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A TREATISE
OF IMMEDIATE UTILITY
TO
MERCHANTS AND TRADERS,

SHOWING

Some of the principal Defects in the present

BANKRUPT SYSTEM;

AND PROVING THEM

BY SEVERAL INTERESTING CASES IN BANKRUPTCY;

WITH

EXTRACTS OF IMPORTANCE

from the Evidence of the late Sir SAMUEL ROMILLY, and other
Witnesses, taken before the Select Committee of the House of Commons
on the Bankrupt Laws, last Session.

ALSO

Containing most serious Objections to several Parts of the

TWO BILLS

lately brought into Parliament for altering and amending the Bankrupt Laws;

AND

EARNESTLY RECOMMENDING A SIMPLE

LEGISLATIVE ENACTMENT,

which would produce the most beneficial effects to both Debtors and
Creditors, and, in a great degree, prevent Bankruptcy, with its frequent la-
mentable consequences of waste of property, &c. &c. &c.

By JOHN DUFRENE.

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PREFACE.

HAVING suffered from the evils of the present Bankrupt system, I have been led to consider a subject to which I might otherwise have been as inattentive as most men of trade, until they are, in some way or other, brought to experience the dreadful effects of being placed, either legally or illegally, under a *hostile* Commission of Bankrupt.

For the last four years I have been in the habit of writing to different Members of Parliament, urging their serious consideration of the subject ; and, although I have been honoured with polite answers to my letters, yet all have, in one way or other, excused themselves, and not unfrequently on the ground, that the Bankrupt Law was too complicated a subject for them to meddle with.

About two months ago a Bill was brought into the House of Commons, "to alter and amend the Laws relating to Bankrupts." Since that time I have thrice petitioned the House, praying that, previous to any legislative enactment on the subject, I might be allowed to give evidence at the Bar of the House on the Bankrupt Laws. I have also been laboriously occupied during the last two months in writing to individual Members of Parliament, representing to them, in the strongest terms, the injurious consequences to both debtors and creditors that would, in my humble opinion, be produced by this Bill, if passed into a law. I have, however, been left quite unsupported in every exertion; and, although I have had much trouble, from time to time, and some expence, in various ways, connected with these efforts for the general good, yet it does not appear to me that I get any

credit for them; nor, after struggling above six years against illegal proceedings under a Commission of Bankrupt against me, have I to this day obtained the least redress.

My determination to appear before the public in print has been sudden; and, in order to accomplish the publication, previous to the passing of the Bills in question, now pending in Parliament, the time for performing it has been very short, which I trust will be an apology for any defects in this humble attempt to excite the attention of the commercial and trading community to a subject in which they are deeply interested, both as debtors and as creditors.

JOHN DUFRENE.

*King's Bench Prison,
May 27th, 1819.*

A TREATISE

OF
IMMEDIATE UTILITY

TO
MERCHANTS AND TRADERS,

&c. &c.

THE mercantile world being materially affected by the present Bankrupt System, the subject cannot be unworthy of the most serious and impartial considerations; and in proportion to the difficulty which exists in altering this law to advantage, grave deliberation will be requisite, so that in attempting to remedy minor defects, evils of greater magnitude may be avoided.

The Select Committee of the House of Commons, that was appointed to revise these laws, terminated their sittings the last Session of Parliament; and, from the Report which they made on the subject, the following is an extract:—"Your Committee entered upon the investigation with a deep sense of its difficulties and importance; but, whatever perplexities they had anticipated, they found, during the progress of the inquiry, greatly to exceed what they imagined likely to occur."—It will appear how cordially I agree with this passage in the Report of the Committee when I venture to

state, that I conceive the difficulties to be insurmountable, and am of opinion, that as soon might the Ethiopian change his skin, or the leopard his spots, as that these honourable gentlemen should have fully succeeded in the task of so effectually removing the spots of imperfection from this monster, the present Bankrupt System, as to cause it to promote the ends of justice.

It is acknowledged on every hand, that this system is productive of so much evil, that it requires the serious attention of the Legislature; and, although it must be admitted that, by legislative enactments, it is in some respects possible to make beneficial alterations in it, provided, at the same time, sufficient care be taken not to make it in other respects more intolerable than it is at present; yet I conceive, (and if I am correct on this point, it is of the utmost importance to consider it,) that it is utterly impossible so to legislate as to render this code properly applicable to the trading interests of the country, because it is a *criminal* code, and consequently wholly unfit to be applied to the cases of honest traders who become unfortunate; for, although there are, no doubt, many fraudulent bankruptcies, yet there can be no doubt also, that honest traders constitute a very great majority of the annual number of persons made bankrupt. The first Statute concerning bankrupts, viz. 34 and 35, Hen. 8, cap. 4, was, even in those arbitrary days, wholly directed against evil designing men, the preamble of which runs thus:—"Whereas divers and sundry persons, craftily obtaining into

their hands great substance of other men's goods, do suddenly flee to parts unknown." This constituted an act of bankruptcy; and, under such extraordinary circumstances, the next Statute, viz. 13 Eliz. cap. 7, provided, that Commissioners should be appointed to act; and a course of harsh proceedings instituted against the body and goods of "*such offenders*." But no honest man was then subject to this Inquisition; and it is most extraordinary that, in the nineteenth century, the mercantile and trading part of this enlightened country should submit to such a state of degradation, as to be subject to a *criminal* code, or a mere reverse of fortune, or, even when in a state of solvency, at the will of a *pretended* creditor, who may falsely swear to a debt and an act of bankruptcy; and that, on mere *ex-parte* evidence, such solvent trader should be published in the Gazette as a bankrupt, without having an opportunity of previously saying one word in his own defence. It is an old maxim, that it were better to suffer ninety-nine guilty persons to escape punishment, than to run the risk of dooming one innocent man to perish; but, according to our present bankrupt system, the matter is reversed, for by it we are led to suppose it to be better that the whole trading community should be liable to be treated as criminals, than that one fraudulent trader should escape.

There can be no doubt of the propriety of protecting creditors against fraudulent debtors; but it could be easily proved, that the bankrupt code produces fraud, instead of preventing it; and by apply-

ing it to the cases of both rogues and honest men, it becomes unfit for either, and frequently the honest man is punished while the rogue escapes. It is, I presume, worthy of remark, that our bankrupt code is contrary to the spirit of the constitution, and to the civil and criminal jurisprudence of the country. A man tried for crime in our courts of law is not required to convict himself; for the *onus probandi* lies with his prosecutor; but the most honest man is placed in imminent danger as to his character and personal liberty, under an *hostile* commission of bankrupt; because, from the inquisitorial sieve through which he has to pass, he is in danger, on the one hand, from his own timidity and his adversaries severity, of having expressions drawn from him, which may be construed into criminality, when, in fact, he has been guilty of none; or, on the other hand, of being charged with contumacy for not giving sufficient answers, and of being committed to prison, there to remain without bail or mainprize.

On reading the Minutes of Evidence taken before the Select Committee, on the Bankrupt Laws, I regretted to find, that the evidence was chiefly confined to the supposed interests of creditors, while the interests of debtors and their necessary protection from injustice and oppression, have been but slightly noticed. The best way to protect the creditor is, I presume, to begin with doing justice to the debtor; for, the same cause which makes it so easy to oppress the debtor produces injury to the creditor. Besides, it ought not to be forgotten,

that, in the commercial community, *creditors, in general, are debtors also*, and consequently the interests of honest debtors and honest creditors are one. I now proceed to state some defects in our present bankrupt system, which require the most serious consideration before any alteration be made in the law on this subject.

In the first place, I conceive, that it is an evil of immense magnitude, because its bearings are so various, that its extent can scarcely be ascertained, and is therefore a practice much to be deprecated, that commissions of bankrupt are opened upon mere *ex-parte* evidence, without even giving notice to the person against whom a commission has issued to attend at that meeting in which he is to be found a bankrupt. It differs essentially from the mode of proceeding in our Courts of Law and Equity: it is, I think, unreasonable and unjust; no occasional necessity can justify it as a general practice, because it so effectually promotes the purposes of oppression and ruin, by facilitating the opening of illegal commissions. While the bankrupt code was confined in its operation to a species of swindlers who, according to the words of the first Statute, "*craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown*," this manner of opening commissions of bankrupt was not so inconsistent; but when honest unfortunate traders were made subject to this law, I conceive that the practice of opening commissions upon *ex-parte* evidence ought to have ceased as against persons who had not only not

gone to parts unknown, but some of whom might, perhaps, be able to prove that they had not in fact become bankrupt. In defence of this practice, it is said, that to give a man an opportunity of disputing his bankruptcy before he is declared a bankrupt, would do away all the promptitude of the bankrupt laws, and all the means of seizing the effects of a man who was disposed to be fraudulent. Now the same might be said of any other legal process; and it might be very convenient to any real or pretended creditor forcibly to enter a man's house and seize property to the value of his claim, without bringing his action to try its validity; but in such case, how would an Englishman's house be his castle? The practice may be still further combated. It is said that, to give a man notice of a commission of bankrupt, to be issued against him, would do away the means of seizing the effects, if he were disposed to be fraudulent. Now in regard to a fraudulent man, who knows he has committed an act of bankruptcy, or who, for fraudulent purposes, causes a commission of bankrupt to be taken out against him, can it be supposed, that such a man has not made all his arrangements before the commission issues? It is therefore only the honest and, perhaps, solvent trader that can be taken by surprise: then this seizing system has certainly an effect, though a very bad one, and is contrary to every principle of justice and humanity; for he is, perhaps, by virtue of a false oath, instantly dispossessed of all his property, and turned out of his habitation, which was previously his boasted castle,

It might, perhaps, be further urged, in defence of this practice, that an act of bankruptcy is, in the eye of the law, a *criminal* act, and that, therefore, the party, committing such act, cannot be treated merely as an insolvent debtor. But this would only more fully prove that the ends of justice cannot be promoted by extending the operation of such a system to the cases of honest, unfortunate men; and, I conceive, that as soon as this bankrupt code was made to embrace more objects than in its nature it was calculated for, from that time it has, by degrees, become that mass of inconsistency, injustice, and oppression, which has brought down, upon both debtor and creditor, almost all the evils of which we have now to complain. As the law now stands, every trader is continually on the verge of a dreadful precipice; for there is not a banker, nor a merchant, nor a trader of any description, however large his possessions, who does not stand exposed to instant ruin: his solvency is not a full protection: and even if he have not a single creditor, yet a false oath as to a debt and an act of bankruptcy, (which is not very uncommon in the present day,) will procure a commission of bankrupt against him forthwith; he is then published in the Gazette as a bankrupt, without any previous knowledge of these nefarious proceedings, and thus ruined—what compensation can be adequate to the injury sustained? After the dreadful tidings have reached him, he may protest against the validity of the commission, but he is not allowed to be made acquainted with the alleged act of bankruptcy on

which it is founded; and the extraordinary reason given, by writers on the bankrupt laws, for this refusal is, lest he should be able to supersede the commission.

Another evil intimately connected with the foregoing, which requires the serious attention of the legislature is, the great length of time that may elapse, before such oppressed and ruined trader can obtain any redress. Why it should be so easy in so short a time to prove a man to be a bankrupt without sufficient legal grounds, if it may be called proof, and then require such a length of time, and various forms of law to prove he is not a bankrupt, I do not here attempt to explain; but this fact is incontrovertible, that, although an illegal commission of bankrupt is procured against a man in a few days, yet it may be as many years before he can obtain a supersedeas. Surely this ought to be otherwise. Mr. Montague, a member of the Chancery bar, made the following remark before the select committee on this subject, namely,—
 “The legislature has given to the Lord Chan-
 “cellor a great power, by a summary jurisdiction,
 “to seize the property of persons in the mercantile
 “world who come within the description of bank-
 “rupts; and I conceive it was intended, that this
 “summary power should be attended with as sum-
 “mary a right in the subject to appeal for redress,
 “if injured.”

