all. The mischief is, that it is least available when most wanted. The very causes which prevent the banks from redeeming their issues promptly, cause a fall in the value of the stocks and mortgages on 'the ultimate security' of which their notes have been issued. The 'ultimate' security may avail something to the broker who buys them at a discount, and can hold them for months or years; but the labouring man who has notes of these 'State security banks' in his possession, finds, when they stop payment, that 'the ultimate security' for their redemption does not prevent his losing twenty-five cents, fifty cents, or even seventy-five cents in the dollar.

"In a circulating medium we want something more than 'ultimate security.' We want also 'immediate' security; we want security that is good to-day, and will be good to-morrow, and the next day, and for ever thereafter. This security is found in gold and silver, and in these only."[1]

The Report of the Superintendent of Banking for the State of New York for 1856 showed that the securities he then held in trust amounted to $39,359,071, which were almost wholly lodged by banking associations and individual bankers.

During the year the securities held in trust for the under-mentioned banks that had become insolvent in 1855 were disposed of. But the sums realized by their sale did not in any case suffice to pay the notes at par; while a period, varying from two to four years, would have to elapse before the affairs of the insolvent banks were finally settled.

| Names of Banks that failed. | Notes redeemed. | Rates of Redemption. | Expiration of Time for Redemption. |
|---|---|---|---|
| Eighth Avenue Bank ....... | All ........... | 94 cents. | May 21, 1861 |
| Farmers' Bank, Onondaga.. | All ........... | 85 cents. | Nov. 12, 1859 |
| James' Bank.............. | All ........... | 91 cents. | June 17, 1858 |
| Merchants and Mechanics' Bank, Oswego ............ | All ........... | 77 cents. | Sept. 28, 1860 |
| New Rochelle, Bank of..... | Stock notes. | Par ..... | June 17, 1858 |
| New Rochelle, Bank of..... | Stock and estate notes | 81 cents. | June 17, 1858 |

This statement set the defective nature of the security system, as administered in New York, in the clearest point of view. It might, no doubt, have been improved by increasing the proportion of securities to notes. But, owing to the variety of securities that were taken (viz., all manner of bonds and mortgages, state, canal, and railway stocks, &c., &c.), and the uncertainty of their value, a great deal of risk was always incurred in accepting them, and they could never form a proper foundation on which to issue notes.

In 1857 another crash took place, and *all* the banks in the Union, from the Gulf of Mexico to the frontiers of Canada, again stopped payments.

There had been a rapid increase of discounts since 1851, and that increase was especially great in 1856, and went on augmenting down to August 1857. On the 8th of that month the discounts and advances by the New York banks amounted to $122,077,252, the deposits in their possession being, at the same time, $94,436,417. This was the maximum of both. On the 24th of August the Ohio Life and Trust Company, which carried on an extensive banking business in New York, stopped payments, and by so doing gave a severe shock to credit and confidence, which the suspension of two or three more banks turned into a panic. Notes being in a certain degree secured, the run upon the banks was principally for deposits. And to meet it they so reduced their discounts and advances, that, on the 17th October, they amounted to only $97,245,826. This sudden and violent contraction necessarily occasioned the suspension of many of those mercantile houses that had depended on the banks for discounts. And it did this without stopping the drain for deposits, which had sunk, on the 17th October, to $52,894,623, being a decrease of $41,546,784 in about two months. The universal stoppage of the banks was a consequence of these proceedings.

The Civil War had as one of its consequences the introduction of a general banking law in the United States, conformable in many respects to the principles of what we have described as the free banking law of New York. At the beginning of the war in 1861, the amount of paper money in circulation was about $200,000,000, of which $150,000,000 had been issued in the loyal States; and the coin in circulation was estimated at $275,000,000. The necessities of the Treasury very soon compelled the Government to borrow from the associated banks of New York, Philadelphia, and Boston, and to issue demand-notes to the extent of $50,000,000,—which, however, were not at first made legal tender. In February 1862 an Act was passed by Congress authorizing the issue of $150,000,000, in Treasury notes of not less than $5 each, out of which, however, $50,000,000 were in lieu of the notes already issued; and this issue was declared to be legal tender except in discharge of customs' duties, and of the payment of interest by the United States on the national debt. It will be easily understood that coin went out of circulation, and a premium on gold was established, which increased as the amount of the Treasury notes was increased by successive legislation, and as national bank-notes came to be issued in pursuance of the law we must proceed to describe. This is the Banking Law of the 25th February 1863, which, as amended by the Act of the 3d June 1864, now continues in force. By this law a Currency Bureau and Comptroller of Currency were appointed in the Treasury Department, with the power to authorize banking associations of not less than five persons subscribing, except in very small towns, a minimum capital of $100,000, 50 per cent. to be paid up at once, and the remainder within six months. It was enacted that any such association, before commencing business, must transfer to the Treasurer of the United States any United States interest-bearing bonds not less than one-third of the capital stock, and should thereupon receive from the Comptroller of the Currency circulating notes of different denominations in blank, registered and countersigned, equal in amount to 90 per cent. of the current market value of the bonds so transferred, but not exceeding their par value. The whole amount of notes thus issued was not to exceed $300,000,000, one-half to be apportioned among the States according to their representative population, and the other half to be apportioned with regard to the existing banking capital, resources, and business of the States.

