

Case No. 8,079.

{14 N. B. R. 159.}²

IN RE LANZ.

District Court, D. Minnesota.

March, 1876.

BANKRUPTCY—PETITION OF CREDITOR—COMMERCIAL PAPER ISSUED IN
COURSE OF BUSINESS—NOTE GIVEN TO PARTNER IN SETTLEMENT.

A note given By one partner, on the settlement of a copartnership business, as manufacturers, to pay for the interest of the copartner in the business, and to settle the balance appearing against him, is not the commercial paper of a manufacturer, issued in the course of his business as such.

For several years previous to June, 1873, [George] Lanz was engaged in partnership with B. H. Randall, of Saint Peter, in the manufacture and sale of boots and shoes. The partnership was dissolved in June, and after selling out the retail stock, Lanz purchased Randall's interest in the machinery, etc., and shipped it to Minneapolis, where a company was organized with Lanz as vicepresident,

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called the "North Star Boot and Shoe Company." On December 1, 1874, Lanz and Randall had a settlement of their old partnership business, and upon an examination of the books of the firm for the purpose of ascertaining, as stated by Randall in his testimony, "how much we owed, how much he [Lanz] owed, and how much was owing us," it was found that Lanz was indebted to Randall in the sum of thirty-five hundred dollars, which amount included the purchase of Randall's interest in the machinery, and he gave his notes for this amount; one for five hundred dollars, payable in four months; two for seven hundred and fifty dollars each, payable in one year, with interest; and one for fifteen hundred dollars, payable in two years. The first note was paid, and Randall transferred the other three before maturity to A. J. Lamberton, one of the petitioning creditors, and he subsequently turned over one of the seven hundred and fifty dollar notes to Kelley, and the fifteen hundred dollar note, still not due, to Meagher. The petition alleges that the defendant, being a manufacturer, made and passed these notes in the course of his business, and has fraudulently stopped and not resumed payment of his commercial paper within a period of forty days. The defendant has denied the allegation that he is a manufacturer, and also denies that the notes were given in the course of his business as a manufacturer. The case was heard before the court without a jury.

Bigelow, Flandrau & Clark, for petitioning creditors.

Start, Gilman Clough & Lane, for debtor.

NELSON, District Judge. If the notes described in the petition were not given by Lanz in the course of his business as a manufacturer, the petition must fall, and the proceedings be dismissed. The facts in regard to the consideration for the notes and the manner they were executed are undisputed. Lanz, and the payee of the notes, Randall, had dissolved a manufacturing copartnership, and were winding up their business; the retail stock had been sold, and there remained on hand all the machinery and the unmanufactured stock to quite a large amount. Lanz purchased this at the time of the dissolution, June, 1873, and on a subsequent settlement between the partners, and after an examination of the partnership books, December 13, 1874, gave his notes to Randall for the sum of thirty-five hundred dollars, which amount included the price agreed upon for the latter's interest in the machinery, etc., and the balance found due upon the books of the firm. The first note was paid, but the other three—two for seven hundred and fifty dollars each, with interest, payable in one year from date, and one for fifteen hundred dollars, with interest, due in two years from date—are unpaid, the latter not due. These notes were transferred by Randall to A. J. Lamberton, one of the petitioning creditors, before maturity, and subsequently two of them were passed by him to the other petitioning creditors.

I do not think, upon the facts thus proved, these notes can be regarded as the commercial paper, within the meaning of the bankrupt law [of 1867 (14 Stat. 517)] of a manufacturer, issued in the course of his business as such. They were given on the settlement

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of the copartnership business between the partners, upon a full examination of the firm books, and the consideration was not only the purchase price of one partner's interest in the machinery, etc., but also all balances appearing against the other partner. The consideration was entirely unconnected with any commercial transaction of a manufacturer, and the notes fall within another class than commercial paper made by a manufacturer in the course of his business as such. Entertaining this view of the case, it is unnecessary to consider the other defences urged. Petition dismissed.

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