MINUTES OF THE NOVEMBER 1970 MEETING
OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The twenty-first meeting of the Advisory Committee on Bankruptcy Rules convened in Room 22C of the Supreme Court Building, Washington, D.C., on Wednesday, November 18, 1970, and adjourned on Saturday, November 21, 1970. The following members were present during the sessions:

Phillip Forman, Chairman, presiding.
Edward T. Gignoux
Asa S. Herzog
Charles A. Horsky
G. Stanley Joslin
Norman H. Nachman
Stefan A. Riesenfeld
Charles Seligson
Morris G. Shanker
Estes Snedecor
George M. Treister
Elmore Whitehurst
Frank Kennedy, Reporter
Vern Countryman, Associate Reporter
Lawrence P. King, Associate Reporter

Others attending all or part of the sessions were Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, Mr. William E. Foley, Deputy Director of the Administrative Office of the United States Courts, and Messrs. Royal E. Jackson and Thomas A. Beitelman, Jr., members of the Bankruptcy Division.

Professor Kennedy called the Committee's attention to his memorandum of October 28, 1970, regarding changes in form and policy in the latest draft of the Bankruptcy Rules and Official Forms. He pointed out the elimination of the decimal system and the use of the hyphen in numbering the rules. (Later in the meeting, the Committee decided to eliminate hyphens and to place the rules in each part in a different hundred series, Rule 1-1 becoming 101, Rule 2-1 becoming 201, etc.)

Rule 2-3. Notices to Creditors and District Director of Internal Revenue

(b) Notice of No Dividend. Professor Kennedy stated this new subdivision had been correlated with changes in the rules on claims and discharge and incorporated some of the ideas discussed at the last meeting regarding the streamlining of the

administration of no-asset and nominal-asset cases. Mr. Nachman questioned the need for the phrase in line 28, "of that fact," and his motion to substitute "to that effect" was carried.

Professor Shanker felt it should be clarified that subdivision (b) meant you need not file claims only for the purpose of getting dividends and if one wished to participate in the case in other ways such as by voting for the trustee or objecting to exemptions, his claim would have to be filed and approved. Professor Riesenfeld suggested rewording the rule to include the text of the notice, namely, that "It is not necessary to file a claim to obtain dividends since apparently there are no assets from which a dividend can be paid." Professor Shanker adopted Professor Riesenfeld's suggestion as his motion; however, it lost 5-4.

Referee Snedecor moved approval of subdivision (b) as modified and the motion carried.

Form No. 12. Order for First Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay

Professor Kennedy stated that he had shortened the title and added a paragraph at the end to implement Rule 2-3. Judge Gignoux moved approval of lines 50-56 of Form 12. Mr. Nachman suggested that the Note cover Professor Shanker's problem that people who do not file claims may not be able to vote for a trustee. He agreed with Mr. Treister that you do not need a claim on file to appear and be heard on any matter except the election of a trustee. Judge Gignoux stated this could be taken care of in the form itself by adding, after "time" on line 53, the following: "in order to share in any distribution from the estate." Professor Shanker and Professor Riesenfeld agreed. Judge Gignoux then moved that the sentence read, "It is therefore unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate," and the motion carried.

Rule 3-2. Filing Proof of Claim

(3) Time for Filing. Professor Kennedy indicated that clause (4) dealing with no dividend cases is new. Mr. Treister suggested that the "s" be deleted from "dividends" on line 85. Professor Seligson then moved approval of the clause and the motion carried.

Rule 4-1. Adjudication as Automatic Stay of in Personam Actions Against Bankrupt

Professor Kennedy called attention to his memorandum of October 28, 1970, and stated that changes had been made in this rule as a result of the enactment of the dischargeability bill. These changes had not been reviewed by the Subcommittee on Style.

(a) Stay of Actions. Professor Kennedy read from his memorandum, which pointed out why § 17a(2), (3), (4), and (8) are not included in subdivision (a). He then read subdivision (a), which provided that the stay does not operate against actions on claims that are not dischargeable under clause (1), (5), (6), or (7) of § 17a of the Act.

Mr. Treister felt that the reference to clause (8) in § 17c(2) involves an unimportant exception but that the reporter had overstated its narrowness in the Note. Professor Kennedy stated he would revise the sentence in the Note. Since not all in personam actions are stayed by the rule, Mr. Nachman felt "certain" should be inserted in the title. However, there was no second to his motion. Mr. Treister then moved to approve subdivision (a) of the rule and his motion carried.

(d) Relief from Stay, (e) Termination or Annulment of Stay as to Debt Not Dischargeable Under § 17a(2), (3), (4), or (8), and (f) Availability of Other Relief. Professor Kennedy stated that in view of the fact that the bankruptcy court now has jurisdiction to enter a judgment determining the dischargeability of a claim and judgment on the claim, subdivisions (d) and (e) may be less than clear and candid as to what may happen in a proceeding to terminate a stay. He suggested adding to subdivision (d) in lines 26 and 36, "and may grant such further relief as may be appropriate," because the court may enter judgment for the successful creditor. Mr. Treister preferred to add the phrase in subdivision (f), and Professor Kennedy then made an alternative suggestion that at the middle of page 6 of the Note there be inserted a statement indicating the court may grant such further relief as may be appropriate under § 17c(3) of the Act. He felt that this rule should not govern the issuance of a judgment giving relief other than with respect to the stay, and that the possibility of a judgment on the claim should be dealt with in the Note rather than in the rule because another rule would deal with judgments on claims that are not discharged. Mr. Nachman pointed out that a statement to that effect would be easier to detect in subdivision (f) of the rule than in the Note because of the length of the Note. Mr. Treister then moved to add "or the granting of such further relief to a creditor as may be appropriate" at the end of (f) on line 40. The motion

carried. As a matter of style Judge Gignoux suggested the additional phrase be reworded, "or the granting to a creditor of such further relief as may be appropriate," and the Committee agreed. Professor Shanker questioned the necessity for the use of "good" on line 25. Professor Kennedy stated that the term "for good cause shown" is not used in the other rules and the Committee agreed to delete it. Mr. Treister then made a motion to approve subdivisions (d) and (e) as modified. Professor Countryman called the reporter's attention to the use of the word "of" in line 23, and the Committee agreed to change it to "over." Mr. Treister stated that since Judge Gignoux, Mr. Seligson, and Professor Kennedy had pointed out that a judgment on a nondischargeable claim is obtainable on a complaint filed under § 17c and the rules that relate to that provision, he wished to reconsider the modification of subdivision (f). Professor Kennedy indicated that this new phrase seemed to allow the court to add some relief even though it was not sought. Mr. Treister then moved to reconsider and leave (f) as is without the added phrase. The motion carried.

Professor Riesenfeld felt that one of the main abuses occurred in a quasi in rem proceeding by attaching property which is an after-acquired asset and is not property of the estate. Although the attachment would not be an interference with the custody of the bankruptcy court, it should be stayed but is not clearly covered in a prohibition of in personam actions or the enforcement of any judgment. Professor Kennedy stated that since one could ask for relief under § 2a(15) of the Act, the automatic stay rule need not deal with it. Professor Seligson stated the rule should stop a creditor from proceeding to take any action after bankruptcy on an unsecured claim which is discharged. At the suggestion of Professor Kennedy, Professor Seligson moved to eliminate "in personam" from line 2 of subdivision (a) and the motion carried. Judge Gignoux suggested substituting "Certain" for "in Personam" in the title. Mr. Treister felt unsecured debts should be in the title, and he moved that it read, "Adjudication as Automatic Stay of Certain Actions on Unsecured Debts." The motion carried.

Regarding subdivision (e), Professor Kennedy explained that § 17a(3) was listed therein even though subdivision (c) already provided for an automatic annulment after 30 days because there might not be any annulment under subdivision (c) if the creditor's name appeared in the schedule but the wrong address was used and he never got a notice of the bankruptcy. The court might determine that his debt was not dischargeable in such an event and thus the stay might be terminated. Mr. Treister felt subdivision (c) took care of the § 17a(3) case whether the creditor's name appeared incorrectly in the schedule or not at all and that (3) should therefore not be included in

subdivision (e). Professor Kennedy agreed. Professor Seligson suggested adding "duly" at the end of line 18 in subdivision (c) and striking "(3)" from lines 31 and 35 of subdivision (e). Professor Countryman suggested the addition of "or who has not filed his claim" on line 19 after "scheduled." The motion carried.

Professor King raised a question as to whether the last sentence of subdivision (d) had the effect of changing the exclusivity feature of the bankruptcy court's jurisdiction. He thought creditors who did not want to be in the bankruptcy court might use the procedure of subdivision (d) to get back to the state court. Professor Kennedy felt the last sentence was unnecessary and recommended its deletion, and the Committee agreed. He stated he would check to see that the Note would correspond to the change in the text of the rule.

Professor King felt "shall" in line 32 of subdivision (e) was too strong. Professor Kennedy recommended the substitution of "may," and the Committee agreed to the change.

Rule 4-3. Exemptions

(c) Objections to Report. Professor Kennedy called attention to page 8 of his memorandum of October 28, 1970, where he explained why the time period prescribed by subdivision (c) of Rule 4-3 for filing an objection to the trustee's report or requesting an extension of time for filing of such an objection had been enlarged from 10 days to 15 days. Judge Snedecor moved approval of subdivision (c) incorporating the 15-day change, and the motion was adopted.

