

mitting that the witness is not mistaken in the words used by the bankrupt. He may have thought and believed that it was all right and just, and something which he ought to do, and which was not giving an unfair advantage to Ahlefeldt; yet that it might be misconstrued by other creditors of his who might possibly hear of it, and therefore, on that account, he wanted nothing said about it. It must necessarily appear, I think, under the circumstances of this case, that the language used is susceptible only of the construction that he intended to do something that he believed to be wrong, and contrary to the principles of justice and equity. It may be admitted that the case is not free from difficulty, and while it is insisted that the amount involved ought not to make any difference, still it is impossible for the court to disregard the fact that the only creditor who files the petition reviewed in this case is one whose claim amounts to \$57.70, and that the only amount which was paid to Ahlefeldt, immediately preceding the filing of the petition in bankruptcy and after he had failed, was \$34.20.

On the whole, I feel inclined, I admit with some hesitation, to affirm the ruling of the district court.

DENDEL v. SUTTON, Assignee of Craig, Bankrupt.

(Circuit Court, S. D. Illinois. 1884.)

BANKRUPTCY—MORTGAGE—HOMESTEAD—FORECLOSURE—DEFENDANT.

If a mortgage is executed by one who afterwards becomes bankrupt, and in his schedule states the premises to be his homestead, the mortgagor must be made a party defendant in the foreclosure proceedings, and cannot be made to appear by his assignee unless the mortgage of the homestead was acknowledged according to the statute of Illinois providing for the acknowledgment of mortgages of homestead.

Appeal from District Court.

DRUMMOND J. The leading facts in this case are that the bankrupt mortgaged to Dendel a lot of land in Jacksonville, which was his homestead; that the acknowledgment did not contain a relinquishment of the homestead right, as was required by the statute. After having made this mortgage, he filed a voluntary petition in bankruptcy and was declared a bankrupt. In his schedule he said that he had a homestead right in this lot of land in Jacksonville. The bankrupt case went on in the usual manner, and an assignee was appointed. Dendel, the mortgagee, afterwards filed a bill in the district court to foreclose the mortgage, and made Sutton, the assignee, and the wife of Craig, who was also a party to the mortgage, parties to the bill, but did not make the bankrupt a party, unless he became such through his assignee. A default was rendered in the case

against the defendants, and a sale made of the property, and Dendel became a purchaser. There was nothing said in the bill or in the decree about the right of homestead of Craig in the property. The time for the redemption from the sale having expired, a deed was made to Dendel, the purchaser under the sale, and then he applied to the district court for a writ of assistance to dispossess Craig from the property, which the court refused to allow, and from the order refusing the writ Dendel has appealed to this court.

I think the decision of the district court was right. Under the conceded facts of the case, the bankrupt had a homestead in the property. The mortgage not being acknowledged in conformity with the statute, the foreclosure proceedings and sale did not divest him of this right. That was an independent proceeding not connected with the proceedings in bankruptcy. The bankrupt law did not destroy the homestead right. The fact that neither the bankrupt nor the assignee interposed to the proceedings of foreclosure the homestead right, did not deprive the bankrupt of the right. If the bankrupt as to that interest was independent, as he clearly was, of the assignee in bankruptcy, then he should have been made a party in order to affect his interest; and it can hardly be assumed that it was the duty of the assignee to bring before the court the right of the bankrupt in property with which he, the assignee, had no connection. It seems clear that the act of congress reserving the interest of the bankrupt in the property means, when it refers to 1871, the amount or value of that interest. So that I think the decree of the district court was correct, and it will be affirmed.

HALL and others *v.* STERN and others.

(Circuit Court, S. D. New York. July 10, 1884.)

PATENT MIRRORS—MEASURE OF DAMAGES.

The defendants, retail dealers in fancy articles, had supplied themselves, up to a certain time, with a style of mirror of which the complainants had a monopoly in the United States, by purchasing the mirrors of complainants; they then began to import a like sort from Europe and sell them at a figure below complainants' price. They sold them at a loss. *Held* that, in estimating complainants' damages, the measure should be the profits they would have made on the trade which defendants diverted. The sales made by defendants are not the criterion of complainants' loss, because it cannot be legitimately inferred, under the particular circumstances, that the complainants would have sold as many mirrors as the defendants sold.

In Equity.

Edmund Wetmore, for complainants.

Delos McCurdy, for defendants.

WALLACE, J. The proofs in this accounting do not show that the complainants lost the sale of their patented mirrors to the extent that