

BARRINGTON LECTURES.

The Council continue to manage this trust in conjunction with the trustees of the fund. In accordance with the plan explained in the report at the commencement of last session, one lecturer only is now appointed, and this appointment was conferred upon Mr. Andrew M. Porter, A. B. (Queen's University) and Barrister-at-Law, after his qualifications and those of four other candidates, as public lecturers, had been tested in a series of very valuable lectures delivered in the Lecture room of the Dublin Athenæum. Applications from nine different places, (being a far larger number than on any former occasion), were sent in this year; and the Council acceded to the applications from Newtownards, county of Down, Sligo, county of Sligo, and Tralee, county of Kerry—thus extending the benefits of the lectures to three different provinces.

The Council have only to add, that no diminution whatever has taken place in the number of members connected with the Society; to congratulate the members upon the healthy condition of the Society, and the zeal and activity displayed by the members in furthering its objects; and to express the continued obligations which the Society owes to the Royal Dublin Society for the use of a place of meeting, and the cordial manner in which that Society co-operates in the views and action of the Statistical Society.

IV.—*Suggestions for the Improvement of the Laws relating to Bankrupts in Ireland.*—By Alexander D. Kennedy, Esq.

[Read Monday, 18th November, 1861.]

As the business of the Court of Bankruptcy seems to be more on the increase than that of any other court in this country, and as the laws regulating that court are occupying much public attention at present, there is, I trust, no need for apology in introducing the subject to the notice of this Society. Without tracing the history of this branch of law, I may just remind you that at one time a bankrupt, whether honest or dishonest, was regarded and punished as a criminal. And under the ancient Roman law, which has been sometimes called "written reason," the bankrupt laws were absurdly and horribly severe; for they permitted the creditors, when a bankrupt's estate was insufficient to pay his debts, to cut up his body and divide it in proportion to the amount of their demands. This, however, being rather an unprofitable piece of butchery, the Roman legislature mitigated the law, by allowing the creditors to sell the bankrupt, and sometimes his wife and children, as slaves, and afterwards to divide the price. What a happy change the wisdom of ages has made! And while all must rejoice at the abolition of cruel and unjust laws, still, on an impartial consideration, I think all will agree in saying that the British legislature, in its abhorrence of legal cruelty, has run into the opposite extreme, and instead of tempering justice with mercy, has shown mercy at the expense of

justice, at least so far as the bankruptcy laws are concerned. Our former bankruptcy laws were, undoubtedly, too severe ; now they are too lenient, and are therefore unjust towards creditors, and injurious to trade.

There are two points in which this shows itself most prominently, and to them I will confine myself. First, the court has no power to punish a bankrupt for any misconduct, or even crime, of which he may have been guilty in the course of his trade, except by suspending his certificate for a period not exceeding three years, or by adjourning his final examination *sine die*, which latter, however, is never done except when the judge has reason to believe that he has not made a full and true disclosure of his affairs. And although such suspension or adjournment is regarded as a punishment in the eye of the law, it is not felt as such by traders, or at all events by those traders who ought to be punished—viz., fraudulent ones ; for it is notorious that many of them, immediately after the refusal of a certificate or the adjournment of their examination, commence trade again in the name of some relative or friend. No doubt the judge can direct the assignees to prosecute the bankrupt in a criminal court, but this must be done at the expense of the estate, and, in consequence, no such prosecution has ever yet taken place (I understand) in this country, the creditors preferring to pocket their dividend rather than spend it in costs. It is unnecessary, however, to occupy time in demonstrating the necessity of a change in this respect, as I find that, so far as regards England, the legislature has admitted it, and has enacted by the 159th section of the Bankruptcy and Insolvency Act of last session, that “if the court shall consider there is ground for charging the bankrupt with any act amounting to a misdemeanour under said statute, the court shall, if the bankrupt consents thereto, direct a statement in writing of the charge to be delivered to the bankrupt, and shall appoint a day for trying the bankrupt on such charge, and, if the bankrupt require it, shall summon a jury for that purpose, and may direct either of the assignees or any of the creditors to act as prosecutor.” But the court *may* direct the bankrupt to be prosecuted in any of the ordinary courts of criminal justice, if the offence amount to a misdemeanour, and on conviction the commissioner shall, *in addition to the punishment awarded for the offence*, have power to direct that the order for discharge (which is analogous to the certificate in this country) be either wholly refused or suspended, during such time and upon such conditions as he shall think fit. And by the 221st section of the same statute, any bankrupt who shall, with intent to defraud his creditors, be guilty of any misdemeanour, shall be liable, at the discretion of the court, to punishment *by imprisonment* for not more than three years, or to any greater punishment attached to the offence by any existing statute.