Rule 4-4. Grant or Denial of Discharge

(a) Time for Filing Complaint Objecting to Discharge. Professor Kennedy read Rule 4-4(a) and explained that the change in lines 6-9 was a part of the streamlining process for no-dividend cases and was agreed to by the Subcommittee on Style. However, since the meetings where this change was discussed the dischargeability bill had been approved and the question arose as to whether the Committee should correlate this rule and the provisions regarding an application for dischargeability. He further stated that this change contemplated the facilitation and expedition of no-asset cases and nominal-asset cases so that a discharge could be granted at the first meeting of creditors. Another rule dealt with the determination of dischargeability of debts whereby the court was allowed to fix a time not less than 30 days nor more than 90 days after the first meeting of

creditors and the Committee might be hesitant to change that time so soon after Congress enacted the statutory provision to that effect. Therefore, the question was whether to retain this feature, which would enable the court to discharge a bankrupt at the first meeting of creditors.

Mr. Treister felt it was appropriate to require the small loan companies, for example, to get their applications under § 17c(2) in by the first meeting of creditors. Professor King stated he could see more problems with accelerating the deadline for filing objections to the discharge. Professor Seligson was worried about the burden placed on the creditors. Mr. Treister stated that the burden placed on them would be that of coming in and asking for an extension of time. Mr. Treister then moved to approve Rule 4-9(a)(2), whereby in a no-dividend case the court could shorten the time for filing complaints to obtain a determination of dischargeability under § 17c(2) as early as the first meeting of creditors, and thus to make this provision correspond to subdivision (a) of Rule 4-4. His motion to add "except that if notice of no dividend is given pursuant to Rule 2-3(b) the court may fix such time as early as the first date set for the first meeting of creditors," at line 11 in Rule 4-9(a)(2) was carried.

Professor Joslin moved to delete from line 4 of subdivision (a) of Rule 4-4, "The time fixed shall not be unreasonably delayed." Professor Kennedy added that an alternative approach would be to correlate Rule 4-4(a) and 4-9(a)(2) so that the second sentence of each would read, "The time fixed shall not be less than 30 days nor more than 90 days after the first date set for the first meeting of creditors except that if notice of no dividend is given pursuant to Rule 2-3(b), the court may fix such time as early as the first date set for the first meeting of creditors." Professor Seligson felt it was too soon after enactment of the legislation to change the rule. Judge Maris pointed out it would take two years to get this rule adopted. A motion approving the quoted sentence was carried.

Professor Countryman stated that the way the rule now read the judge could find himself ruling on the question of discharge before the time had expired for new § 17(c)(2) to make some debts automatically dischargeable if no applications should be filed for the dischargeability determination. He requested Professor Kennedy to write in the Note that no matter what time is fixed for filing objections to the discharge, it should not be granted until the time under § 17(c)(2) has run out. When that time runs out, it will be known which debts are discharged. The Committee agreed.

(b) Notice. This subdivision of Rule 4-4 was adopted without objection.

(f) Order of Discharge. Professor Kennedy stated that subdivision (f) was closely adapted from the statute and assumed that this was a procedural matter. He called attention to Form No. 24, Discharge of Bankrupt, which was also closely patterned on the statute. He also referred to a Form No. 24A, which incorporated the order by reference and included some provisions that followed the statute. He informed the Committee of Mr. Beitelman's suggestion to combine the order and the notice in a single form.

Mr. Treister suggested adding "or b" in line 40 after the reference to § 17a of the Act, since the second sentence of § 17b provides that if a bankrupt debtor fails to obtain a discharge on certain grounds the debts provable at such proceeding shall not be released by discharge in any subsequent proceeding. The Committee agreed to add "or b." Mr. Treister moved adoption of subdivision (f) which was carried.

(g) Registration in Other Districts. Professor Kennedy pointed out that subdivision (g) was closely patterned on the statute's registration provision. Although it was arguably unnecessary, it was included in the rule for two reasons. One was to stake out the position that it is a procedural provision. Another was to assure that the discharge might be enforced extraterritorially in the event the proposal for extraterritorial service of process should fail. Judge Maris stated "of the court" should be added to line 51 referring to an order of the district. Professor Riesenfeld felt the rule should clarify where the order should be filed. Mr. Treister suggested adding in place of "therein" the following, "in the office of the clerk of the district court of that district." The Committee agreed to this modification. Professor Seligson moved approval of subdivision (g), and the motion carried.

(e) Nonpayment of Fees. Professor Joslin stated he felt subdivision (e) should not be in the rule, and Professor Kennedy replied that if it were not, subdivision (d) would overrule the Act. Professor Joslin thought if Congress changed the Act to say there could be an informa pauperis discharge, the rule would contradict it. Judge Gignoux suggested saying that the discharge could be granted if otherwise prohibited by law. Professor Kennedy felt so broad a limitation would not be clear. Mr. Nachman suggested the rule be left as written until the bench and the bar see the draft, and it comes back to the Committee for consideration. The members agreed.

(h) Notice of Discharge. Professor Kennedy stated that subdivision (h) included the comparable provisions of § 14(h) of the Act. Form 24A implemented this rule and was closely correlated with it. The form proposed to incorporate by reference the copy of the order and provided space for listing debts. Mr. Treister felt the creditors should be listed rather than the debts. Professor Countryman suggested the debts which had been determined to be dischargeable should be listed rather than the ones which were nondischargeable. His point was that if you give a notice of discharge to the bankrupt with a list of the debts determined to be dischargeable, he has a document that would be useful to him when appearing in court. Professor Countryman felt there should be an additional category. He suggested adding, "including the following" to Official Form 24 on line 22, thereby providing for a listing of any debts determined to be dischargeable. Judge Gignoux then suggested including both types of debts in the notice. Professor Countryman agreed. Professor Kennedy stated this would amend line 58 of the rule and add an additional paragraph to refer to dischargeable debts in Form No. 24. Professor Countryman made an alternative suggestion to add "and the following debts have been determined to be dischargeable" at the end of line 11. Judge Maris felt the language of the form should be shortened to state merely that the following debts have been determined to be nondischargeable. After discussion Mr. Treister moved to amend subparagraph (h) of Rule 4-4 by eliminating the words in the second sentence up to the last phrase, so that it would read, "The notice shall include the contents of the order of discharge required by subdivision (f) of this rule." The motion was carried. Professor Kennedy stated he would change the Note to explain the relationship between the rule and the statute. Judge Gignoux made the suggestion that the Note also be explicit that the rule supersedes the statute because they are not inconsistent and people may comply with both.

Official Form No. 24, Discharge of Bankrupt

Professor Kennedy stated that Form 24 was an implementation of § 14f of the Act. In light of the decision made in subdivision (h) of Rule 4-4, Professor Kennedy stated that Form 24A was not necessary and could be combined with Form 24, the title of which would be, "Order and Notice of Discharge." Professor Countryman pointed out that line 17 should include, "and b" at the end to comply with the modification of the rule.

Professor Kennedy suggested that the words in line 9 could be modified as follows, "and notice is hereby given that." Mr. Treister felt paragraph 1 was a double negative, and to put it in the affirmative he suggested, "the above-named bankrupt is discharged from all dischargeable debts." Professor Countryman suggested a further improvement to explain in the Note that this covered both § 17a and 17c(2). Professor Kennedy agreed stating that the rule would be much clearer. Professor Joslin did not like the use of "discharge" twice. Mr. Treister made a motion to strike the words in lines 11-12 and substitute, "dischargeable debts." "Released" was suggested as a substitute for "discharged" and a motion to that effect was carried. Judge Gignoux moved approval of Form 24 with the modifications suggested. The motion carried, and Form 24A was therefore eliminated.

Rule 4-9. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt

Professor Kennedy stated that this new rule implemented the new legislation by dealing with the subject of determination of dischargeability of a debt and judgment on a nondischargeable debt. He further stated that this rule adopted the approach that an application to determine dischargeability became a complaint initiating an adversary proceeding.

(a) Proceeding to Determine Dischargeability.

(1) Persons Entitled to File Complaint. Professor Kennedy stated that this subdivision was very close to Section 17c(1) of the Act. He continued that Rule 7-1 included as a new category of adversary proceedings, a complaint to obtain a determination of dischargeability of a debt. Judge Maris brought out the fact that a creditor with an undischarged debt might have an interest in determining the dischargeability of someone else's debt and suggested adding something like, "any creditor with an interest" at line 3. Mr. Nachman thought this might be more specific by referring to "a debt" rather than "any debt." Referee Herzog stated "any" was used to distinguish any debts under § 17c(1) from certain debts under § 17c(2). Mr. Nachman then moved to substitute "any debt" on line 4 for "a debt." Professor Shanker was opposed because he felt any change in the statutory language should be explained. Judge Maris stated that "any" was put there to mean "any sort of debt" and not "anybody's debt." Mr. Nachman's motion was lost.

Mr. Treister stated that there was nothing in this rule to indicate that except for § 17c(2) procedure one could file a complaint at any time. Therefore, he moved to broaden the coverage of paragraph (1) of subdivision (a) so that it covered

the idea that the complaint could be filed at any time, even after the estate had been closed, except as limited in subparagraph (2), and that it also be stated in the rule that if a complaint should be filed after the estate was closed, a filing fee would not have to be paid. A suggestion was made that this matter be covered in the Note. Professor Kennedy replied that he thought it should be covered in the rule. Mr. Treister's motion to add two sentences to subparagraph (1) was carried. Professor Kennedy indicated he would use substantially the language of the statute.

