NOTES AND COMMENTS

BANKRUPTCY

INTERPRETATION OF THE TERM "FARMER"

The debtor owned a farm of about 190 acres on which he had lived all his life, but for some time previous to 1930 he had been engaged in mercantile pursuits. Because of financial losses he began working on the farm again, to which he devoted most of his time. He was principally occupied in raising poultry, although he had a small orchard and garden. During the years from 1930 to 1935 his total income was $4,000.00 of which $2,200.00 was derived from renting three-fourths of the farm to tenants for grazing and cultivation, $300.00 from the sale of farm products, and the balance of $1,500.00 from other real estate not claimed to be farm property. The district court held that the debtor was not a farmer within the meaning of section 75r of the bankruptcy act[1] and dismissed his petition for composition and extension of his debts. The Circuit Court of Appeals for the Second Circuit reversed this decision upon the ground that the debtor's principal income was from farming operations,[2] which result was affirmed by the Supreme Court.[3] Mr. Justice Cardozo, in delivering the opinion of the court, said that, when the facts are viewed as a whole, the debtor was "personally" and "primarily" engaged in farming operations.

It is impossible to arrive at a concrete definition of a farmer. However, certain general principles may be formulated from the decided cases. The bankruptcy act defines a farmer as "an individual who is primarily bona fide personally engaged in producing products of the soil * * *, or the principal part of whose income is derived from any one or more of the foregoing operations * * *" enumerated in the section.[4] The phrases of the definition do not constitute terms of art, but

[1] Bankruptcy Act, sec. 75r, 49 Stat. 246, 11 U.S.C.A. sec. 203r (1935).

[2] *In re Beach*, 86 Fed. (2d) 88 (C.C.A. 2nd, 1936).

[3] *First National Bank & Trust Co.* v. *Beach*, 301 U. S. 435, 57 S. Ct. 801, 81 L. Ed. 1206 (1937).

[4] Bankruptcy Act, sec. 75r, 49 Stat. 246, 11 U.S.C.A. 203r (1935). The operations enumerated are "primarily bona fide personally engaged in producing products of the soil," ["primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state."] The part set off in brackets was not included in the section as passed in

rather each individual case must be considered upon its own peculiar facts.[5] In addition, some courts have said the term "farmer" depends upon its meaning in the particular locality.[6] But this would seem to be nothing more than one of the facts to be considered in each case.

An individual to be classed as a "farmer" must operate a substantial tract of land. What constitutes a substantial tract has not been definitely decided; but where the debtor was engaged in truck-gardening on a plot of ground the size of six city blocks,[7] or, as in another case, four and one-half acres,[8] he was held not to have been a farmer, while twenty acres, in another case was sufficient.[9] The objection does not seem to be directed to truck-gardening, as such, and if the debtor operates on a large enough scale, he should be declared a farmer. In numerous instances the truck-farmer, in addition to raising his garden, markets the produce, yet he does not necessarily become a huckster.[10]

Under the present amendment, the words "primarily—personally engaged" are similar to the former expression "chiefly engaged."[11] Thus, now as then, a person need only be chiefly engaged in farming to be classified as a farmer, which is determined by considering the amount of time, revenue, and indebtedness derived or involved in each of his business activities.[12] The debtor need not perform manual farm labor, and he will retain his character as a farmer, although he has moved

1933, Bankruptcy Act, sec. 75r, 47 Stat. 1470, 11 U.S.C.A. sec. 203r. Previous to this amendment, under section 4b of the Bankruptcy Act of 1898, 30 Stat. 547, 11 U.S.C.A. sec. 22b, the courts were divided as to whether persons engaged in these phases of "farming" were exempt. This depended upon the construction by the courts whether or not the branches of the definition, "chiefly engaged in farming" and "tillage of the soil" were synonymous. Those courts, which held that they were synonymous, said that such persons were not exempt. *In re Stubbs*, 281 Fed. 568 (D.C. Wyo. 1922); *In re Palma Bros.*, 8 Fed. Supp. 920 (D.C. Nev. 1934); unless such occupation was merely incidental to the tillage of the soil. *Gregg* v. *Mitchell*, 166 Fed. 725, 20 L.R.A. (N.S.) 148, 16 Ann. Cas. 510 (C.C.A. 6th, 1909). Under the other construction livestock raising had been held to be farming. *Robertson* v. *Dwyer*, 184 Fed. 880 (C.C.A. 7th, 1911). A case decided previous to the 1935 amendment held that a person deriving all of his income from raising poultry was engaged primarily in farming operations. *In re Wilkinson*, 10 Fed. Supp. 100 (D.C. N. Y. 1935). For a general discussion of the topic see: 15 Ore. L. Rev. 62 (1935); 20 Minn. L. Rev. 307 (1935); 2 O.S.L.J. 282 (1936).

