

Case No. 3,267.

IN RE COTE.

{2 Lowell, 374;¹ 14 N. B. R. 503.}

District Court, D. Massachusetts.

Dec. Term, 1874.

BANKRUPT—DISCHARGE—TRADESMAN.

1. The word “tradesman,” in section 29 of the bankrupt law (Rev. St. § 5110), cannot fairly be held to mean trader, in the large sense of the old bankrupt law. Its meaning considered.

{Cited in *Re Stickney*, Case No. 13,439; *In re Moss*, Id. 9,877.}

2. A farmer, who occasionally bought and sold horses, cattle, and hay, was *held* not bound to keep books as a tradesman, within that section.

{Applied in *Re Kimball*, 7 Fed. 462.}

In bankruptcy. The bankrupt’s discharge was opposed on the ground, that, being a tradesman, he had not kept proper books of account. The evidence tended to show that he was a farmer, and conducted his farm chiefly through his hired men; that several times in each year he visited Canada, and he then usually bought horses or cattle, and sometimes hay, partly for use on his farm and partly for sale. His dealings in these articles were for cash. He was unable to write, and had never kept any books. There was no evidence that his failure was connected with his buying and selling. The amount of his dealings was a subject of some conflict of proof.

G. W. Morse, for objecting creditors.

N. B. Bryant, for bankrupt

LOWELL, District Judge. I have more than once referred to the difficulty which I find in understanding what persons congress intended to include in the class of tradesmen. That this is not a fanciful objection may be seen by the remarks of the court in construing a statute of Pennsylvania, which exempted the necessary tools of a “tradesman” from seizure on execution, in *Richie v. McCauley*, 4 Pa. St 472. “It is to be regretted,” says Bell, J., in delivering the opinion in that case, “that, in framing a statutory provision of so much importance, a term so vague, and admitting of such variety of signification, should have been employed.” He then goes on to say that in England the word is applied to small shopkeepers, but that in the United States it is rarely applied to persons engaged in buying and selling, but to mechanics and artificers of every kind, whose

livelihood depends upon the labor of their hands. Burrill, in his Law Dictionary, adopts this meaning, and gives this case as the authority. Bell, J., cites, too, the opinion in a case in Massachusetts, where the word is used in the same sense. *Howard v. Williams*, 2 Pick. 80, 83. In Webster's Dictionary the definitions are: 1. One who trades; a shopkeeper. 2. Any mechanic or artificer whose livelihood depends upon the labor of his hands (citing Burrill). 3. A handicraftsman in a borough (citing Scot). In Wharton's Law Lexicon (English), the definition is "a shopkeeper."

The act of congress is taken in this part from the insolvent law of Massachusetts (Gen. St c. 118, § 87); but I have not seen any reported case in which it is construed by the courts of the state. We may well regret that the bankrupt act of 1841 had not been followed, which imposed this duty on every merchant, banker, factor, broker, underwriter, or marine insurer. Persons coming within that description might be expected to keep books; but it will be difficult to find any modern definition or use of either "merchant" or "tradesman," which will include underwriters; so that the description probably omits some classes of persons who might well enough be included. Our present inquiry, however, is, whether it describes a person whom no one would expect to find subjected to such a duty, as, for instance, a handicraftsman. [This cannot be contended, because such people never keep books, and are not expected to keep them. It must refer to traders of some sort]²

It cannot be believed that congress really expected that a farmer, who sometimes incidentally, whether more or less often, bought and sold farm stock in addition to his own, and who would not be fitted by education to keep books, and who could not afford to have a clerk, should become an accountant. And yet if "tradesman" means "trader" in the largest sense, and if occasional trading makes a trader, no doubt this defendant was a tradesman.

I am of opinion that "tradesman" cannot fairly be stretched to mean "trader," in the large sense of the old bankrupt law. That law was, for some time, confined to persons who used the trade of merchandise, or sought their living by buying and selling. Among its earliest maxims was one, still important and binding in many respects, that it was to be taken largely and remedially for the benefit of creditors; and accordingly the class of persons subject to the law was continually extended by successive statutes and by decisions. Under these conditions, it was determined that any person might be brought within the act as a trader who bought and sold for gain, though his dealings might be on a very small scale compared with his means invested in other ways, or might be remote from his usual occupations. He would be a trader if he owned one share in a bank or trading company not incorporated. There is no such reason for giving a large meaning to the word "tradesman" in section 29 of the act of congress, and I do not think the word is ordinarily so used at present.

Nor am I prepared to admit that the word has a very different meaning in England and the United States. In both countries it is, I think, most often used as synonymous with “shopkeeper,” and not seldom as a person who supplies your daily or occasional wants, such as a butcher or baker, or even a plumber or carpenter, whether he keeps a shop or not. But in both countries it has a signification much more restricted than that given to “trader” in the old bankrupt law; and I doubt if a dealer in horses and cattle has often been called a “tradesman” in either country.

The English statutes, for some forty or fifty years past, have put at rest the nice and perplexing questions about traders, by giving an alphabetical list of the occupations which should constitute trading, for the general purposes of those acts. But there is nowhere any such definition of “tradesman;” and the word has not become a technical one, excepting in some state statutes, such as have been already referred to, which are not in *pari materia* with the bankrupt law, and in which it is certain that the meaning is different from that intended here. The question, therefore, is addressed to the common usage of this country, and to the judge’s knowledge of his own language. The word might, in many connections, be used in the sense of any man who trades; but I doubt if that is at the present time its usual signification, and whether it has that meaning in this section. The subject-matter proves that the act does not apply to handicraftsmen, or at least that there are many such to whom it cannot apply. The meaning of “tradesman” is, I think, substantially the same as “shopkeeper.” “Merchant,” in this connection, contrasts with “tradesman,” as the greater with the less, and not vice versa.

The trading of this defendant is small enough in amount to bring him down below the grade of a merchant; and there remains a further question, whether congress intended that an occasional dealing by a farmer in farm products, other than those he has raised on his land, will make him a tradesman within this section, even if a person whose sole business should be to trade in such products, like what we call a grocer, or provision dealer, or cattle salesman would be. Here a distinction fairly arises out of the intent of this part of the statute, opposite to that which caused such an extension of the class of traders as general subjects of the bankrupt laws. It does not seem to me that congress intended to say that every one who ever bought and sold, under whatever circumstances, must

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keep books of that part of his business; but that real merchants and actual tradesmen, being the class of persons whom the common practice of mankind makes bookkeepers, should keep their books properly; and that there may be persons who trade, such as peddlers, in a small way, but more especially persons like this defendant, who buy and sell merely by way of eking out their living, which is principally earned in other ways, that are not to be required to do this. Such a construction may leave the law a little uncertain; but it is, in my judgment, a sound construction, and the only one that will effect justice in the long run. In short, the distinction I take between this part of the law and that which made traders an extensive class, is, that the latter was remedial between debtors and creditors, and to be extended; and this imposes a duty on a certain class of persons, as such, and ought to be confined to those who actually belong to that class with some degree of permanence. [I conclude that this defendant was not such a tradesman as is bound to keep books.]

Discharge granted.

¹ [Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.]

² [From 14 N. B. R. 503.]