MINUTES OF THE NOVEMBER 1962 MEETING OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The third meeting of the Advisory Committee on Bankruptcy Rules convened in the Supreme Court Building on November 14, 1962, at 9:30 a.m. The following members, constituting the entire Committee, were present during the session:

Phillip Forman, Chairman
George D. Gibson
Edward T. Gignoux
G. Stanley Joslin
Norman H. Nachman
Stefan A. Riesenfeld
Charles Seligson
Roy M. Shelbourne
Estes Snedecor
Arthur J. Stanley, Jr.
Elmore Whitehurst
Frank R. Kennedy, Reporter

Others attending were Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure; Professor James Wm. Moore, a member of the standing Committee; Edwin L. Covey, Chief, Division of Bankruptcy, and special Advisor to the Committee; Aubrey Gasque, Secretary of the standing Committee on Rules of Practice and Procedure and the Advisory Committees; Will Shafroth, Deputy Director of the Administrative Office; and Joseph F. Spaniol, Jr., Attorney in the Administrative Office.

The Chairman opened the meeting by announcing the resignation of two of the members, Charles A. Horsky and Judge John B. Sanborn, and stated that it was his understanding that the Chief Justice hopes to fill these vacancies in the near future. The Chairman also announced the resignation of Aubrey Gasque as Assistant Director of the Administrative Office, but added that Mr. Gasque was continuing his position as Secretary to the Rules Committees.

Mr. Covey was called upon to bring the Committee up to date on the general status of bankruptcy cases during recent years. Mr. Covey summarized his comments by stating that there were decreases in all types of bankruptcy proceedings except those filed under Chapter XII and Chapter XIII. There was a decline of 4 per cent in all bankruptcy cases filed during the first quarter of this fiscal year (1963) compared to cases filed in the same quarter in FY 1962.

Mr. Covey said that only two bills affecting bankruptcy were passed in the last session of Congress: the Omnibus Bill which referred in part to the certification of documents by the clerk in the referee's office and the bill concerning retired referees who are recalled to active duty.

AGENDA ITEMS 1, 2 and 3

The Reporter briefly outlined the first portion of his memorandum of November 1, 1961, dealing with the appointment of attorneys and accountants for the debtor, particularly in proceedings under Chapters X and XI. He stated that the entire

membership appeared to favor a proviso in General Order 44 authorizing the retention of an attorney, but it was debatable as to which form of the proviso should be used -- that proviso included in Enclosure 1 to the November 1 memorandum which requires the court to find only that the employment is to the best interest of the estate, or the alternative proviso as suggested by the Reporter at the bottom of page 2 of his November 1 memorandum, which contains the added requirement that the retention of an attorney "for any purpose incidental to the operation of the business of the debtor or the disposition of matters pending at the filing of the petition." It was agreed that the provision contained in Enclosure 1 was preferable.

Professor Riesenfeld proposed the elimination of the words "found by the court to be," and it was the consensus of the Committee that this phrase should be deleted on the basis that this was surplus language.

After some discussion as to the use of the word "employ" instead of "retain" and the substitution of the word "employed" in lieu of "engaged," Professor Riesenfeld suggested the following, which was approved by the Committee:

> "That the court may authorize the employment by a receiver, trustee, or debtor in possession of any attorney who has been employed by the debtor when it is to the best interests of the estate."

For reasons stated in his memorandum of November 1, 1961, Professor Kennedy suggested the deletion of the second paragraph of G. O. 44 relating to proceedings under Section 77 of the Act. On motion of Judge Gignoux, it was agreed that this should be

eliminated subject to reconsideration of it in the light of what Professor Moore might suggest. [Professor Moore did not attend the meeting on the first day, but was expected to attend on the following day].

Other revisions to G.O. 44 were adopted as follows:

The first part of the last sentence on first page of Enc. 1 should read:

> "If any attorney employed by a receiver, trustee or debtor in possession shall represent or hold, or without disclosure shall have represented or held any interest adverse to the estate in any matter upon which he is so employed, the court may deny the allowance of any fee to such attorney, ..." [For an additional change in this sentence, see page 6, infra.]

> The word "employed" was substituted for the word "appointed" in the second line of the General Order.

> The caption of G.O. 44 was changed to "Attorneys" instead of "Appointment of Attorneys" in order to be consistent with G.O. 45, "Auctioneers and Appraisers."

> The word "counsel" in line 5 of G.O. 44 was changed to "attorney" and the words "legal counsel" in line 7 of the enclosure were changed to "an attorney."

