

IN RE BOLTON.

Case No. 1,614.

[2 Ben. 189;¹ 1 N. B. R. 370 (Quarto, 83); 1 Am. Law T. Rep. Bankr. 120.]

District Court, S. D. New York.

March Term, 1868.

BANKRUPTCY—SECURED CREDITOR—PROOF OF CLAIM FOR
OVERPLUS—SELECTION OF ASSIGNEE.

A creditor, who has a security for his debt, may prove his claim for the overplus, without abandoning the security, but must set forth the value of the security, and may vote, on the choice of an assignee, upon such overplus.

In bankruptcy. In this case [Henry C. Bolton] the bankrupt and creditors requested the register to certify a question as to the rights of a creditor who held a security for part of his claim. The register held, that a creditor having security may prove his claim, to the amount exceeding the value of the security, without abandoning it, but that he was bound to set forth the value of the security; and that he might vote as a creditor in respect of the overplus proven by him, in the choice of an assignee.

[The following is the certificate and opinion of the register in full:]

[I, Edgar Ketchum, one of the registers of said court in bankruptcy, do hereby certify that in the course of the proceedings, in said cause before me, the following question arose, pertinent to said proceedings, and was stated and agreed to by the counsel for the opposing parties, to wit: Mr. E. Y. Bell, who appeared for the bankrupt, and Mr. W. W. Wiltbank, who appeared for certain creditors of the said bankrupt: "It is controverted by the counsel for the bankrupt, but on the part of counsel for certain creditors it is claimed, that a creditor having a pledge of personal property, given to him by the bankrupt and a third person in the course of their business as copartners, co-trading, or a lien thereon for securing the payment of a debt owing to said creditor from the said bankrupt, should be admitted at a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of his estate, held at a court of bankruptcy, in accordance with the provisions of the 11th and other sections of the act of congress, March 2.1867 (14 Stat. 522), to prove his whole debt without, by so doing, abandoning Ms security, losing his lien thereon, or forfeiting his right to the same." I am of opinion that the creditor having security may prove his claim to the amount exceeding the value thereof, without abandoning the same. But I think the creditor is bound to set forth the value of his security, and that he may vote as a creditor, in respect to the overplus proven by him, upon the choice of assignee. Edgar Ketchum, Register.]²

BLATCHFORD, District Judge. The view of the register is correct.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission. 1 Am. Law T. Rep. Bankr. 120, contains only a partial report.]

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² [From 1 N. B. R. 370 (Quarto, 83).]