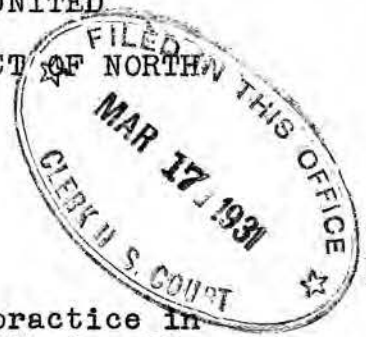


RULES OF PRACTICE IN BANKRUPTCY OF THE UNITED
STATES DISTRICT COURT FOR THE MIDDLE DISTRICT
CAROLINA.



It is ordered that the following rules of practice in bankruptcy in and for the middle district of North Carolina, numbered from 1 to 28 inclusive be and are hereby adopted as the Rules of this Court, effective March 19, 1931.

All existing Rules of Practice in Bankruptcy not hereby adopted are of no effect after March 19, 1931.

1.

Petitions and Schedules.

(a) All voluntary petitions must be either printed or typewritten and shall state the full name of the debtor, without abbreviation or interlineation; likewise occupation, residence, and post-office address. If the debtor resides in a city, his residence shall be stated by street and number.

(b) Voluntary petitions by corporations shall recite the authority of the officer signing the petition and the accompanying schedules.

(c) Schedules in voluntary and involuntary cases shall be filed in triplicate in the clerk's office, properly prepared on printed forms, and shall contain every schedule and subdivision thereof in accordance with Official Form No. 1, with oaths and summaries.

(d) Each item in the schedules not otherwise filled out shall be carried out by the entry "Nothing".

(e) Schedules shall state the street and number, post-office box, rural route, or other detail address of each creditor, if known to the debtor. If unknown, that fact shall be so stated immediately following the name of the creditor.

(f) In involuntary cases referred by the clerk to the referee, the referee shall, if the bankrupt fails within the time prescribed by law to file his schedules, as soon as practicable make an order and cause a copy thereof to be mailed to, or personally served upon the bankrupt, to file in the court by a day named in the order, schedules in triplicate under oath and in the form hereinbefore described, of all his creditors, giving their names, addresses, the amounts due each, the consideration of the debts, and what security, if any, is held for the same; also a full and complete schedule of his assets showing the character, condition and location, and estimated

value of each item; and in case such bankrupt be a corporation, such notice shall be directed to, or served upon the Secretary or Treasurer thereof, or upon **such officer**, agent, or employee as shall have charge, or have had charge of the books of accounts of the corporation.

(g) Amendments to schedules shall be in triplicate and if allowed by the referee, he shall forthwith forward one copy of each such amendment to the clerk who shall file same and attach it to the original schedules.

2.

Orders Made by Clerk as of Course.

In all voluntary cases, when the judge is ^{not} in the division of the district in which such cases are filed and no objections are on file and no statement that a composition is to be offered, the clerk shall upon filing the petition for adjudication, as of course, enter the order of adjudication and order referring the cause to the proper referee.

3.

Jurisdiction of Referees in Referred Cases.

(a) Whenever a case shall be referred to a referee, either by special order of the judge, or by certificate of the clerk in the judge's absence (Form 14), the same shall be considered and treated as before and within the jurisdiction of the referee for all purposes, proceedings and orders that may be necessarily required in the case, including the appointment of receivers, and the granting of restraining orders; but excepting orders confirming compositions and granting discharges, as to which the jurisdiction of the judge is exclusive. The referee may make necessary orders for the preservation of the estate before adjudication.

(b) Interventions for the enforcement or establishment of liens, reclamations of property, or for any similar purposes shall be filed in the first instance with the referee.

4.

Place of Meetings.

When from an inspection of schedules filed, or otherwise it is made to appear to the referee that it will be most convenient for the parties in interest, the referee shall appoint the meetings of creditors to be held at the office of the referee, or at **such** convenient place as he may select.

5.

Setting Off Exemptions.

(a) It shall be the duty of the referee, as soon as practicable after the first meeting of creditors to set off and allow as exempt to the bankrupt the property claimed by him, if the same is exempt as prescribed by the Bankruptcy Act, whenever no trustee has been appointed, or when it appears from the condition and character of the estate that there will be no other duty for a trustee to perform other than the collection and receipt of the property claimed as exempt, and the setting apart of the same to the bankrupt. The claim of the bankrupt for such exemption shall be contained in the schedules as prescribed by subdivision 8 of section 7 of the Bankruptcy Act; and, if not so contained, the bankrupt shall not claim exemptions as a matter of right.

