

[REDACTED]

We are hopeful that counsel will continue to give every case their serious professional attention, but that when issues are clearly frivolous, they will not pursue them blindly and with dogged determination, drowning the courts in an ocean of paper and strained argument, while knowing the law is against them. If the Bar would cooperate more fully with the courts, giving greater attention to this problem, the mounting dockets we now face would disappear. *United States v. Cain*, 544 F.2d 1113, 1117 (1st Cir. 1976).

Defendant's exceptions overruled.

All concurred.

[REDACTED]

Probate Court, Rockingham County
No. 7542

APPEAL OF JOSEPH F. SHAMMA & *a.*

January 31, 1977

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Lee A. Strimbeck, of Concord, by brief, for the petitioner.

PER CURIAM. The principal issue presented by this case is whether a wage earner eligible to proceed under chapter XIII of the Federal Bankruptcy Act may also qualify to proceed in insolvency under state law provisions. We hold that he may not.

The petition of Joseph F. and Theresa C. Shamma to proceed in insolvency under the provisions of RSA ch. 568 was denied by the Probate Court (*Treat, J.*) on the ground that the plaintiffs are entitled to proceed under chapter XIII of the Federal Bankruptcy Act. 11 U.S.C. § 1001 *et seq.* (1970). Pursuant to RSA ch. 567-A (Supp. 1975), the plaintiffs appealed from that order to this court.

Mr. Shamma earns his living by installing carpeting for various customers who hire his services. He maintains that he is not entitled to proceed under chapter XIII because he is not a "wage earner" within the meaning of that section, and that therefore the remedies of RSA ch. 568 should be available to him. The term "wage earner" is defined for purposes of chapter XIII as "an individual whose principal income is derived from wages, salary or commission." 11 U.S.C. § 1006(8) (1970).

■ We agree with the finding of the probate court that Mr. Shamma is eligible to proceed under chapter XIII. In the absence of any evidence that such a finding was so plainly erroneous that it "could not be reasonably made" we are bound by it. RSA 567-A:4 (Supp. 1975). In 1959 Congress expanded the definition of "wage earner" in 11 U.S.C. § 1006(8) in order "to make more debtors eligible to file Chapter XIII petitions." *In re Reed*, 368 F. Supp. 615, 617 (E.D. Va. 1968); see S. REP. NO. 179, 86th Cong., 1st Sess., reprinted in [1959] U.S. CODE CONG. & AD. NEWS 1446-49. Since that time, it has been widely recognized that the definition of "wage earner" is to be given a liberal construction in the context of chapter XIII. *In re Bradford*, 268 F. Supp. 896 (N.D. Ala. 1967); see *Perry v. Commerce Loan Co.*, 383 U.S. 392 (1966); 10 Collier, Bankruptcy ¶ 22.09 (14th ed. 1976); 37 U. Cin. L. Rev. 228 (1968); Annot., 9 A.L.R. Fed. 707 (1971). In *In re Reed supra*, it was held that a tradesman such as the plaintiff who performs odd jobs wherever he finds work and who consequently is employed by various people at an hourly rate instead of by a constant employer paying a fixed monthly or weekly salary is a "wage earner" for purposes of chapter XIII. The reasoning of *Reed* applies equally in the case at bar.