Persons who are fully acquainted with the facts of the case, entertain no doubt in their minds respecting the illegality of the commission of bank-

rupt issued and still in force against me; and yet I have been struggling for above six years, without having obtained any redress whatever. I am advised, that my case has been already fully made out, both as to law and fact, under my petition in the Court of Chancery; and this is not contradicted by the Lord Chancellor himself. Nevertheless, his lordship conceives, that I am not absolutely entitled to a supersedeas, until the validity of the commission has been tried in a court of law. Now, after such a lapse of time as six years, which has tired out my friends, and being deprived of resources, I conceive it very hard, after having incontrovertibly made out my case under one process, to be obliged to go into a court of law to prove the circumstances all over again. I therefore am of opinion, in regard to the verdict of a jury being indispensably necessary to entitle a person illegally made bankrupt to a supersedeas, that it would be far more reasonable to require the verdict of a jury in the first instance, in order to prove that there are sufficient grounds for a commission of bankrupt, before it issues. But if necessity, or expedience require that commissions should issue by virtue of a mere affidavit, then I presume, that illegal commissions ought to be superseded in as summary a manner; especially as a supersedeas must be of far more individual consequence to the debtor, than a commission can possibly be to individual creditors, because the dreadful situation in which a trader is placed under a commission of bankrupt, by losing all power over his estate, will not admit

of delay.—I here introduce two other cases which I conceive to be in point.

About eighteen months ago, a respectable manufacturer, from the west of England, called upon me and stated, that he had been made a bankrupt, and that when the commission issued against him, he was but very little in debt, and not under any pecuniary embarrassment; that he never was indebted a hundred pounds to the person who sued out the commission against him, and that he had not committed any act of bankruptcy whatever. He further said, that the commission was opened in an obscure village, and that the commissioners consisted of attorneys of the lowest order. On the supposition that he could, in a summary way, obtain a supersedeas by a petition to the Court of Chancery, he got the time enlarged for his surrender, in the expectation that the commission would be set aside before the enlarged time expired. He was, however, disappointed in this respect, and, while on his way to meet the commissioners on the day appointed for surrendering himself under the commission, the horse on which he rode broke down; consequently he arrived a little later than the hour appointed for his surrender. He was then told by the commissioners, that he had committed a capital offence by not surrendering himself in due time, and an officer was procured to take him in custody before a magistrate. He therefore insisted on the officer's taking the attorney who acted under the commission into custody also, that they might both be taken before the magi-

strate. This step on the part of the alleged bankrupt changed the scene, and, after some altercation with the commissioners, it was agreed that the services of the officer and the magistrate should be dispensed with. Sometime afterwards, finding that his proceedings in Chancery for setting aside the commission were ineffectual, he brought an action to try its validity, the result of which was, that no act of bankruptcy could be proved against him, and he obtained a verdict; therefore the commission was superseded. The situation in which he then found himself was this,—that he had been ruined in his business; that part of his property had been wasted; and that he had been put to considerable expence and trouble; but that he had not the least prospect of obtaining any satisfaction for the injury he had sustained, as (to use his own words,) the petitioning creditor, the attorney under the commission, and the commissioners, were altogether scarce worth a good dinner.

The circumstances of the other case to which I have alluded were also related to me by the party himself, who had been made a bankrupt at a time when he was not at all engaged in commercial matters. This gentleman had formerly been connected with two other partners in an extensive concern in a provincial town, from whom he had separated himself, and, at the time of the dissolution of partnership, he did not know of any unsettled account as due from the firm, except a balance which was due from them to a banker; and as he could not get his partners to close this account so speedily

as he wished, he paid his share to the said banker, which was several thousand pounds, and got exonerated. He then retired wholly from business, and came to reside in London. Two years after the dissolution of partnership, he was one day almost thunderstruck on seeing himself published in the Gazette as a bankrupt, in conjunction with his two former partners. He, however, resisted the commission, conceiving it illegally procured, and immediately petitioned the Court of Chancery for a supersedeas. The alleged act of bankruptcy, on his part, which he had great difficulty in ascertaining for some time, was the following, viz. that before the dissolution of partnership, he had on a certain day caused himself to be denied when a creditor called upon him. In the course of his proceedings in Chancery for setting aside this commission, he was enabled to prove, that this alleged act of bankruptcy was founded on perjury; and his opponents finding that it would not sustain a commission against him, they applied to the Court for time to find out some other act of bankruptcy. The Court of Chancery ultimately directed an issue to try the act of bankruptcy in a court of law, and ordered that the opposite parties should give a fortnight's notice, previous to trying the issue, of any act of bankruptcy which they might discover to support the commission. At length such notice was given of an act of bankruptcy, which act was sworn to in Court on trying the issue, consequently a verdict was obtained against him, and the commission was proceeded in. All proceedings had

previously been stayed by the Court of Chancery until the matter was tried; and, after this verdict, the bankrupt was called upon to surrender himself under the commission. Having a wife and several children, he could not bring himself to submit to be stripped of all his property, and reduced to poverty under a commission of bankrupt, when he conceived himself not to be indebted to a single individual under the said partnership; and, in a conversation with one of his sons, I was informed, that after the trial, his father came to the desperate resolution of not appearing to the commission, and of becoming an outlaw, by leaving his native country for ever.

I am further of opinion that, even when there really is a sufficient debt and an act of bankruptcy, it is a great defect in the law, that one creditor, to the amount of an hundred pounds, should be able to sue out a commission of bankrupt contrary to the desire of a majority of the creditors. It is inconsistent in the extreme, because a commission of bankrupt is considered as for the use of the creditors in general. It is also unjust that one vindictive creditor should, at his caprice, sacrifice the interests of a mass of creditors, and hold them at defiance; more especially as it is wholly unnecessary, because that individual creditor has a remedy by bringing an action for his hundred pounds, and, on obtaining judgment, can take the goods or body of his creditor in execution.

In the next place, in regard to the debtor, I conceive, that it is unjust and unnecessarily degrad-

ing, that, merely because he has become unfortunate, he should, on the issuing of a commission of bankrupt against him, be pursued like a *thief*, by immediately *seizing* his books of accounts and all his property. Why should not a man, whose situation in life has been respectable, and who has had the confidence of his creditors for perhaps many years, be allowed to deliver up his property like an honest man, and also be permitted to keep his books of accounts a sufficient time to enable him to do what is requisite in them, instead of their being delivered to an accountant, who, although he may be very able to cast up accounts, yet he may be very ignorant of that man's business, and consequently unable to make up the books?

It is again still more harsh, that this honest unfortunate trader, should be required, *under the penalty of death*, to surrender himself before the commissioners on the forty-second day from the date of the commission. The only apology which might perhaps be made for such severity is, that it is a criminal code; but then it follows, that its operation should be confined to criminals, so that honest men might not be degraded by it; and the not confining it within such limits, is one great cause of the mischief it produces. Sometimes a debtor is in prison when a commission of bankrupt issues against him, and in such cases it is the practice of the commissioners to issue their warrant to bring him before them on the forty-second day to surrender himself according to law; for, otherwise, being in prison, he could not attend.

Here another evil presents itself, which I am inclined to think more frequently occurs than might be supposed; for, although I have lived very retired in the King's Bench, yet, within one year, I accidentally heard of several cases of bankrupts confined there, in which no warrants had been issued by the commissioners, to bring the bankrupts before them on the day appointed for their surrender:—The particulars of one of these cases are the following.—The bankrupt was detained in the King's Bench at the suit of several creditors, when a country commission of bankrupt was issued against him. He was served with the usual summons, signed by the commissioners, as soon as he was declared a bankrupt, requiring him to appear before them, on certain days, to be examined, &c. and he made every preparation in his accounts to pass his examination on the day appointed for surrendering himself; but when the time arrived, no warrant was issued by the commissioners to bring him before them, who could not be ignorant of his confinement, because one of the commissioners was the attorney employed in one of the actions against him, by which he was held in custody.—However, a few days after the time appointed for his surrender had expired, he was informed, that, in consequence of his not having surrendered himself, under the commission, proceedings of outlawry were instituted against him. The bankrupt then presented a petition to the Court of Chancery, in order to do away the outlawry, but his attorney informed him, that his petition could not come

on to be heard, in its regular course, in less than twelve months. Such was the shocking situation in which this unfortunate man was placed by the irregular and harsh proceedings under his commission.

Another case deserving of notice, which I ought not to omit, is that of a person who conceived himself illegally declared a bankrupt; and although he did appear before the commissioners on the appointed day, which is called surrendering under the commission, yet he was afterwards prosecuted for feloniously not surrendering; the circumstances were:—that he was a prisoner in the King's Bench about five years ago, when the commission of bankrupt issued against him, and he immediately protested against it, as ~~it~~ being illegally procured; he denied the debt, the trading, and the act of bankruptcy on which it was founded, and petitioned the Court of Chancery for a supersedeas. The commissioners issued their warrant to bring him before them on the day appointed for his surrendering himself under the commission, and he appeared before them, but he declined going into any examination until he had tried the validity of the commission, for which purpose he had already commenced proceedings in Chancery. The commissioners then committed him to prison for contumacy, and he was afterwards advised to bring an action of trespass and false imprisonment against the parties concerned, in which action he obtained a verdict, subject to a point of law as to the validity of the commission for the consideration of the judges. Before this action was brought to a close,

the prosecution was commenced against him, charging him with feloniously not surrendering under the commission. He was tried, convicted, and sentenced to suffer death; but the judge afterwards respited him for six weeks, in order to submit a point of law for the decision of the judges; and, at length, the punishment of death was commuted for two years' imprisonment. I never ascertained exactly what this point of law was; but it has been intimated to me, by a person in London, who made some inquiry, that the point was respecting the surrender, and that the judges decided, that the bankrupt having appeared before the commissioners within the time prescribed by law, it was surrendering himself within the intent and meaning of the statutes concerning bankrupts.

In regard to the cases already stated, my knowledge of them was obtained from the parties who were thus made bankrupts, &c.; but the following short account of another oppressive case I obtained from a printed report of it, which is stated to be the case of an eminent paper-merchant in the county of Sussex, who became bankrupt, and was indicted for a capital offence, he being charged with having embezzled and concealed his goods above the value of twenty pounds, with intent to cheat and defraud his creditors. Upon his trial at the county assizes, in the year 1816, it was stated that he had received £32 10s. 9d. upon debentures for drawbacks on paper shipped, which sum he had not accounted for. To prove this, a mass of accounts were produced in Court, when it turned out that the bankrupt had

rendered an account of the said sum as received by him on debentures; but there was an error of a single day in the date of the transaction, which the bankrupt declared was entirely owing to the accountant employed under the commission. The jury found him *not* guilty.

The life of this person was thus placed in jeopardy; and his case, together with the other cases which I have stated, are sufficient to prove the great danger in which the lives, the liberties, the character, and the property of his Majesty's subjects are placed by the operation of this bankrupt system. It was justly remarked, in evidence before the Select Committee, that "the severity of capital punishment frequently prevents the punishment of fraudulent persons." But, although a fraudulent bankrupt may escape, yet it is clear, from the foregoing cases, that some persons are not unwilling to endanger the lives of honest men.

Another evil in the present system, which I conceive to be of no small magnitude, relates to the lamentable consequences, in the deprivation of personal liberty and of character, arising from the great discretionary and inquisitorial powers vested in commissioners of bankrupt. Since the bankrupt code has been applied not merely to the cases of rogues, but also to the cases of honest men, it has, of necessity, been divested, in some respects, of its original severity; but the great discretionary powers of commissioners of bankrupt, which were originally intended for only criminal cases, have to this day remained undiminished. Much might be

said against the propriety of entrusting such extensive and permanent discretionary powers to any set of men to be generally applied; and as desperate evils only can require such desperate remedies, it follows of course, that the whole trading part of the country ought not to be subject to this inquisition; and that every honest unfortunate trader ought not to be liable to be dragged before such a tribunal, where he has been previously condemned without a hearing. When a bankrupt appears before the commissioners, it is not for the purpose of being heard in his own defence, but in order to answer, without being allowed any time for consideration, such questions as are put to him; and a string of questions may be so framed as to compel him to give such kind of answers as may be construed against him. Here I leave out of the question the probable timidity and confusion which may be experienced in such a situation; and I think, that this mode of proceeding against a man, who may have the strongest nerves and the clearest head, is calculated to entrap the individual, and to produce effects far from promoting the ends of justice, especially when it is considered, that a bankrupt, with the best of principles, and the fairest character, may give the most full and positive answers upon oath, and yet the commissioners may pronounce such answers to be unsatisfactory, and commit the party to prison, there to remain without bail or mainprize, when, at the same time, it may perhaps be the commissioners themselves who are in error, not being able, in all cases, to understand a man's

business and concerns so well as he does himself. But this is not the whole of the evil, for commissioners of bankrupt commit persons to prison on the mere general declaration, that their answers are unsatisfactory, without stating the particular grounds of their dissatisfaction, which, in many instances, might be essential to a further answer or explanation. Here I shall state a case which I presume to be much in point.