Professor Kennedy brought up the matter outlined in his memorandum beginning at the bottom of page 6, Enclosure No. 4, submitted by Referees Heisey and Owens of the District of Minnesota, and the proposed amendment of G.O. 44 relating to creditors' committees and the proposed restriction on their choice of an attorney by court approval. It was the consensus of the Committee that this subject goes into an area which needs considerable study and that following such study, the matter would be placed on a future agenda and acted upon by the Committee.

The recommendation that G.O. 44 be amended to permit the trustee to be employed as his own attorney, and to receive compensation therefor, was discussed extensively by the Committee.

The Reporter advised that in 1939 Section 72 was amended to authorize a receiver or trustee to receive additional compensation for services rendered as an attorney.

Mr. Nachman was of the opinion that the court ought to know whether a trustee is acting in a legal capacity and that the court should decide by an order whether a man is to perform duties over and above those of a trustee. He suggested that the Committee should limit its inquiry to whether there should be a prior order before a receiver or trustee may represent himself. Judge Snedecor was in agreement.

Following a full discussion of whether a provision should be inserted to the effect that in order for a trustee to receive additional compensation as an attorney he must have a prior order authorizing it, the Chairman asked that a vote be taken on the issue. Also included in the motion was whether the provision should be inserted in G.O. 44 or G.O. 35, which deals with compensation. The Committee indicated, by a vote of 5 to 3, that it favored appropriate language to be inserted in G.O. 44.

Judge Maris nevertheless thought G.O. 35 the appropriate place to deal with the problem. Judge Gignoux stated that a trustee who is an attorney should be expected to perform his own legal services and that he may be compensated by court order for any extraordinary legal services, and further stated that this should be made clear in the General Order. Professor Riesenfeld suggested adding to G.O. 44 language to the effect that the court may authorize the trustee to act as an attorney for special purposes in the administration of the estate.

At the suggestion of Judge Snedecor, the Chairman appointed a subcommittee consisting of Judge Gignoux, Professor Riesenfeld and Mr. Covey, together with the Reporter, to draft language in the light of the discussion to be inserted in G.O. 44, and which would be presented at a later time.

Some further revisions to G.O. 44 were approved by the Committee as follows:

> The substitution of the word "entered" for the word "granted" in the third line of G.O. 44.
>
> The elimination of the words "or debtor in possession" which appear in the fourth line from the bottom of the first page of Enclosure 1, and the insertion of the word "or" between the words "receiver" and "trustee."

The Committee also agreed that the note should contain an explanation indicating the reason for the deletion of the words "or debtor in possession." This deletion was made at the suggestion of Professor Seligson who said: "I don't think we should have anything in the General Orders that will preclude the attorney for the debtor in possession from getting compensation. The language we voted on earlier disqualified the attorney for the debtor from receiving compensation if he has an interest adverse to the estate."

The question of the position of the words "without disclosure" in the third sentence of G.O. 44 was brought up by the Reporter, and after brief discussion it was decided to restore the words to their original position, after the first word of the sentence. The third sentence, as finally adopted by the Committee, reads as follows:

> "If without disclosure any attorney employed by a receiver or trustee shall represent or hold, or shall have represented or held any interest adverse to the

> estate in any matter upon which he is so employed, the court may deny the allowance of any fee to such attorney or the reimbursement of his expenses, or both, and may also deny any allowance to the receiver or trustee if it shall appear that he failed to make diligent inquiry into the connections of such attorney."

Judge Maris had earlier suggested merging 44 and 46, and in line with this suggestion the Reporter was directed to look into the feasibility of doing this. General Order 44 would then be captioned "Attorneys and Accountants" and G.O. 45 would be captioned "Auctioneers and Appraisers."

Prior to the luncheon recess, Professor Riesenfeld suggested the deletion of the words "the court is satisfied that" in the second sentence. Without objection, the recommendation was adopted.

GENERAL ORDER 45

General Order 45, as proposed by the Reporter and as amended by Professor Riesenfeld, was approved as follows:

> "No auctioneer shall be employed by a receiver, trustee, or debtor in possession, and no appraiser shall be appointed, except upon an order of the court expressly fixing the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or of the United States Department of Justice shall be eligible for employment as an auctioneer or for appointment as an appraiser."

The reference to G.O. 45 in the note should be changed to G.O. 46.

The Reporter promised to look into Judge Gignoux's question of whether the words "Judicial Branch" should begin with capital letters.

AGENDA ITEM 4.