(b) If, in accordance with the foregoing provision, no Trustee is appointed for an estate, the referee may order that no meeting of creditors, other than the first meeting, shall be called and he may close the case at such meeting (General Order XV).

(c) The trustee shall make report to the court, within twenty days after receiving notice of his appointment, of the items and estimated value thereof set off to the bankrupt as exempt under the State law, according to the provisions of the 47th section of the Bankruptcy Act.

6.

List of Claims Transmitted to Clerk.

General Order XXIV shall not be construed to require the referee to transmit to the clerk a separate statement of each proof of debt; but only that he shall transmit a list of the claims proved, after he has reason to believe that all claims have been proved against the estate that will be presented.

7.

Notice To Creditors.

(a) The referee shall cause notice of the first meeting of creditors to be published at least once in a designated newspaper, and shall cause such notice to be mailed to each creditor as scheduled, at the post-office address given in the schedules; and of all subsequent proceedings and hearings in the cause as to which notice is required by the Bankruptcy Act, or the rules of practice of this court, he shall cause notice to be mailed to each of the creditors as provided by law, or to their attorneys of record.

(b) When the length of time of notice is not prescribed by the Bankruptcy Act or any rule, the referee shall in his order, fix such time as in his judgment shall seem best.

(c) The referee shall attach to his record a copy of each notice with a certificate of mailing the same in the form following:

In the District Court of the United States
for the Middle District of North Carolina.

In the matter of:)
) In Bankruptcy
) No. _____
_____ Bankrupt.)

I, _____ Referee in bankruptcy in and
for said district, hereby certify that on
the _____ day of _____, 19____, I mailed notic-
es to creditors of which the annexed is a
copy, one each to the persons, copartner-
ships, and corporations mentioned in the shed-
ules on file herein, aggregating _____ notices,
by depositing such notice in the United States
mail in the city of _____ in the district
aforesaid.

Referee in Bankruptcy.

(d) Notice required to be given by the Act shall be served
by mail unless otherwise required by law or the order of the
Court.

(e) The certificate of the referee filed with his record
shall, in all cases and for all purposes, be evidence that
notice has been published and mailed as required by the Act,
the rules, or the orders of the Court.

8.

Appointment of Receivers.

(a) When the judge is absent from the district, an applica-
tion for the appointment of a receiver in an involuntary case,
shall be addressed to the judge, filed with the clerk, and by
him referred to the referee with a certificate of the judge's
absence. The appointment of a receiver in such case, shall not
ordinarily be made by a referee except after a hearing has been
had on the application, upon reasonable notice to the alleged
bankrupt. In such cases the referee is authorized to assess and
approve the bond of the petitioning creditors.

(b) Applications for the appointment of receivers in voluntary
cases, shall be made to the judge when he is in the division of
the district in which the case is pending.

(c) When the judge is absent from the division and a case has
been referred generally to a referee, application for the appoint-
ment of a receiver in a voluntary case, shall be made to the refer-
ee, accompanied with a certificate of the clerk that the judge is
absent from the division.

(d) Receivers shall not be appointed unless it is made to appear
that such appointment is absolutely necessary for the preservation
of estates; and if it so appears, the court may appoint a tempor-
ary receiver on its own motion.

(e) When the duties of a receiver are those of a mere custodian,
the referee shall so state in his order of appointment.

Receiver's Reports and Accounts.

(a) Immediately upon the appointment and qualification of a trustee, the receiver shall turn over to the trustee all the money and assets in the receiver's possession, taking the trustee's receipt therefor. The receiver shall file his report and account within ten days after the qualification of a trustee, unless such time is extended by the judge or referee. The referee shall audit the accounts of the receiver and, if allowed, shall discharge him.

(b) Where a receiver has been appointed in a case which is afterwards dismissed or otherwise disposed of without a reference to a referee, such receiver shall immediately, after the dismissal or other disposition of such case, submit his report and accounts to the judge.

(c) Applications of receivers for compensation in cases which have been referred to a referee shall state the amount claimed, and notice thereof shall be given to creditors as required by section 48 (d) of the bankruptcy act.