The banks already existing in the several States were rapidly transformed into national banks under the operation of this law, and their previous notes withdrawn in exchange for the new national bank issue. The currency of the Union thus came to consist of the demand-notes of the Treasury, which rose in 1865 to about $450,000,000, and of the notes of the national banks, which rapidly approached the limit of $300,000,000,—the latter notes passing throughout the Union, whatever the bank through which they were issued, as freely as the former, since the ultimate payment of them was secured by the deposit under the law we have stated, of an adequate amount in United States' bonds at the Treasury. It is not our purpose to trace the subsequent financial history of the States, but the experience of 1873 must be referred to for the instruction it affords. As no sufficient steps were taken after the termination of the war to reduce the swollen value of the currency, gold remained out of circulation, though with the growth of business the premium on it declined to an average rate of 12 per cent.; but no inconvenience was felt from the existence of a pure paper circulation, and the opinion, in fact, arose that the currency thus established was a sure preventive of recurrent panics and exaggerated rates of discount. But in September 1873 the financial house of Jay, Cooke, & Co., having locked up a large amount of capital in railway enterprises not immediately if ever likely to be productive, suspended payments; other financial houses were forced to take the same step, several banks closed their doors, and a severe panic set in. The holders of the notes in circulation of the banks that failed were protected by the deposit of bonds at the Treasury, and the notes were never discredited; but the financial distress throughout the Union was excessive, and continued for many months. It was practically demonstrated that the national bank law protected the holders of national bank-notes from loss, but afforded no immunity against the occurrence of financial crises.

[1] The above statements are taken from a paper read by Lord Overstone to the Committee on Banks.



*Banking in Germany.*

Banking in Germany, up to the close of the Franco-German War, presented no peculiar features requiring attention. The Bank of Hamburgh was established in 1619, on the model of that of Amsterdam, as a purely deposit bank for the transfer of sums from the account of one individual to that of another; and its management appears to have been uniformly good. In the several German States banks were authorized under laws peculiar to each; and most of them were allowed to issue notes according to regulations varying from State to State. It followed that the notes of each bank were confined to its own neighbourhood; but the establishment of German unity was followed by a demand for a general banking law, and the establishment of a note currency that might circulate throughout the empire. After some discussion the Act of the 30th January 1875 was passed to satisfy these demands. Under this law an Imperial Bank was established, with an uncovered issue of 250 millions of marks (= £12,500,000); and thirty-two banks were recognized as possessing rights of uncovered issue to the extent of 135 millions of marks (£6,750,000). The Imperial Bank is, however, allowed to increase its issue, subject to the condition that at least one-third is represented by cash in hand, and the remaining two-thirds by bills not having more than three months to run; while the other banks may also exceed their authorized issues subject to the payment of 5 per cent. interest on the excess above the authorized limit, *plus* the cash in hand, and weekly returns are required of the amount in circulation. No note is to be less than 100 marks (£5), and no new right of issue can be conceded except by a law of the empire. The State itself, however, under a law of April 1874, has the right to issue 120 millions of marks in State notes of small denominations. The working of this law has not yet been tested; but, if we may judge from our own experience, it will not produce any rapid withdrawal of local issues, and the unification of the note currency of the empire will not be accomplished. (L. H. C.)