Professor Joslin opened the discussion of this agenda item by stating that, after having given due consideration to the proposals regarding installment fees, he had reached the conclusion that the installment payment of fees should no longer be authorized. He accordingly recommended that the installment payment of fees be abolished. Professor Joslin made a motion to this effect which was seconded by Judge Gignoux. Professor Joslin explained his position by saying that the installment payment of fees probably reflects the conditions of the 1930's when a man's salary was so small that he had to have some help to get him through bankruptcy, but, he continued, "with the exemption laws the way they are and the amount of money that a man makes now, it is absolutely silly to have the installment payment of fees."

Prior to calling for the vote on the motion, the Chairman permitted a full discussion on the subject and requested that Professor Kennedy bring the Committee up to date on the findings of his study on the matter. Professor Kennedy began by referring to his memorandum of October 29th, 1962, on the subject of installment fee proposals.

There followed a brief discussion of whether the applicant should be required to sign the application for permission to pay filing fees in installments, and the consensus of the Committee was that the applicant should sign.

The prayer, as appears in Enclosure 2 of the October 29, 1962, memorandum, was approved by striking the words "in the amounts and on the dates proposed by him or as determined by the court." The

prayer, as revised, reads:

> "Wherefore this applicant prays that he be permitted to pay the filing fees in installments."

The proviso dealing with the extension of time in G.O. 35A was next discussed. Several of the members expressed views as indicated in the Reporter's memorandum of October 29th, and, of the various proposals suggested, it was the consensus of the Committee to adopt the suggested proviso of the Reporter, as amended, as follows:

> "Provided, That for cause shown the court may extend the time for payment of any installment over a period of not to exceed six months from the filing date of the original petition."

The Reporter then went on to the next point for discussion, namely, the standard of ability of the applicant to pay the filing fees in full, as embodied in the language contained in the first sentence of each of the first two paragraphs of proposed G.O. 35A. The Reporter, in an effort to bring the Committee up to date on the subject, said that the general order, as it now stands, requires a verified petition that "he is without and cannot obtain the money." He recalled the committee's attention to the action taken at its last meeting to delete the words "and cannot obtain" since it was believed that they might put the applicant to the necessity of selling his exempt property. As a result of a series of memoranda and responses, the Reporter prepared the version as it appears in Enclosure 1 of the October 29th memorandum.

Professor Seligson opposed the language "cannot pay" and stated that this phrase was too ambiguous and would create many problems. Judge Snedecor was of the same opinion. After some discussion

it was decided by the members to draft the language on the basis of the necessity to pay and the Reporter was instructed to prepare this portion of the General Order to say in effect that it is necessary for the applicant to pay such fees in installments without any further qualifications.

At Mr. Gibson's suggestion, the following underlined language was added to the last paragraph of the Order for Payment of Filing Fees in Installments:

> "It is further ordered that all payments be made at the office of the clerk of the United States District Court located at _____, in _____, _____, and that until the filing fees are paid in full, the bankrupt [or debtor] shall pay no money to his attorney and the attorney shall accept no money from the bankrupt for services in connection with the proceeding initiated by the petition under the Bankruptcy Act."

The Chairman then called for the vote on Professor Joslin's earlier motion which was to abolish the installment payment of fees. Only three members being in favor of the motion, it was lost.

Judge Gignoux questioned the grammatical usage of the phrase "dates of payments" in the second paragraph of proposed G.O. 35A and stated that he would prefer "dates of payment." The Reporter agreed to make the necessary change.

AGENDA ITEM 5.

The Committee voted to abrogate G.O. 23, Orders of Referees.

AGENDA ITEM 6.

The consensus of the Committee regarding the captions to the official forms was to delete the "s" in the word "Proceedings"

and to use the singular form, and further, to drop the word "In." Examples of the new form would be "Proceeding for an Arrangement," "Proceeding for a Real Property Arrangement," and so forth.

AGENDA ITEM 7.

It was agreed that all forms addressed "To the Honorable Court" should be revised so as to eliminate this salutation.

It appeared to be the consensus of the Committee that no additional official forms or provisions dealing with a Chapter XII arrangement proposed by creditors need be drafted.

Professor Seligson, in his memorandum of April 12 relating to Official Forms 48-62, stated that the title of the form which appears immediately under the form number is improperly placed if it is intended to be a part of the form, and suggested that the form should contain not only the caption but also "a brief statement of the character of the paper" as prescribed by G.O. 5(3). It was agreed that the Reporter should supply such a short description of the case in the forms in order to comply with G.O. 5(3) as suggested by Professor Seligson.