(2) Time for Filing Complaint Under § 17c(2) of Act; Notice of Time Fixed. Professor Kennedy read paragraph (2), stating that the last sentence would be the same as the first sentence under Rule 4-4(b). Mr. Treister felt it would be easier to draft a general rule stating, "Not withstanding the foregoing rule, etc." rather than stating two exceptions for the no-dividend notice. Professor Kennedy stated he would work on this correlation, and the Committee agreed to approve Mr. Treister's motion.

(3) Applicability of Rules in Part VII. Professor Kennedy stated that there was a provision in Rule 7-1 correlated to paragraph (3) of subdivision (a). Referee Herzog pointed out an inconsistent use of "any." Professor Kennedy indicated he would change "any" to "a" and the Committee agreed.

(b) Demand for Judgment on Nondischargeable Debt.

(1) Demand for Judgment. Professor Kennedy read paragraph (1) of subdivision (b), pointing out the reference should be to § 17c(3) of the Act rather than § 17a(3) as indicated in the deskbook. There was no objection.

(2) Demand for Jury Trial. Professor Kennedy stated that the rule contemplated that a local rule could specify whether to leave it to the referee or the judge to preside at a jury trial in a proceeding under § 17c of the Act. It was pointed out that an advantage of this provision would be that it would allow local determination of the place for the trial.

Professor Kennedy asked if there is a right to jury trial when the issue is dischargeability. Mr. Treister felt there should not be a right. Referee Herzog stated the questions of whether a financial statement was false and whether it was material would be questions of fact which should go to a jury. Professor Kennedy stated those questions may occur only on the complaint to determine dischargeability. Referee Herzog felt if the state law permitted jury trial, then the rule under the same circumstances should permit a jury trial. Judge Gignoux stated that according to the example Referee Herzog

gave, every creditor who filed that type of complaint would ask for judgment on his claim and would demand a jury trial. However, the referee's office is not set up to work with juries. Referee Herzog answered that the majority of small loan company creditors would not want a jury trial. Judge Maris pointed out that referees are too busy to conduct jury trials. Referee Snedecor moved to eliminate from the rule any provision for a jury trial before a referee at this time. Referee Herzog amended the motion to leave this decision to the local rules for practical reasons. Professor Seligson supported Referee Herzog's motion and added that it should be stated in the affirmative that there is a right to trial by jury, that the request therefor should be addressed to the district judge, and that he should conduct the trial by jury unless local rules otherwise provide. Mr. Nachman agreed. Referee Snedecor withdrew his motion.

After discussion regarding the necessity for jury trials and their cost Professor Kennedy implemented Referee Herzog's motion by suggesting striking lines 29 through 32 and adding, "The trial shall be placed on the calendar of the district court as a jury action unless a local rule of court provides otherwise." He also suggested ending the sentence on lines 35-38 with "jury" at the beginning of line 37. However, Professor Kennedy pointed out that this did not take care of the problem stated by Professor Riesenfeld in the case where a demand is made for a jury trial and the referee disagrees that there is a right thereto. There was discussion as to who decides whether there is an issue triable by jury. Judge Maris suggested adding that "if the bankruptcy judge determines that such an issue actually exists, the trial shall be placed on the calendar of the district court." Professor Kennedy suggested a clause to add at the beginning of his previous suggestion as follows: "If the bankruptcy judge determines that there is an issue triable of right by a jury, ..." Professor Seligson suggested that the rule provide for a hearing, and Referee Herzog accepted his and Professor Kennedy's suggestions as amendments. Professor Kennedy reworded his suggested sentence by adding at the end, "unless the bankruptcy judge determines at the hearing on notice that there is no triable right by a jury or unless a local rule of court provides otherwise," etc. After further discussion Professor Kennedy summarized the feeling of the members that a proceeding should go to the judge only if the referee should decide that the issue is triable of right by jury, and there should be a right to a hearing before a referee would ever deny a request. Judge Forman suggested Professor Kennedy redraft Rule 4-9 incorporating the suggested changes.

(Adjournment at 5:10 p.m.)

Thursday, November 19, 1970

Professor Kennedy distributed a redraft of Rule 4-9, explaining that it included an additional subdivision (c), entitled Jury Trial, which had appeared as subparagraph (2) under subdivision (b) of the draft considered on Wednesday. The reason for the change was that the structure of the earlier draft had indicated there was a jury trial only in connection with the proceeding for judgment rather than the proceeding for determination of dischargeability. Mr. Treister questioned the reference to Rule 7-5(b), and Professor Kennedy explained that the language came from the Rules of Civil Procedure. The Committee preferred to use the phrase, "in accordance with this rule" in place of this reference and to add in the second line "and filing" after "party." Mr. Treister suggested adding, "when it is ready for trial," before the first "unless clause" in the sentence beginning, "The trial of an issue."

After discussion of the use of the term bankruptcy judge, Professor Riesenfeld suggested changing "shall" in the 7th line from the bottom of the draft to "may" in order that there would be discretion upon which to accommodate the practical needs of the particular proceeding. Judge Maris suggested striking "All" at the beginning of the sentence. Professor Kennedy read the sentence, "Issues not triable of right by a jury may be tried by the bankruptcy judge, and all motions and applications in the proceedings other than those necessarily incidental to and made during the course of the jury may be determined by the bankruptcy judge."

After further discussion Professor Kennedy suggested changing the "unless clause" in the sentence beginning, "The trial of an issue," to read, "unless a local rule of court provides for a trial of such an issue before the referee." Mr. Treister suggested an alternative version, "unless a local rule of court provides for a different procedure in conducting a jury trial." He felt the local rule should be able to change the rule so that the trial could be placed on the calendar before it was ready for trial. Professor Riesenfeld moved that the "unless clause" remain as drafted, i.e., "(2) a local rule of court provides otherwise." His motion carried.

Judge Gignoux made a motion to adopt Rule 4-9 as modified but subject to change in light of experience under the new statute. The motion carried. Because of the change in the organization of the rule, Professor Kennedy added that the semicolin and "Jury Trial" should be deleted from line 17 of subdivision (b) of the rule. He also stated that the headings for subparagraphs (1), (2), (3), (4), and (5) should be deleted.

The Committee members agreed to these changes and to add ";Jury Trial" to the title of Rule 4-9.

Rule 7-55. Judgment by Default

Mr. Treister was concerned about the possibility of a default judgment on an application for determination of dischargeability by a creditor and the use of the rules in Part VII for this purpose. Therefore, Professor Kennedy suggested putting a qualification in Rule 7-55 at line 17 by changing the period to a coma and adding, "and no judgment by default shall be entered against a bankrupt in a proceeding under Rule 4-9 unless represented in the proceeding by an attorney." Another alternative would be to add an exception to Rule 4-9. Judge Gignoux felt this was covered by the sentence beginning on line 8 of Rule 7-55. If a qualification was to be added, Judge Maris and Professor Joslin felt it should be in Rule 4-9. However, Professor Shanker was opposed because, as Judge Gignoux pointed out, the protection was in the general rule. Mr. Treister decided he did not want to change the rule until after the comments come in and experience has been obtained under the dischargeability legislation.

Rule 5-12. Designated Depositories

(e) New Bond: When Required; Its Effect. Professor Kennedy stated that a parenthesized sentence which appeared in the draft considered at the last meeting has been deleted because it seemed unnecessary. However, according to the minutes of the last meeting the sentence was to be retained. Professor Kennedy asked the members to reconsider the sentence as follows: "A new bond given under this subdivision when approved by the referee shall replace the prior bond with respect to any subsequent default of the depository and the order of approving the new bond shall relieve the sureties on the prior bond from liability thereon with respect to any subsequent default." Referee Whitehurst made a motion to leave out the sentence, and the motion carried.

Judge Maris suggested this rule be more specific when referring to "the referees." Since the entire body of referees do not have the responsibility to designate in every district, he suggested the insertion of "of each district." Mr. Horsky made a motion to add "in each district" to line 1 after "The referees." The motion was approved.

Rule 7-1. Scope of Rules of Part VII

Professor Kennedy called attention to a new category (8) of proceedings governed by the rules in Part VII, "or determine the dischargeability of a debt." The additional clause was approved without objection.

Rule 7-12. Defenses and Objections

(a) When Presented. Professor Kennedy stated that the provision for the 1000-mile limit in the second sentence of the earlier draft of Rule 7-12(a) had been deleted because there was no justification for drawing this limit. Referee Whitehurst moved that the rule be approved without the sentence and the members agreed.

Rule 7-52. Findings by the Court

(a) Effect. Professor Kennedy stated that Rule 7-52 contained three new sentences. The first was the third sentence of the subdivision and was the same as Civil Rule 52(a). It was previously deleted because of its similarity to Rule 8-10. The Committee agreed, however, to include the sentence because Rule 8-10 does not apply to the review of findings of the district judge when he sits as a bankruptcy judge and it would be appropriate to include the "erroneous standard" rule in that situation.

The second of the new sentences appeared on lines 12-16, and Professor Kennedy stated that it was an adaptation of Civil Rule 52(a). It was deleted from an earlier draft of the rule, but the Subcommittee on Style thought it should be restored and Mr. Treister felt an additional last sentence should be added. Mr. Treister made a motion to restore the sentence beginning on line 12 and the motion carried. Judge Gignoux pointed out that the phrase "for the plaintiff" used in this sentence was not correct, and the Committee agreed to its deletion. Professor Kennedy pointed out that the source of the last sentence was a rule for the Southern District of California. Mr. Treister made a motion to approve the principle of the sentence, but his motion was lost and the sentence in parentheses was deleted.

