IN RE HANNA.

Case No. 6,027.

{5 Ben. 5;[1] 7 N. B. R. 502.}

District Court, S. D. New York. Feb., 1871.

AMOUNT OF DEBT—VALUE OF SECURITY.

At the meeting of creditors to choose an assignee, a creditor, who held as security for a debt a mortgage, which in his proof of debt he stated, on information and belief, to be worth less than the amount of the debt, claimed to be entitled to vote for assignee, on the difference between the value, so stated, and the amount of the debt. Held, that he was not entitled to vote upon such difference, or any part thereof. {Cited in Re Hunt, Case No. 6,884.}

{In the matter of Samuel Hanna, an involuntary bankrupt}

At the meeting of creditors called for the purpose, of choosing an assignee herein, the firm of A. T. Stewart &Co. had filed a proof of debt, and claimed the right to participate in the choice of assignee, and to have, the sum of $50,075.82, being the difference between an item (viz., $100,075.82), of indebtedness, and the value of the securities held therefor, as such value was estimated and sworn to in said deposition, included in the amount on which they were entitled to vote. Edward S. Innes, a creditor who had proved his debt, objected, among other things, that said deposition and the matters therein stated did not entitle the said A. T. Stewart &Co. to participate in the choice of assignee, upon said sum of $100,075.82, until the value of theproperty held as security should have been ascertained by sale there of, in such manner as the court should direct There upon, at the request of the counsel for the respective parties, the question was adjourned into court, for decision by the judge, with the following opinion by the register:

By JAMES F. DWIGHT, Register:

The claim of A. T. Stewart &Co. consists of two parts: 1st For $25,000 and interest, on five several notes and drafts, which amount is unsecured. 2d. For $160,513.80, secured by two mortgages, each for $150,000, and upon which indebtedness has been paid the sum of $61,591.57, leaving still unpaid (but secured by the mortgages), the sum of $98,922.23. This creditor claims to fix the

value of the securities by the deposition of the partner making the proof of debt, that he "has been informed and believed," that the security of the two mortgages is not worth beyond the sum of $50,000; and that, although the value of these securities may prove to be more or less here after, the "estilnate" made in this way is sufficientfor the purposes of adjusting the amount on which the firm may be admitted to vote for assignee.

I do not consider this position tenable. The twentieth section of the act [of 1867 (14 Stat. 526)] seems to me to clearly determine this point, in saying: "When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien there on, 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 betweenhim and the assignee, or by a sale thereof, to be made in such manner as the court shall direct." The mortgages themselves were to the extent of $300,000, to cover loans and advances; and, as these loans and advances had not equaled the amount stated as that security, I am of opinion that A. T. Stewart & Co. can be admitted as a creditor, under this proof of debt, only in the amount of $25,000 and interest, for the notes and drafts, of the first class stated; and that the indebtedness stated of the second class must rest in abeyance until the value of the securities stated are ascertained in the manner provided for in the section quoted.

Mr. Hilton, for A. T. Stewart &Co.

Mr. Kursheedt, for Edward S. Innes.

BLATOHFORD, District Judge. I concur with the register in his views.

[In Case 6,026 a special order was made appointing the register special custodian of the property put up for sale under the mortgages to A. T. Stewart & Co.]

[1] [Reported by robert D. Benedict. Esq., and here reprinted by permission.]