

good law. On the other hand, the alterations have evidently not in anywise impaired the authority of any of the earlier decisions which proceeded, as may be supposed, upon the principle that the word "servant" was to be understood in its ordinary legal sense, of a person under the control of the bankrupt with respect to the details of his work\*.

In this point of view there has been no abrogation of the doctrines, that a preference cannot be claimed by a partner of the bankrupt, nor by persons following a distinct business or profes-

\* That a commercial traveler, engaged upon an annual salary was within the description, "clerk or servant," was laid down in *Ex parte Neal* (1829) Mont. & Mac. 194.

A similar ruling with regard to the manager of a cotton mill paid so much a year in weekly instalments was made in *Ex parte Collyer* (1834) 2 Mont. & A. 29, 4 D. & C. 520.

That a city editor of a newspaper employed at a weekly salary under a contract terminable at a week's notice was a servant within the Act of, 1849, ch. 106, § 168, was held in *Ex parte Chipchase* (1862) 11 W.R. 11, 7 L.T.N.S. 200.

That a claimant who had worked during the evening for the bankrupt, and during the day for another person, was entitled to a preference was held in *Ex parte Oldham* (1858) 32 L.T.N.S. 181.

In *Ex parte Homborg* (1842) 2 Mont. D. & DeG. 642, 6 Jur. 508, it was declared that a "seaman" is a servant within the Act.

In *Ex parte Harris* (1845) De Gex. 165, 9 Jur. 497, 14 L.J. Bank. 26, a trader borrowed £550, under an agreement by which the lender was to become his clerk at a salary of £220 a year. The trader agreed to produce his accounts and balance sheets to the lender who was to get in the debts, and alone to draw checks on the banking account. If the balance was in the trader's favour at any time he might draw the amount of it. On payment of the loan, or on proceedings being taken to recover it, the agreement was to be at an end. The lender was to have the option of becoming a partner. Held, that the lender was a "clerk." The contention on the other side was that he was merely a person advancing capital, and that the agreement was only a mode of paying a large rate of interest.

That the preference could be claimed by the servant of a person who at the time of the commission was a "trader," although he was not such at the time when the claimant was hired was held in *Ex parte Gough* (1833) 3 D. & C. 189, Mont. & Bl. 417 (bankrupt had been an architect until about two months before the commission, and had then become a builder).

\* *Hickin, Ex parte* (1850) 3 De G. & S. 662, 14 Jur. 435, 10 L.J. Bank. 8. There however, it was held that the claimant, a bookkeeper and cashier, was not a partner, although he had been performing services for several years before any definite agreement as to a salary of a specific amount was made, and the evidence showed that the reason why such agreement had not previously been made was that the employer was engaged in making experiments in a certain manufacture, from which he hoped to derive a considerable fortune, out of which the claimant was to be paid for his services. But it was also proved that he had done his work in consideration of an anticipated salary, and was not looking for his remuneration solely to the profits of the business.