Rule 9-21. Entry of Judgment

(a) Original Entry on Docket. Professor Kennedy stated that Rule 9-21 was derived from Rule 58 of the Federal Rules and had been modified to deal with the entry of a judgment of

the district judge when he acts as a bankruptcy judge as well as with the entry of a judgment of a referee. He stated further that the "separate document" requirement was made applicable to any judgment rendered in an adversary proceeding or contested matter, but neither the rule nor the accompanying note declared the consequence of noncompliance with the separate document requirement.

There was discussion regarding possible difficulties in tracing cases when a judgment was entered in the referee's docket and then the case was taken over by the district judge. The members felt this could be discussed after comments are received from the bench and bar.

Mr. Horsky then moved approval of the rule and the motion carried.

Rule 9-30. Effective Date

Professor Kennedy stated that the rule was new and was patterned on several provisions of Rule 86 of the Federal Rules of Civil Procedure. Judge Maris stated that the procedure of having a rule on effective date has been abandoned during the past few years because the effective date now appears in the Supreme Court order. There was no objection to the Committee's eliminating the rule.

Official Form No. 12. Order for First Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay

Professor Kennedy called attention to lines 21-23 of Form No. 12 which are new and which separate the paragraph fixing the last day for the filing of objections to the discharge of the bankrupt from paragraph 3 on lines 18-19, enabling the referee to fix different dates. He also stated that lines 34-38 were new. Mr. Treister suggested that if the court fixed that same last day to file a discharge there should be some bracketed instructions that paragraphs 3 and 4 could be combined. He also suggested that the paragraph beginning on line 31 be moved up under paragraph 4 and Professor Kennedy stated he would try this.

Professor Riesenfeld stated that "the debt may be discharged" in line 37 was wrong because the statute says "shall" and this part of the statute has an automatic discharge. Professor Kennedy stated that was true only if a creditor contends that his debt is not discharged. Professor Riesenfeld then suggested striking, "as provided in § 17c(2) of the Act." Referee Herzog

made a motion to that effect and it carried. There was no objection to the other modifications and the form was approved.

Official Form No. 24. Discharge of Bankrupt

In view of the amendments of Rule 4-4 Professor Kennedy suggested combining both the notice and order of discharge. However, Mr. Beitelman pointed out that the statute provides for the order and then within 45 days after the order becomes final, the notice goes out. Therefore, the bankruptcy judge or referee must sign the order and wait for 10 days before it becomes final, and if the notice goes out within 45 days after the order becomes final, the notice will have a different date from that on the order. He suggested to change Rule 4-4(b) to read, "Within 45 days after entry of the order," or "It is ordered and notice is herewith given." After discussion Mr. Treister moved to omit "notice is hereby given" from Form No. 24 and to indicate through instructions that the notice requirement of the rules may be handled simply by stamping on the bottom of the order. He also suggested changing the title to "Discharge of Bankrupt." The Committee agreed to having a form for the order of discharge including bracketed instructions on the bottom to indicate to the referee that a notice may be sent out after 45 days as provided in the rule.

Enumeration of the Rules

Judge Maris suggested the use of another system rather than dashes in the rules. He pointed out that dashes have never been used in other rules except for drafting purposes. The Committee agreed to number the rules according to the sequence 101, 102, etc.

Judge Maris also suggested that a scope and construction rule be set out as Rule 1, for instance: "These rules govern the procedure in the United States district courts and other courts of bankruptcy in all cases and proceedings under the Bankruptcy Act (such as in Guam). They shall be construed to secure the expeditious and economical administration of the estates of bankrupts and debtors and the just, speedy, and inexpensive determination of all cases and proceedings under the Act." Professor Kennedy indicated that there is already a rule of construction that includes the last quoted sentence but that it is not at the beginning. The Committee agreed to Judge Maris' suggestion of including a scope rule first.

Professor Kennedy stated that this completed consideration of the Bankruptcy Rules and Forms. Judge Gignoux made a motion to approve this package of rules with the modifications made, authorize the reporter to make necessary editorial changes, authorize the chairman to transmit the rules to the standing committee for printing and distribution by approximately April 1, 1971. The motion carried.

Professor Kennedy stated that he had prepared cross-reference tables between the rules, the Bankruptcy Act, the General Orders, the Official Forms, and the Federal Rules of Civil Procedure, which he suggested as an appendix to the letter of transmittal of the rules.

Chapter XIII Bankruptcy Rules

Rule 13-1-1. Commencement of Debtor Proceeding

Professor Countryman stated that this simply raises a question of terminology because the corresponding bankruptcy rule refers to a bankruptcy case. Here, he felt it unappropriate to refer to a wage earner or a Chapter XIII case and proposed to state "A debtor proceeding under Chapter XIII of the Act." Professor Kennedy pointed out that this may have been originally drafted to mean a case includes all proceedings within a case. Professor Riesenfeld made a motion to strike, "A debtor proceeding" and substitute, "A case" and the motion carried.

Rule 13-1-2. Reference of Cases; Withdrawal of Reference and Assignment

Approved with the use of a reference to "case" rather than "proceeding."

Rule 13-1-3. Original Petition

Professor Countryman stated that this rule refers to Official Form No. 13-1 which is a simplification of former Official Form No. 58. He suggested deleting "most" from the last sentence of the Note. Professor Countryman referred to his memorandum of October 15 setting out the five differences between this form and the Official Form 1 (Voluntary Petition). Mr. Treister pointed out that if there is a possibility of delay, the proposed plan should not have to be submitted. He suggested paragraph 5 be amended to read, "Petitioner is

insolvent or unable to pay his debts as they mature and desires to effect a plan payable out of his future earnings." In regard to paragraph 6, Professor Shanker suggested there be two blanks upon which to indicate whether a plan would be filed with the petition or at a later time. Judge Gignoux pointed out that in most cases the plan is filed with the petition. After discussion Professor Joslin made a motion to approve paragraph 5 as suggested by Professor Countryman and leave out paragraph 6. However, his motion was not seconded. Professor Countryman then suggested, "Petitioner is insolvent or unable to pay his debts as they mature and desires to propose a plan." Professor Kennedy pointed out that the statute (§ 623) requires the petitioner to state an alternative. Professor Countryman stated that by leaving out "future earnings" the statute is being changed. Mr. Horsky made a motion to that effect. Professor Riesenfeld moved to amend Mr. Horsky's motion by adding "under Chapter XIII," however, the motion lost. Mr. Horsky's original motion was carried.

Professor Shanker felt the second sentence of paragraph 5 did not belong there and Professor Joslin moved to delete it. Before making this policy decision Professor Countryman suggested turning to Rule 13-1-5. He stated that it has no counterpart to the bankruptcy rules or the Act. Referee Herzog felt there is something wrong with making a man pay immediately after filing his petition. Professor Countryman relayed Referee Cyr's approval of the rule without it being mandatory to begin payments immediately. Professor Joslin moved to delete Rule 13-1-5 which provided for a system of payments. The motion was carried 6-5. Because of this decision the second sentence of Rule 13-1-5 was also deleted.

Professor Countryman then turned to paragraph 6 of Form 13-1 stating the question was to decide whether to have the rule or not. After discussion Mr. Treister moved to delete the requirement that the debtor attach to his petition a copy of any previously proposed plans and the motion carried. The second sentence of the rule therefore read, "He may file with his petition a proposed plan." Returning to paragraph 6 of Form 13-1, Referee Herzog felt "Proposed Plan No." was not needed and Professor Countryman indicated that Referee Cyr also felt it was nonsense to include. Mr. Horsky stated that if they pass the form the way it reads they will alleviate everything that had been said so far. He suggested adding, "This sentence shall be included if a plan is filed," in brackets at the end of the paragraph. The motion carried and Professor Riesenfeld wished to be recorded against the motion. Referee Herzog moved to amend by deleting, "designated Proposed Plan No." and "of debtor." The motion carried. Referee Whitehurst pointed out that "Chapter XIII Proceeding No. ...." should be changed in the caption.

For future drafting purposes, Judge Maris pointed out the reference in the Note to the Chapter XIII rules was too broad.

Professor Shanker suggested that the reference to "proceedings" in the last paragraph should be changed. He moved that the sentence read, "Wherefore petitioner prays for relief in accordance with Chapter XIII of the Act" and the motion carried.

Professor King raised a question regarding the bracketed phrase, "or has had his principal place of business" in paragraph 2 of Form No. 13-1. Professor Countryman stated as indicated in his memorandum that this would only be applicable under a Chapter XIII case for a debtor who had been in business but had gotten out before filing petition but within the past six months. Professor Joslin felt the specification was unnecessary and moved to leave out the reference to the principal place of business. Judge Maris suggested the Note indicate that if the business has been in another district for the past six months and is no longer in existence he might use the other district. The motion that paragraph 2 refer only to the residence of the petitioner as Professor Countryman originally drafted was carried.

As indicated in his memorandum Professor Countryman stated he saw no need for a change in the bankruptcy schedules that go with the petition. Referee Whitehurst moved that the bankruptcy schedules be used for the Chapter XIII cases, and the motion carried.

Official Form No. 13-5. Statement of Affairs

Professor Countryman stated that the next document to accompany the petition was the Statement of Affairs which does not omit any information required by Form 7 for bankruptcy proceedings but includes more information about the creditor's expenses and income. He stated that Referee Cyr's response to the questionnaire indicated he felt Questions 5 through 8 of the form were unnecessary and would like more time to consider them in detail. Referee Whitehurst suggested adopting a Statement of Affairs for straight bankruptcy and having a supplemental statement for Chapter XIII. Mr. Horsky moved to consider this document after the Committee had heard the responses from Referees Cyr and Copenhaver. The motion carried.