10.

Reports and Accounts of Trustees.

(a) The provisions of section 47 of the bankruptcy act (U. S. Code, Title II, Sec. 75), relative to the duties of trustees, and of section 65 thereof (U.S. Code, Title 11, Sec. 105), shall be rigidly enforced.

(b) After the distribution of the funds of an estate in bankruptcy is complete, every trustee shall file his final account showing all receipts, the date and whence received; every allowance of expense paid, and each individual disbursement and the purpose thereof, arranged in chronological order and the balance, if any, remaining in his possession, to which shall be attached the trustee's oath to final account as prescribed in Form 50 of the Forms in Bankruptcy; whereupon the referee shall withdraw the paid checks from the depository and make an audit of said account as required by General Order XVII in Bankruptcy; and if it appears that the trustee has fairly and honestly administered said estate and duly accounted for all property or money coming into his hands in accordance with the law; and if said account has been duly audited as above provided and found correct, the trustee shall be discharged of his trust; Form 51 of the Forms in Bankruptcy to be used therefor.

(c) Referees are directed to exercise an active supervision over the trustees to prevent delay in the settlement of estates. If any trustee, after due notice from the referee, neglects to make proper reports or to pay dividends, or causes unreasonable delays in any respect, the referee in charge shall make certificate of the facts and submit the same to the district judge, and thereupon the judge will in his discretion issue a rule requiring the trustee to show cause why he should not be removed.

(d) Where the bankrupt has no property other than such as is exempt, and no assets have come into the hands of the trustee, it may not be necessary to call a final meeting of the creditors, and the trustee may be entitled to a discharge from his trust by filing a report with the referee stating the facts and making it

appear to the satisfaction of the referee that there is not property of the bankrupt available as assets of the estate.

11.

Attorneys.

(a) No receiver or no trustee shall employ an attorney without having first obtained authority by written order from the judge or referee upon written application setting forth the necessity for such employment.

(b) Petitions for the allowance of attorney's fees shall show in detail the amount and character of all services performed; and no attorney for a receiver or trustee shall be allowed compensation out of the assets of the estate for services other than for such as are reasonably necessary and of a strictly legal character.

(c) All petitions for attorneys' fees shall comply with the requirements of Order XLII of the General Orders in Bankruptcy.

(d) The referee shall not allow any attorney fees in excess of the following amounts:

\$50.00 to attorney or attorneys for petitioning creditors.

\$75.00 to attorney for bankrupt.

\$100.00 to attorney for trustee.

If services of exceptional character justify greater compensation, the referee shall report the nature of the services, the amount of assets and any other material facts together with his recommendation to the court for such orders as the court deems advisable.

(e) The solicitation by attorneys or others of the power to represent creditors in any bankruptcy proceedings, is deemed unethical and is to be deprecated. Referees are therefore directed to deny any such representation.

12.

Referee's Records.

(a) Every referee shall keep a docket with a suitable index in which shall be entered by cases, the dates and character of all papers filed, all orders made, the dates and purposes of all meetings of creditors, and a record of all other proceedings before the referee. The entries as to the proceedings in

cases should be sufficiently complete to show the nature of each paper filed and the substance of each order, judgment, or decree issued by the referee.

(b) In this docket there shall also be entered by cases, a record of all claims filed, showing the number of the claim, dates on which filed, names of creditors and their attorneys, nature of the claim, amount claimed, and ~~amount~~ allowed.

(c) At the close of each case the referee shall prepare a transcript of all entries in this docket in relation to the same, to which shall be securely attached all orders and papers, reports, and dividend sheets relating thereto, arranged in chronological order; all proofs of claims arranged in numerical order as filed, and followed by the certificate of the referee that the case has been closed; and the same shall constitute the record book of the referee required by paragraphs "b" and "c" of section 42 of the bankruptcy act (U. S. Code, Title 11, Sec. 70), and the same shall forthwith be filed with the clerk of the court.

(d) A record in detail shall be maintained in each case in the above described docket of the fees earned and the indemnity for office and clerical expense collected by the referee. When the case is closed, the total amounts of the respective items shall be posted by cases into a record book columnar ruled to show filing fee, commission, filing claims, office and clerical expenses, traveling expenses, and total.