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BANKRUPTCY. When a person is unable to pay his debts in full, the law of civilized countries adopts some means of satisfying the creditors, as far as they can be satisfied, out of the debtor's estate, and relieving the debtor himself from pressure which, by his own efforts, he would not be likely to overcome. The debtor having been declared a bankrupt, his property vests in his creditors for the purpose of being rateably divided among them, and he thereupon starts a new man, entirely relieved from the obligations thus partially satisfied. Such, in general terms, is the process of bankruptcy as observed in modern societies. The law of bankruptcy is, in fact, a modern creation, slowly evolved out of the criminal code in answer to the necessities of a widely-spread industrial life. Early society is unanimous in treating inability to fulfil legal obligations as a most serious offence; and the harshness of ancient law towards debtors has been explained as a consequence of the fact that a contract was at first regarded as a sort of incomplete conveyance, and creditor and debtor as persons who respectively had and had not fulfilled their legal obligations. The early law of Rome, while prohibiting contracts of usury, still gives the legal creditors the savage remedy of dividing the carcase of their debtor or selling him and his family into slavery. Severe commercial distress endangering the stability of the state is of frequent occurrence in the history of Rome; but the law against debtors long retained its primitive severity. The Lex Pœtelia (about 326 B.C.) enabled a debtor, who could swear to being worth as much as he owed, to save his freedom by resigning his property; and many years after the legislation of Julius Cæsar established the *cessio bonorum* as an available remedy for all honest insolvents. The slow development of the law, and the practical difficulties with which each new adjustment was met, are copiously illustrated by the history of bankruptcy legislation in England. The first English statute on bankruptcy (34 and 35 Hen. VIII. c 4) was directed against *fraudulent debtors*, and gave power to the lord chancellor and other high officers to seize their estates and divide them among the creditors. The 13 Eliz. c. 7 restricted bankruptcy to *traders*, and prescribed certain acts by committing which a trader became a bankrupt. Commissioners appointed by the lord chancellor are to seize the person of the bankrupt and divide his property among the creditors. The 4 Anne c. 17 and 10 Anne c. 15 took away the criminal character hitherto borne by the proceedings, and allowed a debtor, with the consent of a majority of his creditors, to obtain a certificate of having conformed to the requisitions of the bankrupt law, which, when confirmed by the chancellor, discharged his person and his after-acquired property from debts due by him at the time of his bankruptcy. The 6 Geo. IV. c. 16 allows a debtor to procure his own bankruptcy (an arrangement previously regarded as fraudulent); and introduces the principle of deeds of arrangement between debtor and creditors without a public bankruptcy. The 1 and 2 Will. IV. c. 56 established the Court of Bankruptcy, consisting of six commissioners, along with four judges as a Court of Review, and appointed official assignees to get in the bankrupt's estate on behalf of the creditors

Various other statutes in the next twenty years made unimportant changes in the constitution of the court. In 1847 jurisdiction in bankruptcy was again restored to the Court of Chancery by the appeal being transferred to that court. The Bankrupt Law Consolidation Act, 1849, effected several important alterations in the system. Proceedings were to begin by a petition to the Court of Bankruptcy instead of a fiat out of Chancery. The commissioners were authorized to award certificates, classified according to the merit of the bankruptcy. In the first class the insolvency was declared to be due to misfortune; in the second, not entirely to misfortune; and in the third, not at all to misfortune. Certain specified offences deprived the bankrupt of all right to a certificate, and made him

