IN RE ELY.

Case No. 4,428.
{5 Law Rep. 323.}

District Court, S. D. New York. 1843.

BANKRUPTCY—WHO ARE CREDITORS—ASSIGNOR OF BOND AND MORTGAGE.

{One to whom the bankrupt had executed a bond and mortgage, assigned the same to a third party as security for a debt, and afterwards assigned all her property, credits, etc.

to a receiver appointed in a suit pending against her. *Held* that, notwithstanding these assignments, the assignor was not deprived of the title to the bond and mortgage in such sense that she ceased to be a creditor of the bankrupt, but, on the contrary, she was entitled, as such, to take part in the proceedings.]

On the coming in of the commissioner's report, exceptions were taken by the bankrupt [John Ely] to the competency of the opposing party to the objections on the ground that she was not a creditor. On the 9th March, 1835, the bankrupt executed a bond arid mortgage to Mrs. Traphagen. She assigned the bond and mortgage to Bernard L. Simpson, May 1, 1836, to secure a debt owing him, and also the payment of rent, &c, on premises leased of him, and stipulated that the assignment should become absolute on her failing to pay. Simpson assigned his interest therein to Mr. Cram, May 14th. In 1841, Cram sued the bond in the name of Mrs. T., and recovered judgment; his claims against Mrs. T. would absorb the judgment within about $200. Messrs. Grahams prosecuted a creditor's bill against Mrs. T., and April 12, 1841, she assigned to a receiver in that suit, all her estate, effects, interests, &c, &c., but she is contesting the creditor's bill with the complainants, and the case yet remains undecided between them. The court held, that the assignment to Simpson, notwithstanding the absolute clause on her default to pay, was only by way of security, and did not render the bond his property, or that of his assignee. That the assignment of Mrs. T. under the creditor's bill, only placed her effects in the custody of the law, and did not transfer her title so entirely but that she possessed an interest dependent only upon the termination of the chancery suit in her favor. If in judgment of law, she no longer stood in the relation of creditor to the bankrupt, she was interested in obtaining the whole debt from him, as that would increase the funds passed to the receiver in extinguishment of the claim in chancery, and furthermore, because if that bill is displaced, equity would secure the restoration of the fund to her. The act [of 1841 (5 Stat. 440)] authorizes creditors who have proved their debts, and other persons, in interest, to oppose the discharge, and in the one character or other she makes out a clear title to file the objections. Exceptions overruled.

E. H. Ely, for bankrupt.

Benedict & Belknap, for creditors.