(e) Every referee shall file in the clerk's office at Greensboro, on or before the 15th day of July of each year, a report of all asset cases which have not been closed and which have been pending more than fifteen months. Such reports shall contain the title and number of the cases, the date when it was refereed, and a concise statement showing what substantial proceedings have been had in the case, and why it ~~has~~ not been closed.

13.

Depositories.

(a) All moneys received by a receiver or trustee in bankruptcy must be deposited in some depository designated as required by section 61 of the bankruptcy act in the name of such receiver, trustee, or trustees in bankruptcy in the particular cause in which such money is received, and shall be drawn out only as prescribed in General Order in Bankruptcy No. XXIX.
Checks must be countersigned by referee or judge.

(b) Referees shall direct into which of the designated depositories the assets or money of a bankrupt estate shall be deposited. In making such deposits, receivers or trustees are directed, in addition to making the deposit slip in the name of the receiver or trustee for the respective bankrupt estate, to add and show the number of the case which the same bears upon the bankruptcy docket in the office of the clerk of this court.

(c) All accounts of funds of estates in bankruptcy in the

United States district court shall be segregated by the depository under a general index heading of "Bankruptcy- United States District Court", and all such accounts shall be indexed thereunder and the number of each case, as docketed in the office of the clerk of the court, shall likewise be shown in each respective case thereon.

(d) All official checks drawn by receivers, trustees, or other persons in bankruptcy, shall be retained by the depository until withdrawn by the referee or judge on his order.

(e) All paid checks drawn by receivers, trustees, referees, or other persons in bankruptcy matters shall be withdrawn from the depository upon the closing of the case and filed in the office of the clerk of the Court in the order of the respective case number, in a file kept specially for that purpose, separate and apart from the case papers.

(f) Each depository shall, at the close of business at the end of each quarter period of each year and at such other times as the court may direct, prepare and transmit to the clerk of the court at Greensboro, a statement of all balances in estates in bankruptcy on deposit, showing the number and title of the case, the name of the receiver or trustee, and the amount of the balance.

(g) Depositories shall allow duly accredited examiners of the Department of Justice free access at all times to the accounts of moneys of bankrupt estates and the use of paid checks drawn on such accounts.

14.

Bonds of Receivers and Trustees.

All official bonds of receivers and trustees, when appointed by a referee, shall be approved by the referee. When such bonds are approved by the referee, they shall be transmitted forthwith to the clerk of the court who shall file the same and enter a minute thereof in the case on the bankruptcy docket.

15.

Payment of Referees' Fees.

(a) The fee of fifteen dollars (\$15.00) provided by section 40 of the bankruptcy act, shall not be payable to the referee unless there is a general reference, or some question relating to the estate or composition or discharge is referred to the referee. The fee of fifteen dollars for the referee, prescribed in section 40 of the bankruptcy act, shall be payable within ten days after each case has been closed, and for such purpose, a case shall be considered as closed when the referee has filed with the clerk his record under section 42 of the bankruptcy act and his statistical report properly prepared.

(b) In such cases where the filing fees of the clerk, refer-

ee, and trustee, as provided in section 40 of the bankruptcy act, were not originally deposited with the clerk of the court, the trustee, in any case where he has money belonging to the bankruptcy estate sufficient to pay the whole or part of the filing fees and other costs taxed in the clerk's office, shall forthwith deposit the necessary amount with the clerk of the court to be by him applied to the payment of such fees and costs in the case.

16.

Commissions of Referees and Trustees.

(a) The commissions of referees shall be based on the amount of money disbursed to creditors, and the maximum allowance to trustees for commissions shall be based upon all moneys disbursed or turned over to any person, including lien holders, as is provided by the bankruptcy act.

(b) The commissions of referees and trustees shall not be paid in full until the final order of distribution has been made by the referee; partial payments may be made during the course of administration not to exceed one-half the amount of commissions that have accrued on moneys disbursed.

17.

Expenses of Referees.

As indemnity for expenses in the administration of estates in bankruptcy before him, the referee shall be allowed and paid from the bankrupt estate, the following:

(a) Amounts actually and necessarily paid by the referee for newspaper publication of notices required by the act.

(b) The actual and necessary expenses paid by a referee while necessarily away from his place of residence on official business.

(c) For preparing and mailing notices required by the act, not exceeding twenty, Three dollars fo each set of notices and for each additional notice above twenty, ten cents for each notice given.