liable to a criminal prosecution. The object of this arrangement was, of course, to meet fraudulent, or not entirely honest, attempts to obtain the benefit of a discharge of debts under the bankruptcy laws. It was not entirely successful, inasmuch as there was no settled principle observed in classifying the certificates, and the lowest class was, for all practical purposes, as good as the highest. The Act of 1849 also encouraged private arrangements by making a composition, accepted by nine-tenths of a bankrupt's creditors, binding upon the rest; but it was decided subsequently by the courts that, to make such a composition binding, it must be accompanied by a complete *cessio bonorum*. The next statute, the Bankruptcy Act, 1861, made non-traders subject to the law of bankruptcy, and empowered a majority in number, and three-fourths in value, of the creditors to bind the minority without a *cessio bonorum*. This arrangement was found to lead to private and fraudulent compositions, and in consequence by an Amendment Act in 1868 enlarged powers were given to non-assenting creditors. All this legislation still failed to give complete satisfaction. The complete exoneration of after-acquired property was denounced as unfair and likely to invite fraudulent bankruptcies, the system of arrangements with creditors was disliked, and the control of creditors over the property of the debtor and proceedings in bankruptcy was felt to be too small. The Bankruptcy Act, 1869, was passed after many unsuccessful attempts to deal with these complaints. It established a new Court of Bankruptcy, consisting of a chief judge, registrars, and other officers. The commissionerships were abolished, and the subordinate staff was to be transferred to the new court. The chief judge in bankruptcy is to be a judge of one of the Superior Courts of Law and Equity; and hitherto the office has been held by one of the acting vice-chancellors. Appeals from the county courts in bankruptcy go to the chief judge, and appeals from the chief judge to the Court of Appeal in Chancery, and thence occasionally to the House of Lords. Official assignees were abolished; and *trustees*, who should be creditors, are to be appointed to distribute the bankrupt's estate, while the creditors may appoint a committee of inspection to superintend the operations of the trustees. A comptroller in bankruptcy will receive the trustees' accounts after they have been audited by the committee, and take notice of any irregularity in the proceedings of the trustees. The law of reputed ownership was restricted to traders. Voluntary settlements by a trader, except in the case of property accrued in right of his wife, are void as against the trustee if the settler becomes bankrupt within two years after the settlement; and if he becomes bankrupt within ten years, it must be shown that, at the time of the settlement, he had sufficient property besides to pay his then existing debts, otherwise the settlement becomes void. A covenant by a trader, although made in consideration of marriage, for future settlement of property not then in any way belonging to him, is void as against the trustee, unless the property has been transferred or paid before the bankruptcy. The Act also introduces important alterations as to the discharge of the bankrupt. A bankrupt will not be discharged unless his estate has paid ten shillings in the pound, or a majority of the creditors (three-fourths in value) declare that the bankrupt is not responsible for the deficiency, and that they desire his discharge. If within three years the bankrupt makes up the dividend of ten shillings in the pound, he may have his discharge; and in the meantime his property will be protected from the creditors of the bankruptcy. If he fails to make up this dividend within three years, any debt remaining unpaid will become enforceable against his after-acquired property,—subject, of course, to the rights of creditors subsequent to the bankruptcy. There are provisions for compromising the bankruptcy by composition or liquidation by arrangement. The usual criminal clauses have been separated from the new statute of bankruptcy and appear in a separate enactment,—the Debtors' Act, 1869,—and the Court of Bankruptcy has no longer any criminal jurisdiction whatever. The Debtors' Act abolishes imprisonment for debt (except in certain cases in which the debt is mostly of the nature of a penalty), and provides for the punishment of certain misdemeanours of fraudulent debtors, whose affairs have come into bankruptcy. The prosecution takes place before the ordinary criminal tribunals. The Bankruptcy Act and the Debtors' Act become—by the repeal of previous statutes relating to insolvency, bankruptcy, and imprisonment for debt—a complete record of the legislation now in force on this subject.

Under the new statute all the county courts are constituted local courts of bankruptcy, while for the London district, as defined in the Act, there is the London Bankruptcy Court. All these courts are presumed to be the same court, and cases may be transferred from one to the other if necessary. Subject to this power of transfer, proceedings are to be taken against a debtor in the court of the district in which he resides; and if he does not reside in England and Wales, in the London court. By order of that court, or by resolution of the creditors, or by certificate of the local judge, cases may be transferred to the London court from any of the local courts. The chief judge, or a local judge, may delegate the powers (except the power of committing for contempt) to the registrar. All the courts of bankruptcy and their officers in England are to act in conjunction with bankruptcy courts in Scotland and Ireland, and with British courts having jurisdiction in bankruptcy elsewhere, the orders of one court being enforceable within the jurisdiction of the others. Section 72 of the Act gives to the new Court of Bankruptcy the important power "to decide all questions of priority, and all other questions of law or fact arising in any case of bankruptcy coming within the cognizance of such court, or which the court may deem it expedient or necessary to decide, for the purpose of doing complete justice or making a complete distribution of property in any such case." By this enlarged jurisdiction the court has power to decide, even as against strangers, questions arising in the bankruptcy; and it has been held that it may restrain proceedings in Chancery or at Common Law, and even out of the jurisdiction. The judge may, at the request of parties, or of his own discretion, direct issues of fact to be tried by a jury.

By the Bankruptcy Act, 1861, the special legislation relating to insolvent debtors was abolished. Up to that time *traders* only had been allowed the relief of bankruptcy, and all other insolvent debtors remained liable to their creditors for the unpaid portion of their debts. They might be kept in prison during the creditor's pleasure, and any property they might acquire was available for the satisfaction of the creditors' claims. From time to time special Acts were passed for the liberation of insolvent debtors confined in prison, a general Act (53 Geo. III. c. 102) was tried for a limited period and repeated, and finally, by 1 and 2 Vict. c. 110, a court was established for the "relief of insolvent debtors," their discharge, of course, being conditional on the surrender of their property for the benefit of their creditors. The principle of the distinction thus maintained between the trader and the non-trader was, that the creditors of the former were to be regarded as to some extent partners in his speculations, while the latter was alone responsible for his insolvency; and it was feared that the discharge of bankruptcy, if allowed as a means of satisfying private debts, might give great encouragement to extravagance and fraud. On the abolition of the



Insolvents' Court in 1861, all insolvent debtors were admitted to the relief of bankrupt's discharge, but a distinction is still made on several important points between traders and non-traders. A schedule to the Act of 1860 gives a list of the different occupations which are to be considered as "trades," and the exception is expressly stated that "a farmer, grazier, common labourer, or workman for him, shall not, nor shall a member of any partnership, association, or company, which cannot be adjudged bankrupt under this Act, be deemed as such a trader for the purposes of this Act." The liability to bankruptcy may therefore be said to be now almost co-extensive with the capacity to make a contract. Persons who cannot make a binding contract, *e.g.*, married women, minors, lunatics, &c., cannot be made bankrupts. But where this incapacity is removed (as for example in the city of London, where by custom a married woman may trade as a *femme sole*), the liability to bankruptcy will arise.