A person is now confined in the King's Bench prison, who has for a considerable time been committed there by the commissioners of bankrupt for not answering to their satisfaction, and who has made various ineffectual efforts to get discharged. Now, as there are so many turnings and windings in an examination before commissioners of bankrupt, it is sometimes difficult for an indifferent person to comprehend the merits of it; and, after all that can be stated on such subjects, I have observed, that indifferent persons are apt to make the following remark: "Ah! there must be something in this matter that we do not yet know of." I shall therefore be brief, and not trouble the reader with any statements of this case which might be subject to such a remark, but shall strictly confine myself to what may be clearly understood; to such particulars as cannot be controverted, and which come directly to the point in question, viz. One of the steps which the bankrupt took to obtain his discharge from prison, about a year ago, was the following: He requested that the accountant employed under the commission might attend him with his

books of accounts, in order to enable him, if possible, to satisfy the commissioners. After this was done, he requested that a meeting might be appointed for him to be further examined. A meeting was accordingly fixed upon, and the bankrupt underwent another long examination, in which, he says, he did his utmost to satisfy the commissioners. When the examination was finished, the bankrupt was ordered to retire to an adjoining room; and, after an interval, on being brought again before the commissioners, he was informed, that he stood re-committed to prison. He immediately begged to know from the commissioners, what were the particular grounds of their dissatisfaction with the answers he had given on that occasion, that he might be enabled to give any requisite explanation, declaring that he was willing to give every answer in his power: but the commissioners declined saying any thing on the subject. After the bankrupt had been conducted back to prison, he wrote to the attorney under the commission, requesting that another meeting might be called, to enable him to answer any further questions, and also begged to be informed, in what respects his answers at the last meeting were considered to be unsatisfactory. The attorney wrote him a letter in reply, stating, that the commissioners refused to call another meeting; and that, in regard to the grounds of their dissatisfaction with his former answers, he referred him to the warrant of commitment. But as this warrant only states in general terms, that his answers were unsatisfactory, the bankrupt remains, of course, ig-

norant in what respects the commissioners conceived that he had not fully answered the questions which were put to him.

I recollect an instance, about two years ago, respecting one of the partners of a mercantile house in London, who had become bankrupt, being committed to Newgate by the commissioners because he could not account for a scratching out in one of their books of accounts. Now, how easily a clerk might make a blunder in the course of writing, and erase it without the principal knowing any thing of it? This person, however, continued in Newgate some time, (I believe several months) and at length the commissioners discharged him, he not being able to give them any other answer in the matter.

Not long ago I heard of a bankrupt being committed by the commissioners to the King's Bench Prison, because a leaf had been torn out of one of his books of accounts; and a retail dealer told me, at the time it happened, that he had sometimes himself torn a blank leaf out of one of his books of accounts when he had to make out a bill of parcel in a hurry. Such a practice is certainly not proper; but all men are not alike particular in matters of this kind, and as a man in such case considers that he has a right to do as he pleases with his own books, an irregularity of this sort ought not to subject him to perpetual imprisonment, in the event of his becoming bankrupt, which he perhaps never thought would be his lot.

I shall now make an extract from the evidence given before the select committee, last session, by

the late lamented Sir Samuel Romilly, which may have more weight than any remarks of mine on the subject. Sir Samuel, after speaking of the cruelty of the law, making it a capital offence that of a bankrupt not surrendering himself under the commission on a certain day from the date thereof, made the following remarks:—"Another part of the law relating to bankrupts, which is highly penal in its consequences, and which very urgently requires alteration, is that which gives power to the commissioners to commit a bankrupt to prison, if he do not answer to their satisfaction the questions they put to him respecting his property, and to keep him in custody till he does. It was formerly held that if a bankrupt gave plain and direct answers to the questions, even though the commissioners believed them to be false, they had no power to commit, and the only remedy was a prosecution for perjury; but it is now understood that, if the commissioners discredit the answers given them, they may imprison the bankrupt till he answers to their satisfaction. Such a power ought not, under any system of laws, to be entrusted to any description of persons, who, however wise and discreet, yet, being men, must be subject to error. The answers given by the bankrupt may be true, though they do not appear such to the commissioners. Truth has not always the semblance of truth; and no man can have had much experience of judicial proceedings, without having sometimes seen that facts, which at the first statement of them appeared in the highest degree improbable, have nevertheless

in the end been fully and satisfactorily established. If ever this should have occurred in bankruptcy, and the first impression have been acted upon; if ever a bankrupt should be committed because the commissioners refuse credit to his assertion, although that assertion be strictly true (and no person can doubt that this may sometimes happen) an innocent man may be punished with perpetual imprisonment, only because his judges are difficult of belief. It is perseverance in truth which in such case must make the imprisonment perpetual; the only chance of deliverance is, to fabricate some falsehood, and to maintain it with such confidence and consistency, that it shall gain credit with those by whom the truth was disbelieved."

I refer to the evidence of another witness, Mr. Cullen, who is a commissioner of bankrupt himself; and I think his candour is highly creditable to him in the following observations:—"I have not had opportunity or leisure to inform myself of the actual result of all the several cases of commitment that have occurred in my own time, but I do believe it would be found that the amount of property discovered, or supposed to be discovered by it, bears no sort of proportion to the number of commitments, or the misery occasioned by them." In another part of his evidence this witness says—"I have known commissioners decline to discharge a bankrupt, even where property was out of the question, and the assignees and creditors had disclaimed all further concern, merely because they (the commissioners themselves) were not satisfied of the truth and fulness of his answers."

"Mr. Justice Blackstone, when he said that, after the abolition of the *peine forte et dure*, there was no such thing as torture in the English law, had forgot the power of commitment by commissioners of bankrupt."

"What is it but a species of torture (emphatically called *the question*) to wring a confession of supposed guilt, by the sufferings or the terrors of imprisonment? I have seen bankrupts under examination, with the terror of commitment held out to them, so confounded that they have not known what they said, have answered distractedly and at random, and have declared to me, and with such agitation as convinced me of their sincerity, that they did not know how to answer, but that they were ready to answer in any way that would only save them from being sent to Newgate."

Another witness, Mr. Lavie, who is an eminent solicitor in London, stated to the committee respecting the examination of witnesses before commissioners of bankrupts as follows:—"I am acquainted with two very important cases, in one of which the object of the examination had any thing else in view than the discovery of the bankrupt's property; and although there were seven or eight persons present on the part of the estate, counsel, attorney, and others, the witness was refused permission to have any person with him; the other case was that of old Mr. Boylston, who underwent examinations day after day totally unassisted; and in both these cases the causes which were produced by the examinations were brought into Guildhall,

without my knowing a single word that had been said by either of them upon their examinations.— On the 9th of April, 1816, which was the last time that I attended a witness before Commissioners, I was offered to be permitted to remain in the room; but that I was to put no questions or enter into any explanations whatever: I refused to continue on those terms, but left a clerk, who, having taken some minutes of the evidence, was compelled to give up those minutes before he was permitted to leave the room. The supposition that a witness is at all times to speak the truth, is not, according to my conception, affected by this mode of proceeding; for the probability is, that by the confusion in which he may be placed, he may tell any thing but the truth, without the smallest intention to be guilty of any concealment: and those inquisitorial examinations are carried to the length of examining accounts and figures, of which I conceive there is no chance whatever of obtaining any accurate result from an examination so conducted.”

Mr. Christian, who is a commissioner of bankrupt, states, in his book on the bankrupt laws, that commissioners sitting in bankruptcy have a greater power than any of our Courts of Law or Equity; that they can examine a bankrupt privately, and even order his attorney out of the room. I know an instance of a bankrupt being summoned to attend the commissioners to be examined not more than an hour before the time fixed for the examination. Thus a bankrupt may be dragged before the commissioners, without any previous

notice, to be privately sifted; he is also liable to have the meaning of his answers misrepresented, or, at least, misunderstood; and, having no witness present on his part, he may be committed to prison without his friends knowing what has happened.

It has been suggested, that it may be expedient to erect a new building for the meetings of commissioners of bankrupts, instead of their meeting in Guildhall. It was also recommended by some gentlemen, before the Select Committee, last Session, that each list of commissioners should have a separate room; that the public should be excluded, and only those who might be interested in such commission should be admitted to the apartment where that business was going on. Now, as the opening of a Commission of Bankrupt, prior to its being gazetted, is considered trying the bankruptcy, I presume it would be as improper to exclude the public there, as it would be in a Court of Law when causes were trying. Besides, *connecting this subject with the foregoing remarks relative to the extensive powers of commissioners of bankrupts*, there is something very objectionable, however good the motive may be, in such suggestions about private rooms, because such a plan would too much resemble a certain building in Spain, which Englishmen do not much admire. It was said by one witness before the committee, that this new building might be properly called the Bankrupt-hall; but, taking into consideration all that has been stated respecting the examinations and commit-

ments by commissioners of bankrupt, I *seriously* think, that such new building might with propriety be called the English Inquisition. I also presume that, before the expence of such a building be incurred, it might perhaps be well to consider whether it be possible, by legislating, to diminish, with advantage, the number of bankruptcies, (which I shall in the sequel endeavour to show is practicable) and by that means make sufficient room for such business to be continued in Guildhall. I close my observations on this part of the subject with a forcible remark, that I lately met with in reading.—The author says:—"England—that country, which is the freest in the world, is at the same time distinguished by some as extraordinary exceptions to a state of freedom as it is possible for the imagination of man to conceive." Now I think it will not be denied, that some such extraordinary exceptions as these are strikingly exhibited in parts of our present bankrupt system.

Towards the close of the last Session of Parliament, a Bill was brought in "to alter and amend the laws relating to bankrupts," and ordered to be printed; but the further consideration of the subject was postponed till the present Session, in order, as it was said, that the commercial part of the country might, in the interim, have an opportunity of considering the provisions of the Bill.

About two months ago a similar Bill was brought into the House of Commons, which, on being committed, was divided into two parts, and called the "Bankrupt Acts Amendment Bill," and the

"Bankrupt Regulation Bill," and ordered to be printed on the 7th of May, 1819. I shall now state in what respects some parts of these Bills are, in my humble opinion, highly objectionable; but previous to such remarks, I present to the reader two Petitions to Parliament on the subject.

The following is a Copy of a Petition, which was presented to the House of Commons by Sir Robert Wilson, on the 2nd of April, 1819, and ordered to lie on the table, and to be printed:—

To the Honorable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of John Dufrene, late of Leeds, merchant, but now confined in the King's Bench Prison.

SHOWETH,

That your Petitioner, on the 5th of June last, caused a Petition of his to be presented to your Honorable House, stating, amongst other matters, that having read the Minutes of Evidence taken before the Select Committee of your Honorable House on the Bankrupt Laws; and their Report thereon, he regretted to find, that the evidence which had been given upon that important subject could not be sufficient to enable your Committee to obtain a full view of the defects in the present bankrupt system; and the said Petition prayed, that your Petitioner might be permitted to be

heard, and to give evidence at the Bar of your Honorable House on the subject of the Bankrupt Laws generally, and particularly on that part of the law by which your Petitioner has suffered a long and destructive imprisonment.

That about the same period a Bill was brought into your Honorable House, "to alter and amend the Laws relating to Bankrupts," and ordered to be printed; but the further consideration of the subject was postponed until the present Session of Parliament, in order, as it was said, that the commercial part of the country might, in the interim, have an opportunity of considering its provisions.