(d) For any copy of testimony, or of orders, or other papers, fifteen cents per folio.

(e) Pursuant to section 62 of the bankruptcy act, it shall be the duty of the referee, when a case is ready to be closed, to file with the district judge, an itemized statement under oath in each case of the amount due him as indemnity for all expenses incurred by him in the administration of the case. The judge will examine the same and if correct and in due form, will transmit the same to the referee for payment by the trustee.

18.

Perpetuating Testimony.

The actual and necessary expense of having testimony reported under section 38, par. 5, of the bankruptcy act, is to be paid by the trustee as an expense of administration.

19.

Traveling Expenses.

Where any officer makes charge and collects an indemnity on account of expenses incurred in traveling, when absolutely necessary in the discharge of his official duties, an itemized account of such traveling expenses shall be rendered in detail, sworn to, and attached to the trustee's final account.

20.

Petitions for Review.

When a review by the judge of any order, ruling or decision of the referee is desired, an objection shall be made at the time of the ruling, order or decision objected to, by the person objecting to the ruling, order or decision and desiring a review, which objection shall be noted on the record; and he shall file with the referee his petition for a review pursuant to General Order XXVII within ten days of the date of said order, ruling or decision. If objection be not so made and petition filed within said period of ten days, the person affected by such order, ruling or decision, shall be deemed to acquiesce therein and to have waived all right to have the same reviewed by the judge. For good cause shown, the referee may, at any time within ten days after the making of any order, ruling or decision by him, allow a petition for review even though objection was not filed at the time of the making of the order, ruling or decision sought to be reviewed, or he may extend the time within which a petition for review may be filed, not to exceed thirty days from the granting of such extension of time. Whenever practicable, the referee shall annex to the transcript showing the order, ruling or decision, objection and petition, his reason for the order, ruling or decision complained of.

21.

Proceedings Upon Petition for Discharge.

(a) Upon the filing of a petition for discharge, properly prepared upon Form No. 57 of the Forms in Bankruptcy, the referee, in case the costs are paid and expenses which have accrued in the cause have been paid or otherwise to his satisfaction provided for, shall fix a time for the hearing, and notice thereof be given, as provided in section 58 of the bankruptcy act, to all known creditors and other persons in interest; and also a time within which parties in interest may enter appearance in opposition; and if no appearance in opposition shall be entered within

the time limited, the referee shall so immediately certify to the judge and the order of discharge will issue as of course; but if appearance in opposition be entered within the time limited, and the specifications are filed as required by General Order XXXII, the matter shall, if the necessity therefor arises, be referred to the referee who will proceed thereafter to give notice to the bankrupt and to all creditors, as prescribed by law, that he will proceed to take testimony touching the specifications filed, which notice shall fix a date when the taking of testimony shall be begun. Provided, however, that the referee shall not be required to hold such reference and take such testimony without first having the costs for taking the same, including the expense of a stenographer and typewriter advanced and deposited with him. Upon the completion of the testimony the referee shall certify the same and his conclusions of fact and law to the judge for further action.

(b) Upon the filing by the bankrupt of an application for discharge, the referee shall before entering an order of notice thereon, collect from such bankrupt an amount of money sufficient to cover the expense of publishing notice of such application and other expense, if any; and upon the failure of the bankrupt to make a deposit of such sum within a period of thirty days from the filing of such application, such application shall stand dismissed for want of prosecution without further order.

(c) A bankrupt shall be entitled to be reimbursed from his estate as a part of the cost of its administration for the amount so deposited with the referee; provided such bankrupt makes seasonable application to the trustee for such reimbursement.

32.

Compositions.

(a) Where a bankrupt desires to offer terms of composition to his creditors before adjudication, he shall express such desire in writing and file it with the clerk with the schedules of all his property and a complete list of his creditors required to be filed by bankrupts if such schedules and lists shall not then have already been filed. Thereupon adjudication shall be delayed, and the clerk shall make reference to the referee for the purpose of calling a meeting of creditors, filing and allowing claims, receiving the offer of composition and acceptances, and considering the proposed composition. The referee shall call a meeting of creditors for the purpose above mentioned. Publication and notice shall be as in case of first meetings. Such meetings may be adjourned to enable creditors to prove claims or the bankrupt to secure additional acceptances. If the offer is not accepted, the referee shall file his report to that effect with the clerk, and the case shall proceed as usual, and as though no such special reference had been made.