Proceedings in bankruptcy are now begun by a petition from one or more creditors (claiming not less than £50), alleging that the debtor in question has committed an act of bankruptcy, and praying that he may be adjudged a bankrupt. The following are "acts of bankruptcy:"—(1.) If the debtor has assigned his property to trustees for the benefit of his creditors; or (2), has made a fraudulent conveyance of any of his property; or (3), with intent to defeat his creditors, has departed from or remained out of England; or, being a trader, has left his dwelling-house, or begun to keep house, or suffered himself to be outlawed; or (4), has filed a declaration of inability to pay his debts; (5.) If execution for not less than £50 has been levied by seizure of goods (in the case of a trader); (6.) If the creditor has served a "debtors' summons" for not less than £50, and the debtor has for three weeks (or if a trader, for seven days) neglected to pay or compound for the same. The adjudication must be asked for within six months of the act of bankruptcy, and the petitioning creditor's debt must be for a liquidated (*i.e.*, ascertained) sum due at law or in equity, and must not be a secured debt unless the security is given up for the benefit of the creditors. Should the alleged debtor deny his indebtedness, the court may dismiss the summons or direct the issue to be tried by itself or some other competent court; and similar proceedings take place when the debtor appears to the creditors' petition and repudiates his indebtedness.

The consequence of adjudication is that all the bankrupt's property vests in the registrar of the court, until the appointment by the creditors of a trustee, and thereafter in the trustee. The word property has been expressly defined to include money, goods, things in action, land, and every description of property, whether real or personal, also obligations, ornaments, and "every description of estate, interest, and profit, present or future, vested or contingent, arising out of, or incident to, property as above defined." The adjudication "relates back" to the time of the "act of bankruptcy." The bankrupt may retain the tools of his trade and the necessary clothing and bedding of his family to the extent in all of £20. It is the duty of the trustee to discover, take possession of, realize, and distribute the bankrupt's property; and, subject to the provisions of the Bankruptcy Act, he must follow the directions of the committee of inspection or the creditors. The bankrupt is required to aid in the administration. He must procure a statement of his affairs, and submit to a public examination thereon. A bankrupt under examination is not, like a witness in other courts, protected from questions tending to inculpate himself, although he cannot be compelled to answer a question whether he has done some specific act clearly of a criminal nature. His answers may afterwards be used as evidence against him on a criminal charge. The bankrupt cannot now be arrested or imprisoned except for attempts to leave the country, avoid appearance, remove or conceal his goods, &c., or, after adjudication, for removing goods above the value of £5, or failing to attend examination, or committing contempt of court. If a member of the House of Commons is adjudged bankrupt, he becomes incapable of sitting or voting for one year after the adjudication, unless within that time the bankruptcy is annulled or the creditors satisfied. If on the expiration of a year neither of these events has taken place, the court certifies the fact to the speaker, and the seat of the bankrupt member thereupon becomes vacant. A bankrupt peer is disqualified from sitting or voting in the House of Lords, unless and until his bankruptcy is annulled on the ground that the order of adjudication ought not to have been made, or the bankrupt is discharged by actual payment or satisfaction in the prescribed mode from all debts and liabilities due at the date of his bankruptcy. The conditions on which a bankrupt may obtain his discharge have been already stated. The discharge releases the bankrupt for all debts provable under the bankruptcy, except debts due to the Crown, or for offences against the revenue, and debts incurred by means of fraud or breach of trust. The court has power to annul the bankruptcy on various grounds, but in that case all acts properly done by the trustee in reference to the property of the bankrupt will now remain valid. A partnership may be adjudged bankrupt, and the general rule of distribution is that the joint creditors have priority of payment out of the joint or partnership property, and the separate creditors out of the separate estate.

