

Case No. 3,614.

IN RE DAVIS ET AL.

{1 N. B. R. 120; ¹Bankr. Reg. Supp. 26; 7 Am. Law Reg. (N. S) 30; 6 Int. Rev. Rec. 149; 15 Pittsb. Leg. J. 103.]

District Court, N. D. Ohio.

1867.

BANKRUPTCY—ELECTION OF ASSIGNEE—SECURED CREDITORS.

A creditor of a bankrupt holding a claim wholly or partially secured, may prove the same in bankruptcy, but cannot vote for assignee.

{Cited in Re Hunt, Case No. 6,884.]

{On certificate of register in bankruptcy.]

The question arose in this case before the register whether a creditor holding a claim fully or partially secured should be allowed to vote for an assignee. The question was certified to Judge SHERMAN, as follows, by Myron R. Keith, one of the registers of said court in bankruptcy:

“In the course of proceedings in said matter before me, the following questions arose pertinent to said proceedings, and were stated and agreed to by the counsel for the opposing parties, to wit: J. M. Jones, who appears for the bankrupt and Payne & Wade, who appear for the creditors of said bankrupt The facts are: A. C. Gardner, a creditor of said bankrupt, has proved his claim before the register, as a claim secured by mortgage on real estate, and the question arising is this: Under the provisions of the bankrupt act [of 1867 (14 Stat 522)], should a creditor, holding a claim fully or partially secured, be allowed to vote at the first meeting of creditors in the election of an assignee? Section 13 provides that the creditors shall, at the first meeting held after due notice from the messenger, in the presence of a register designated by the court, choose one or more assignees of the estate of the debtor, the choice to be made by the greater part in value and in number of the creditors who have proved their debts. Section 23 provides that the court shall allow all debts duly proved, and shall cause a list thereof to be made and duly certified by one of the registers. Section 20 provides that when a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property to be ascertained by agreement between him and the assignee or by a sale thereof to be made in such manner as the court shall direct Section 13, above referred to, allows all creditors who have proved their debts to participate in the choice of an assignee. The certified list of creditors required by section 23, is for the purpose of spreading upon the record a statement of the names of all admitted as creditors,

and the amount due to each. Section 20, in my opinion, so far as voting for assignee is concerned, limits the creditors to those who are not secured, for it provides that creditors holding security shall be admitted as creditors only for the balance of their debts, after deducting the value of the security, and that value can only be determined by agreement between him and the assignee, or by sale of the property which cannot be agreed on between them, or ascertained by sale until after the assignee is chosen. I am therefore of the opinion that a creditor holding security, although he has proved his debt as provided in the 22d section of the bankrupt act, cannot vote in the election of assignee. And the said parties requested that the same should be certified to the judge for his opinion thereon.”

SHERMAN, District Judge. I concur with the register in the opinion by him given, on the question above stated, and approve the same.

¹ [Reprinted from 1 N. B. R. 120, by permission.]