Official Form No. 13-6. Statement of Executory Contracts

Professor Countryman stated two preliminary questions about this form which has no counterpart. The statute now requires the debtor to submit a statement of executory contracts, however, the Bankruptcy Act does not make clear the meaning of an executory contract. Professor Countryman drafted a definition on the form which states that a contract is executory only if something remains to be done on both sides. He stated that the Committee should first consider whether the form is a proper place to include such a definition. Mr. Treister suggested the rule state that the petition should be accompanied by a list of all contracts or that no list be requested. The only apparent purpose for listing executory contracts, he felt, was for rejection. Professor Countryman stated that in most Chapter XIII cases there were no executory contracts listed. Judge Gignoux pointed out that these cases should be handled as economically and as streamlined as possible, therefore, he felt the schedule, statement of affairs, and statement of executory contracts should be consolidated to include only the information necessary for the referees. Referee Snedecor moved to eliminate Form 13-6 as well as the requirement set out in the rule. The motion carried. Mr. Horsky suggested that Professor Countryman prepare a short form for the schedule and statement of affairs in order to carry out Judge Gignoux' suggestion and submit it to various referees for comment. The Committee members agreed.

Rule 13-1-4. Petition in Pending Bankruptcy Case

Professor Countryman stated that the first two sentences are an adaptation of the Bankruptcy Act. He took the third sentence out of the statute and placed it in the rules because he felt it was more appropriate to be in a rule of procedure. He called attention to Official Form 13-1-7 to which the rule refers indicating that it differs from Official Form 13-1 (Original Petition) in three respects. First of all, he stated, it contains no allegation as to venue, it identifies the nature of the pending proceeding as voluntary or involuntary, gives the date of filing and identifies any receiver or trustee and third, the note is more explicit. Mr. Treister felt the words in brackets in number 2 regarding the name of the receiver or trustee were unnecessary. After a brief discussion number 2 of the form was changed to "Petitioner is the bankrupt in Bankruptcy case # _____ pending in this court," on motion of Referee Whitehurst. Mr. Horsky moved approval of Rule 13-1-4 assuming Professor Countryman would change the Note and the motion carried.

Rule 13-1-6. Caption on Petition

Professor Countryman stated the rule differs from Bankruptcy Rule 1-6 only in substituting "debtor" for bankrupt and the rule could be incorporated by reference. The Committee agreed.

Rule 13-1-7. Filing Fees

Professor Countryman stated this would have to be reworded because it would have authorized the payment of filing fees from payments beginning on the first payday after the petition is filed which is now out. It should be rewritten to allow payment according to the plan, he said. The June 30 memorandum reported that a survey of the practice of referees in these cases indicated most allowed the payment of filing fees of the amounts paid in under the plan and some requiring advance payments allowed payment of filing fees out of that.

Section 624(2) and § 633(2) of the Act require the payment of two filing fees. However, the survey reveals that neither is required to be paid in installments outside the plan, and he proposed to incorporate this practice in the rules. Mr. Treister questioned why the debtor couldn't pay in installments simply because they ask this rather than going through a complicated process. Professor Shanker suggested that until the first meeting of creditors the debtor shall have the option of paying in installments or submitting a plan of such and if the filing fees are not paid by then the court shall determine whether installments are allowable.

Mr. Treister suggested that if the fees are not paid by the first meeting the court shall decide how to handle it, by installments, payment under the plan or the court can dismiss it. Referee Snedecor felt subdivisions (a) and (b) should be approved as is, however, Professor Countryman pointed out that the statute contemplates the entire fee will be paid before the plan is confirmed and § 659 contemplates this will be the first thing paid. Therefore, "in installments" should be added after "fees" on line 13 thereby ending the sentence. He also stated that the last sentence should be deleted as unnecessary, and he would provide a sentence which takes care of the second $15. Professor Countryman further stated that Referee Cyr disliked the use of the word "may" in line 10. He felt "shall" should be used so that the clerk does not have any discretion. Professor Kennedy pointed out that in the comparable bankruptcy rule "may" was used deliberately in order to expedite the cases. Mr. Horsky moved to change "may" to "shall" and the motion carried. In place of the last sentence of subdivision (b)(1),

Professor Countryman stated he would add something to the effect that at the first meeting the second filing fee must be paid or the court authorizes payments under the plan or otherwise, and that the first fee must be paid. The Committee agreed to deletion of (2) under subdivision (b).

Regarding the last sentence of subparagraph (3), Professor Countryman stated that this is not in the bankruptcy rule because the bankruptcy court is not concerned with reducing the size of the attorney's fee except under § 60D, however, Chapter XIII cases should be concerned with this. He suggested revising the sentence to read, "In such cases compensation to the attorney shall be awarded as governed by Rule 13-2-19," and the Committee agreed.

Professor Kennedy stated that the rule in General Order 35 from which subdivision (b) of Chapter XIII Rule 13-1-7 is derived specifies the use of the word "may" because of the possibility of a local rule requiring the payment of fees before the filing of a petition. After a brief discussion Professor Seligson moved that "shall" be used in both places so that acceptance of the petition is not left up to the clerk. The motion carried.

(Adjournment at 5:00)

Friday, November 20, 1970

(a) General Requirement. After the decisions were reached regarding subdivision (b) Professor Countryman turned to this paragraph stating that § 624(1) of the Act requires every original petition to be accompanied by a $15 filing fee but does not require that fee for a petition filed in a pending bankruptcy case assuming that the debtor will have already paid it or have gotten an order for payment in installments. However, there was no provision that the order be entered, therefore, he drafted this subdivision which requires full payment of Chapter XIII filing fees unless the debtor has paid the fee or an order has been entered providing for installments. Mr. Horsky moved its approval and the motion was carried.

Rule 13-1-8. Schedules, Statement of Affairs and Statement of Executory Contracts

(a) Schedules and Statements Required. Professor Countryman indicated that the first sentence with regard to statement of executory contracts had been deleted and in every other respect conforms to the bankruptcy rule. Mr. Horsky moved approval of subdivision (a) and the motion carried.

(b) Time Limits. Professor Countryman stated that the first sentence assumes that the statement of affairs will be more elaborate here than in straight bankruptcy cases. With reference to the second sentence, § 624(1) requires the debtor whose petition is not accompanied by the schedules and statements to file both a list of creditors and their addresses and a summary of the debtors assets and liabilities. Section 7a(8) requires only the list of creditors and addresses for bankruptcy cases and the summary of assets and liabilities seems even less necessary in Chapter XIII cases so he left it out. If the filing of the schedules is to be delayed 10 days, Referee Cyr saw no reason for requiring the list of creditors. Mr. Treister pointed out that the first meeting is not called until the plan is filed, therefore, the list is not needed. Referee Whitehurst stated that in Chapter XI cases the list may be inaccurate and there is no time to examine the books. At the suggestion of Professor Countryman, Mr. Horsky moved to delete the second sentence and at the end of the first sentence add, "or within 10 days thereafter." The motion carried. The members also agreed to change "proceeding" in line 12 to "case" and add "of affairs" to "statement." Mr. Treister felt the except clause at the beginning of the first sentence should be deleted as unnecessary and the Committee agreed. In the third sentence, Mr.Treister suggested that "shall" could be changed to "may" however, Judge Gignoux stated that this would cause the Committee to have to review the meaning of the except clause at the end of the sentence. Mr. Horsky moved to approve the sentence with the addition of "of affairs" after "statement" on line 19, and the motion carried.

(c) Interests Acquired or Arising After Petition Filed Professor Countryman stated that he would like to interpret Chapter XIII so that the debtor's property is not vested in the trustee but § 70i says that upon confirmation of the plan or at such later time provided by the plan or by the order confirming the plan the title to the property revested in the debtor and § 21h makes clear that this applies to a wage earner plan. He tried to draft a counterpart to the bankruptcy rules about getting information about after acquired property which was vested in the trustee under one of the three provisions of § 70a. He further stated that if a plan is confirmed or if the proceeding is dismissed, it is unlikely that the supplemental schedules will be used but they may be of some use in keeping records up to date against the possibility of a conversion to bankruptcy. Professor Countryman recommended that the Committee not incorporate subdivision (c) until he adds Mr. Treister's suggestion providing for conversion to bankruptcy by the addition of something specific which would require the debtor to see if he must comply with the bankruptcy rules. Mr. Horsky made a motion to approve this recommendation, and it was carried.

(d) Changes in Income or Expenses after Statement of Affairs Filed. Professor Countryman indicated this subdivision has no counterpart in the bankruptcy rules. He had trouble drafting it because if read literally, it would require the debtor to report every change in income or expenses. He suggested that "significant" or "substantial" might be inserted, however, he felt it would be better to leave this matter to those concerned. He recommended that subdivision (d) be incorporated because it is difficult to make adjustments by modification of the plan where the court frequently learns of adverse changes only after the debtor has defaulted under the plan. Moreover, unless local rules require it, there is no requirement that the debtor report favorable changes in his income or expenses. Referee Herzog made a motion to approve the subdivision with the addition of "material" to "change" in both phrases. Mr. Treister objected because it creates an additional burden when you put a sanction on whether it is in violation or not, complicates it and he does not like increasing payments under the plan especially when the debtor does not like to file anyway. Also, if there is an adverse effect on his income it will come to the attention of the court anyway. Referee Herzog's motion to approve the subdivision as amended was lost and subdivision (d) was eliminated.

