In re MICHEL.

(District Court, E. D. Wisconsin. May 1, 1899.)

BANKRUPTCY—COSTS—FEE TO ATTORNEY OF INVOLUNTARY BANKRUPT.

Under Bankruptcy Act 1898, § 64, authorizing the allowance of a reasonable attorney's fee "to the bankrupt in involuntary cases while performing the duties herein prescribed," a reasonable fee may be allowed to the attorney of an involuntary bankrupt for his services in drawing the schedules and making copies of the same, and also for attending the bankrupt upon the latter's examination before the referee.

In Bankruptcy. On question certified by referee in bankruptcy.

The referee's certificate was as follows:

I, D. Lloyd Jones, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent in the said proceedings:

This is a case of involuntary bankruptcy. On the 7th day of April, 1899, Edward S. Bragg, attorney for the above-named bankrupt, presented to me for allowance his bill for services rendered to the above-named bankrupt, which bill is hereto annexed, and accompanied by a petition of said Edward S. Bragg, praying for an order to the trustee herein, requiring him to pay the same out of the proceeds of the estate of the said bankrupt. The items charged for by the bankrupt's attorney were as follows:

1899. Jan. 22. Drawing schedules, etc.
Jan. 24. Making three copies.
Jan. 25. Completion and verification of copies.
Feb. 15. Attendance at Milwaukee, before referee, expenses.
Feb. 22. Attendance before referee, expenses.

I am in doubt as to the extent of my authority in passing upon or allowing such bill. Section 64 of the bankrupt act authorizes the payment of one reasonable attorney's fee "to the bankrupt in involuntary cases while performing the duties herein prescribed." The gross assets, as I am informed in this case, amount to between nine hundred and one thousand dollars; and the debts proved against the estate amount to over sixty-nine hundred dollars. The examination of the bankrupt, held before me, occupied a portion of two half days. Being in doubt as to my authority to allow for services of a bankrupt's attorney in excess of the services for drawing schedules, I certify this question to the court for its opinion and instructions thereon.

E. S. Bragg, in pro. per.

SEAMAN, District Judge. Section 64 prescribes the expenses which are "to be paid in full out of the bankrupt's estate," including under "(3) the cost of administration" one reasonable attorney's fee for professional services actually rendered "to the bankrupt in involuntary cases while performing the duties herein prescribed." And section 7 enumerates the duties which are imposed upon the bankrupt when either class of petition is filed. The bankrupt is entitled to the benefits of counsel for the performance of each of the several acts named, and I am of opinion that the referee is empowered to make and adjust the allowance accordingly, based upon all the circumstances, and having regard to reasonableness, both in the extent of services and their value."

In re RESLER.

(District Court, D. Minnesota, Fourth Division. May 15, 1899.)

BANKRUPTCY—PROVABLE DEBTS—CLAIM BARRED BY LIMITATIONS.

A claim which, at the time of the filing of a petition in bankruptcy against the debtor, was barred by the statute of limitations of the state where the debtor resides, and where the proceedings in bankruptcy are instituted, is not a provable debt against his estate in bankruptcy, whether the creditor resides in the same state or some other. Nor is such a claim revived or made provable by the fact that the bankrupt includes it in his schedule of debts filed in the bankruptcy proceedings.

In Bankruptcy. On review of decision of referee in bankruptcy.

The certificate of the referee was as follows:

I, Orlando C. Merriman, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: At the first meeting of the creditors of said bankrupt, S. E. Olson Company, a corporation organized under the laws of New Jersey, Wyman, Partridge & Company, a co-partnership of Minnesota, D. L. Newborg & Son, a co-partnership of the state of New York, and Jos. H. Wertheimer, a resident of the state of Michigan, presented, by their attorneys, Messrs. Fowler & Henderson, of Minneapolis, Minn., their proofs of claim against said bankrupt, and asked that said claims, and each of them, be proved and allowed as claims against said bankrupt; that said claims, and each of them, were scheduled by said bankrupt in his schedule of unsecured creditors, which was filed with said bankrupt's petition herein. Objection was made at said meeting to the allowance of said claims, or any of them, by the bankrupt and by certain creditors of the bankrupt whose claims had been allowed, on the ground that the statute of limitations of the state of Minnesota had run against said claims, and each of them, for the reason that it appeared on the face of said claims, and each of them, that said claims, and each of them, became due and payable more than six years prior to the filing of the petition by the bankrupt herein; and that because a period of more than six years had elapsed between the time when said claims, and each of them, became due and said petition was filed, that said claims, and each of them, were barred by the statute of limitations, and were not debts which were properly provable under the bankruptcy law approved July 1, 1898. No evidence was taken upon said question, but the decision of the referee was based wholly and entirely on the records and files of said estate. Upon said proceedings, and upon the facts as shown by the records and files in said matter, the following questions of law arose: Can a claim which appears upon its face to have become due and payable more than six years prior to the filing of a petition by a bankrupt, which claim has been duly entered by the bankrupt in his schedule of debts, be proved so as to entitle the holder to share in the estate of the bankrupt, if objected to by the bankrupt or a creditor whose claim has been allowed? First. Where both the bankrupt and the creditor now reside in the state of Minnesota, and did so reside at the time the debt was incurred, and during all the time since said time. Second. Where the bankrupt resides in the state of Minnesota, and the creditor resides in some other state, and each did so reside at the time the debt was incurred, and have so resided at all times since. The referee ruled that said debts, and each and all of them, were not provable, on the ground that each and all of them appeared upon their face to be barred by the statute of limitations; and that the entry of the same by the bankrupt in his schedule of debts did not revive the debt, or was not a waiver by the bankrupt of the statute of limitations. To the ruling and decision of the referee as above set forth, an exception was duly taken by said claimants, and each and all of them, and the said questions above presented are hereby certified to the judge for his opinion thereon.