Form No. 48

Professor Seligson suggested the need to conform the recitals of venue in Paragraph 1 of Form No. 48, and also of other forms to the statute. It was agreed not to include any additional venue provision in the Form. As suggested by Professor Seligson in his memorandum, the Committee agreed, without objection, to eliminate paragraphs 4, 5, 6, and 7 of Official Form 48, and to include an informational footnote of the matter contained therein.

The words "Wherefore your" at the beginning of the prayer were restored by the Reporter. [But note change agreed to in re Form No. 58, infra.] On suggestion by Mr. Gibson it was agreed to consolidate the first paragraph of the form with the first numbered paragraph. This would then read:

> "Your petitioner, by occupation a _____[or engaged in the business of _____], has had his principal place of business . . . . ."

Form No. 49

The Committee directed its attention to Form No. 49, and specifically to the first paragraph, which indicates to the creditors the happenings to take place at the meeting. Professor Seligson, in his memorandum of April 12, objects to this itemization of things to take place and suggests language, as set forth in his April 12 memorandum, in keeping with the provision of Section 336. It was Mr. Nachman's view that the language as proposed by the Reporter may tend to enhance public relations with the creditor in that it permits the creditor greater participation in the proceeding, and still be within the spirit of the Bankruptcy Act.

In the way of a compromise, it was agreed that the Reporter be instructed to revise the language so as not to violate the Act, and yet to permit the creditor active participation in the proceeding. The following language was suggested:

> ". . . . .at which place and time the creditors may attend, file proofs of claim, which may be allowed or disallowed, nominate a trustee, appoint a committee of creditors, participate in the examination of the debtor, present written acceptance of the proposed arrangement, if filed, and transact such other business as may properly come before the meeting."

Without objection, the following paragraph as recommended by Professor Seligson in his memorandum of April 12, was substituted for the second paragraph as proposed by the Reporter in his draft of Form 49, and adopted:

> "Accompanying this notice are a copy of the proposed arrangement [if appropriate], a summary of the liabilities of the debtor and a summary of the appraisal of the property of the debtor [or a summary of the assets of the debtor]."

Judge Snedecor suggested the following:

> "At such meeting the court will fix a time within which the proposed arrangement shall be filed and will adjourn the meeting for at least 15 days after the date is so fixed. At least ten days before such adjourned meeting, the court will mail notice of the time and place of the adjourned meeting, together with a copy of the proposed arrangement to the creditors and other parties in interest."

At Professor Kennedy's suggestion, it was agreed to leave in that portion of Judge Snedecor's language which relates to the fixing of time within which the proposed arrangement shall be filed.

Form No. 51

The next-to-the-last paragraph of the form was revised according to the suggestion made by Professor Seligson in his memorandum of April 12, 1962, and adopted in the following form:

> "The debtor having made the deposit required by this chapter and by the arrangement and the court being satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by the Act;"

Form No. 52

The position of the word "duly" in line 5 of the first paragraph was changed so that the phrase will now read, "having been duly heard and considered."

Form No. 53

Paragraph 2 was revised and adopted as follows:

> "Your petitioner is the legal [or equitable] owner of the real property [or chattel real] which is security for debts proposed to be dealt with by the arrangement hereinafter set forth, and petitioner has an interest in such property which is not limited to a right to redeem it from a sale had before the filing of this petition."

Paragraph 4 was revised by substituting the phrase "herein sets forth the terms of the arrangement with his creditors proposed by him," for the phrase "proposes the following arrangement with its creditors."

Form No. 54

No change

Adjourned at 5:15, Nov. 14
Reconvened at 9:15, Nov. 15

[Professor Moore in attendance]

Form No. 55

As suggested by Professor Riesenfeld, the bulk of the contents of Form No. 55 will be divided into two numbered paragraphs and the first seven words, "The above-named debtor respectfully states that," will be deleted.

Form No. 56

The words "above-named" preceding the word "debtor" were stricken in the second line of the second paragraph. Other changes will also be made to conform with previous suggestions by the Reporter.

Form No. 57

The Reporter's draft was approved subject to other general changes in form previously suggested.

Form No. 58

It was agreed to follow the language of the statute throughout. It was also agreed to drop the word "Your" at the beginning of paragraphs 1 and 4.

The words "or wages" will be added at the end of paragraph 4.

Paragraphs 5, 6, 7, and 8 will be deleted and a footnote added.

