

**A SKETCH OF THE
DOCTRINE RELATIVE TO
COMMITMENTS IN
BANKRUPTCY**

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A Sketch of the Doctrine Relative to Commitments in Bankruptcy by John Beames

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v. H. 1827.

A

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OF

THE DOCTRINE

RELATIVE TO

Commitments in Bankruptcy.

BY

JOHN BEAMES,

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*Sicut ipse plurimum in unam confere inventa, ubicunque ingenio non
erit locus, cura testimonium meruisse contentus.—QUINCT.*

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TO THE
RIGHT HONORABLE, THE EARL OF ELDON,
LORD HIGH CHANCELLOR OF GREAT BRITAIN,
THIS LITTLE TRACT,
UPON A SUBJECT WHICH HIS LORDSHIP'S DECISIONS HAVE
TENDED SO MUCH TO ELUCIDATE, IS,
WITH HIS PERMISSION,
RESPECTFULLY INSCRIBED.

PREFACE.

SHORTLY after I was appointed a Commissioner of Bankrupt, I was led to reflect upon the subject of Commitment. I consulted the different treatises upon the bankrupt law. Some of them are, undoubtedly, works of great merit, and justly entitled to the high reputation they enjoy; but they are very concise with respect to the subject of commitment. This cannot excite surprise when the extent is considered of that branch of the law of which they professedly treat, comprising a very wide range of legal; as well as of equitable jurisdiction. But, if, from this cause, the text-writers on the bankrupt law have appropriated only a small portion of their volumes to the discussion of the doctrine of commitment, the extreme importance of the subject is evident, whether we reflect upon the consequences, which for a time at least, are penal in every instance in which recourse is had to this "trust of power," or whether we consider the variety of persons who are liable to, and may become the objects of it. The bankrupt law, indeed, amongst those who are subject to examination, and eventually to commitment, distinctly enumerates the various individuals comprised within the following classes; *first*, persons whom the commissioners shall believe capable of giving any information concerning the trading, or act of bankruptcy: *secondly*, persons known, or suspected to have any of the estate of the bankrupt in their possession: *thirdly*, persons supposed

to be indebted to the bankrupt: *fourthly*, persons whom the commissioners believe capable of giving information concerning the person, trade, dealings, or estate of the bankrupt, or concerning any act of bankruptcy committed by him, or any information material to the full disclosure of his dealings: *fifthly*, the bankrupt himself: *sixthly*, the bankrupt's wife. From this enumeration, it is obvious, that the power of commitment, is nearly, if not quite commensurate with the whole mass of society, there being, probably, but few persons who do not fall within the one, or the other of these classes.

Although this power is probably not more extensive, with respect to the persons over whom it may be exercised, than is absolutely necessary, in order to counteract the numerous and variously complicated frauds of traders, it is perfectly evident, that it ought to be well defined, least the personal liberty of the individuals who are liable to become the objects of it, should be unnecessarily endangered. It is equally obvious, that those who are entrusted with this power should understand the extent to which they may exercise it. Ignorance upon this point must necessarily be productive of infinite mischief. Whilst the persons liable to be the objects of the power would have their personal liberty endangered by the doubts which would surround a jurisdiction involved in unnecessary obscurity, the individuals entrusted with the exercise of that jurisdiction would be placed in a situation of difficulty. If this palliated, yet at the same time it would lead to the excesses of the rash and intemperate commissioner, and if it excused, it would have a natural tendency to occasion the deficiencies of the one who was timid and diffident in the discharge of his duties.

These considerations led me to examine with some attention the original cases. I found, that much was defined, which I had considered indeterminate, and much was elucidated, which I had conceived to be obscure. I found, that, with few exceptions, the power of commitment had been limited and restricted, as much, possibly, as it ought to be, considering the infinite and variously complicated frauds it has to counteract, and repress. In the course of this investigation, I collected some information which I considered valuable: but I do not know, that I should ever have arranged it for publication, had I been insensible to the urgent entreaties of individuals, for whose judgment I entertain much respect. Nor even thus influenced, should I have suffered this tract to appear without much more reflection than I have been able to bestow upon it, had not the flattering manner in which it has been announced by a gentleman highly distinguished for his knowledge of the bankrupt law, and still more for the liberality and kindness with which he is ever ready to communicate that knowledge to others, compelled me at once to go to the press, least by the delay of the publication, I should excite a higher expectation with regard to the nature, or the merits of this sketch, than it really has any just pretensions to.

Another reason has in some measure induced me not to delay the publication. I allude to the passing of the recent Bankrupt Act, which in some respects affects, if not alters, the law relative to this subject. I have endeavoured to point out the instances in which it may be considered to have that effect.

If any further alteration should take place in the Bankrupt Law, it may possibly deserve the consideration of those entrusted with the very difficult task of