[5] *First National Bank & Trust Co.* v. *Beach, supra,* note 3; *In re Knight*, 9 Fed. Supp. 502 (D.C. Conn. 1935); *In re Storey*, 9 Fed. Supp. 858 (D.C. Cal. 1935).

[6] *In re McMurray*, 8 Fed. Supp. 449 (D.C. Iowa 1934); *In re Palma Bros.*, 8 Fed. Supp. 920 (D.C. Nev. 1934).

[7] *In re McMurray*, 8 Fed. Supp. 449 (D.C. Iowa 1934).

[8] *In re Weis*, 10 Fed. Supp. 227 (D.C. Iowa 1935).

[9] *In re Wilkinson*, 10 Fed. Supp. 100 (D.C. N. Y. 1935).

[10] *In re Terry*, 208 Fed. 162 (D.C. Pa. 1913) which says that "because a man who produces food products by cultivtating the soil markets these products by carting the same from door to door, or by selling to merchants at wholesale or at retail upon his own premises, he cannot be said to be a huckster and not a tiller of the soil."

[11] *In re Day*, 10 Fed. Supp. 229 (D.C. Ill. 1935); 2 O.S.L.J. 282 (1936).

[12] *In re Brown*, 253 Fed. (C.C. A. 9th, 1918); *In re Mackey*, 110 Fed. 355 (D.C. Del. 1901).

away if he retains an active interest in the management of the farm,[13] which may be exercised through an agent.[14] However, supervision has been held to be only an incident to looking after an investment where the debtor was considered as primarily engaged as a civil engineer;[15] or as property management, where a lawyer's potential income was greater from other sources, although he had given up his practice and moved to the farm.[16] But a person will remain a farmer, if his other activities are incidental to that of farming.[17]

The phrase, "the principal part of whose income is derived from farming operations," appears at first glance to be a provision that would include those persons who are primarily engaged in another occupation, or none at all, as retired farmers, who prior to the amendment of 1933, were held not to be exempt from involuntary bankruptcy.[18] But the courts interpreting the present section have not been uniform in their construction of the two parts of the definition. The case of *In re Day*[19] held that there is little or no distinction between the phrases, "engaged chiefly in farming," "personally engaged primarily in farming," and "the principal part of whose income is derived from farming operations." Another interpretation is that the party must be engaged "primarily" in farming operations, and the clause, "or the principal part of whose income," *etc.*, was a precaution against bad years when he is forced to earn a livelihood from some other occupation.[20] *In re Olsen*[21] concludes that the principal part of the debtor's income must be derived "from bona fide personal engagement in producing products of the soil." Thus, it seems that these courts have failed to give effect to the wording of the definition, and the debtor must be engaged primarily in farming as before

[13] *In re Glick*, 26 Fed. (2d) 398 (C.C.A. 7th, 1928).

[14] *In re Wright's Estate*, 17 Fed. Supp. 908 (D.C. La. 1936). The farm properties were superintended by the debtor through her son. Since she furnished tools and equipment and financed the operations, her status was not affected by the fact that the farms were, in part, cultivated by tenants, some of whom worked on quarter and half shares.

[15] *In re Day*, 10 Fed. Supp. 229 (D.C. Ill. 1935).

[16] *Baxter* v. *Savings Bank of Utica, N. Y.*, 92 Fed. (2d) 404 (C.C.A. 5th, 1937); *Cf. In re Olson*, 21 Fed. Supp. 504 (D.C. Iowa 1937).

[17] *In re Parmer*, 16 Fed. Supp. 1006 (D.C. Pa. 1936) (engaged in stone crushing and threshing); *Couts* v. *Townsend*, 126 Fed. 249 (D.C. Ky. 1903) (private banking); *American Agriculture Chemical Co.* v. *Brinkley*, 194 Fed. 411 (C.C.A. 4th, 1912) (storekeeper); *In re Hoy*, 137 Fed. 175 (D.C. La. 1905) (lawyer).

[18] "Any natural person except * * * a person engaged chiefly in farming or the tillage of the soil * * * may be adjudged an involuntary bankrupt." Bankruptcy Act of 1898, sec. 4b, 30 Stat. 547, 11 U.S.C.A. 22b. This section, at present, reads: "Any natural person except * * * a farmer, * * * may be adjudged an involuntary bankrupt * * *." Bankruptcy Act, sec. 4b, 49 Stat. 246, 11 U.S.C.A. sec. 22b (1935). *Glass* v. *Farmer's Loan & Trust Co.*, 53 Fed. (2d) 844 (C.C.A. 7th, 1931); *In re Driver*, 252 Fed. 956 (D.C. N. J. 1918).

