

Case No. 17,923.

IN RE WOLF.

[4 Sawy. 168;¹ 17 N. B. R. 423.]

District Court, D. Nevada.

Jan. 18, 1877.

ACT OF BANKRUPTCY—COMMERCIAL PAPER—NON-PAYMENT.

The mere letting a note, payable one day after date, remain unpaid forty days after it falls due, is not an act of bankruptcy, in the absence of any demand of payment, or other facts to show a suspension and failure to resume.

[Cited in *Brown v. Jefferson Co. Nat. Bank*, 9 Fed. 264.]

[Cited in *Lindsey v. Flebbe*, 5 Colo. App. 218, 38 Pac. 399.]

This was a petition for an adjudication of bankruptcy, charging that the respondent had suspended and stopped payment of his commercial paper, and had not resumed in forty days. Upon the return day of the order to show cause, the only proof offered of the act of bankruptcy was a promissory note made by E. Wolf in favor of one Parker, for \$1,000, payable "one day after date," which showed upon its face that it had been due more than forty days. There was proof that no demand had ever been made on Wolf for payment of the note. No other evidence was produced tending to show a suspension of payment and failure to resume.

J. B. L. Brandt, for petitioner.

M. N. Stone, for respondent.

HILLYER, District Judge. It could not have been the intention of the framers of the bankrupt law to make the simple fact that a note like this remained due and unpaid for forty days an act of bankruptcy. There is certainly a reasonable presumption that the parties to such paper made payable one day after date did not expect it would be paid on the day it fell due. No demand being made on him, the maker would be likely to let the note run for an indefinite time; and it would be, it seems to me, a most unjustifiable construction of the bankrupt act [of 1867 (14 Stat 517)], to say that by so doing he was stopping or suspending payment of his commercial paper.

Suspension of payment means something more than a failure of the maker of such paper as this to seek the holder and pay him. Business men understand very well what the term means; there is the idea in it of a failure to pay from an inability to do so; and here there is nothing to show that the debtor was not abundantly able and willing to pay the note on presentation.

The prayer of the petition is denied.

¹ [Reported by L. S. B. Sawyer, Esq., and here reprinted by permission.]