Form No. 59

As suggested by Judge Gignoux, the first portion of the first paragraph of Form 59 will be changed to read as follows:

> "Notice is hereby given that on the ..... day of ....., 19.., the above-named debtor filed a petition in this court stating that he desires to effect a plan to pay his debts out of his future earnings or wages, ..."

Form No. 60

Judge Snedecor recommended the elimination of applications for confirmation of an arrangement. It was agreed that there should be a form.

Form No. 61

In the second paragraph, delete the bracketed words "if appropriate, add." The last paragraph was revised to read: "It is ordered that the plan is confirmed."

Following the discussion of all the Forms (48-62) Judge Gignoux moved that the Reporter be instructed to modify all forms, except where a general order specifically requires otherwise, so that the signature element should be:

Signed:_____
Attorney for Petitioner
[Petitioner signs if not represented by attorney]

Address:.....,
....., ...

AGENDA ITEMS 8-13

G. O. 2, Enclosure 1 to March 31, 1962, memorandum.

The Committee had considered putting in the word "Bankruptcy" before the word "Act" in the second sentence, but at Professor Moore's suggestion, this will be inserted in G.O. 1.

G. O. 2 was revised as follows:

> "....After reference to a referee of a proceeding under the Act, all papers, including proofs of claim, shall be filed with the referee, and any such paper received by the clerk shall, after the clerk has noted on it the date of its receipt, be transmitted forthwith to the referee. When a proceeding under this Act is not referred, all papers, including proofs of claim, shall be filed with the clerk of the district court, unless otherwise ordered by the judge. A paper erroneously delivered to either the clerk, the referee or the trustee shall be transmitted to the proper person and shall be deemed filed with him as of the date of its original delivery."

Proposed G.O. 17(5), Enclosure 3, and G.O. 21(1), Enclosure 5 to March 31, 1962, memorandum

In view of the Committee's adoption of Judge Maris' suggestion as to the last sentence of G.O. 2, the Reporter was of the opinion that the last sentence of G.O. 21(1) should be deleted and that no reference should be made to G.O. 17; also, that proposed paragraph (5) was not needed, but that perhaps a cross reference was needed in G.O. 21 to G.O. 2.

The first sentence of G.O. 21(1) was revised to read:

> "A proof of claim against an estate shall be correctly entitled in the court and in the proceeding and shall be filed as provided in G.O. 2."

Proposed paragraph (5) to G.O. 17 was deleted as suggested by the Reporter.

G.O. 4, Enclosure 2 to March 31, 1962 memorandum

Mr. Whitehurst wondered if this language in the first sentence would take care of an agent or a corporation. Judge Sanborn had suggested in correspondence with the Reporter that "A proceeding may be conducted by any party in interest in person in his own behalf or by an attorney authorized to practice in the district court." Judge Gignoux suggested: "Any party may appear and conduct the proceeding in person or by an attorney who shall be authorized to practice in the district court."

After some discussion of the first sentence, Professor Kennedy read the final version as follows:

> "Any person may appear and conduct the proceedings himself or by an attorney authorized to practice in the court; but a creditor will only be allowed to manage before the court his individual interest."

The last sentence of G.O. 4 was amended to read:

> "Notices, orders and other papers shall be served upon the attorney and if required by the Act, these general orders, or by the order of the court shall also be served on the party personally."

The Committee discussed the possibility of drafting a general order to deal with orders to show cause in bankruptcy proceedings and also service of notice by registered mail. In view of this

discussion, definitive action was deferred on G.O. 4 subject to further study by the Reporter in the light of the discussion.

Judge Gignoux's suggestion for the last sentence is as follows:

> "Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney and shall also be made upon the party himself if required by the Act, these general orders, or the order of the court."

G.O. 20

Deleted.

G.O. 21

The first sentence of G.O. 21(1) will be revised as mentioned earlier in the discussion of G.O. 17; that is, it shall include the cross-reference to G.O. 2 in the first sentence. The word "rendered" in the last sentence was changed to "entered."

The only change suggested for G.O. 21(2) is to substitute the word "court" for "referee."

G.O. 21(3) -- In order to incorporate a suggestion made by Professor Riesenfeld, the first sentence was revised to read:

> "A person who by his individual undertaking has secured a creditor of the bankrupt or debtor may file a proof of claim in the name of the creditor when the creditor fails to file his proof of claim at the first meeting of creditors and the name of the creditor is known by the person so contingently liable."

The second sentence was amended to the following:

> "When the name of the creditor is unknown, proof of such claim may be filed in the name of the person contingently liable."

