

**THE NEW LAW OF BANKRUPTCY:
CONTAINING THE BANKRUPTCY
ACT 1883, WITH INTRODUCTION,
TABLES, NOTES, AND AN INDEX**

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The New Law of Bankruptcy: Containing the Bankruptcy Act 1883, with Introduction, Tables, Notes, and an Index by A. B. Bence-Jones

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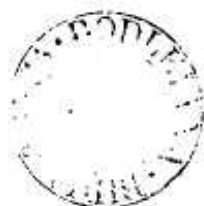
THE
NEW LAW OF BANKRUPTCY.

CONTAINING

THE BANKRUPTCY ACT, 1883,

WITH

INTRODUCTION, TABLES, NOTES, AND
AN INDEX.



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WEST CORNER ST. PAUL'S CHURCHYARD, LONDON.

1883.

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NOTE.

THE new Bankruptcy Act has now been before the public long enough to require something more than a reprint of the text and a hasty index. Its provisions have yet to be worked out by General Rules, which, together with forms, may be expected towards the end of November. So far as criticism is possible without this additional matter, this book endeavours to present some idea of what the New Law is, and to describe how it comes to be so. The proceedings of the Grand Committee on Trade are accordingly frequently referred to with a view to showing what changes were effected in the measure during its passage through Parliament. The notes to the text of the Act are mainly such notes as the Editor considers convenient for interpreting the language of the section to which they are appended.

Particular attention has been given to the Tables of Powers and Duties which precede the text of the Act and notes. It is hoped that a clearer idea of the scope of the Statute will be gained from these Tables than could be given by a longer and more complete introduction. Men of business for whom this book is primarily intended will see without difficulty that the success or non-success of the New Law mainly depends on the manner in which the Official Receivers perform their duties. The fate of the Act lies in their hands.

Wherever possible, references have been given to the corresponding provisions of the Bankruptcy Act, 1869.

A. B. B.-J.

LINCOLN'S INN, *September*, 1883.

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INTRODUCTION.

THE one object of all bankruptcy legislation is to secure a fair distribution of the debtor's property among those of his creditors who have claims upon him. The necessity of a law of bankruptcy was known to the Roman civil law, just as it is to every system of modern law; and through all the same idea may be traced, that not only must an insolvent debtor be compelled to take steps to satisfy his creditors the moment that his insolvency is apparent, but that he must also be prevented from entering into fresh enterprises and incurring further losses. In England the laws which were passed to give effect to these principles have varied much in their method and scope. With those which date from a time previous to this century we need have little concern; but in the course of hardly more than fifty years we have had four different systems in force—one system only differing from another in the method of administering debtors' assets. The question has always been, "Shall the creditors be permitted to look after their own interests, or is it better to establish a set of officials who shall administer the estate in a prescribed manner?" Before 1831 the creditors in England had the nominal control over the estate, and it was generally understood that this fact enabled the debtor to free himself from his liabilities without much advantage to his creditors. Then came Lord Brougham's Act, which gave to a class of official assignees some powers of supervision, and these powers were afterwards extended. However, through defects rather in the details of this system than in its principle, public opinion changed, and in 1861 an Act was passed which left them little or no power; in 1869 another

The aim of
bankruptcy
laws.

English
bankruptcy
law.

Recent
legislation.

Act was passed which abolished them altogether, and left it to the creditors to look after their interests, and since that time public opinion has changed again so far as to enable Mr. Chamberlain to carry the law which we have now to consider.

The new
law.

a. 3.

This law is called the Bankruptcy Act, 1883; and as the greater part of it does not come into operation until the beginning of the year 1884, there is ample time to become acquainted with its leading features. The object of this book is, then, to state and explain its characteristics, to describe as far as possible the probable working of the new law, and to criticise in detail those clauses of the Act which appear to have most importance.

Elements of
the law.

Primarily there are only two parties to a bankruptcy—the debtor and the creditor. But the interests of both require the employment of agents to get in and to distribute the debtor's property; while the necessities of administering a law of bankruptcy make it convenient to employ judicial and legal assistance. We have therefore four classes engaged in bankruptcy: (1) the debtor, (2) the creditors, (3) the administrative officers, and (4) the judicial and legal officers. The essential difference between the law as it has been since 1869 and the law as it is to be after the end of 1883 is this: that under the old law the State practically confined its interference to the fourth of these classes, and left the administrative functions to be determined on by the debtor and creditors, while under the law as it is to be the State takes a very active and important part in the administration of the debtor's property.

Interference
of the State
in bank-
ruptcy
affairs.

The State is represented by the Board of Trade—a department of the Government which is mainly responsible for the new Act. Hitherto, Bankruptcy Bills and Acts have usually been left to the Law Officers of the Crown; and where official interference under the old Bankruptcy Laws, now extinct, was recognised, it was mainly vested in officers who were responsible to the judicial Courts. This confusion of the administrative and of the judicial functions is now most wisely avoided; and, as will be seen, for the first time in our commercial history, a department of Government enters into a share of the

control of bankruptcy proceedings. To England this is new. But it has long been known and practised in France. There and in most foreign countries bankruptcy is merely treated as a branch of one great commercial code which regulates, by a process of State interference, the relations of buyer and seller in whatever form they appear. How far it is desirable that our Board of Trade should be placed on the footing of the foreign Tribunals of Commerce it is not for this introduction of the new law of English bankruptcy to discuss. State interference even on the ground of purifying commercial morality is not likely to be popular in England; and a law which is not popular is not likely to be long unrepealed. But the fact remains that the Board of Trade, acting through officers known as Official Receivers, is soon to have a full and vigorous control over the relationship that exists between an insolvent debtor and his creditors.

The commercial community is well accustomed to an alternative event instead of an adjudication of bankruptcy, where a debtor is unable to meet his liabilities. That alternative is a composition. Composition and liquidation by arrangement, as practised under the Law of 1869, have long been condemned; and this part of the old system has been abolished, and as from the date of the commencement of the Act, modified in its working until the Act comes into force. The matter is mentioned here because the new provisions for composition or arrangement are an integral part of the new law of bankruptcy. The effect of the change is that composition (as well as full proceedings for an adjudication) is now placed under the control of the Court and of an officer of the Board of Trade, and is thereby made attainable only after the debtor's affairs have been thoroughly investigated by an official who is especially charged with that duty. This composition is now held out to an insolvent debtor as a possible reward for good behaviour, if the creditors are mercifully inclined. He is in any event to be gazetted, and to be publicly examined by the "independent" official; but if a composition is permitted, he will not be disqualified for continuing to act as a vestryman or member of a local board, as would be the case if he were fully adjudicated. But this will appear

Composi-
tion with-
out adjudi-
cations.

a. 176.

a. 32, &c.