That your Petitioner, as a member of the commercial community, felt it to be his duty to examine the provisions of the said Bill, and he now humbly begs leave to state to your Honorable House, that he is of opinion, that if any such Bill were to pass into a law, it would prove to be highly injurious to both debtors and creditors; that it might shake the commerce of the country to its foundation; and that it certainly would produce a mass of individual misery amongst His Majesty's trading subjects, greater than has been already experienced under this system of law, which is admitted to be most injurious to the commerce of the country, and to the best interests of morality.

Your Petitioner therefore most humbly entreats, that your Honorable House will be pleased to pause before any Bill relating to bankrupts shall be allowed to pass into a law similar to that which was brought in during

the last Session of Parliament. And your Petitioner further prays, that previous to any legislative enactment on this important subject, he may be permitted to be heard and to give evidence at the Bar of your Honorable House on the subjects contained in his aforesaid Petition, which was ordered to lie on the table, and to be printed, about the close of the last Session of Parliament.

And your Petitioner will ever pray, &c.
JOHN DUFRENE.

The following is an Abstract of another Petition that was presented to the House of Commons by Mr. Curwen, on the 20th of May, 1819, and ordered to lie on the table:—

SHOWETH,

That your Petitioner, on the 21st of April last, petitioned your Honorable House, &c. &c.

That your Petitioner cannot contemplate, without emotion, the possibility of a Legislative enactment which might render the law still more oppressive; and he humbly begs leave to state, that he has read the two Bills which are now before your Honorable House, namely, the "Bankrupt Acts Amendment Bill, and the "Bankrupt Regulation Bill," and he is of opinion, that the said Bills are, in many respects, highly objectionable, and if passed into a law would, from their extreme severity, be injurious to creditors as well as debtors, and consequently, instead of protecting the in-

terests of trade and commerce, would have a tendency to defeat the ends of justice.

That your Petitioner also begs leave to state, as an important consideration, that although much evidence was received before the Select Committee on the bankrupt laws, yet not one person has been heard in the character of a debtor, and he humbly submits, that in framing a new law on the subject, it ought to be made equally to protect commercial men, both as debtors and as creditors.

Your Petitioner therefore most humbly prays, that the said Bills may not, in their present state, be allowed to pass into a law; and that, previous to any legislative enactments on this important subject, your Petitioner may be permitted to be heard and to give evidence at the Bar of your Honorable House on the subject of the Bankrupt Laws generally, and particularly on the subjects contained in his aforesaid Petition, which is now laid on the table of your Honorable House.

And your Petitioner will ever pray, &c.

JOHN DUFRENE.

REMARKS

ON SEVERAL CLAUSES IN THE
BANKRUPT ACTS' AMENDMENT BILL,
AND
BANKRUPT REGULATION BILL,

Which Bills were ordered to be printed, by the House of Commons, on the 7th of May, 1819,

It will be no doubt generally admitted, that, in all cases, it is not enough to prove that some advantages might accrue from any proposed alterations, but that it ought to be a primary consideration, whether the proposed advantages of such alterations would be greater than the disadvantages; as, if the latter should preponderate, the former must of course fall to the ground.

One of the remedies proposed by the Bankrupt Acts' Amendment Bill, page 2, is, that if a trader shall leave, or cause to be left, at the office of the Secretary of Bankrupts, a declaration in writing, that he is insolvent, it shall be a sufficient ground for a commission of bankrupt. Now, I presume, that nothing can be more proper, than when an honest trader becomes unfortunate in his business, and finds that he cannot proceed in it with advantage, that he shall then be enabled to deliver up his property, in an honourable way, to be equally

divided amongst his creditors; but this principle being once admitted, (a concerted act of bankruptcy having hitherto, under the present system, been considered illegal) it strikes at the very foundation of the bankrupt statutes, which describe all persons subject to their provisions as "offenders," and authorise certain severe proceedings against the body and goods of such offenders: consequently, instead of this insolvent being allowed, upon the very principle of the foregoing proposition, to deliver up his property like an honest man, it is immediately seized and taken from him by forcible means; and he is required, under the penalty of death, to appear, or surrender himself on an appointed day before the commissioners: he is also condemned to surrender before the same tribunal, the last piece of coin, or the last token of affection; and the same amount of property, namely, twenty pounds, which is by law allowed to be retained by every insolvent, on taking the benefit of the insolvent act, incurs the penalty of *death*, if retained by an insolvent person out of his estate under the bankrupt laws, after passing his final examination.—Therefore, in the words of Mr. Lockhart, when examined before the committee,—“this is a confusion and violation of the common distinctions between right and wrong; nay, worse, the classification of the unjust and dishonest bankrupt, with the honourable but unfortunate trader, exalts the guilty, and debases the innocent and meritorious.” The gentleman who used those words, and also some of the other witnesses stated, as their

opinion, that, under the bankrupt laws, a sufficient distinction was not made between the honest and the fraudulent debtor; but I think that such distinction can never be properly made, until it is rendered impossible to make any honest man a bankrupt. It is generally supposed, that the word bankruptcy means insolvency; but it is an error, for, according to the bankrupt statutes, bankruptcy is not insolvency, nor is mere insolvency bankruptcy. A trader, with the largest possessions, may be compelled to be a bankrupt, if he happen to commit an act of bankruptcy, while a trader, who is insolvent, has no right to be a bankrupt without having committed such act. Some of the gentlemen who were examined before the committee complained, that it was frequently difficult to get an insolvent trader to commit an act of bankruptcy, in order to make him a bankrupt. Now, the most common and ready act of bankruptcy is, for a trader to cause any creditor of his to be told, on calling upon him, that he is not in his house when he really is there; and my opinion on the subject is this—that, independent of the wickedness of falsehood, I think no man in his right mind would commit an act of bankruptcy in order to subject himself to all the horrors of a threatened, or an apprehended, *hostile* commission of bankrupt. If there be no law to enable him to deliver up his property to his creditors, in an honourable way, it is not *his* fault; and by refusing to commit an act of bankruptcy, he obeys the existing law, which pronounces such ~~law~~^{act} to be criminal. The extreme

severity of the bankrupt code often drives men to do what they ought not to do, and which perhaps, but for its severity, they never would have done. I have heard of instances of some unfortunate traders having been able to offer their creditors from ten to fifteen shillings in the pound, under a composition, or an assignment; but, on its being refused, and a *hostile* commission of bankrupt being taken out against them (here I make a distinction between a *hostile* commission and otherwise) they have been unwilling to give their creditors a single shilling, if they could avoid it, in spite of all the terrors of the law. Their principles seemed to change with the conduct of their creditors, and as the law, under which they were forcibly brought, called them criminals, they seemed determined not to have the appellation in vain. Extreme severity has frequently a hardening tendency, and excites all the bad passions of human nature; but kind treatment has often the most salutary effects, and sometimes it even softens the adamant heart, and conquers the stoutest foe.

Another gross inconsistency in the present bankrupt system is, the possibility of an honest trader, who is perfectly solvent, being made a bankrupt and ruined, upon the ground of some frivolous or pretended act of bankruptcy; and this leads me to another part of the bill in question, page 3, which proposes some additional acts of bankruptcy, the first of which is the following, viz.—When a trader “shall, for seven successive days, stop payment, not being disabled, through severe or sudden

illness, from attending to business, or, during that time generally refuse, or be unable to pay all his just debts and demands.” The next is, a trader, being for thirty successive days absent from his usual place of abode, or counting-house, or warehouse, without having made provisions for the payment of bills of exchange, or other demands of his creditors during any of such days becoming payable, due, and owing. The third is, a trader who, being in any part of the United Kingdom, when notice of a writ or writs having been issued against him, shall be left at his usual place of abode, or counting-house, or warehouse, shall not enter an appearance, or put in bail to such action within nine days after a second repetition of such notice, an interval of seven days being suffered to elapse between each notice, and shall not also justify such bail in due time, in case the same shall be excepted to.

Now, whatever might be the supposed advantages that would be produced by such additional acts of bankruptcy, one great disadvantage would evidently be the consequence, namely, that it would increase the number of bankruptcies, and render the bankrupt system a more effectual engine of destruction than it is at present: in short, such an alteration in the law might shake the commerce of the country to its foundation, and soon cause numerous traders to fall like a set of nine-pins.

At Leeds, the place where I carried on my business, the merchants are chiefly engaged in foreign commerce, and it is the general custom

with them to make their payments to the manufacturers on the first Tuesday in every month, with the following exceptions, that, when the merchants are disappointed of expected remittances, through the non-arrival of the foreign mails, or from other causes, it is the practice, and even with the most respectable and solid houses, to delay their payments to the manufacturers, for one and sometimes two months: nevertheless, during the whole of my residence for several years at Leeds (London being my native place) a bankruptcy in that populous commercial town and neighbourhood was a very rare thing indeed. The manufacturers in that district had but very seldom any thing to do with law, which was no doubt the salvation of both debtors and creditors. The law, as between debtor and creditor, was therefore to them almost useless and harmless, through having scarce any thing to do with it; and it is only the adoption of such a line of conduct that could save almost the whole town from ruin, if a delay of payment for seven days were now made an act of bankruptcy.

In regard to the second new act of bankruptcy proposed, viz.—That of a trader going from home for thirty days without having made provision for all the demands of his creditors which might fall due during any of such days, it appears to be founded in error, as to the nature of English commerce; for, in all parts of the country, persons engaged in the inland trade frequently go from home for the express purpose, not only of obtaining orders for goods, but also of collecting money

owing to them, in order to provide for their own payments which are falling due, and which payments are therefore frequently unprovided for before such persons go from home, but are nevertheless duly made before they return.

The next proposed act of bankruptcy—That, after the notification of a writ at the house, or counting-house of a trader, who shall not, within a certain number of days, put in bail, is also highly objectionable, because that individual may then be from home, and, under such circumstances, may be unable to procure bail in due time, although he might perhaps find no difficulty in so doing, if he were at home, and able to make a personal application to his friends.

The fourth new act of bankruptcy proposed is—That of a trader lying in prison upon civil process for debt for fourteen days. As the law now stands, the act of bankruptcy, by lying in prison, is two lunar months, and the alteration to fourteen days, would, I think, often produce much mischief, with but a small proportion of good. Surely some pause is requisite before the ruin of a man is sealed. I knew a merchant at Leeds perfectly solvent, and in fact a man of considerable property, who was arrested for a very large sum of money; he went to prison for want of bail, and only obtained his liberation a very short time before the two months expired, which would have been an act of bankruptcy.

The fifth new act of bankruptcy proposed is—A trader staying abroad with intent to defeat or delay his creditors, although he did not appear to quit

the kingdom with any such design.—I think that a trader, on this ground, would be liable to much misrepresentation. Any wicked person might trump up a story, and say that he believed him to have no good cause for prolonging his stay abroad, and his ruin might be the consequence, as well as others connected with him.

The sixth new act of bankruptcy proposed is—When a trader shall execute, whether voluntarily or under terror of arrest, any warrant of attorney to confess judgment against himself, with intent to prefer any particular creditor. Now, if a trader could not save himself from a prison without doing this, it might in some cases be an act of justice to himself and his general creditors, in order to avoid ruin.

The seventh and last new act of bankruptcy proposed is—That a trader, who shall execute any deed of trust or assignment of his property, for the general benefit of his creditors, or who, without any deed, shall do the same, shall henceforth be accounted and adjudged a bankrupt to all intents and purposes; and that the solicitor, employed in preparing any such deed of trust, shall forthwith notify the same to the secretary of bankrupts, who shall register such notification; and that the said solicitor shall also immediately advertise such trust-deed for three successive weeks in the alternate Gazettes.

