

**AN EXPOSURE OF THE INJURIOUS
EFFECTS OF THE PRESENT SYSTEM OF
THE BANKRUPTCY LAW, IN LONDON
AND IN THE COUNTRY; WITH
SUGGESTIONS FOR ITS IMPROVEMENT**

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An exposure of the injurious effects of the present system of the bankruptcy law, in London and in the country; with suggestions for its improvement by A Barrister

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IN A SERIES OF OBSERVATIONS UPON THE MOST IMPORTANT OF THE
REFORMS PROPOSED BY HER MAJESTY'S COMMISSIONERS
OF INQUIRY INTO BANKRUPTCY AND INSOLVENCY.

BY A BARRISTER.

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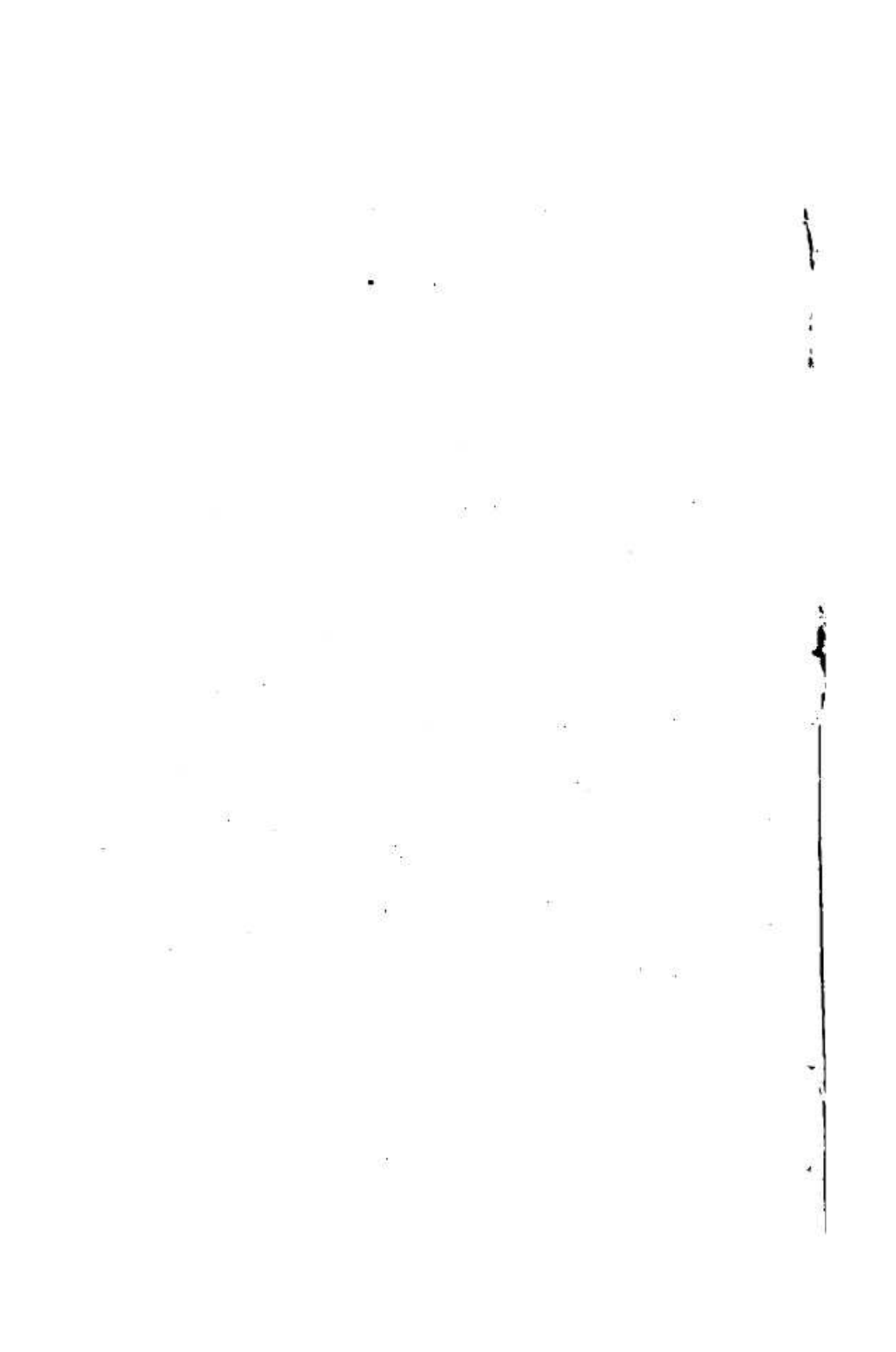
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PREFACE.

THE following remarks on the Report of the Commissioners for Inquiring into Bankruptcy and Insolvency, which are intended to point out the injurious operation of some parts of the existing system of Bankruptcy Law, first appeared in a series of communications in the *Morning Chronicle*, during December last and the two following months. They are brought together in their present shape in order to snatch them, for a while, from that oblivion to which observations in the columns of the daily press are usually condemned: and it is hoped that, as somewhat condensed statements of facts and arguments, they may, in some degree, be acceptable to those persons who are interested concerning the very important subjects to which they refer.



