

IN RE MOSS.

[19 N. B. R. 132.]¹

District Court. S. D. New York. April 23, 1879.

BANKRUPTCY—STOCK BROKER—MERCHANT OR
TRADESMAN—FAILURE TO KEEP
BOOKS—DISCHARGE.

The bankrupt was a stock and gold broker, but was not a member of the Stock Exchange. He took orders for the purchase and sale of stocks and gold, but conducted the business exclusively through the agency of other brokers, who were members of the exchange, and divided the commissions with them. *Held*, that he was not a merchant or tradesman, within the meaning of the act, and as such disentitled to a discharge for failure to keep books of account.

In bankruptcy.

B. Skaats, for bankrupt.

Chas. E. Crowell, for creditor.

CHOATE, District Judge. This is an application for the discharge of the bankrupt. The only specification is that, being a "merchant or tradesman," he kept no books of account. The bankrupt kept no books. The only question is, was he a "tradesman," within the meaning of the act [of 1867 (14 Stat. 517)]? The evidence as to the nature of the bankrupt's business is very confused; but, as nearly as it can be made out from his examination, it was as follows: He was a stock and gold broker, but without being a member of the Stock Exchange. He took orders for the purchase and sale of stock and gold, but did not himself execute the orders. He opened accounts in his own name, as "agent," with other brokers, who were members of the exchange, and they bought and sold for him upon his orders, and gave him half the commission usual in such transactions. He furnished those for whom he did the business a memorandum of each

transaction immediately after it occurred. It did not appear whether his customers knew that he bought and sold exclusively through other brokers, nor was there any evidence of concealment. The debts contracted by him consisted chiefly of balances due the brokers through whom he acted, being in reality for excess of his losses over the margins deposited. There were also some debts for borrowed money, and some debts due to the customers who employed him, for balances on these stock transactions. Upon these facts, I think it clear that the bankrupt was not a "merchant or tradesman," within the meaning of the act, and as such disentitled to a discharge for failure to keep books of account. The careful discussion of the meaning of the word "tradesman" in recent cases makes it unnecessary to do more than refer to those authorities. In re Coté [Case No. 3,267]; In re Stickney [Id. 13,439]; In re Marston [Id. 9,142]. Discharge granted.

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