Now, to make such an act of bankruptcy as this, would, I think, be like resolving to suit commercial men to the law, instead of the law to the benefit of trade. When a trader and all his creditors have

come to an arrangement of their accounts, what can the secretary of bankrupts, or any other person in the kingdom, have to do with the matter? If an unfortunate trader has got ten shillings in the pound to offer his creditors, I presume they ought to have a right to accept of it, if they think proper; and I really cannot see with what propriety any other man could interfere, and require information on the subject, even if the creditors should choose to forgive him the whole of their debts. But more especially in the case when the whole of a man's creditors agree to take ten shillings in the pound, with what justice or propriety could they, in effect be told, that, because of such agreement, the man shall be liable to be made a bankrupt, and that they shall only have five shillings in the pound? Whether they would get five shillings, or much less, under a bankruptcy, would depend on circumstances; but it could be proved, to a demonstration, that the proffered ten shillings in the pound would, in such case, be considerably diminished. A short extract from the evidence of Mr. Layie, the solicitor, which was taken before the select committee on this subject, will, I think, be highly worthy of notice, and is the following:—"With my ideas on the subject any additional acts of bankruptcy would be attended with no good whatever, because they will only create impediments in other modes of settlement. If the calling of creditors together, or the fact of stopping payment, is to be an act of bankruptcy, there is no prospect of any arrangement taking place, and therefore I should be very sorry

that acts of bankruptcy, which, from the circumstances, may compel a man to be a bankrupt, whether the creditors or himself desire it or not, should be increased." The following question, amongst others, was put to Mr. Lavie: "Does not great injury arise to creditors from insolvents sometimes delaying or refusing to become bankrupts?" To which this gentleman replied—"There may, in some cases; but I have known cases where, by this means, commissions have been avoided, to the salvation of both the debtor and the creditor."

In addition to what has been stated on this point, I remark, that I presume it would be thought a strange practice, in a civilized country, if the circumstance of a person, becoming indisposed in his bodily health, should be the signal for immediately putting a period to his existence by violent means, and in an ignominious manner, when a little medical aid might perhaps shortly restore him to health and strength. And I think it would be almost as preposterous, that any slight derangement in the affairs of an honest mercantile man, or momentary stoppage of payment, should be the signal for not only instantly extinguishing his commercial existence, but also for subjecting him to be treated as a criminal at discretion; for, even as the law now stands, an honest trader is treated as a criminal from the moment that a *hostile* commission of bankrupt issues against him.

I have seen a review of a pamphlet, entitled, "Prospectus of a new Law between Debtor and

Creditor; with Remarks on the Inefficacy of Imprisonment for Debt, and its Injury to Commerce and Trade." The author states the law on the subject in Holland, France, Scotland, and Denmark—In relation to the last country, the following is an extract:—"A considerable merchant-house, in Copenhagen, is rarely driven to the extremity of a failure. It may lay the state of its affairs before the liquidation commissioners of government, when the king seldom refuses to advance the money required, and to take securities upon the plantations, bonds, and bills, the property of the house; and the greatest anxiety is always shown, on the part of government, to prevent the failure of a merchant-house in the country of Denmark." Such prevention of individual ruin and of national injury is, I presume, not unworthy of consideration; and especially as it is diametrically opposite to the practice under our destructive bankrupt system.

It is proposed by the Bankrupt Regulation Bill, pages 17 and 18—That, from the time that a commission of bankrupt issues against a trader, until a final dividend shall be made of the estate and effects of such bankrupt, it shall, and may be lawful to and for the major part of the commissioners, as well as the assignees and the creditors under the said commission, to compel the attendance of the said bankrupt, whensoever such commissioners, or assignees, or creditors, shall think it necessary or advisable to examine him; and, if he shall not answer to the satisfaction of the commissioners, it shall and may be lawful, to and for the said com-

missioners to commit him, not merely to prison, there to remain, without bail or mainprize, but that the law shall be reduced to a certainty, to commit always to *Newgate*, notwithstanding such bankrupt shall be then a prisoner in the King's Bench, Fleet, or other prisons.

Now, when the most abandoned character commits one of the highest crimes, he soon takes his final trial before a jury of his country, and is thus relieved from a state of suspense; but, an honest trader, under the bankrupt laws, would not be so highly favoured. By the foregoing additional acts of bankruptcy proposed, it will appear how very easily the most respectable trader might be declared a bankrupt; and as, by the operation of a commission, with its consequent delays, it is sometimes years before a final dividend is made, every bankrupt, under such circumstances, might, according to the aforesaid proposition in the bill, be kept in a kind of purgatory for such a length of time, by remaining at the beck and call of the commissioners, the assignees, and the creditors, for continual examination, and liable, until a final dividend, to be committed to *Newgate*, at the discretion of the commissioners, if they should think, or choose to say, that he has not answered satisfactorily; and, perhaps, (as is now sometimes the case,) without stating the grounds of their dissatisfaction, which might be essential to a further answer or explanation. I presume it could neither be just nor necessary to keep any human being in a state of torture for such a length of time; but that, on the contrary,

a bankrupt ought to be allowed to pass his final examination as soon as possible, and be relieved from the terrors of the liability of commitment to prison. Much has been said, of late, in various ways, respecting the propriety of the classification of criminals in our goals, so that slight offenders should not be compelled to associate with more depraved characters; but, according to what is proposed in this clause of the bill, it appears as though there is no prison, nor any kind of company that can be too bad for an unfortunate trader, under commitment by commissioners of bankrupt, and, therefore, no other prison than *Newgate* shall receive him. This bare fact will, no doubt, make a powerful impression upon the readers; and, therefore, without attempting any comment, I hasten to remark on another part of the bill, page 21, which proposes—That the major part of the commissioners, named in any commission of bankrupt, shall, at their third meeting, and also at any adjourned meeting, strictly examine and inquire, whether such bankrupt has acted with injustice towards his creditors, either in contracting any debts, or entering into any engagements, without any fair prospect, or probable means, of paying such debts, or fulfilling such engagements; that the commissioners shall also certify thereon, and such meeting shall be notified in the *Gazette*.

As the law at present stands, the jurisdiction of commissioners of bankrupt, in examining persons under a commission, is limited to the obtaining of a full disclosure of the estate and effects of a bank-

rupt, in order that an equal distribution thereof may be made amongst his creditors, provided that he be insolvent; and, if he be a *solvent* bankrupt, then to cause the surplus of his property to be delivered back to him, after all his creditors have been paid, in full, twenty shillings in the pound. Under our general criminal code, no man is required, in a court of law, to convict himself; for the *onus probandi* lies with his prosecutor. The additional powers, now proposed to be vested in commissioners of bankrupt, to examine into the motives and conduct of the bankrupt antecedent to the commission, and as far back as they please, would, notwithstanding, be less objectionable, if the only effect likely to be produced would be the discovery of injustice in the conduct of the bankrupt; but, the principal objections to the granting such additional powers, I conceive to be the following:—That the great latitude of discretionary power, now proposed to be given, would enable commissioners of bankrupt to oppress a man most unmercifully, if they should ever be so disposed: it would also allow them to go into matters concerning which, for want of commercial knowledge and experience, they would be unable, in all cases, to judge correctly: it would further permit them, by examining a man's motives, to attempt to dive into the deep recesses of the human heart, which is a power absolutely denied to mortals by the Supreme Being; and, I think, that the establishment of such an inquisition would be a disgrace to the English nation. In regard to the contracting of debts, without the probable means

of paying them, it is worthy of remark, that the debts in general, of men in trade, are for goods, or merchandise, which they purchase for sale; therefore the means of their paying such debts lie in the very purchases by which these debts are contracted, independent of all other resources. Besides, as a matter of course, men of trade, or commerce, before they sell goods or merchandise, upon credit, to a trader, of whom they have not had any previous knowledge, make inquiry respecting his character, stability, the nature of his business, &c. and, if they neglect this, it is their own fault. Then, after such inquiry, the act of giving credit is, I conceive, a tacit admission that they agree to sell at the risk of that man's success in business as to the payment for the goods: so, on the other hand, a purchaser runs a risk as to the prices he agrees to pay for such goods; and if, with the exception of downright swindling, such contracts were not conclusive on both sides, why might not creditors, as well as debtors, be examined before commissioners of bankrupt, not merely as to the proof of the debt, but also as to the fairness of *their* dealings, with reference to the price and quality of their goods, and the justice and propriety of *their* conduct towards their debtors, in order to ascertain, whether *they* had not been the cause of their debtor's failure? But I submit, that commissioners of bankrupt could not possibly examine creditors in such matters with any certainty of judging correctly, and, that they must labour under equal uncertainty, if, as is

now proposed, they should be authorised to go into such examinations with debtors.

In regard to the certificate—As the law now stands, the signatures of three-fifths of the creditors, in number and value, entitle a bankrupt to his certificate. But, by the bill in question, page 22, it is proposed, that the signatures of four parts in five, in number and value, of the creditors, to the amount of twenty pounds and upwards, shall be required; and that such certificate, although thus signed by the creditors, shall not be allowed, until the commissioners have certified the surrender and conformity of such bankrupt to his commission, the full disclosure of his property, and the disposition and expenditure thereof; as likewise the belief of such commissioners of the truth of such disclosure, and the general propriety and correctness of the conduct of such bankrupt; and that, even then, such certificate shall not be subscribed by such commissioners before the expiration of twelve calendar months, from the date of the commission, until a dividend of the estate and effects shall have been declared. It is further proposed, page 23, that it shall be "competent," to the commissioners (though as the margin states, they shall not be bound,) to refuse to subscribe the said certificate, in case it shall appear to them, from the examination of the said Bankrupt, that he has been guilty of gross misconduct, improvident speculation, or fraud.

The principal reason assigned, before the Select

Committee, why it ought to be made more difficult for a bankrupt to obtain his certificate, was, that fraudulent bankrupts frequently got their certificate by means of a number of debts being proved by fictitious creditors, to enable them to sign such certificate. If this be the fact, there would be some danger of increasing both perjury and robbery by altering the requisite number of signatures from three-fifths to four-fifths, as a greater number of fictitious creditors would then be necessary to obtain the certificate in fraudulent cases. On the other hand, it could be proved, that very honest men are not unfrequently unable to obtain their certificate, and sometimes for the want of the signature of only one hostile creditor, who perseveringly refuses it: by this means an honest man is frequently kept in prison a considerable time after he has delivered up all his property; and he may remain there for life, at the suit of such vindictive creditor, if he make his election not to prove his debt under the commission. I know a very honest and honourable mercantile man, who told me that he was once a bankrupt, and was kept out of his certificate for sixteen years. Mr. Montagu, on his examination before the committee, last session, produced a list of certificated and uncertificated bankrupts, for a period of twenty years. Now, as the latest possible calculation would be most to the purpose in considering the effects of the practice in bankruptcy, at the present time, I shall cite the numbers for the last ten years, on the said list, by which it appears that, from the year 1796 to the year 1805, the to-

tal number of bankrupts was 8761, of which 5018 were certificated, and 3743 uncertificated. Now, although it must be admitted that there are fraudulent bankrupts, yet I think there can be no doubt, that a great majority of the annual number of persons made bankrupt consists of honest, unfortunate traders; and, if so, the aforesaid list of bankrupts does not prove that bankrupt certificates are in general too easily obtained, but rather the contrary. Mr. Lavie is a solicitor in London, in great practice, and has been in the profession thirty-seven years; he said, before the Committee last session, "I have had only two cases in my office where the bankrupts have been guilty of fraud." However, from other evidence given before the Committee, respecting fraudulent bankrupts obtaining the certificate, it must be supposed, that some part of the 5018 certificated bankrupts, in the aforesaid list, were fraudulent persons; and if, as has been already presumed, a great majority of bankrupts are honest men, it then follows of course, that, amongst the 3743 uncertificated bankrupts, there must have been a great number of honest, oppressed individuals. This calculation, therefore, makes against the proposed alteration of requiring four-fifths, instead of three-fifths, of the signatures of creditors to the certificate. Besides, as a majority of votes in Parliament is considered sufficient to decide the most important national questions, so I think a majority of creditors, when the matter depends upon numbers, ought to be competent to decide upon all questions under a commission of bankrupt.