THE BANKRUPT LAW,

&c. &c.

ON THE PROGRESS OF REFORM IN THE BANKRUPT LAW.

THE Bankrupt Laws, and the practice of the Courts of Bankruptcy, on which (together with the laws relating to insolvent debtors) an able and voluminous report has been made public by the commissioners appointed for the purpose of inquiring thereon, is now engaging the attention of Parliament. The Lord Chancellor, it is well known, is desirous of remedying the many evils which are yet suffered to spring out of and disgrace our system of laws relating to debtor and creditor, and will, it is to be hoped, exert all his influence for their suppression.

As relates, now, to bankruptcy.

Till the year 1832, a commission of bankruptcy was only a specious name for legalized plunder. The frauds committed had become proverbial; the delays and expenses quite ruinous. Dishonesty and perjury of the most unblushing kind abounded, and assumed every possible shape. The courts of the commissioners were but too often arenas for vulgar contention, and schools wherein to learn the arts of fabricating counterfeit debts and fictitious accounts.

Vesey, the well-known Chancery reporter, states that, in 1801, Lord Eldon expressed "strong indignation" at the frauds practised under the Bankrupt Laws, and declared his determination to repress them. "He observed," says the accurate reporter, "with warmth, that the abuse of the Bankrupt Law was a disgrace to the country, and that it would be better at once to repeal all the statutes (relating

thereto), than suffer them to be applied to such a purpose. There is," he said, "*no mercy to the estate*, nothing is less thought of than the object of the commission." His Lordship's censure and indignation were apparently directed against commissioners, solicitors, assignees, "and such small deer;" but it is not altogether impossible that his acute observation was aimed at higher game.

The expenses of bankruptcy have always been defrayed by fees paid by the already insolvent estate, and it may easily be supposed that Lord Eldon, when he gained possession of the seals, was highly indignant, if not cruelly disappointed, on finding that one of his predecessors, Lord Thurlow, feeling "no mercy for the bankrupt's estates," had appointed his nephew to an office called *The Patentee in Bankruptcy*, which was a sinecure in the strictest meaning of the term; the annual income of which appears, by returns made to the House of Commons in 1831, by the Secretary of Bankrupts, to have amounted to the sum of 11,253*l.*! Lord Eldon's indignation, however, afterwards abated, and his warmth cooled down, it is to be supposed, for he attempted no reform of such crying abuses when he had the power to correct them. Possibly a grant, in reversion, of the Patentee's fees to the Honourable William Henry John Scott, for the term of his natural life, at the expiration of the previous interest therein, may have acted as a sedative on Lord Eldon, and calmed his emotion. Powerful indeed must have been the sense of justice, strong the sympathy for suffering and ruined creditors, to resist the alluring temptation of a settlement on a son of an income sufficient to maintain the dignity of a dukedom!

The office of patentee was abolished in 1832, by Lord Brougham's bill, and a compensation of 7,352*l.* per annum granted to the Rev. Thomas Thurlow for his life, and afterwards to the Hon. W. H. J. Scott for his life. Taking the annual amount received by the patentee at only 7,352*l.* a

year, instead of 11,253*l.*, as stated in the returns before referred to—then, had that annual sum, so cruelly screwed out of insolvent estates in order to maintain a sinecure office, been vested in the funds during the last fifty years only, it would by this time have produced a capital of upwards of a million and a half, the annual interest of which would have sufficed to pay all the offices connected with bankruptcy throughout the country, and to save every bankrupt's estate from the burden of fees still payable, and which are so large as actually to engorge the whole of small bankrupt estates!

Although Lord Eldon's personal efforts at reform in bankruptcy were confined to warm expressions, followed up by a warm grant to his son, yet the public, hearing from the learned lord's own lips that frands were perpetrated which disgraced the nation, determined that so scandalous a state of things should no longer exist, at least to so intolerable a degree. A parliamentary committee was obtained, which sat in 1817 and 1818. The result of their labours was a bill which passed into a law (5 Geo. IV., c. 98), but this proved so full of objectionable matter, that it was repealed at once by the 6 Geo. IV., c. 16. So unsatisfactory, however, was this new act, that in 1827 a special committee of the Court of Common Council of London was appointed to consider and report upon the then state of the Bankrupt Laws, and admirably they discharged their duties. Lord Brougham's reforms in 1832 are fresh in the minds of all who feel any interest in the subject. At the time when his Lordship brought forward the question concerning the most beneficial mode of administering the Bankrupt Laws, the subject had been discussed by some of our ablest jurists. It must, nevertheless, be acknowledged that, with very few exceptions, these, instead of diving deep into the matter, and striving to develope and establish just principles, were content to point out amendments in practice only. But experience has clearly shown that evils exist, which only admit of a permanent cure by attacking them at