

Case No. 3,095.

IN RE CONE ET AL.

[2 Ben. 502;¹ 2 N. B. R. 21 (Quarto, 10).]

District Court, S. D. New York.

Aug., 1868.

PLEADING IN BANKRUPTCY—FRAUDULENTLY STOPPING PAYMENT.

Where a petition in involuntary bankruptcy alleged as an act of bankruptcy that the debtors had “fraudulently stopped and suspended, and not resumed payment of their commercial paper for a period of fourteen days,” but no facts were stated in the petition or in the affidavit which accompanied it, to show that such stoppage, &c., were fraudulent, *held*, that no order to show cause could be issued.

[Cited in *Baldwin v. Wilder*, Case No. 806; *Re Hercules Mut. Life Assur. Soc.*, Id. 6,402.]

In bankruptcy. This was an application for an order to show cause why the debtors should not be adjudged bankrupts. The petition was filed by Wright Gillies and James M. Gillies, and alleged that they were creditors of William S. Cone and William M. Morgan, and that in April last said Cone & Morgan made in their favor a promissory note, payable in two months, for \$618.19; that at the time said note became due, payment was demanded and refused; and that within six months before the filing of the petition, the said Cone & Morgan suspended payment of their commercial paper for a period of fourteen days.

BLATCHFORD, District Judge. The petition merely states a legal conclusion that the debtors “have fraudulently stopped and suspended, and not resumed payment of their commercial paper, for a period of fourteen days.” This is stated substantially in the language of the thirty-ninth section [of the act of 1867 (14 Stat. 536)]. The affidavit to sustain the allegations of the petition merely states the same legal conclusion. The stoppage and non-resumption are sufficiently shown, but no facts are set forth to judicially satisfy the court that such stoppage and non-resumption were fraudulent. Mere stoppage and non-resumption for fourteen days are not sufficient, nor is fraud inferable therefrom. The order to show cause is refused.

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