Several of the witnesses, on being examined before the Committee, doubted the propriety of this arbitrary discretionary power as to the certificate being vested in irritated individual creditors, and of thus allowing them to be judge of their own cause. Mr. Montagu stated the following four bad effects of this law, viz. 1st, That it had a tendency to prevent a full disclosure of the bankrupt's estate; 2dly, To prevent the obtaining possession of it; 3dly, To occasion bribery; and, 4thly, To produce perjury. The evidence of the late lamented Sir Samuel Romilly on this point is well worthy of consideration, and the following extract is much to the purpose, viz.: "The evils which may befall a bankrupt who cannot obtain his certificate, though they are very severe, and in some cases extremely cruel, are yet not of such a kind as ought to be inflicted by way of punishment."—"A man who is undergoing the penalty of his crimes ought not to be left in the doubtful state in which an uncertificated bankrupt is placed, leaving it uncertain, to all who hear of his condition, whether his sufferings are the effect of his own guilt, or of the capricious cruelty of some unrelenting creditor. If, however, the law, relating to certificates, were not, as a penal law, liable to all these objections, yet, upon what principle can it be justified, that the administration of this law, in which the public has so deep an interest, should be confided to creditors not responsible to any one for their conduct, but left at full liberty to act as their passions or their interests may prompt? No man, much experienced

in bankrupt law, who will recollect to what persons certificates have been granted, and to whom they have been refused, will pretend that the discretion, thus entrusted to creditors, has been generally exercised upon motives which would bear the test of any moral investigation. I have heard it, indeed, asserted, that creditors abound with kindness and humanity, and never refuse certificates, but to those who are undeserving of them. I cannot say that my experience confirms that observation; on the contrary, I have known several instances of the most harsh and inhuman refusals of certificates by creditors."

I feel persuaded as to the correctness of these observations by the late Sir Samuel Romilly, respecting the conduct of some creditors; but I also believe, that a majority of creditors act with justice and humanity towards their debtors; and, in order to qualify, and to make my statement the more impartial, I feel bound to add, that, as an individual, I have no cause of complaint against my creditors in general, for they have always treated me in the most handsome manner, and continue favourably disposed towards me. I am not seeking a certificate, but am disputing the validity of the commission of bankrupt which was issued, and is still in force against me. I am further of opinion, that creditors are not the only persons who might be likely to err respecting the certificate; and it might perhaps be made to appear, that the aforesaid arbitrary discretionary power, relative to the certificate, ought neither to be vested in commissioners

of bankrupt; for if, by committing persons to prison, they sometimes improperly deprive of personal liberty and of character, it follows of course, that by possibility they might also improperly grant or withhold bankrupts' certificates. For my own part, I conceive that it would be a great evil to invest commissioners of bankrupt with a discretionary power to refuse the certificate, not only after it has been signed by the bankrupt's creditors, but also in case it should appear to the legislature that irritated creditors ought not to have this power to punish a man at their discretion; for I am of opinion that, in many cases, commissioners might, through misconception of a man's character, or otherwise, improperly withhold his certificate, if their granting of it depended upon their *belief* of the truth of the bankrupt's statement, after he had delivered it upon oath, and upon their views of the propriety and correctness of his conduct antecedent to the commission, and also whether he had, or had not, been guilty of improvident speculation, &c. I desire to give no offence whatever to professional gentlemen, when I state, that they are perhaps not the most likely description of persons to decide correctly upon what is, or is not, improvident speculation in trade or commerce. The knowledge of the uncertainty of the law has in general the effect of preventing any professional gentleman the risking of his own costs upon the issue of one of the best of cases. In the country, attorneys are commissioners of bankrupt; and when acting in the capacity of commissioners, they might perhaps

carry their views of precaution so far, in judging of commercial matters, as to cause them to pronounce a certain course of conduct in a trader to be improvident speculation, which might in fact be nothing more than that kind of enterprise which has raised this country to a pinnacle of commercial greatness. The same might perhaps be said of military enterprise; for, if an army were never to engage in battle until they knew beforehand that the victory was certain, where would have been the laurels of the heroes of Waterloo?

With respect to a bankrupt's certificate, two facts appear to be indisputable, viz. that fraudulent persons often obtain it, and that honest men are frequently deprived of it: and, after weighing the different opinions respecting the most proper mode of granting it, the only conclusion at which I can arrive is this,—that justice requires that a bankrupt's certificate ought not to depend upon the discretion of either the creditors or the commissioners; but that a bankrupt, after having conformed to the laws concerning bankrupts, and made a full disclosure of his property, upon oath, for the benefit of his creditors, his oath should be credited like that of any other individual under the commission, and he should be immediately entitled to his certificate. And even if there should appear any evil in this mode of granting it, yet, if it be the *least* evil, it would still be the best path to pursue. If a bankrupt have acted with injustice, let him have a trial by a jury of his country, and then punish him according to law. This course would prevent per-

jury and robbery under a commission, by completely doing away the evil complained of, that of fictitious creditors proving debts for the purpose of signing the certificate; and it would also prevent honest men becoming the victims of arbitrary discretionary power.

Mr. Cullen, a commissioner of bankrupt, on giving evidence before the Committee, stated, in regard to the proposition to enable commissioners to enter into an inquiry into the anterior conduct of the bankrupt, and to grant or withhold the certificate according to the result of such an inquiry, said, that it “would be to inflict upon the commissioners an extravagant and hateful power.”

In the Bankrupt Acts' Amendment Bill, page 9, it is proposed, that capital punishment, in cases when a bankrupt shall not surrender himself on the appointed day under a commission of bankrupt, imposed by the act of 5. Geo. II. shall be repealed—The opinion is now so general, that the punishment of death, in such cases, is too severe, that any observations of mine thereon would be superfluous. I, however remark, that the following important consideration arises out of the subject, namely, that it is not only this part of the present bankrupt law which is too severe, but that the extreme severity of the bankrupt code altogether, has a tendency to defeat the ends of justice.

It is further proposed, page 11, that the punishment for non-surrender shall be transportation; and that, if a bankrupt shall not surrender before five o'clock of the day that shall be appointed for such

surrender, he shall be deemed and adjudged to be guilty of felony. As the law now stands, a bankrupt is required to surrender himself on the forty-second day under the commission, before twelve o'clock at night; therefore, the proposed alteration increases the severity, in one respect, by shortening the day of surrender seven hours. This will appear to be not unimportant, when it is recollected, that I have already referred to a case, in which it was stated, that the alleged bankrupt, in consequence of an accident when on his way to surrender himself, the horse on which he rode having broken down, he arrived before the commissioners a little later than the hour appointed, and he was immediately threatened with a prosecution for having thus committed an act of felony. The appointed hour was, in this case, in the middle of the day, the time for surrendering having been enlarged, in consequence of a petition to the Court of Chancery to supersede the commission, which had been illegally procured.

In this clause of the bill, respecting the surrender, a variety of supposed circumstances, under a commission of bankrupt, are included as additional acts of felony, and subject to the same punishment, which make it altogether a most frightful picture of severity; and, connecting this with that inquisitorial mode of proceeding under the bankrupt laws, which creates such facility to turn light into darkness, and truth into error, I really think, that if such a clause as this were made law, the most upright trader, under a *hostile* commission of bank-

rupt, could not possibly prevent his being transported, if his adversaries should be determined upon it. The clause is a long one; but some of the items, in addition to the surrender, are the following, viz. That in case such bankrupt shall not submit to be examined from time to time upon oath, by and before the commissioners, and also by and before the assignees and other persons by this present statute authorized to examine him, and in all things conform to the several statutes already made, or to be made, concerning bankrupts; or, in case he do not, upon such his examination, fully and truly disclose and discover all his estate and effects, real and personal, and all books, papers, and writings relative thereto, and how and in what manner, to whom and upon what consideration, and at what time or times he hath disposed of, assigned or transferred any of his goods, wares, merchandises, monies, or other estate and effects, of, in, or to which he or any person or persons in trust for him, was or were any ways possessed, interested or entitled at any time before the issuing of the said commission, or whereby such person or persons, or his family or families, hath or have, or may have or expect any profit, possibility of profit, benefit or advantage whatsoever, &c. &c. &c. in all or any of the said cases the said bankrupt shall be deemed and adjudged to be guilty of felony, and shall be transported for life, or for any period not less than fourteen years, according to the magnitude of the offence or offences.

The reader will no doubt be of opinion, that the complicated nature of this phraseology, and the great latitude here given for accusation, would create such a facility for putting almost any kind of construction upon the words and conduct of a bankrupt, and even upon the law itself, that it would be next to impossible for the most honest man to escape a charge that would transport him at the discretion of his adversaries; for instance, by this clause, and also a following one, something to the same purport, it would, I think, not be very difficult to magnify the destroying of a piece of waste paper, with any writing upon it, into that of a document of importance; and the circumstance of its being destroyed might cause the bankrupt to be unable to disprove the accusation, as to the importance of the paper in question. To prove this, I could produce a case quite in point, under the law as it now stands, in which a bankrupt was charged with destroying a document of consequence, and he remained for some time under the charge, because it could not be produced. It was, however, at length not only found, but it also turned out to be of no importance, even if it had been lost or destroyed. And, upon the whole of the aforesaid clause in the bill, it would be almost, if not wholly, impossible for any bankrupt even to ascertain *the extent of his liability* to be accused of felony. In my humble opinion, it were better generally to consider how to prevent crime by other means, than by increasing the number of punishments. Two enormous

evils, amongst others of minor importance, flow from the bankrupt system, as it is at present constituted; and by the proposed alterations in the said bills, I conceive that these evils would be increased: in the first place, the system itself produces fraud; and, secondly, it subjects honest, well-meaning men to unmerited suffering.

I shall now refer to the concluding clauses of the bill in question, which relate to a matter of too much importance to be passed over unnoticed, because it so deeply involves the liberty of the subject, and the protection of property. The sum and substance of what is proposed, to which I now refer, as expressed and understood, is, that the commissioners, and all parties acting under a commission of bankruptcy, whether legally or illegally, shall be protected, saved harmless, and indemnified against all consequences; and that commissioners of bankrupt shall be protected in imprisoning his Majesty's subjects under a commission of bankrupt, at discretion, without any regard to the legality of their proceedings, or the validity of the commission of bankrupt under which they are acting. The following is one clause, to which I now particularly allude, p. 18. "And be it further enacted, by the authority aforesaid, That no action, suit, or other proceedings, other than a certiorari in the Court of King's Bench, shall henceforth be brought, sued out, commenced or prosecuted against any commissioner or commissioners of bankruptcy, for, on account, or in respect of any act, matter or thing whatsoever, committed or done by such commissioner or com-

missioners in the exercise, performance and discharge of the several duties, authorities and powers assigned and entrusted to commissioners of bankrupt, by this or any other statutes made or to be made concerning bankrupts, or by any orders or decrees in bankruptcy, made or to be made, by the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the great seal for the time being, and shall be protected, saved harmless and indemnified from all costs, charges and expences," &c.

The next clause provides, "That no assignee of the estate and effects of any bankrupt or bankrupts, duly chosen and appointed as in this act is directed, shall be personally liable to any costs, charges, damages or expences, for or in respect of any act matter or thing, whose legality shall depend on the validity of the said commission, committed or done by such assignee or assignees," &c.

Another clause states, That the validity of a commission of bankrupt shall not henceforth be disputed in any action brought against the messenger to the said commission; and that the commissioners' warrant shall be sufficient authority to him for all acts done in conformity thereto.

The last clause on this subject states, That no sale or other disposition of any of the lands, tenements, &c. or other real or personal estate of any such bankrupt, made by the assignees, shall be henceforth impeached, invalidated, or otherwise controverted, or the title to such lands &c. called in question, for or in respect of any supposed defect

in the validity of such commission of bankruptcy; but that all such sales or other disposition, if made *bona fide*, shall be valid and effectual to all intents and purposes whatsoever, notwithstanding the said commission shall be subsequently thereto superseded, or otherwise declared to be invalid.