Rule 13-1-9. Verification of Petitions and Accompanying Papers

Professor Countryman stated this need not be a separate rule, however, if it is he would suggest deletion of "statements of executory contracts." Professor King suggested changing the title to, "Schedules and Statements of Affairs." Judge Gignoux moved approval of the rule as amended. The motion carried.

Rule 13-1-10. Amendments of Petitions, Schedules, Statement of Affairs, and Statement of Executory Contracts

Professor Countryman stated this rule would be a duplicate of the bankruptcy rule if "or" on line 1 were moved before "statement" and "statement of executory contracts" were stricken, and "application or" were added before "motion" on line 4. In the Note he deleted "of property" because any amendment of the schedules should be brought to the notice of the trustee and in Chapter XIII proceedings schedules of debts are more important than schedules of property. Judge Gignoux pointed out the "proceeding" on line 3 should be deleted. Mr. Horsky moved approval and the motion carried.

Professor Seligson asked their decision regarding the statement of affairs and Professor Countryman replied that the Committee decided he would draft a single short form document covering both schedules and statement of affairs and postpone consideration on it until comments are received from certain referees.

Rule 13-1-16. Venue and Transfer

(a) Proper Venue. Professor Countryman stated that where none of the usual bases for venue is present, this rule would substitute "a district in which his employer is located" for "a district where he has property" as specified in the Act. His reasoning was that the Chapter XIII procedures deal with future earnings rather than present assets. Referee Herzog pointed out that "principal place of business" had been stricken from the official form and Professor Countryman stated the Note would indicate that in some cases this would be appropriate. After a brief discussion Mr. Treister moved approval, and the motion carried.

(b) Transfer and Dismissal of Cases. Professor Countryman indicated that "proceeding" in lines 19, 27, and 29 should be changed to "case" and Professor Seligson suggested the Committee assume these changes will be made automatically by Professor Countryman throughout the rules. Judge Gignoux moved approval, and the motion carried.

(c) Procedure When Petitions Involving the Same Debtor are Filed in Different Courts. Professor Countryman stated that only the first sentence deviates from the bankruptcy rule. Rule 13-1-16 attempts to deal with the unlikely case of a debtor who files a Chapter XIII petition in more than one district and also files, or has filed against him, a bankruptcy petition in a different district. It assumes that as long as one Chapter XIII petition is pending, the matter is to proceed under Chapter XIII rather than in bankruptcy. Professor Seligson pointed out that "debtor proceeding" in line 45 should be referred to as "Chapter XIII case." The Committee agreed and decided that the Style Subcommittee should determine whether the phrase should be stated "case under Chapter XIII" or "Chapter XIII case." Professor Seligson moved approval of subdivision (c) as amended and the motion carried.

(d) Reference of Transferred Cases. Professor Countryman pointed out that when "proceeding" in line 53 is changed to "case" it will be a duplicate of the bankruptcy rule. Professor Seligson moved approval, and the motion was carried.

Rule 13-1-17. Joint Administration of Proceedings of Husband and Wife

Professor Countryman stated that this rule extracts all that is applicable from Bankruptcy Rule 1-17 insofar as it authorizes joint administration of estates of husband and wife. After discussion Mr. Nachman moved adoption with the understanding that the reporter would further investigate with concerned referees the possibility of joint petitions, and the motion carried.

Rule 13-1-20. Dismissal or Conversion to Bankruptcy Without Confirmation of Plan

(a) Voluntary Dismissal or Conversion to Bankruptcy; Dismissal or Conversion for Want of Prosecution or Denial of Confirmation. Professor Countryman stated that this rule, which has no counterpart in the bankruptcy rules, says that if Chapter XIII filing fees are paid the case may proceed as a bankruptcy case. In the event the filing fee under the bankruptcy case has already been paid or an order has been entered for installment payments, there would have been no order for delay of payment of the Chapter XIII filing fee under Rule 13-1-7. In other words, the present language leaves open the possibility of allowing a debtor to convert to bankruptcy although he was in default on his installment payments of the Chapter XIII filing fee. He suggested the Committee may want to require the debtor to pay the $50 instead of $30 in every case. Judge Gignoux pointed out that in this situation the language seemed to indicate that after the fee was paid the court would dismiss the case rather than send it back to the bankruptcy court. Mr. Treister felt this is too complicated, and the Administrative Office should take care of these fees. He moved to delete lines 8 through 10. Paragraph (1) of this subdivision was approved with the deletion.

Professor Countryman then recommended deletion of the words on line 15 down to "and" on line 16. He also indicated that "proceeding" on lines 14 and 19 should be "case." Professor Riesenfeld raised a question about the schedules because of the change in the reference to petition. Professor Countryman replied that he did not draft any special provisions about schedules or statement of affairs and there were none in the Act. However, he placed a cross reference to Rule 13-2a-5 in the Note and this rule should cover the schedules. Mr. Treister suggested he add that the schedule should be filed in so many days and Professor Countryman agreed. Judge Gignoux then moved approval of paragraph (2) as amended and the motion carried. As a matter of style, Mr. Nachman pointed out that "the court

shall" had been repeated in subdivision (a) and (1) and (2). Professor Countryman replied that it was needed in paragraph (2).

Professor Seligson felt the debtor should not have to file a voluntary petition when consenting to bankruptcy and Professor Countryman stated he drafted that in order to pick up the automatic adjudication under § 18f. Referee Herzog agreed stating that it was too complicated. Professor Seligson moved to add, "with the written consent of the debtor enter an order adjudicating him a bankrupt." Professor Countryman read the paragraph as approved: "(2) if the petition was filed pursuant to Rule 13-1-3, enter an order dismissing the case or, with the written consent of the debtor, enter an order adjudicating him a bankrupt."

Professor Countryman pointed out that when the Committee agreed to delete Rule 13-1-5, subdivisions (b) and (c) dealing with the debtor who did not make those payments, were also deleted. This raised a question in connection with what was previously approved. He suggested adding an additional event in subdivision (a) which would authorize action on failure to make installment payment or, since want of prosecution is already in subdivision (a) and a definition thereof in the Note, and failure to pay the filing fee is not there or under § 666 of the Act, he would suggest redrafting to incorporate this. Mr. Treister pointed out that this would have to be mandatory and another phrase would have to be added such as "unless excused by the court." Rather than adding this to the Note he suggested incorporating a definition of prosecution in the rule. Professor Shanker suggested including that confirmation cannot be made until the filing fees are paid and Professor Countryman suggested adding this to the second paragraph of the Note.

Mr. Treister pointed out that in the bankruptcy rules there is a provision of distribution of partial payment. Professor Countryman suggested leaving subdivision (c), Distribution of Payments, in by making it subdivision (b) and deleting "pursuant to Rule 13-1-5" and the second sentence. The Committee agreed to these amendments as well as changing "proceeding" on line 38 to "case."

(c) Notice to Creditors. Mr. Treister stated that this retracts the bankruptcy rule and Professor Countryman suggested substituting, "in the schedule if any" for "on the list of creditors" appearing on line 53. The motion carried. Based on the changes in subdivision (a)(2), Professor Countryman suggested striking "or directing that a proceeding continue as a bankruptcy case" on line 5 and substituting "adjudicating the debtor a bankrupt." The Committee agreed.

(d) Effect of Dismissal. Professor Countryman stated this is comparable to the bankruptcy rule. Referee Herzog moved approval, and the motion carried.

(e) No Other Adjudication. Professor Countryman stated that this comes from § 668 of the statute. In regard to subdivision (a)(2) Professor Seligson felt the debtor should not have to file a voluntary petition when consenting to bankruptcy, and Professor Countryman stated he drafted that in order to pick up the automatic adjudication which seems to say that the debtor may not be adjudicated even though he wanted to. Professor Countryman attempted to make clear in subdivision (e) that there is an exception as provided in this rule and in Rule 13-2A-4. Mr. Treister pointed out that the exception is covered in the rules and moved deletion of-(e) which was formerly (f). The motion carried.

Rule 13-2-1. Appointment and Qualification of Trustees

(a) Standing Trustees. Professor Countryman stated that Part 2 of the rules begin with the trustee and subdivision (a)(1) deals with the appointment of the standing trustee in Chapter XIII. Professor Riesenfeld pointed out that "debtor proceedings" in line 3 should be referred to as "Chapter XIII cases." Mr. Nachman moved to delete "under administration" from line 3 as unnecessary, and the motion carried. Mr. Treister pointed out that there is a comparable bankruptcy rule which deals with the referee's authority by majority vote. Professor Countryman suggested adding, "the referees in each district, by majority vote, shall appoint the standing trustees," and the Committee agreed.

(2) Qualifications. Professor Countryman stated that this subdivision is entirely devoted to the standing trustee. He explained that under the bankruptcy rules the trustee must file a bond within five days, however, he did not feel Chapter XIII should be so restrictive. He stated he also borrowed the sentence in brackets from Bankruptcy Rule 5-12. Mr. Nachman suggested adding "blanket" to "bond" in order to correspond to the bankruptcy rule. Professor Countryman explained that "in such amount and secured by such sureties as the referees shall determine" is not the language used in the bankruptcy rules which have been streamlined. In order to conform to Bankruptcy Rule 5-12 they should add after "United States" on line 10, "or by the deposit of securities designated in Title 16, U.S.C. § 15 conditioned on the faithful performance," etc. Professor Riesenfeld moved approval, and the Committee approved the amendment to the first sentence.

