 for each hour actually engaged." Such an examination the register must bestow upon any proof of debt offered to him to file, whether sworn to before him or not This duty is not only an obvious one, but the supervision expressly contemplated by general order 34 shows that it was this service which is complete on the filing of the proof, the payment for which was contemplated by the supreme court when it was provided that, until this fee was paid, the register might decline to file the proof. The fee, therefore, for this examination, when the proof is not taken before the register in charge of the case, before the recent amendatory act, was one dollar, and now, by the reduction provided for by that act, fifty cents.

YesWeScan: The FEDERAL CASES

It is proper to bear in mind that although this fee is nominally for the service rendered in filing the proof of debt it is really the only provision made for all other services which are involved in the filing of such proof: such as entering the proof on the register's docket, computing the amount due upon it, certifying it to the assignee in the list of creditors, etc., besides the clerical care of all proofs of debt for convenient reference by assignee or creditors, as occasion from time to time demands, These latter services are in exact proportion in each case to the number of proofs of debt filed, and for which no other compensation is provided.

Detroit, June 27, 1874.

Approved: JNO. W. LONGYEAR, District Judge.

Ordinary proofs of debt contain usually six folios. For such proofs it is therefore established in this district one dollar and eighty-seven and a-half cents may be charged by a register in bankruptcy for taking a proof of debt, and for examining and filing a proof taken before any other officer, fifty cents.

¹ [Reprinted from 10 N. B. R. 141, by permission.]