A less public form of bankruptcy is also sanctioned by the Act of 1869. By § 125 it is provided that the creditors of a debtor may declare (by a majority in number and three-fourths in value) that his affairs are to be liquidated by arrangement and not in bankruptcy. By § 126 the creditors may, by a resolution under the same conditions, resolve that a composition shall be accepted in satisfaction of the debts due to them by the debtor. If liquidation is resolved on, every creditor, whether having notice of the meeting or not, is absolutely restrained from taking any proceedings for recovering his debt, unless it appears to the court that his debt is prejudicially affected by the resolution; otherwise under liquidation or composition, the court may restrain or permit other legal processes on respect of provable debts as it thinks fit.

In Scotland, as in England, the law of bankruptcy arose as a remedy against the frauds of insolvent debtors. It was declared by an Act of the Scottish Parliament (1621, c. 18) that no debtor after insolvency should fraudulently diminish the fund belonging to his creditors, and if a deed of assignment was gratuitously executed after the contracting of debt in favour of a near relation or a confidential friend, fraudulent dealing was to be presumed. The Act 1696, c. 5, settled the definition of a notour or notorious bankrupt, a question which had previously engaged the attention of the judges of the Court of Session. The statute defines a "a notour bankrupt" to be any debtor who, being under diligence by horning or caption, at the instance of his creditors, shall be either imprisoned, or retire to the abbey or any other privileged place, or flee or abscond for his personal security, or defend his person by force, and who shall afterwards be found, by sentence of the Lords of Session, to be insolvent. Bankruptcy as thus defined was, it is said, intended to afford a remedy against fraudulent preference by debtors, and not as the ground-work of a general process of distribution, although by later statutes it became a necessary requisite of every such process. The exceptions recognized in the Act of 1696, of persons absent from Scotland, and therefore not liable to imprisonment, or of persons exempted therefrom by special privileges

were removed by later legislation. The English distinction between traders and non-traders, it will be observed, is not recognized in Scotch law. The statute made null and void all voluntary dispositions, assignations, and other deeds at or after or within sixty days before bankruptcy. The principal Bankruptcy Act now in force is the 19 and 20 Vict. c. 79 (amended by 20 and 21 Vict. c. 19 and 23 and 24 Vict. c. 33).

By section 9 of the principal Act, notour bankruptcy is now constituted—

1. By sequestration (or adjudication in England and Ireland); and

2. By insolvency concurring either—(a), with a duly executed charge for payment followed by imprisonment or apprehension, or flight or retreat to sanctuary, by execution of arrestment of debtor's effects, not discharged within fifteen days, by execution of poinding of any of his movables, or by decree of adjudication of any part of his movable estate; or (b), with sale of effects belonging to the debtor under a poinding or under a sequestration for rent, or retiring for twenty-four hours to the sanctuary, or making application for the benefit of *cessio bonorum*.

Notour bankruptcy continues, in case of sequestration, until the debtor has obtained his discharge, and in other cases until insolvency ceases. Sequestration may be awarded of the estate of any person in the following cases:—

1. Living debtor subject to jurisdiction of Scotch courts,—(a), on his own petition with concurrence of qualified creditors; or (b), on petition of qualified creditors, provided he be a notour bankrupt, and have had a dwelling-house or place of business in Scotland within the previous year.

2. In the case of a deceased debtor, subject at his death to the jurisdiction of the court,—(a), on the petition of his mandatory; or (b), on the petition of qualified creditors (§ 13).

Sequestration may be awarded either by the Court of Session or by the sheriff. A sequestration may be recalled by a majority in number and four-fifths in value of the creditors, who may prefer to wind up the estate by private arrangement. If the sequestration proceeds, the creditors hold a meeting, and by a majority *in value* elect a trustee to administer the estate, and three commissioners (being creditors or their mandatories) to assist and control the administration and declare the dividends. The bankrupt (under pain of imprisonment) must give all the information in his power regarding his estate, and he must be publicly examined on oath before the sheriff; and "conjunct and confident persons" may likewise be examined. The bankrupt may be discharged either by composition or without composition. In the latter case (1) by petition with concurrence of all the creditors, or (2) after six months with concurrence of a majority and four-fifths in value of the creditors, or (3) after eighteen months with concurrence of a bare majority in number and value, or (4) after two years without concurrence. In the last case the judge may refuse the application if he thinks the bankrupt has fraudulently concealed his effects, or wilfully failed to comply with the law.