Now, I will admit, that some inconvenience may arise to the aforesaid parties, as to their liability at present to have actions at law brought against them, when acting under illegal commissions of bankrupt; but, it would also be very inconvenient, and sometimes beyond it, to an honest trader to be illegally, and as it were instantly, turned out of his dwelling, dispossessed of all his property, ruined in his business, perhaps his character blasted, and his person committed to prison, if he should happen to be not very tame under such circumstances before the commissioners; and after such proceedings had been proved to be illegal, that he should not only have no compensation for all these injuries and insults, but that further, after his property had been deteriorated, having been sold for, perhaps, only half its real value, that the protection afforded by law to both the buyer and the seller of it should leave him unprotected, and utterly unable to recover the whole of the property of which he had been plundered by such illegal commission of bankrupt. I conceive, that such an alteration as this would undermine the fundamental laws of the country, which pronounce to be trespassers, all parties concerned in illegally seizing upon any man's person and property: in short, such a new law would, to a certain degree,

outlaw every man of trade or commerce in the country, as being subject to the bankrupt laws. I am of opinion that it would be a very simple remedy for these various evils, if no person were permitted to proceed with a commission of bankrupt until it was ascertained beyond dispute to be a legal one; and that this would be the best mode of protecting all parties.

It may be presumed that no respectable commissioner of bankrupt will feel offended at my stating, that commissioners of bankrupt, being in common partakers of the frailty of human nature, are not only liable to do wrong, but that they ought to be amenable to the laws of the country, as well as other persons. In confirmation of this opinion, I will refer to much higher authority than my own. Mr. Montagu, on giving his evidence before the select committee last session, cited something that was said, as to the liability of commissioners of bankrupt to do wrong, by the present Lord Chancellor, when first he took his seat upon the Bench in the year 1801; of which the following is an extract from Mr. Montagu's evidence, viz. "In the first page of the sixth volume of Mr. Vesey's Reports, the reporter says "this: 'The Lord Chancellor took the first occasion of expressing strong indignation at the frauds committed under cover of the bankrupt laws, and his determination to repress such practices. On this subject his lordship observed with warmth, that the abuse of the bankrupt law is a disgrace to the country, and it would be better at once to repeal all the statutes than to suffer

"them to be applied to such purposes; there is no mercy to the estate; nothing is less thought of than the object of the commission. As they are frequently conducted in the country, they are little more than stock in trade for the commissioners, the assignees, and solicitor; instead of the solicitors attending to their duty as ministers of the court, for they are so, commissions of bankruptcy are treated as matter of traffic; A. taking up the commission, B. and C. act as commissioners. They are considered as stock in trade; and calculations are made how many commissions can be brought into the partnership.'"

In the year 1817, a bill was brought in, by an honourable member of the late parliament, Mr. Lockhart, called the Bankruptcy Repression Bill; and, on the motion for the second reading of the bill, on the second day of May, in the said year, that honourable gentleman is reported to have said, that "at present the law had the effect of enticing men of loose principles to become bankrupts; they had only to find a friendly commissioner, a friendly solicitor, and fictitious creditors for three-fifths, of their debts: these unfortunately were too easily found; and, the certificate being obtained, the rightful creditors were entirely defeated."

By the quotations I have now made, it appears that, in fraudulent commissions of bankruptcy, there are sometimes several parties concerned, namely, a fraudulent debtor, fictitious creditors, a friendly solicitor, and a friendly commissioner. Nevertheless, all the denunciations in the aforesaid bills are directed against only one party, namely

the Debtor. This I conceive to be rather unfair. I also think, that it is impossible to remedy evils in which four different parties may be concerned by merely legislating to punish only one of the parties who may be guilty of misconduct; and more especially when it is considered that, in some cases, the bankrupt may, by possibility, be the innocent party, while the rest are guilty; it will be evident, that the subject, being thus partially viewed, must absolutely prevent an adequate remedy.

I am of opinion, that a fraudulent bankrupt, who cheats his creditors of their property, bad as that may be, does not produce so much real evil to individuals, as a commissioner of bankrupt does who rashly, at his own discretion, without equitable and reasonable grounds, commits men to prison, to the endangering their character and good name, which I conceive to be the most valuable treasure any person can possess; for, compared with this treasure, as Shakespeare says,

“Who steals the purse steals trash.”

Besides, it is sometimes possible to have stolen property restored; but how can a commissioner of bankrupt restore months, or years of a man's life, which he has deprived him of, by cutting him off from the world, and entombing him within the walls of a prison! and how can he restore the health he has injured, and the reputation he has blasted!—I do not wish to give any unnecessary offence, and hope that I have made no remarks which may appear to be invidious; but still some persons may be of opinion, that it is the height of

imprudence on my part, while in the hands of commissioners of bankrupt, to say what I have said on the subject, and that I shall probably be punished for it. I hope not; but, be this as it may, unless I neglect to do my duty on a most momentous subject, at this particular crisis, I have no alternative, but to risk the consequences of performing it.

Several merchants of respectability were examined before the Select Committee, and their statements I conceive to be worthy of the most serious consideration. They all agree in the following particulars; namely, that, from the results they have experienced in cases of bankruptcy, they avoid as much as possible to make any of their debtors bankrupt; that they always prefer to accept of even a small composition rather than produce a bankruptcy, because that, in cases where offers of ten shillings or more in the pound have been made to them by their insolvent debtors, and such offers have been rejected through the obstinacy of sometimes only one creditor, not more than two and sixpence in the pound, in the same cases, has been paid under a bankruptcy; and that in many cases, where a composition has been offered and refused, nothing at all has been paid under a bankruptcy. In a case, in which I was myself a creditor, the parties became insolvent, and, after looking into their affairs, they made an offer to their creditors of ten shillings in the pound, with two sureties, to be paid by instalments at the expiration of four, eight, and twelve months. This offer was accepted by the whole of the creditors except one, who was

the holder of a bill of exchange. This creditor held the rest of the creditors at defiance; he refused to agree to the composition, and sued out a commission of bankrupt; in consequence of which a large stock in trade was sold off considerably under value, and the creditors, instead of having secured to them ten shillings in the pound within twelve months, according to the terms of the proposed composition, they only received three and sixpence in the pound in about three years. A person, confined in the King's Bench, who had been a retail dealer, told me, that he had offered his creditors twelve shillings in the pound, with security for the payment, which was not accepted, through the hostility of one or two creditors; that a bankruptcy was the consequence, and there was such a waste of property, in one way or other, that he said it became doubtful whether the creditors would be paid any thing under the commission.

Another case was, a respectable farmer, who was confined in the Bench, and who stated to me, that he was worth considerably more property than was sufficient to pay all his creditors. He, therefore, offered to engage to pay them in full twenty shillings in the pound, if they would allow him twelve months time to pay the money. One hostile creditor had taken out a commission of bankrupt before any act of bankruptcy had been committed; and another creditor arrested him. Thus, by the commission of bankrupt, he was prevented paying his creditors, as he could have done in twelve months, had he not been molested. Then the other hostile creditor,

who arrested him, refused to prove his debt under the commission, in order to keep him in prison, and his signature happened to be also necessary to the certificate; consequently, this unfortunate man, after being deprived of all his property by virtue of the commission of bankrupt, could neither obtain his liberty, nor his certificate. These and many other similar cases have come to my knowledge very accidentally; for, having lived very retired in the King's Bench, I have always had but a slight knowledge of its inhabitants. I therefore entertain no doubt, but that a host of cases might be produced, if a little trouble were taken to collect them, which would make the deepest impression in favour of the cause of suffering humanity.

There are many obvious reasons why the accepting of a composition under an insolvent estate must be more advantageous and desirable than a commission of bankrupt, some of which I conceive to be the following:

In the first place, the nature of such composition is beautiful simplicity, when contrasted with the complicated machinery of a commission of bankrupt.

Secondly, The simplicity of a composition creates no expence, while the expence of the numerous windings and movements under a bankruptcy is sometimes enormous.

Thirdly, Under a composition, there is scarce any waste of property; but, from the nature of the sales made under a bankruptcy, loss of property is inevitable, besides what is frequently wasted by litigation, which it is the interest of the attorney acting under the commission to promote.

Fourthly, The acceptance of a composition, while it is a humane and gentle proceeding towards the debtor, it is advantageous to the creditors themselves, inasmuch as the said embarrassed debtor, when protected against the operation of the law, is able to do more for them than any other person or persons, who are strangers to his business and concerns; and it is a well known fact, that a trader can obtain payment of his own debts much readier than such payment can be obtained under a commission of bankrupt. Besides, it is decidedly the interest of all men, who get their livelihood by buying and selling, to make their payments regularly and in due time; consequently many traders act the part of honest men, who really do not possess the very best of principles; and, in the first stage of embarrassment, they are in general inclined to do their very utmost for their creditors, if they will only save them from ruin. But, take away the spring of action; place these men under a *hostile* commission of bankrupt; persecute them; blast their character; deprive them of all their comforts; destroy all their prospects; in short, drive them to desperation by a course of harsh proceedings, and the contrast between their present and former deportment will then appear as great as darkness is to light.

The evils and the inconsistencies of the bankrupt system are so great and so numerous, that, after all that has been said as to the best mode of altering this law, it never can, in my humble opinion, be made to promote the ends of justice. Nevertheless, I think it might not be difficult to make a simple

law that would protect the interests of both debtor and creditor: but upon such a foundation as the bankrupt system, I conceive it to be utterly impossible to raise a superstructure to which the interests of the commercial and trading community could be properly confided. However, in the absence of either a new law, or any alteration in the present bankrupt law, I humbly suggest the propriety of legislating upon one important point, the effect of which I conceive would be, that, in many cases, it would alone instantly operate to the salvation of both debtors and creditors; and on this subject I think there could scarcely be a dissenting voice.

It has already been stated, that when a composition, or an assignment, is proposed under an insolvent estate, the wishes and arrangements of the mass of creditors are frequently thwarted and overturned by merely one obstinate creditor. This, I think, is quite preposterous, especially as, sometimes, such creditor may, by possibility, be either a persecuting, vindictive man, or an ignoramus; and, if of the latter description, so much the worse for both debtor and creditors. In short, the principle operates in such a variety of shapes, that the mischief it produces is almost incalculable. Therefore, what I now earnestly recommend for legislative interference is this: *That in such cases, where a composition, or an assignment, or any other arrangement is proposed on the part of the debtor, it might be, in a high degree, beneficial to enact, That a majority of creditors shall, in all cases, be competent to prevent a small minority destroying their arrangements with*

their embarrassed debtor, whether he be solvent or insolvent. Such a legislative enactment would, I think, of itself, go a great length towards remedying many of the evils now complained of, and soon produce the most salutary consequences to both debtors and creditors. In this opinion I am supported by some statements that were made by Mr. Lavie, before the Select Committee, last session, which are much in point, and I here cite a few words from the Minutes of Evidence. That gentleman stated a very strong case respecting a composition which was proposed by the insolvent, and accepted by the creditors, but which arrangement was ultimately completely destroyed by an individual creditor refusing to sign the instrument executed by the creditors at large. Mr. Lavie then said: "Those concerns I have had the honour of being particularly engaged in, generally have a great deal of property abroad; and one great reason for the creditors always being anxious for any thing short of a bankruptcy is, that the property abroad is got in with so much greater difficulty under a commission than when a person is himself to obtain payment of his own debts. I understand that in the Scotch law, a majority of creditors agreeing to a composition binds a small minority; and it would be very desirable, beyond all question, as in the case I have instanced, that something of the same sort should take place here."

Having introduced into this little publication several cases in support of my opinion relative to the defects in the present bankrupt system, it would, I

conceive, be improper to omit giving some account of my own case, as it will also tend, in a great degree, to prove some of the evils that I have now endeavoured to hold up to public view. The following petition to Parliament has a two-fold object. It relates to the bankrupt law generally; and in particular, it contains a minute statement of the circumstances relative to my improper commitment to prison by the commissioners of bankrupt, with the views I entertain in regard to the necessity for endeavouring to get discharged from this commitment in a manner that will promote some future security, and obtain that degree of justification which the preservation of character renders indispensable.

Copy of a Petition which was presented to the House of Commons by Mr Alderman Wood, on the 21st of April 1819, and ordered to lie on the table, and to be printed:—

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble Petition of John Dufrene, late of Leeds, Merchant.

SHOWETH,

That your petitioner begs leave to refer your Honourable House to a petition of his which was presented on the 1st of May 1817, praying that a bill, then before the House, for investing commissioners of bankrupt with an unlimited discretionary power, might not pass into a law, and also to another petition, presented on the 2d instant, which were ordered to lie on the table, and to be printed.

