

Case No. 5,920.  
[1 Dill. 587.]<sup>1</sup>

IN RE HALL.

Circuit Court, D. Iowa.

1871.

BANKRUPTCY—APPEAL—REVIEW—COMMERCIAL PAPER—SUSPENSION OF  
PAYMENT—BANKRUPTCY.

1. A creditor who does not claim under commercial paper may charge, as an act of bankruptcy, failure by debtor after suspension to resume payment of commercial paper, though suspension be not fraudulent.

{See In re Ballard, Case No. 816; Baldwin v. Wilder, Id. 806.}

2. An order vacating an adjudication of bankruptcy made at the former term cannot be revised on appeal.

In bankruptcy.

E. A. Storrs, for petitioning creditor.

N. M. Hubbard, opposed.

DILLON, Circuit Judge. 1. An appeal to the circuit court does not lie by the petitioning creditor from an order of the district court vacating, at the instance of another creditor, an order made at a previous term, adjudicating their debtor a bankrupt; the remedy of the petitioning creditor in such a case is under the second section of the bankrupt act [of 1867 (14 Stat 518)], and not by an appeal under the eighth section. Ruddick v. Billings [Case No. 12,110]; Ex parte Alexander [Id. 160]; Langley v. Perry [Id. 8,067]; Hawkins v. Bank [Id. 6,245].

2. A creditor whose claim is not evidenced by commercial paper, but rests in an open account, may file a petition against his debtor, under section 39 of the act, and charge, as an act of bankruptcy, that he has suspended and failed to resume payment of the commercial paper for the prescribed period.

3. It is not necessary, in order to constitute an act of bankruptcy, that the suspension and failure to resume payment of commercial paper for fourteen days should be fraudulent In re Burt [Id. 2,210].

<sup>1</sup> [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]