It was agreed to delete the phrase "pro tanto" and to say something to the effect that "No dividend shall be paid upon such claim, except upon satisfactory proof that the original debt will be diminished by the amount so paid," as suggested by Professor Riesenfeld.

G.O. 21(4) was revised and adopted as shown below:

> "(4) A power of attorney to represent a creditor shall conform substantially with Official Form No. 18 or Official Form No. 19. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in section 20 of the Act."

G.O. 21(5) was revised and adopted in principle as shown below:

> "(5) Any party in interest may apply for reconsideration of the allowance or disallowance of any claim against the estate. If reconsideration is permitted, the court may, after hearing upon notice allow, disallow, increase or decrease the claim, if appropriate."

Prior to adjournment on the second day of the session, Judge Snedecor suggested that a subcommittee be appointed for the sole purpose of editing or polishing the proposals thus far made by the Advisory Committee with the understanding that no substantive changes would be made by the subcommittee. Judge Maris believed this to be a feasible idea and recommended to the Chairman that a subcommittee of three, including the Chairman, be appointed to assist the Reporter in making editorial changes needed. It was so ordered and the subcommittee will be composed of the following: Judges Forman and Gignoux and Professors Seligson and Kennedy.

Adjourned at 5:00, Nov. 15
Reconvened at 9:00, Nov. 16

Form 18, Enclosure 6 to March 31, 1962 memorandum

At the suggestion of Mr. Nachman, the Reporter recommended the possible inclusion in the Form of the words "or debtor" in order to cover not only straight bankruptcy proceedings, but also debtor relief proceedings. Mr. Seligson thinks it a mistake to try to cover Chapter X in this form. He thinks it should be confined to straight bankruptcy and perhaps arrangements. He suggested including XI, XIII and ordinary bankruptcy, but not X or XII.

Judge Gignoux suggested the following language:

> "The undersigned claimant hereby authorizes you or any one of you with full power of substitution to act for this claimant in all matters arising in this proceeding."

Professor Joslin agreed with Judge Gignoux's suggestion; however, he would include the right to receive dividends, and leave out the attendance phrase.

Judge Gignoux amended his language to read:

> "The undersigned claimant hereby authorizes you or any one of you with full power of substitution to vote, to receive dividends, and, in general, to act for the claimant in all matters arising in this proceeding.

Mr. Nachman suggested that the Reporter take this in hand and redraft the form in accordance with the suggestions made by Judge Gignoux and Professor Joslin, having in mind the suggestions made for brevity in all of these forms. In encouraging brevity, an earlier suggestion had been made to eliminate the vote for propositions language. However, the Reporter and Mr. Nachman were of the opinion that this language should be retained and that the Committee should vote on whether to retain it. The Chairman

called for the vote on whether to retain the language which reads, "to vote for or against any proposal or resolution that may be then submitted under the Bankruptcy Act." The Committee voted to leave in this language.

The Reporter then asked for an expression of opinion on whether it was felt by the members that an attorney, by reason of his representation of a client, should have the right to vote for a trustee without power of attorney. The consensus was that an attorney should NOT vote for a trustee without a power of attorney.

The Committee discussed briefly whether or not the attorney should have the right to receive dividends without the power of attorney. It was agreed that the Reporter should research this matter further and advise the Committee of his findings.

Form 19, Enclosure 7 to March 31, 1962 Memorandum

The consensus as to Form 19 was that a form for a special power of attorney was needed. As suggested by Professor Seligson, it was agreed to include a power of substitution whereby an attorney could designate attendance by another attorney in the event he could not be present and that the date and time clause could be eliminated; and further, that the form would specify "first" meeting.

Form 28, Enclosure 8 to March 31, 1962 Memorandum

After some discussion wherein it was agreed to adopt the proposed caption of this form, Judge Snedecor recommended the following language with a view towards simplification:

"At the time of bankruptcy, the bankrupt owed the claimant as wages, salary or commission, the sum of _____ dollars earned between the _____ day of _____ and the _____ day of _____ at the rate of _____ dollars per week, per month."

The Committee voted to sacrifice some of the legal, technical phraseology of the form, as it now stands, in favor of the practical, simple phraseology, and Judge Snedecor submitted the following draft for the Committee's consideration:

"1. The bankrupt justly owes the claimant $_____ as wages, salary or commissions earned at the following rate of compensation _____ for services performed beginning on the _____ day of _____ 19____ and ending on the ____ day of ____ 19 ____.

