

IN RE KIMBALL, BANKRUPT.

Circuit Court, D. Massachusetts.

May 25, 1881.

1. BANKRUPTCY—BOOKS OF ACCOUNT.

A teamster, who, even to a very considerable extent, buys and sells hay and straw for the *bona fide* purpose of keeping his teams from standing idle, is not such a merchant or tradesman as is bound to keep books of account under the provisions of the bankrupt law.—[ED.]

In Bankruptcy. Petition for Revision.

*Dudley & Dudley*, for petitioner.

*Geo. W. Morse*. and *J. C. Lane*, for bankrupt.

LOWELL, C. J. I am called upon to decide whether the district court was right in holding that the bankrupt was not such a merchant or tradesman as is bound to keep books of account. He was a teamster, owning many horses and carts, and engaged for years very extensively in his regular business. When that became slack, he took to supplying certain friends and neighbors with hay and straw. He did this to keep his horses and carts employed, and when he sold at wholesale he charged only enough above the cost to pay his usual charges for teaming. He sold sometimes at retail, but how often or how much does not appear. The total amount of business which he did in hay and straw, in some years, was very considerable.

I was much impressed with the argument for the creditor, that this man really had two distinct vocations, that of a 462 teamster and that of a merchant. I think, however, that his case comes fairly within the principle of *Cote's Case*, 2 Low. 374. I gave the subject then all the investigation which seemed necessary, and I remain of opinion that this law is very imperfect and limited in its scope. It does not require bankers, brokers, manufacturers, carriers, and miners to keep books of account, but only merchants and tradesmen. Most of the business of the United

States is done by persons who are not within the requirement. My opinion in *Cote's Case* was approved by *Dillon J., Re Stickney*, 5 Dill. 91.

I do not feel bound or authorized to apply this limited law to a teamster, who, even to a very considerable extent, bought and sold hay and straw for the *bona fide* purpose of keeping his teams from standing idle.

Petition for revision denied.

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