[19] 10 Fed. Supp. 229 (D.C. Ill. 1935).

[20] *In re Hilliker*, 9 Fed. Supp. 948 (D.C. Cal. 1935); see *Sherwood* v. *Kitcher*, 86 Fed. (2d) 750, 751 (C.C.A. 2nd, 1936).

[21] 21 Fed. Supp. 504 (D.C. Iowa, 1937).

the amendment. Hence, in those instances of cases involving retired farmers, *etc.*, the change of the section does not apparently vary the result of the former decisions. On the other hand, a few courts have recognized the possibility of a person being classed as a farmer under the second part of the definition. *In re Shonkwiler*[22] held that the debtor, who had derived all of her income from a farm where she did not operate or manage the farm, but lived in another state with her husband, was a farmer. Another court said: "The debtor made a prima facie showing [that she was a farmer] by alleging in her petition that the principal part of her income was derived from farming operations."[23] The principal case and *Louisville Joint Stock Land Bank* v. *Radford*[24] recognized, in *dictum*, that situations may arise where income from farming operations would make one a farmer who was otherwise occupied, as this must have been the intent of Congress.

In the principal case, the largest part of the debtor's income was derived from renting three-fourths of the farm to tenants and from other sources not farming. No other case is in point upon these facts, but where a large part of a farm was operated by tenants, more properly termed sharecroppers, the status of the debtor as a farmer was not thereby affected.[25] Whether or not these facts affect the debtor's classification after he is considered as primarily engaged in farming is best answered by quoting from Mr. Justice Cardozo's opinion: "If Beach was a farmer because he cultivated a substantial farm, he did not step into another business by leasing other acres of the tract to tenants for farming, grazing, or cultivation. Those acres personally cultivated and those occupied by tenants are phases and aspects of a unitary calling. The result will be the same, though the farming and leasing be viewed as disconnected, and not as parts of a composite whole. In that view the farming is still the business, the leases are the investments, more profitable than the business, but leaving it unchanged. A farmer remains a farmer, just as a lawyer remains a lawyer though the returns of his investment, while not enough to keep him going, are larger, none the less, than the profits of his labor."[26] Under such circumstances, a lawyer would seem to be classifiable as a farmer within the second branch of the definition, if it is read in the disjunctive. But to carry out the purpose of section 75, rehabilitation of distressed farmers as such,[27] the requirement, by some

[22] 17 Fed. Supp. 697 (D.C. Ill. 1935); *cf. Rudy* v. *Fed. Land Bank of Baltimore*, 91 Fed. (2d) 549 (C.C.A. 3rd, 1937).

[23] *In re Storey*, 9 Fed. Supp. 858 (D.C. Cal. 1935).

[24] 295 U. S. 555, 599, 55 S. Ct. 854, 867, 79 L. Ed. 1593, 1610 (1935).

[25] *In re Wright's Estate*, 17 Fed. Supp. 908 (D.C. La. 1936), cited *supra* note 14.

[26] *First National Bank & Trust Co.* v. *Beach*, 301 U. S. 435, 439, 57 S. Ct. 801, 803, 81 L. Ed. 1206, 1209 (1937).

of the courts that the debtor be primarily engaged in farming, would be more within the spirit of the statute.

In view of the present legislation before Congress it is appropriate to discuss how this may affect the present definition as construed by the courts. Section 1 (17) provides that: " 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one of such operations."[28] This is another attempt by the drafters to clarify the definition,[29] but contrary to the usual procedure, it seems to be in accord with the interpretation of the majority of the courts. Thus, if farming and renting is to be viewed as a "unitary calling," it would seem that, as a logical conclusion, the decision in the principal case would be the same under this definition. Although the proposed change would clearly exclude the retired farmer from its scope, the question still remains whether, if a doctor, or lawyer, or other person were personally engaged in farming, by management or otherwise, and the principal part of his income were derived from this source, he would be exempt even though he is primarily engaged in his other occupation. Or, would a debtor, primarily engaged in farming, but obtaining the principal part of his income from other activities, be held not to be a farmer? Both of these are possible interpretations of the section. The purpose of the section appears then, to be not a desire to effect a rehabilitation of farmers, as such, but to relieve the poor farmer from the burden of his obligations which would seem to be always present.

ITHAMAR D. WEED

[27] *In re Noble*, 19 Fed. Supp. 504 (D.C. N. J., 1937).
[28] H.R. 8046, p. 2.
[29] Chandler, Report No. 1409, p. 6.