2. No payment, check or other evidence of this debt has been received except _____.

Dated at _____ this _____ day of__19__

_____
Claimant "

Form No. 29, Enclosure 9 to March 31, 1962 memorandum.

It was agreed that the address should relate to the individual and that the language in the beginning should be: "That the undersigned, who is the claimant herein, resides at _____."

It was also agreed that at the end of the paragraph relating to partnership claims, the phrase "and is duly authorized to make this proof of claim on its behalf" should be added.

At the end of the paragraph relating to a claim made by agent or attorney, the closing phrase should be "and he is duly authorized to make this proof of claim in behalf of the claimant."

Paragraph 6 of Form 29 was amended to read:

"No part of this claim or of the indebtedness out of which it arises has been paid, is subject to any set-off or counterclaim, is secured, or has at any time been secured, except_____."

Judge Snedecor was in favor of separating the exception clauses in paragraph 6, that is, the recital regarding payment, the recital regarding set-off, and the recital regarding security. The consensus was that this should be done. In the recital relating to security, it was decided that this should be in close conformity with the statute and that language in effect saying "no securities are held for this claim except" be used.

The following phrase should be added to paragraph 5:

"as shown by the itemized statement attached hereto."

The following language was suggested for paragraph 7:

"This claim is filed as a general, unsecured claim to the extent that the above security does not satisfy the claim. [If priority is claimed, so indicate with the amount of priority claimed].

Professor Kennedy suggested that the signature element to Form 29 be only one line. This was left to the Reporter's discretion.

Form No. 33, Enclosure 10 to March 31, 1962 memorandum

Judge Snedecor moved to eliminate this form. Professor Seligson was of an opposite view and favored its retention. Judge Gignoux seconded the motion of Judge Snedecor, but it was lost.

At Professor Joslin's suggestion, the title of Form 33 will be revised to read "Order on Reconsideration of Claims."

AGENDA ITEM 17.

The proposal under this item, basically, is the elimination of the verification requirement, the elimination of duplication in what the referee has to report, and the inclusion of certification

of the correctness and completeness to the best of the knowledge of the referee, which G.O. 26 and Official Form No. 47 still include.

With authority to make minor alterations as deemed necessary, Professor Joslin moved to accept the Reporter's draft of G.O. 26 and Official Form 47. Judge Stanley seconded the motion.

Judge Forman suggested the elimination of the certification. Judge Gignoux agreed and it was the consensus that the certification should be omitted. Professor Joslin accepted this amendment to his motion and the motion was carried.

It was thereafter agreed that the need for this general order and official form should be re-examined.

AGENDA ITEM 28

The problem under this item was whether the General Orders should implement the policy to confine appointments of receivers to cases of particular necessity.

Mr. Nachman moved to accept Professor Kennedy's language with relation to Chapter XI cases as indicated in Enclosure 1, G.O. 40, paragraph (1), excluding the necessity for verification.

Following the discussion of the first paragraph of G.O. 40, Mr. Nachman agreed to amend his motion to incorporate the modifications made by Professor Seligson. These modifications included the revision of the second sentence to read in principle as follows:

> "Unless immediate appointment is necessary to prevent irreparable loss to the estate, the appointment before adjudication shall be made only upon due notice with opportunity for hearing afforded to the bankrupt or debtor and to any other parties in interest designated by the court."

Professor Seligson also suggested that the Order should recite the basis of the necessity for appointment. It was agreed that a third sentence would be inserted to include this. Mr. Nachman's motion was carried as amended.

In paragraph (2), the words "after the filing of a petition" will be stricken, as suggested by Mr. Covey.

AGENDA ITEM 21

Judge Whitehurst moved the abrogation of G.O. 50, and it was so ordered.

AGENDA ITEM 23

Proposal that a limit be placed on the time that a court is permitted to hold an application for relief under advisement, by George Natanson in his letter of December 4, 1961.

Judge Maris summarized the discussion in the following manner:

> "The Committee recommended that referees be required to submit reports on pending matters analogous to those made by the judges, including certificates of review, and that this matter be placed on the agenda of the Judicial Conference Committee on Bankruptcy Administration."

The Reporter was instructed to write to Mr. Natanson advising him of the action taken by the Committee.

AGENDA ITEM 24

Professor Seligson, in his letter of June 26, 1961 to Professor Kennedy, related a problem which Referee Herzog mentioned to him, and that is that in permitting an aggrieved person to file a petition for review of a referee's order within ten days after the entry thereof, the adverse party in some cases is not given notice until one or two days before the ten-day period has expired.

