

sion', nor by a servant of an independent contractor employed by the bankrupt'.

It has been denied that a manager is within the purview of the Victoria Companies Act (1885) (No. 851), § 3, in which the phrase "clerk or servant" is defined as including "any clerk, artificer, handicraftsman, journeyman, servant in husbandry, labourer, workman, domestic or menial servant". In the same case, however, such an employé was held to be within the description, "clerk or servant" in the Insolvency Act, 1871, § 113¹⁰.

In Newfoundland the term "servants" has been held to include all persons who, (not being contractors or mechanics engaged on an occasional or special service), render personal service in the ordinary course of business on the trading establishment of an insolvent¹¹.

¹⁰In *Ex parte Walter* (1873) 1 L.R. 15 Eq. 412; 42 L.J.B. 40, 21 W.R. 53, it was held that a music master and a drill sergeant, engaged by the term to attend a school twice a week at a fixed rate per hour or per lesson, were not "clerks or servants." Their attendance was deemed rather to be of the same nature as that of a surgeon or apothecary.

That an accountant employed at a fixed salary to keep the books of a trader was not a "servant or clerk" within the meaning of the Act of 1870 was held in *Ex parte Butler* (1857) 28 Law Times O.S. 375.

In *Ex parte Ball* (1853) 3 De G., Mac. & G. 155; 17 Jur. 198; 22 L.J. Bank. 27, it was held that the phrase "labourer or workman of such bankrupt" in § 160 of the Act of 1849, did not include "drawers" employed in mining to assist colliers, to whom the work was let out at a certain price per score baskets. The evidence showed that each collier had a "drawer" attached to him, whom he brought when he was himself hired, and whom he paid out of his own earnings, according to an agreement made without the privity of the bankrupt, and that the colliers discharged the drawers as they saw fit, without interference by the bankrupt.

¹¹In *re Intercolonial S. & P. Co.* (1887) 13 Vict. L.R. 896; 9 Austr. L.T. 76. The *ratio decidendi* was that the descriptive words were used in a descending order, according to rank, and therefore could not be construed as, comprehending a class of employés higher than "clerks."

¹²The decision proceeded on the ground that the descriptive words were intended to include all the employés in the sole service of the debtor, and paid by salary or wages, as distinguished from those hired to work by the piece, and that these words were indicative of a division of employés into two main classes—one consisting of those whose duties were mainly mental and clerical, the other composed of those who duties were mainly manual and physical. On the facts this ruling agrees with the English decision, *Ex parte Collier*, cited in note 5, *supra*.

¹³In *re Insolvency of Ridley* (1876) Newfoundl. Rep. (1864-1874), 351. ("skinners" and "cullers" allowed in preference under § 22 of the Act.)