Professor Shanker stated the place for filing the approving order should be indicated in the rules and Professor Countryman suggested adding after "the bond" on line 15, "the order appointing the standing trustee and the order approving the bond." The Committee approved the amendments.

Professor Countryman explained that the third sentence came from the bankruptcy rule on designating depositories. The Committee approved.

The last sentence of subdivision (a) was read by Professor Countryman with the insertion of, "and has filed his bond." He added this as evidence of the qualification. Mr. Nachman pointed out that the mere filing of the bond is not enough, and Professor Countryman suggested adding, "and his bond has been approved." Judge Gignoux felt that if there is a standing trustee in each case there is no necessity for a separate order of appointment in every case. Referee Whitehurst suggested adding, "Whenever evidence of the appointment is needed the referee can sign a statement that he is a trustee in that particular case." Professor Countryman stated the last sentence could be deleted and something like, "whenever necessary the court shall enter an order designating the trustee" could be added to subdivision (e). A motion to approve the deletion of the last sentence was carried. The motion to approve paragraph (2) of subdivision (a) as amended was carried.

(b) Appointment of Trustee Where No Standing Trustee. (1) Appointment. Professor Countryman read the paragraph stating that the second sentence is from the bankruptcy rule. He stated the subdivision would make a change in what the statute now provides. Section 633(4) says that if the plan is accepted by creditors the court shall appoint a trustee and this rule would provide for an early appointment because of the rule about advance payments. Referee Herzog moved approval and the motion carried.

(2) Qualification. Professor Countryman suggested deleting "in such amount and with such sureties as the court shall determine" beginning on line 37; changing the sentence beginning on line 41 to "Unless otherwise provided by local rule, a bond given under this subdivision shall be filed with the referee" and place it after the sentence ending on line 45; and deleting "by separate order be designated as trustee in the proceeding in which he is appointed and shall" on lines 46-48. Mr. Treister moved approval of the subdivision as amended and the motion carried.

(c) Eligibility. Professor Countryman explained that this subdivision is extracted from the bankruptcy rule and that he did not think it appropriate to include a Guideline Procedure for Chapter XIII cases adopted by the Judicial Conference in March 1970. There was discussion as to whether the attorney for the debtor should be disqualified from becoming trustee in certain cases because of adverse interest, however, there was no motion. Referee Herzog moved approval of subdivision (c) as drafted and the motion carried. Professor Countryman pointed out that the Note to the Bankruptcy Rule mentions not only prohibition on the standing trustees in straight bankruptcy but the old statute of 1934 on undue concentration of appointments and he did not feel this should pertain to Chapter XIII. The Committee agreed.

(d) Proceeding on Bond. Professor Countryman stated that this subdivision corresponds to the bankruptcy rule. Referee Herzog moved approval and the motion carried.

(e) Evidence of Qualification. Because of the automatic designation order, Professor Countryman stated this would be redrafted to say that the order approving the bond or other security given by the trustee under this rule, shall constitute conclusive evidence of his appointment and qualfication and that in the case of a standing trustee or a trustee who filed a blanket bond when such evidence is necessary the court shall enter an order designating him a trustee. Referee Whitehurst moved approval as suggested and the motion carried.

(f) Joint Administration. Professor Countryman stated that he took all from Bankruptcy Rule 2-10 that is applicable to Chapter XIII. Mr. Treister felt some of the language was unnecessary and Professor Countryman suggested incorporating the portion regarding a single trustee in Rule 13-1-17. Judge Gignoux moved that the sense of the entire subdivision be incorporated in Rule 13-1-17 and the motion carried.

Rule 13-2-2. Notices to Creditors.

(a) Ten-Day Notices to All Creditors. The first two clauses were approved. Professor Countryman recommended striking "on revocation of a confirmation" from clause (3). After discussion Professor Seligson moved to eliminate the entire clause (3). Professor Countryman explained that if it were deleted and one creditor filed an objection the other creditors would not receive notice of this. The decision was deferred until consideration of Form 13-11, Order for First Meeting of Creditors Combined with Notice Thereof and of Automatic Stay. Professor Countryman read the form stating that "and" at the end of the line in

paragraph number 2 should be stricken as well as "designated Plan No. ..." in paragraph number 4 and "or cause to be filed" in the same paragraph. He recommended striking "and ..... is fixed as the date for hearing on any such objection" from paragraph number 5. Mr. Treister agreed because if you assume all creditors including the ones who have objections ought to be warned of a hearing on objections of confirmation then this does not give them notice of it and if you want to give notice you cannot do it this way. Professor Seligson agreed and moved that number 5 read: "..... is fixed as the last day for filing objections to the confirmation of a plan which all affected creditors do not accept." The motion carried.

Professor Countryman stated that since they decided that the notice of the first creditors meeting will not fix the date for a hearing on any objections they could better deal with clause 3 of subdivision (a) of Rule 13-2-2. Professor Seligson restated his motion to strike the first part of clause 3 and consider revocation later. Professor Countryman agreed stating that the other creditors who have not objected, who have accepted the plan, if there is going to be some question as to whether it is properly confirmed or not should have a notice. The motion lost 6-5. Professor Riesenfeld suggested an amendment that it be made clear that if objections are filed a notice should go out. He moved to add "If an objection is filed" to clause 3. When Mr. Nachman pointed out that this did not sound correct Professor Countryman suggested adding "any" objections. After discussion, Professor Countryman suggested "(3) any hearing on objections to confirmation or on confirmation of a plan." Referee Whitehurst questioned (2) regarding the time fixed for filing objections and Mr. Treister suggested that the objection should be filed at any time prior to confirmation. Professor Countryman stated he would add this to his rule on confirmation then there would be no need for a notice fixing the date for filing objections, thus clause (2) would be stricken. Professor Seligson withdrew his previous motion and moved that 1) in the appropriate rule there be provided for a hearing on confirmation of a plan, 2) objections to confirmation may be filed at any time prior to confirmation, and 3) clauses (2) and (3) of Rule 13-2-2(a) be deleted and the rule provide only for notice of the hearing on confirmation of the plan. Mr. Nachman suggested he add that the rule also provide for hearing on objections, however, the members disagreed. The Committee then agreed on the first two principles of Professor Seligson's motion.

Professor Seligson stated he would like to tie in a provision regarding the first meeting with the third principle of his motion which would provide for notice of the hearing of confirmation of the plan. The additional provision would allow

the meetings to be combined and held at the same time and place. The Committee agreed in principle that "A notice of the hearing on confirmation of the plan may be given to all creditors and may be given in connection with the first notice of the meeting and may be combined." The members agreed. The Committee also agreed that Professor Countryman would draft rules which would encompass the principles agreed upon. This vote was unanimous. Judge Gignoux wanted it noted that the hearing on confirmation of the plan cannot be held at the first meeting but can be held subsequently.

Professor Countryman stated he changed clause (4) to read, "the time fixed to file rejections of a proposed modification of a plan prior to confirmation." Mr. Treister pointed out that the way the rule is structured, the only creditors who should get this notice are the ones who have accepted. Professor Seligson made a motion to delete clause (4) and the motion carried.

Professor Countryman stated he would change clause (5) to read, "the hearing, if any, on the approval of the trustee's account;" because he did not provide for a final meeting but he does provide for a copy of the trustee's account to be mailed to all creditors and if they object there will be a hearing. After discussion Referee Snedecor moved to delete clause (5) because it does not belong and Professor Countryman withdrew this clause.

The members felt that clause (6) should remain the same as the bankruptcy rule. After a brief discussion Referee Snedecor moved approval and the motion carried.

Professor Countryman stated clause (7) conforms to the bankruptcy rule with the exception of the addition of "upon cause shown." Mr. Treister moved to delete the clause and have a general rule elsewhere about sending out special notice. He also suggested deleting clause (6) and upon reconsideration the Committee agreed to striking both clauses.

(b) Other Notices to All Creditors. Professor Countryman stated this subdivision differs from (a) only in the respect of the period of notice. Both (1) and (2) are informational notices, however, (2) may not be necessary. Referee Snedecor moved deletion of clause (2) and the motion carried.

Professor Countryman suggested deferring clause (3) until the Committee considers Rule 13-4-4. The members agreed.

Mr. Treister suggested holding clause (4) in abeyance until consideration of Rule 13-4-8. The Committee agreed.

(c) Notices to Creditors Whose Claims are Filed. Mr. Treister pointed out that there is not much purpose in Chapter XIII in dispensing with the notices to all schedules of creditors after the 6-month period has expired. Professor Countryman recommended withdrawing the subdivision and the members agreed.

(c) Addresses of Notices to Creditors. Professor Countryman stated that this subdivision which was formerly (d) is the same as the comparable bankruptcy rule. This was adopted.

(d) Notices to the United States. Professor Countryman pointed out that this subdivision which was formerly (e) is comparable to the bankruptcy rule. Mr. Nachman suggested that "list of creditors" on line 48 be stricken. Professor Seligson moved approval as amended and the motion carried.

(e) Notice by Publication. Professor Seligson moved approval of this subdivision which was formerly (f) and extracts the bankruptcy rule. The motion carried.

(f) Caption. Mr. Treister pointed out that the reference in line 65 to the statement of affairs is not necessary. A motion to delete the reference beginning with "and" on line 65 carried.

(Adjournment at 5:05 p.m.)

