

(a) *Scope of statutes considered with reference to the character of the remuneration.* By the explicit provision regarding piece-work which is inserted in the two latest of the English Bankruptcy Acts a decision in which the Act of 1825 was declared not to be applicable to persons employed on that footing, has been definitively overridden<sup>12</sup>.

The doctrine of that decision, however, had already been discarded in a case controlled by the Act of 1869, which does not expressly include employes working by the piece<sup>13</sup>.

Having regard to the broader phraseology of the existing enactment it is perhaps open to question, whether the English Courts would now follow the doctrine, adopted with reference to the Act of 1849, that a clerk paid by commission on goods sold by him was not entitled to a preference<sup>14</sup>.

<sup>12</sup> *Ex parte Grellier* (1831) Mont. 264, Rev'g. Mont. & Mac. 45. This case was followed in two of the Australian Provinces, with relation to statutes which did not expressly include persons working by the piece. *In re Murray* (Victoria: 1874) 5 Austr. J.R. 3 (Insolvency Act, 1871, § 113); *Re Whittell* (§ 848) Legge Rep. (New So. Wales) 441 (Insolvency Act, 1872).

The more recent of these cases, it will be observed, antedated the decision in *In re Allsopp* (1875) 32 L.T.N.S. 443, by which workmen by the piece were admitted to the benefits of the English Acts. See next note. *In re Holyoke* (1857) 35 W.R. 396, (decided under § 40 of the Act of 1833), a man who had formerly acted for the bankrupt as general foreman of a brick yard, entered into an agreement with him by which he undertook to manufacture bricks by piece work, receiving so much per thousand for the bricks produced, out of which the wages of the men who worked under him were to be paid. It was shown further that the bankrupt had paid the workmen who did certain parts of the work and that the claimant continued to act as general manager of the brick works, and that he was liable to be discharged at a week's notice by the bankrupt, who had also the right to discharge and engage all men working under the contract, and to make alterations in the rate paid per thousand for the bricks. *Held*, that he was within the description "labourer or workman" in § 40 of the Act of 1833.

<sup>13</sup> *In re Allsopp* (1875) 32 L.T.N.S. 443. There a miner employed to get ironstone out of a mine for which he was paid by the yard or ton, had under him to assist in the work other men for whose wages he alone was responsible, but he was bound to conform to the regulations in force at the time, by which he was obliged to work a stated number of hours per day, and was subject to be dismissed at a moment's notice for misconduct, and could not leave or absent himself without the consent of the manager.

<sup>14</sup> *Ex parte Simmons* (1858) 30 L.T. 311.

In Victoria it has been held that the words "clerk or servant" in the Insolvency Act, 1871, § 113, (a provision worded similarly to the earlier English Acts), do not include a commercial traveller paid by a percentage on his sales. *Ex parte Tomlin* (1885) 11 Vict. L.R. 304.

It may also be observed, that in some American cases it has been held