

TRADER OR NON-TRADER.

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The question of trader or non-trader has not ceased to be of importance in bankruptcy law, because the insolvent laws have been merged therein. The very commencement of proceedings calls attention to this fact. Thus one of the acts of bankruptcy is that when "the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons, requiring him to pay a sum due of an amount not less than £50, the debtor, being a trader, has, for the space of seven days, or not being a trader, has, for the space of three weeks succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same;" (32 & 33 Vict. c. 71, s. 6.) In *Re Schomberg* (L. Rep. 10 Ch. A. 172; 23 W.R. 204) the Lords Justices held that the section meant that the trader must be a trader at the date of the summons. Still a trader may be retiring, or the person who traded may have retired from the business. To use the illustration of Horace: A grain is taken away from a heap of corn; it still continues a heap. Another is taken, and another, and at some time the heap ceases to exist. A difficulty of this kind was, in *Chidley v. Chidley*, recently presented to Lord Justice Mellish for decision, his learned brother having been detained by illness from assisting in the solution or decision of the logical *sortites*. Lord Justice Mellish remarked that it rested with the debtor to rebut the presumption of continuance: (*Heanny v. Boul*, 1 Rose, 356, 3 Camp. 233.) In delivering his judgment, he said that the case presented no difficulty to his mind. "A trader does not cease to be such because he stops active business for temporary purposes. It might be that trade was bad, that he wanted money, that there was a strike among the workmen. The stoppage must be with an intention to abandon the business altogether. After October 24th no more corn was purchased. September 7th was the last day for selling. On December 3rd the debtor was still in possession of the distillery. I will assume that no more servants were retained than were necessary to keep the distillery in order. He might be inconvenienced by the want of money, but his efforts to obtain it were evidence of his intention

to start again. It is absurd to say that he had ceased business. Otherwise a stoppage in business would make any insolvent a non-trader." The appeal was dismissed with costs. We do not suppose that this case or *Re Schomberg* throws any doubt upon the well-established doctrine that in respect of debts contracted during the trading, a man who has retired from business may be made a bankrupt: (*E. P. Dewdney*, 15 Ves. 495; *Willoughby v. Thornton*, 1 Selw. N. P. 175.) In *Ex parte Griffiths, Re Mostyn* (3 D. M. & G. 170), Lord Justice Bruce held that a trader, after becoming indebted, is not to be heard to say to his creditor that the trading has been left off, if a question arises whether the debtor can or cannot be made bankrupt, any more than to say that the merger of a simple contract in a bond, or a bond in a judgment, which for many cases extinguishes without satisfying the original debt, would prevent the creditor making his debtor bankrupt on the original debt if still unsatisfied. Trading within the bankruptcy law, it may also be remarked, does not depend upon the quantity of business done, but upon the intention. The general words of the Act of 1869 are: "Persons who either for themselves, or as agents or factors for others, seek their living by buying and selling and selling or buying, and letting for hire goods or commodities, or by the workmanship or conversion of goods or commodities."—*Law Times*.

The marginal note to Clement's case, 1 Lewni C.C. 113 (1834), runs thus: "Possession in Scotland evidence of stealing in England." This is a summary of a case of horse-stealing tried at Carlisle, the evidence being that the horse was a few days afterwards found in the prisoner's possession, across the border, and it has been made the ground for much gibing, by the English, at the acquisitive propensities of their northern brethren.