That the first petition stated various circumstances respecting a commission of bankrupt, bearing date the 13th day of June 1812, which was sued out against your petitioner, contrary to the will of one hundred and eleven creditors of his, by a person in London, who had not any legal claims for debt against your petitioner, and who chose himself sole assignee. The allegations, contained in the said petition, relative to your

petitioner's case, have been verified by affidavits, which his opponents have not been able to disprove.

That the said petition further stated that, through the abuse of discretionary power by commissioners of bankrupt, your petitioner had suffered about five years' imprisonment; and as this imprisonment is still continued, your petitioner now begs leave to state to your Honourable House the following particulars thereof, viz. That at the third public meeting at Guildhall, on the 28th of July 1812, your petitioner surrendered to the commissioners under the said commission, but protested against its validity, and signified his intention to petition the Lord High Chancellor for a supersedeas. Your petitioner was, however, examined before the commissioners, and he answered all the questions that were put to him; but his final examination was adjourned to the 22d day of August, in order that his petition for a supersedeas might previously be heard. That when the said petition came on to be heard, on the 17th day of August, this sole assignee, who sued out the commission, stated by his counsel that he could not be ready, and moved the Lord Chancellor to let the petition stand over to the next day of petitions, which motion his Lordship granted. That at the adjourned meeting at Guildhall, on the 22d of the same month, your petitioner's counsel attended and stated to the commissioners, that the decision of the Lord Chancellor having been delayed by the said assignee, they ought to adjourn any further examination of your petitioner until his cause should be heard; but the said commissioners refused to adjourn, and pressed your petitioner to be examined. Your petitioner, however, conceived that he had gone every reasonable length by answering all the questions which were put him at the third meeting, when he signified his intention to petition the Lord Chancellor for a supersedeas, and as this said assignee, who sued out the commission of bankrupt, had declared himself not ready to prove the validity of his proceedings when the petition for a supersedeas came on to be heard, and as he had on that occasion been allowed further time by the Lord Chancellor to answer the said petition, your petitioner, by the advice of his attorney, asked the commissioners to adjourn until the validity of the commission had been decided by the Lord Chancellor; and, on declining any further examination for the reasons aforesaid, the commissioners committed him to the King's Bench prison, where he now remains.

That your petitioner, therefore, humbly submits, that this conduct on the part of the commissioners was not only con-

trary to all reason and equity, but that it was also contrary to law, according to the following extract from the 16th sec. 30th cap. 5th Geo. II. relative to the power of commissioners of bankrupt to commit persons to prison, viz.—“ In case any such bankrupt or bankrupts, or other person or persons, shall refuse to answer, or shall not fully answer, to the satisfaction of the commissioners, or the major part of them, all lawful questions, &c. not having a reasonable objection to the wording thereof, or otherwise, &c. it shall and may be lawful to and for the said commissioners, &c. to commit,” &c.

That, by the foregoing extract from the act of Parliament, it appears to your petitioner, that “ a reasonable objection ” is a sufficient legal authority for not answering commissioners of bankrupt, and presuming that his aforesaid objection to answer was a reasonable one, he conceives himself entitled to an honourable discharge from the said commitment; and as such commitments cannot fail to be disreputable, the preservation of your petitioner's character absolutely requires that he should not seek to be discharged otherwise than according to law; that such legal discharge is also necessary for his future security, because, even if your petitioner could be induced to sacrifice the present point, on which he has now suffered above six years imprisonment, and which point any person may comprehend, he would still be in danger of being recommitted by the commissioners on some other point, which perhaps neither himself nor any other person might be able to understand; as it is the practice of commissioners of bankrupt to commit persons to prison on merely stating generally that the answers they have received are unsatisfactory, without giving the particular grounds of their dissatisfaction, which in many instances might be essential to a further answer or explanation; and, exclusive of the foregoing objections, your petitioner submits, that if the commission of bankrupt be invalid, it would moreover be highly inconsistent for him to pass through such an inquisitorial sieve, thus subjecting himself to still further misrepresentation, and various other evils which might arise from either the misconception or hostility of his adversaries.

That your petitioner, in addition to his own case, humbly begs leave to state, that he has read the minutes of evidence taken before the Select Committee of your Honourable House on the bankrupt laws, and their report thereon, by which he regrets to find that the evidence which has been given upon this important subject could not be sufficient to enable your Committee to obtain a full view of the defects in

the present bankrupt system, because the said evidence is chiefly, if not wholly, of an *ex-parte* nature, being confined to the supposed interests of creditors, while the interests of debtors and their necessary protection from injustice and oppression have been but slightly noticed; and as, in the commercial part of the community, creditors in general are debtors also, your petitioner submits, that the interests of honest debtors and honest creditors are one; and that, without taking a full and impartial view of the subject, even the declared object of better protecting the interests of creditors must fail, because the possible exercise of injustice towards the debtor is now, in various ways, and must continue to be, productive of injustice towards the creditor.

That by the said evidence, taken before the Select Committee, it appears, that several harsh measures have been proposed to them as remedies for the existing evils in the bankrupt system; but these remedies, your petitioner fears, would be worse than the disease, one of which is, that an unlimited discretionary power be vested in commissioners of bankrupt, and against their judgment to be no appeal.—Your petitioner therefore submits, that such a legislative enactment would be to be deprecated, because the limited discretionary power, already vested in commissioners of bankrupt, frequently produces the most degrading and oppressive consequences; for, although a bankrupt is always examined upon oath before the commissioners, yet, whatever may have been his previous respectability in life, he is, according to the present practice, liable to be disbelieved upon his oath; and although he may give the most full and positive answers upon oath, yet he may, at the discretion of the commissioners, be committed to prison; there to remain without bail or mainprize, on the mere general declaration of the commissioners that his answers are unsatisfactory; consequently, a bankrupt who is committed to prison is sometimes unacquainted with the particular grounds of the dissatisfaction of the commissioners, who may perhaps themselves be in error, because they cannot in all cases be so well acquainted with a man's trade, business, and concerns as he himself: and your petitioner presumes, that it is only requisite that these and other evils be generally known to Parliament and to the country, in order to have a practice abolished, which, your petitioner humbly submits, bears more resemblance to the Spanish Inquisition than to an English court of law.

That, in many respects, your petitioner feels great reluctance to obtrude himself upon the notice of your Honourable

House, but a powerful sense of duty compels him to sacrifice minor considerations; and as the subject is of such vast importance, involving no less than the interests of the whole commercial and trading parts of the country, together with the character and happiness of numerous individuals, your petitioner conceives that, under such circumstances, and more particularly under the circumstances of his own case, it would be criminal on his part voluntarily to remain silent, and, at such a crisis, to withhold his feeble efforts for the general good while seeking redress in his own case.

Your petitioner therefore humbly prays, that he may be permitted to be heard and to give evidence at the bar of your Honourable House on the subject of the bankrupt law generally, and particularly in reference to that part of the law which relates more immediately to your petitioner's imprisonment. And your petitioner, conceiving his aforesaid commitment to prison was contrary to all reason and equity, he further prays, that your Honourable House will be pleased to take into your serious consideration, whether the law on this subject, as contained in the 16th and 18th sections, 30th chap. 5th Geo. II. is already sufficient for the purpose of your petitioner being honourably discharged from prison; that is to say, whether the said law allows a reasonable objection to be a sufficient ground for refusing to answer commissioners of bankrupt; and whether your petitioner's aforesaid objection to answer the commissioners was a reasonable objection.

And your petitioner will ever pray, &c.

JOHN DUFRENE.

I shall now trespass but a short time upon the patience of the reader, relative to the latter part of the prayer of the foregoing Petition, which refers to my commitment to prison, by the commissioners of bankrupt; and, in fact, the matter is so simple, that I conceive it will only require very few words on the subject.

The Petition states, in substance: That in the year 1812, a commission of bankrupt was sued out against me, by a person who had no legal claim for debt, to support it, and who chose himself sole assignee; that these and other allegations have been verified by affidavits, which my opponents have not been able to disprove; that, when I surrendered myself before the commissioners, I protested against the validity of the commission; nevertheless, on being examined, I answered all the questions which were put to me; that the commissioners afterwards adjourned my final examination, in order that my Petition in Chancery, for obtaining a Supersedeas of the commission might previously be heard; that, when the said Petition came on to be heard, my opponent, by his counsel, stated, that he could not be ready, and got the hearing of the petition postponed. Therefore, when I appeared before the commissioners, at the meeting to which they had adjourned my final examination, I stated the foregoing circumstances, relative to the hearing of my petition having been delayed by my opponents, and asked the commissioners to continue the adjournment of any further examination, until the validity of the commission was ascertained; but, the commissioners refused to adjourn; and, on my declining to be examined, for the reasons I have just stated, they committed me to the King's Bench Prison, where I have remained to this day.

My Petition prays, that the House will be pleased to take into their serious consideration,

whether the law be already sufficient for my being honourably discharged from prison; that is to say, 1st, whether the law allows a reasonable objection to be sufficient ground for declining to answer commissioners of bankrupt—and 2dly, whether my aforesaid objection to answer them was a reasonable one. The 16th sec. 30 cap. 5 Geo. II states, that if a bankrupt shall refuse to answer lawful questions before the commissioners, not having a reasonable objection to the wording thereof, or otherwise, they may commit him to prison. Now, it appears, that commissioners of bankrupt can only ask *lawful* questions; and, if the commission, on which they ground all their authority, be illegally procured, I have the sanction of that great judge, Chief Baron Hale, and also numerous decisions in our courts of law, since his time, for stating, that all which commissioners do, under such *illegal* commission of bankrupt, is trespass on their part; consequently, their questions cannot be lawful questions. But, I do not rest my case wholly on this point, nor have I acted upon it; for it appears, by my petition, that I answered all questions put to me, until my opponent began to delay the hearing of my petition in Chancery for a supersedeas. I therefore now, more particularly, contend, that nothing could be more reasonable on my part, than to ask the commissioners to continue the adjournment of my examination, after my opponent had delayed the hearing of my petition; and, that it was *unreasonable*, and consequently, according to the foregoing section of the Statute, *unlawful*, on their part, to commit me to prison under such circumstances.

If the reader will but seriously consider the subject, in all its bearings, I think it will appear, that the trading community, as being subject to the Bankrupt System, is placed in a more precarious and dangerous situation, in various ways, than the country in general was under the late suspension of the *Habeas Corpus Act*, both as to the number of its victims, and the extent of their sufferings. For my own part, it would have been a much less evil for me to have been imprisoned for a few months, by the Secretary of State, than for six years, by Commissioners of Bankrupt. The Bills lately brought into Parliament, for altering the Bankrupt Laws, not only do not provide any remedy for such evils as the deprivation of personal liberty and of character, at the caprice of commissioners of bankrupt; but, on the contrary, it is proposed to increase their discretionary powers, and to grant them full protection, in the event of abusing it. I presume that those members of the legislature, who distinguished themselves against that *temporary* measure for abridging the liberty of the subject, the late suspension of the *Habeas Corpus Act*, (with the propriety or impropriety of which, it is not my present object at all to interfere,) can now only, through the want of information on the mournful subject of the operation of the bankrupt laws, acquiesce in granting a *permanent*, unlimited, arbitrary power, to commissioners of bankrupt.

I have nearly omitted to remark, that the Bankrupt Regulation Bill, page 4, proposes to grant to the commissioners an enormous power, in regard to the examination of witnesses, to compel their at-

tendance by virtue of *arrest and apprehension*; and that, like bankrupts, they shall be liable to be committed to prison, there to remain, without bail or mainprize, if they do not answer &c. &c. to the satisfaction of the commissioners. By this clause, persons who are not traders, and consequently not liable to be made bankrupts, would, nevertheless, be subject to the arbitrary power of commissioners of bankrupt: and, upon the whole, I think it must be admitted, that the enormous *discretionary* power altogether, which is proposed to be granted by the Bills in question, would be highly dangerous to the liberty of the subject; and therefore, if its disadvantages should exceed the proposed advantage, it would become an increased national grievance.

I trust that the foregoing considerations will be some apology for my late application to Parliament, and for now obtruding myself upon the notice of the public.

FINIS.

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