Saturday, November 21, 1970

Rules 13-2-3 and 13-2-4 were omitted from discussion in order that they could be redrafted by Professor Countryman.

Rule 13-2-5. Examination

Judge Forman pointed out that this rule is the same as the bankruptcy rule. Judge Gignoux moved approval as written. The motion carried.

Rule 13-2-6. Apprehension and Removal of Debtor to Compel Attendance for Examination.

Professor Countryman stated this also is the same as the bankruptcy rule. Judge Gignoux moved approval and the motion carried.

Rule 13-2-7. Acceptance or Rejection of Plans

(a) Time for Acceptance or Rejection. Professor Countryman explained that in drafting this subdivision he tried to say that if one does not act by a certain time he is deemed to have accepted the plan, which is a modification of the provisions in the Act. Professor Shanker felt the rule should indicate that if one files a claim and does not object, acceptance is assumed. Professor Seligson suggested the following: "At any time prior to the conclusion of the first meeting of creditors each creditor may file or cause to be filed with the court his written rejection of the plan which accompanies the notice of the first creditors meeting and upon his failure to do so shall be deemed to have accepted the plan." Judge Gignoux preferred the rule as originally drafted because he felt a written acceptance would be very helpful to the referees, however, he suggested adding, "his acceptance or rejection of the plan or a summary thereof." Professor Seligson replied that he felt the addition of acceptance was unnecessary but he would modify his motion if the members agreed.

After discussion of Professor Riesenfeld's suggestion to include "each creditor affected by the plan" Professor Seligson suggested that since claims of sovereigns are included they should stated that each creditor is included in order to comply with the cases. Professor Countryman suggested adding, "each creditor whose acceptance is required by law" however, Mr. Treister opposed the stylistic change. Referee Snedecor moved as a substitute motion to include the words, "each creditor affected or dealt with by the plan" in line 3. The motion was lost.

Professor Seligson's motion to change the first sentence was carried as follows: "At any time prior to the conclusion of the first meeting of creditors each creditor shall file with the court his acceptance or rejection of the plan, or the summary thereof, which accompanies the notice of first creditor's meeting and, upon his failure to do so, shall be deemed to have accepted such plan."

Professor Seligson's motion to approve the second sentence beginning on line 7 was carried.

Professor Joslin moved to delete "and may be filed by him with the court on behalf of the accepting creditor" from the third sentence because he felt it was unnecessary, however, his motion lost. Mr. Treister moved to adopt the sentence as drafted and his motion carried.

Professor Shanker felt the important part of subdivision (a) is not the time for acceptance or rejection and suggested changing the title to "Time for Acceptance or Rejection; Effect of Failure to Accept or Reject."

(b) Form of Acceptance or Rejection. Professor Countryman read the subdivision suggesting the deletion of "by number, date and name of debtor." Professor Riesenfeld pointed out that there could be a misunderstanding and Professor Countryman suggested deleting "filed" in line 13 because subdivision (a) takes care of the time of filing. The members agreed.

Professor Joslin felt there was a problem because subdivision (a) provides that failure to file shall be deemed an acceptance and (b) is for form which says it should be in writing but if one does not read subdivision (a) it sounds as though such acceptance must be in writing. Mr. Nachman suggested the Note clear up this problem. Mr. Treister suggested it state that the function of subdivision (b) as it deals with (a) is to allow the creditor to file in writing if he desires.

Professor Countryman read the second sentence stating that he added it in order to make clear that an agent could accept or reject. However, Professor Shanker felt the sentence included detail which was taken care of by the proof of claim form. Professor Countryman agreed to withdraw the second sentence.

In connection with subdivision (c) Professor Countryman explained that if the plan deals with his secured claim the creditor can veto it but if the plan does not he can only vote as an unsecured creditor.

Mr. Treister felt this subdivision was unnecessary. Upon discussion he pointed out that the problem in this area arises in the rule where you can take a secured creditor and value his collateral and state he is secured for so much and unsecured for the balance. After the Committee reached a decision on Rule 13-3-7 on allowance of claims, Mr. Treister moved approval of this subdivision and the motion carried.

Rule 13-3-7. Objections to and Allowance of Claims for Purpose of Distribution; Valuation of Security

(a) Trustee's Duty to Examine and Object to Claims. Professor Countryman stated that this makes no change in the bankruptcy rule. Mr. Nachman moved approval and the motion carried.

(b) Allowance When No Objection Made. Professor Countryman read the subdivision adding Rules 13-3-3 and 13-3-4 to line 7. The phrases, "Subject to the provisions of subdivision (d)" and "unless the court directs the creditor to establish that the claim is free from any forbidden charge" are not in the bankruptcy rule, he pointed out. After discussion Mr. Nachman moved approval and it carried.

(c) Objections to Allowance. Professor Countryman read the subdivision stating that it differs from the bankruptcy rule only in the respect that it provides for a copy of the objection to go not only to the claimant but to the debtor. Referee Herzog suggested adding that if an objection is filed a copy should be mailed to the trustee. Professor Countryman stated the phrase on line 16 would read, "claimant, the trustee and the debtor." Professor Riesenfeld pointed out that "objector" should be substituted for "trustee" in the case where the objector is someone other than the trustee such as another creditor. Mr. Treister moved approval after discussion, and the motion carried.

(d) Secured Claims. Professor Countryman read a revision of the first sentence to conform to the bankruptcy rule as follows: "If a secured creditor files a proof of claim, the value of the security held by him as collateral for his claim shall be determined by the court." He further stated that he added the last sentence rather than a separate rule regarding appointment of appraisers. After discussion Mr. Treister moved approval as amended and with the addition of "by" after "specified" in line 29 at the suggestion of Professor King. The motion carried. Professor Riesenfeld pointed out that the phrase on line 26 should be clarified and Professor Kennedy suggested substituting "it is enforceable for" for "of" and the members agreed.

Rule 13-2-8. Proxies: Prohibition of Solicitation; Voting

Professor Countryman stated the only difference in subdivision (a) from the bankruptcy rule was the phrase, "to vote the claim for acceptance or rejection of a plan and any modification thereof." Mr. Treister pointed out that trustees are not elected under Chapter XIII and he felt this rule is unnecessary there. Professor Countryman agreed stating that unless you are going to prohibit the solication of proxies or regulate them the rule is not needed. Mr. Treister moved its deletion and the motion carried. The Committee also agreed that the comparable provision in the bankruptcy rules need not be incorporated in Chapter XIII rules.

Rule 13-2-15. Employment of Attorneys and Accountants

Professor Countryman pointed out that the only difference in the bankruptcy rule was that it included employment of attorneys and accountants by receivers. Referee Whitehurst felt if they adopt the rule the receiver should be included, however, if reference is made to the bankruptcy rule, receiver should be left out. The Committee agreed that Professor Countryman would state in the Note that the appointment of an attorney or accountant would be rare. After further discussion it was decided that the rule should merely incorporate the bankruptcy rule.

Rule 13-2-18. Duty of Trustee to Keep Records, Make Reports and Furnish Information

Professor Countryman stated this tracks the bankruptcy rule except for the possibility of an inventory already having been filed. Mr. Treister suggested changing clause (1) as follows, "within a reasonable time after entering upon his duties file an inventory of the property of the debtor if the court so directs." Judge Gignoux pointed out that Referee Cyr felt this rule would place an impossible burden on the trustee to require an inventory which had no great utility and suggested the same change as Mr. Treister. Professor Riesenfeld suggested the phrase on line 3 read, "if and as the court directs," and Mr. Treister pointed out that if the Committee adopts this change, the beginning phrase "within a reasonable time after entering upon his duties" would not be necessary. The Committee agreed to these changes.

Clause (2) was approved without objection.

Professor Countryman stated that clauses (3) and (4) were the same as the bankruptcy rule. Judge Gignoux suggested changing clause (3) as follows, "furnish information concerning the estate and its administration when directed by the court or when reasonably requested by a party in interest." He also suggested deleting clause (4). The members agreed. Clause (5) thus became (4) and was approved.

Rule 13-2-19. Compensation of Trustees, Attorneys and Accountants

(d) Restriction on Sharing of Compensation. Professor Countryman stated he changed this from what Professor Kennedy had written to make it clear that they would reach the sharing of compensation from either debtor proceeding or straight bankruptcy proceedings, because he felt in any particular case

one is concerned about the attorney before him sharing someone else's compensation not merely from another Chapter XIII case but from a bankruptcy case and he felt the bankruptcy rule did not make this clear. Instead of the phrase in line 76, "in a bankruptcy case or in a debtor proceeding under the Act," Mr. Treister stated that "any proceedings under the Act," would take care of it. He moved to change line 76 to "services in any case under the Act or in connection with such a case." Professor Countryman suggested the bankruptcy rule should be changed also and the Committee decided to leave this to Professor Kennedy to conform now or later. Professor Kennedy stated this might cause changes elsewhere but Professor Countryman stated he felt this was a unique situation. Professor Riesenfeld questioned the use of "proceeding" in lines 71 and 72, and Professor Countryman stated it should be Chapter XIII case in both lines.

(a) Application for Compensation. Judge Gignoux had some problems with the subdivision and suggesting revising it so that it applies only to attorneys and accountants. After discussion, Professor Countryman stated he would redraft (a) so that it deals with the problem of separate paragraphs. One would be on the attorneys and accountants, and the other would be on trustees other than standing trustees and deal with their applications. The Committee decided to consider the redraft at the next meeting on March 3 through 6, 1971.

Adjournment at 1:00 p.m.