It was the Committee's consensus that an order should be drafted following the provision of Rule 77(d), FRCP, namely, that immediate notice be given after an order is entered.

Adjourned at 5:25 on Nov. 16
Reconvened at 9:00 on Nov. 17

AGENDA ITEM 19

G.O. 51, Enclosure 1, Ancillary Proceedings.

Professor Seligson summarized the discussion as follows:

"We agree in principle that (1) there ought to be an application made to the primary court including the application for the appointment of an ancillary receiver; (2) if the application is granted, that the ancillary proceeding may be instituted in the court of bankruptcy in the ancillary district; (3) that when such a proceeding is instituted, it shall be instituted in the office of the clerk of that court and it shall be automatically referred except where otherwise ordered by the judge. Also, that no receiver shall be appointed where a trustee is qualified." Professor Seligson moved that the above outline be approved and that the Reporter be instructed to prepare a draft to include the provisions outlined.

It was agreed to delete the last two sentences of paragraph (1) of proposed G.O. 51. Mr. Nachman recommended that the second sentence of paragraph (1), G.O. 51, be redrafted to say "An application shall contain a detailed statement ....."

In paragraph (2), it was agreed that the first sentence should be retained, but that it should be revised to read: "No ancillary receiver shall be appointed after a trustee has been appointed and has qualified."

Mr. Whitehurst made the motion that a General Order be drafted to permit automatic reference by the clerk on an application to reopen an estate so that the jurisdiction of the referee under Section 2(a)8 would be clear. This policy was agreed to by the majority of the membership, Professor Riesenfeld dissenting.

AGENDA ITEM 20

The idea of drafting an official form of notice of first meeting of creditors and the desirability of the inclusion of a statement to notify the creditors that their claims must be filed not later than six months after the first date set for the first meeting of creditors was acceptable to the Committee, and the Reporter was instructed to prepare a draft along the lines used in the New York notice. However, the third paragraph in the New York notice is not deemed appropriate.

AGENDA ITEM 22

Proposed revision or abrogation of G.O. 47, Reports of Referees and Special Masters

Part of the problem under this Item is whether to authorize the judge to receive further evidence and what attitude the district judge should take with respect to the referee. Judge Maris stated that there is no difference between the findings of a referee in a bankruptcy case and the findings of a special master in a civil action.

Following a lengthy discussion, Professor Seligson said that nothing else need be done except to clarify G.O. 47. He stated that the findings of fact made by either the referee or a special master should be accepted unless clearly erroneous. Further, that it should embrace the language in Rule 53(e)(2). Professor Seligson

made the following motion: "That the judges retain the power to take additional testimony or recommit the taking of additional testimony as now provided specifically with respect to special masters; that it should be applicable both to special masters' and referees' findings." In the interest of expedition of bankruptcy proceedings, Professor Joslin and Judge Gignoux were against the motion. The Chairman rephrased Professor Seligson's motion as follows: "That the district judges shall continue to have the right to call for further testimony over that which is contained in the certificate of review; that the second sentence of G.O. 47 be retained and also be made applicable to certificates of review."

Professor Seligson's motion was lost. Professor Joslin made the motion that the judge have no such authority and that the case be remanded to the referee. This motion carried.

Judge Gignoux suggested that in redrafting G.O. 47, the first paragraph should be devoted to the final order of referees and the second paragraph to the final report of special masters.

The Reporter was instructed to advise the Reporter of the Civil Rules Committee of the action taken on G.O. 47 and to recommend the modification of Rule 52, FRCP.

AGENDA ITEM 15

Proposal to require creditors' meetings and examinations to be conducted before referee

This proposal was referred to the Committee on Bankruptcy Administration of the Judicial Conference.

AGENDA ITEM 16

Proposal for new order or form prescribing requirements of applications for allowances.

Upon Judge Snedecor's motion, it was agreed not to pursue the matter further.

AGENDA ITEM 14

G.O. 14 was revised and adopted as follows:

"No official trustee shall be appointed by the court nor except as provided hereinafter, should any general trustee be appointed to act in a class or classes of cases. The court may, in its discretion establish a panel of standing trustees for cases where creditors do not elect trustees. Appointment of trustees by the court from such panel shall be so apportioned as to prevent a monoply of such appointments or the allowance of excessive or exhorbitant compensation to any person within the district."

AGENDA ITEM 25

Due to the limitation of time, discussion of Item 25 was deferred and will be placed on the agenda for the next meeting.

The meeting adjourned at 1:00 subject to the call of the Chairman.

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