(b) If the offer is accepted, the referee shall report to the court the proceedings had before him, together with a list of the creditors accepting and a list of those not accepting, with the amount for which the claim of each creditor is allowed,

and a list of creditors scheduled but who have not filed claims. Such report shall show the amount owing as priorities and to secured creditors, also the estimated expense of administration and the amount necessary to be deposited to effect the composition. The referee shall also report whether, in his opinion, the composition is for the best interest of creditors and should be confirmed; and, if confirmed, a copy of the order of confirmation shall be filed with the clerk of the court.

(c) After a case has been referred to a referee, the offer of composition shall be filed with him. The referee shall call a meeting to consider the offer. Thereafter the proceedings shall be as hereinbefore directed.

(d) The consideration necessary to effect the composition as estimated by the referee shall, in advance of the filing of the petition for confirmation, be deposited in one of the designated depositories in bankruptcy to the credit of the case and "subject to the order of the United States District Judge". If the composition is confirmed, a copy of such order stating the name of the person authorized to sign checks disbursing the consideration shall be mailed to the depository by the clerk of the court. If the composition is not confirmed, such deposit shall be returned to the person making the deposit on check signed by the clerk, upon the order of the judge.

(e) Notwithstanding the confirmation of the composition, the referee shall continue to have jurisdiction to make orders of distribution, file, and allow or disallow claims, and do such other acts as may be necessary to properly disburse the consideration and close the case. If the consideration deposited is not sufficient, the referee shall make orders, subject to review, requiring the bankrupt to make additional deposits. When the distribution has been completed, the person who made the distribution shall file with the clerk a statement showing in detail the disbursements made. If any balance remains, it shall be refunded to the bankrupt.

23.

Copy of Adjudication to be sent Clerk.

Whenever the referee issues an adjudication upon the order of reference, he shall immediately transmit a copy of the same to the office of the clerk of the court, where the filing of the same shall be promptly and properly noted in the proceedings on the docket of the case.

24.

Final Meeting of Creditors.

Final meeting of creditors shall be called and held in all asset cases in which a trustee has been appointed. (see rule 1D (d))

25.

Undistributed Balances.

Undistributed balances remaining in the hands of a trustee after the closing of a case and which it is impracticable to disburse, shall be paid into the registry of the United States District Court. Checks for such balances shall be signed by the trustee and countersigned by the referee, and shall be accompanied by a statement showing the name of the bankrupt and the number of the case. Undistributed balances as aforesaid, in excess of \$50.00 shall be paid into the registry only by special order of the court in each case.

26.

Filing of Paid Checks.

All checks in bankruptcy cases returned to the office of the clerk of the court by the referees in bankruptcy, shall be kept in such office of the clerk in the order of their respective case numbers, in a file specially for that purpose, separate and apart from the papers in the respective cases; and such paid checks shall be examined only in the presence of the clerk, unless otherwise ordered by the Court.

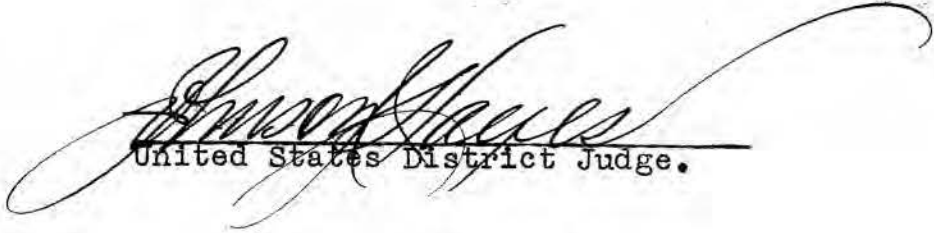
27.

Deposit for Publishing Notices and For Other Expenses.

Upon the filing of a petition in bankruptcy where there are no assets above exemptions, the petitioner shall deposit with the clerk of the referee, Three Dollars (\$ 3.00) for publishing notices, and fifteen cents for each creditor to cover all other office expenses necessarily incurred by the referee.

The clerk will enter the foregoing rules, numbered from 1 to 27 inclusive, in the minutes of the court.

Done at Greensboro, North Carolina, this 17 day of March, 1931.


United States District Judge.