The procedure in *cessio bonorum* is regulated by 6 and 7 Will. IV. c. 56 (which gave jurisdiction to sheriffs) and Act of Sederunt of June 1839. A debtor who is or has been in prison, or has had a warrant of imprisonment served against him, may present a petition setting forth his inability to pay his debts, and his willingness to surrender his estate, and praying for interim protection. The debtor is examined by the sheriff on oath, and the creditors may be heard against the petition. A decree of *cessio bonorum* operates as an assignation of a debtor's movables to a trustee for behoof of creditors. The bankrupt under a *cessio* has no power to insist on his discharge, and therefore cannot protect his subsequent acquisitions against his creditors. By the late statute a majority of the creditors (subject to review by the court) may, in certain cases, resolve that the bankrupt shall be entitled to apply for a decree of *cessio* only, and not to a discharge in the sequestration, and the court may grant the *cessio* in the sequestration without requiring a new process.

By the Bankruptcy (Ireland) Amendment Act, 1872 (35 and 36 Vict. c. 58), the law of Ireland has been assimilated to the new system established by the English Bankruptcy Act, 1869. (E. R.)

*Bankruptcy in the United States.*

In the United States, Congress alone has power to pass a bankrupt law which shall have authority throughout the country. The several States may enact such statutes when there is no law of Congress in operation; but these statutes will fully bind only the citizens of the State which enacts it. There is no power to obtain effectual control of property without its limits so as to prevent local preferences; nor can the State laws discharge contracts due to non-residents. The general Government has made so little use of the power confided to it, that many of the States were obliged to pass bankrupt laws, notwithstanding the imperfection of their operation in some cases, and those, often, the most important in the interests involved. Massachusetts had an excellent system, established in 1838, which is specially mentioned because the Act of Congress is largely drawn from this source. All State laws on the subject are suspended while a general law of bankruptcy is in force.

The first general Bankrupt Act was passed in 1800, and repealed in 1803. In 1841 another law was put in operation, with a special view of meeting the urgent needs of debtors who had been ruined by the commercial revulsion of 1837–38, and who could receive no effectual relief from local laws. This Act was repealed in thirteen months; but in the meantime a very large number of cases had been disposed of, amounting, for example, to 3250 in Massachusetts alone. The law now in operation took effect June 1, 1867. It was framed with much care by a committee of the House of Representatives, of which Mr Jenckes, of Rhode Island, was the chairman and chief working member. Its authors hoped that it would form a permanent addition to the commercial jurisprudence of the country.

The administrative machinery is simple. The district courts, which have always had the original jurisdiction of causes in admiralty, revenue, and other national matters, are made courts of bankruptcy. The judge of each district ascertains how many registers are needed for the convenient despatch of causes in his territory, and they are appointed by the chief justice of the United States and the district judge concurrently. The registers have, by law, functions chiefly administrative and ministerial; but they, in fact, hear and decide many judicial questions by consent of the parties, and subject to the revision of the judge. In proceedings in bankruptcy proper, such as adjudications, discharges, proof of debts, marshalling assets, there is an appeal from the district to the circuit court, and no farther. Actions at law, or suits in equity, to which assignees in bankruptcy are parties, may be brought either in the State or the Federal courts. If in the latter, the whole case if in equity, or the law points in an action at law, may be carried to the Supreme Court at Washington when the amount in dispute exceeds $5000, or questions of law, which the judges of the circuit court consider doubtful, may be certified by them to the Supreme Court, whatever may be the amount involved; and all decisions of the highest court of a State, involving questions of law under the Bankrupt Act, may be reviewed by the Supreme Court, if adverse to



the right or title set up under that statute. In some of these various modes the principal questions arising under the Act will in time be settled by the highest judicial authority, and thus uniformity of decision will be secured.

The statute covers the whole ground of bankruptcy and insolvency. It is applied to all debtors, whether traders or not, and to debtors petitioning for its benefits, as well as to those proceeded against by creditors. Any one who owes $300 may petition, and any such debtor who has committed certain specified acts may be adjudged bankrupt *in invitum*. The acts of bankruptcy are substantially alike in all such statutes in England and the United States, and tend to prove either fraudulent conduct or hopeless insolvency, such as concealing property, conveying it fraudulenly, departing the district with intent to defraud creditors, lying in prison for twenty-one days. There is nothing analogous to the trader debtor summons, though the Act of 1800, and the Massachusetts law of 1838, admitted a somewhat similar test of bankruptcy. This law, however, has adopted one which to a considerable extent supplies this want, by declaring a merchant, trader, banker, broker, manufacturer, or miner to be bankrupt who has suffered his commercial paper to remain overdue and unpaid for forty days. No other distinction is made between traders and other debtors, excepting that merchants and tradesmen are bound, under pain of being denied their discharge, to keep proper books of account.

