

both include inn-keeper in the word "trader." The Insolvent Act of 1869 should receive a more liberal construction than the Act of James, as that Act was penal in its nature. In *Bagwell v. Hamilton*, 10 U. C. L. J. 305, the Judge referred to 7 Vic. ch. 10, for a definition of the word trader. An inn-keeper buys and sells food, fodder for cattle, liquors, &c., and in some cases deals very largely with wholesale and retail merchants, and should be held to be a trader.

HAGARTY, C. J.—The sale question presented by this appeal is, whether an "inn-keeper" is a "trader" within the operation of the Insolvent Act of 1869.

This Act professes to assimilate the Bankruptcy and Insolvency Laws of the different Provinces, and its first section declares that "This Act shall apply to traders only," giving no definition or explanation of that term.

The Act of 1864, sec. 2, declares, "This Act shall apply in Lower Canada to traders only, and in Upper Canada to all persons, whether traders or non-traders." In sec. 3 sub-secs. 2 and 3, provisions are made as to traders not meeting commercial engagements. Sec. 12 sub-sec. 5, declares that all the provisions in the Act respecting traders, shall be held to apply equally to unincorporated trading companies and co-partnerships.

The Amending Act, 1865, sec. 3, makes a further provision respecting a trader's permitting an execution to remain unsatisfied, &c.

No definition is given of the word. The Bankrupt Act of 1843, 7 Vic. ch. 10, made liable to its provisions all persons being merchants, or using the trade of merchandize, bankers, brokers, persons insuring ships or other vessels, &c., builders, carpenters, shipwrights, keepers of inns, taverns, hotels, coffee houses, millers, &c., and all persons who, either for themselves or as agents or factors for others, seek their living by buying or selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders within the scope and meaning of this Act. This Act, originally limited to two years, was continued from time to time, and finally was allowed to expire about the year 18—.

An Insolvent Court was established, 8 Vic. ch. 48, but containing nothing bearing on this question: Consol. Stat. U. C., ch. 18. See also Consol. Stat. U. C. ch. 26, for relief of insolvent debtors.

The various Imperial Statutes are set out in Cook's Bankrupt Law, No. I. The Act 34 & 35 Hen VIII. ch. 4, does not describe bankrupts beyond "divers persons craftily obtaining into their hands great substance of other men's goods, suddenly fleeing to parts unknown."

18 Eliz. ch. 7, declares who is to be deemed a bankrupt: "Any merchant or other person using or exercising the trade of merchandize by way of bargaining, exchange, rechange, bartry, chevisance, or otherwise, in gross or in retail, seeking his or her trade or living by buying or selling."

1 Jac. I. ch. 15, reciting that "frauds and deceits, as new diseases, daily increase," repeats the definition, with slight verbal alterations, substituting "persons" for "merchants."

21 Jac. I. ch. 19, (still lamenting the increase of fraud), adds to the definition, "the trade or

profession of a scrivener, receiving other men's moneys or estates into his trust or custody."

13 & 14 Car. II. ch. 24, exempts certain persons putting stock into companies from the Bankrupt Laws.

10 Ann ch. 15, repeals the description of a bankrupt in that statute of James.

5 Geo. II. ch. 30, sec. 30, makes persons dealing as "bankers, brokers and factors," liable to be bankrupts.

4 Geo. III. ch. 33, speaks of "merchants, bankers, brokers, factors, scriveners, and traders," as liable to Bankrupt Laws.

45 Geo. III. ch. 124, repeats the same description.

So the law seems to have remained till the 6 Geo. IV. ch. 16, by which, amongst many others, "victuallers, keepers of inns, taverns, hotels or coffee houses," shall be deemed traders liable to become bankrupts.

Down to the passing of this Act (1825), it seems clear that an inn-keeper, simply as such, was not a trader within the meaning of the statutes.

In *Smith v. Scott* (9 Bing. 16) (1832). Tindal, C. J., says: "The question turns on the construction of the late Bankrupt Act, which for the first time has rendered subject to bankrupt law the vocation of 'victualler, keepers of inns, taverns, hotels, or coffee houses.'" See also *Gibson v. King* (10 M. & W. 667).

*Saunderson v. Rowles* (4 Bur 2067) is a decision of Lord Mansfield, that a victualler was not within the Act. He says: "We are all clear that this man is not within these laws, upon the authority of the determined case of an inn-keeper, and also upon the reason of the thing." These reasons are fully set out. "It is not such a contract as is made amongst merchants and shopkeepers, or other dealers, in the ordinary course of trade or commerce."

It seems perfectly clear that under the term "trader," unassisted by statutable interpretation, an inn keeper, as such, is not subject to the bankrupt laws.

The learned Judge of the Court below considered that as the 7 Vic. ch. 10, defined the expression "trader," and declared that inn-keepers should be considered traders within the scope and meaning of that Act, that we might consider this a Legislative declaration on the point. I am unable to accede to this view.

The Act in question was allowed to expire, and our Legislature for some years abandoned the policy of the bankrupt laws. In 1864 it passed a law, applying its principles only in Lower Canada, and to all persons, traders, or non-traders in this Province. Then the existing law of 1869 declares expressly that it shall apply to "traders only."

I do not see what right we have to give this word any larger meaning than it has in itself, or to include within its meaning the numerous classes of persons declared by a long expired, temporary Act, to be within its scope and meaning.

If the 6 Geo. had been allowed to expire in England, or had been repealed, and after some years a new statute had reverted to the already cited definition of 18 Eliz. ch. 7, I am of opinion that it would have been impossible to apply the Act to the classes embraced by the repealed