

PHELPS v. STERNS.
 SAME v. DUDLEY.

{4 N. B. R. 34 (Quarto, 7).}¹

District Court, D. Maine.

1870.

BANKRUPTCY—PROOF OF DEBTS—SECURITY.

Where a creditor petitions that debts proved by respondents, who are also creditors, be disallowed, on the ground of having taken a mortgage to secure their debts within four months of adjudication, *held*, debts of respondents disallowed.

{These were proceedings by George G. Phelps against S. P. Sterns and the same plaintiff against Smith Dudley.}

J. O'Donnell, for libellant.

FOX, District Judge. These two cases were petitions by Phelps, a creditor of the estate of William H. Porter, of Paris, a bankrupt, against the respondents, who were also creditors of Porter, praying that the debts proved by respondents against the estate of Porter be disallowed. Respondents were creditors of Porter, and March 29, 1869, took a mortgage of Porter's farm to secure their debt. Within four months thereafter Porter was adjudged a bankrupt on petition of Phelps. In August, 1869, the assignee of Porter brought a suit against respondents to break their mortgage; after that suit respondents, before a trial was had, voluntarily released their mortgage and all claims under it to the assignee, and that suit was dismissed; respondents proved their debts against the estate of Porter, and petitioner asks to have them disallowed by reason of this mortgage, alleging it to be a preference in fraud of the bankrupt act [of 1807 (14 Stat. 517)]. Debts of respondents disallowed.

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