The property of the bankrupt is assigned by the judge or register to the persons chosen by the majority in number and value of the creditors—the court having full power to overrule the choice of the creditors, or to add an assignee to those chosen. The assignment is conclusive evidence of the assignees' authority, and cannot be collaterally impeached on any ground, excepting want of jurisdiction in the bankrupt court, nor in any suit whatever. This most valuable rule was adopted by Massachusetts in 1838, and has saved an enormous amount of useless litigation. There is no danger of injustice from it, because the adjudication against a bankrupt is never made without notice to him, nor without a trial by jury, if he demands one; and any person having an interest adverse to the adjudication has a right to be heard as well as the debtor.

The doctrine of the relation of the assignee's title to an act of bankruptcy committed in the country has not obtained in the United States. That title relates, as in other suits, to the beginning of the proceedings,—that is to say, the day and hour that the petition, whether voluntary or involuntary, is filed. The most marked difference between the English and American statutes, or rather between the practical working of them, is in the extension given by the latter to the doctrine of preference. By the law of 1867 and its amendments, the assignee can avoid all advantages given to pre-existing creditors within four months (in involuntary cases, within two months) before the filing of the petition, if the bankrupt was then insolvent, and intended a preference, and the preferred creditor knew the insolvency and the intent, no matter what pressure, by suit, threat, or otherwise, may have been brought to bear upon the debtor. This law, as construed, operates almost like a relation back of the assignee's title, so far as pre-existing creditors are concerned, unless the payments or settlements have been made in the ordinary course of business, and sometimes, though rarely, when they have been so made. This rule is a logical development of the law of preference, as established in Lord Mansfield's time, and still continued in England. When it is considered that a preference is a technical fraud, and may be charged as an act of bankruptcy and as a valid objection to the debtor's discharge, it will be readily seen that the conduct of debtors in failing circumstances must be much restrained and regulated, to the advantage of the general creditors, by the perils that attend a partial or unfair mode of settlement, or even a struggle to continue business after recuperation has become hopeless. Such was found to be the operation of a similar law in Massachusetts, where it prevailed for more than twenty years before the statute of that State was suspended by the general Bankruptcy Act of 1867.

The discharge of the debtor is granted or refused by the court absolutely. There are no grades or classes of certificates, and no power to suspend action upon the question, and put the debtor on probation. In voluntary bankruptcies 30 per cent. must be paid in dividends, or the consent of one-fourth in number and one-third in value of the creditors must be obtained. Any creditor may oppose the decree of discharge for fraud committed or continued within six months before the petition, for loss by gaming, and in the case of merchants and tradesmen, as we have seen, for failure to keep suitable accounts. The discharge when granted, is, like the assignment, unimpeachable in any court; but it may be reviewed within two years by the court that granted it, upon evidence afterwards discovered.

The title, powers, and duties of the assignee, the mode of settling joint and separate estates, and marshalling debts and assets, are substantially similar under the English and American systems. The title of the assignee, however, does not depend at all, in any case, upon the date of the petitioning creditor's debt. The misdemeanours created by the law were taken, with some modifications, from the felonies of the English Act in force in 1867. The mode of compounding with creditors has recently been adopted from the English statute of 1869, and has been largely used with good results.

Whether or not the bankrupt law will take its place as part of the settled policy of the country cannot be easily predicted. It is not likely to be displaced until the existing commercial depression has been relieved. After that time much will depend upon the degree of care and economy with which it is administered, and the readiness of Congress to adopt modifications that shall be found to be necessary, but most upon the opinion that the debtors of the country may entertain of its operation. The law was considerably modified in 1874 in the interest of debtors, by making adjudications *in invitum* more difficult, and discharges more easy; but the law is still popular with creditors, because of the serious check it imposes upon local preferences. It is likewise approved by those lawyers and judges who have had the most to do with its administration; and it is not improbable that the effect of a few years more of its operation may be to render it indispensable to the commercial world. (J. L.)

BANKS, SIR JOSEPH, for upwards of forty years president of the Royal Society of London, was born in Argyle Street, London, on the 13th of February 1743. He was the only son of William Banks, a gentleman of considerable landed property, whose father had derived his fortune principally from successful practice as a physician in Lincolnshire, had been on one occasion sheriff of that county, and had for some years represented Peterborough in parliament. Very little is known of Joseph's early life and education. He appears to have been sent at the age of nine to Harrow, and after spending four years there, was removed to Eton. Here he seems first to have acquired a taste for botanical pursuits, and was accustomed to spend all his leisure hours in the beautiful lanes and fields round the school. He carried the same fondness for natural history to Oxford, where he was entered as a gentleman commoner of Christ's College; and by his exertions a lecturer on natural science was for the first time brought into the university. After taking an honorary degree he left Oxford; and at the age of twenty-one he found himself possessed of ample means,