The following acts are there enumerated as misdemeanours :—

1. If any bankrupt shall not, after due notice, surrender and submit to be examined by the court.
2. If he shall not on his examination give a true account of all his property, &c., and deliver up all his books.
3. If after adjudication, or within 60 days prior, he shall remove,

conceal, or embezzle any part of his property to the value of £10 or upwards.

4. If in case of any person having, to his knowledge, proved a false debt under his bankruptcy, he shall fail to disclose same to the assignees within a month.

5. If he shall wilfully and fraudulently omit any effects from his schedule.

6. If he shall conceal any books, deeds, papers, &c.

7. If after the filing of the petition, or within 3 months prior, he shall part with, conceal, or falsify any of his books, papers, &c.

8. If within the like time he shall, knowing he is unable to meet his engagements, fraudulently have made away with or mortgaged any part of his property, or if he shall conceal from the court debt due to or from him.

9. If (being a trader) under his bankruptcy or at any meeting of his creditors within 3 months before petition filed, he shall have attempted to account for any of his property by fictitious losses or expenses.

10. If (being a trader) he shall within 3 months before petition filed, under the false colour of dealing in the ordinary course of trade, have obtained on credit from any person any goods with intent to defraud.

11. If (being a trader) he shall, within 3 months before petition filed, pawn or dispose of, otherwise than by *bona fide* transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for.

By the 222nd section, the Bankruptcy Court is given, with respect to the foregoing offences, the same jurisdiction and powers as are vested in her Majesty's justices of the peace; and the 223rd section enacts, that when the commissioner directs that the bankrupt be prosecuted in one of the ordinary criminal courts, the costs of such prosecution shall be paid in the same way as the costs for prosecutions for felonies are now paid.

I have, perhaps, detailed the acts which are made misdemeanours under the new English statute too fully, but I have done so in order to call to mind the many flagrant frauds for which practically no punishment is now provided in this country. But as these sections leave untouched many commercial offences of although perhaps less moral delinquency still of more frequent occurrence, and for which punishment is provided by another portion of the English act, I consider it necessary to state the 3rd clause of the 159th section, whereby it is enacted "that if a bankrupt shall not be accused of acts amounting to misdemeanour, or if he shall have been accused and acquitted, but in either case there shall be made, or shall appear to the court to exist, objection to the granting of an immediate discharge, the court shall proceed to consider the conduct of the bankrupt before and after adjudication, and the manner and circumstances under which his debts have been contracted, and if the court shall be of opinion that the bankrupt has carried on trade by means of fictitious capital, or that he could not have had, at the time when any of his debts were contracted, a reasonable ground of expectation of being able to pay same, or that (if a trader) he has, with intent to

conceal the true state of his affairs, wilfully omitted to keep proper books of account, or (whether trader or not) that his insolvency is attributable to rash and hazardous speculation or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by frivolous defence to any action to recover any debt due from him : the court may either refuse an order of discharge, or may suspend the same for such time as the court may think fit, or may grant an order of discharge subject to any conditions touching any emoluments, profits, or income which may afterwards become due to the bankrupt, or may sentence the bankrupt to be imprisoned any for period not exceeding one year."

As such provisions have been deemed necessary for England, and as it must be admitted that there is, at least, an equal necessity for them in Ireland, I need not say more on this branch of the subject than express a hope that the next session of parliament will not be allowed to pass without the above clauses being extended to this country.

But the second particular in which I complain of the extraleniency of the law towards bankrupts is one which may be more difficult to have remedied, inasmuch as it has not been recognised by the legislature, and because it appears at first sight to be inherent in the bankruptcy code. I allude to the full and absolute release which the bankrupt, on obtaining his certificate, gets from all debts included in his schedule. I am perfectly well aware that this is one of the fundamental principles on which the bankruptcy laws are based, and that such a release is considered beneficial to the trade of the country, as it encourages a trader to commence business again by removing the burden of past debts from his back. Undoubtedly, this principle ought not to be disregarded, but, with advantage to commerce, it might be modified. For under the present system how often does it happen that a bankrupt, who has obtained his certificate and paid his creditors perhaps only a few pence in the pound, after a time becomes possessed of a considerable sum of money, or of an ample income, arising perhaps from his own exertions, from a bequest, or some other source, which would be more than sufficient to pay his creditors in full and maintain his family in comfort. Yet he can never be called upon to pay one farthing on foot of the debts which he owed at the time of his bankruptcy. And will not every person's experience remind him of cases where creditors have been irretrievably ruined by a bankruptcy, have been reduced from affluence to poverty, where the bankrupt, having profited by the proceedings, has within a short time become a wealthy man. No doubt there are a few bright examples (but how few) of men who, under such circumstances, voluntarily paid the entire 20s. in the pound to all their creditors, but it was only *in foro conscientie* that they were bound to do so. Yet ought not the law of our land compel such obvious justice? It is with this view that I suggest the following modification of the existing bankruptcy code:—That a bankrupt who has obtained his certificate, but whose estate has paid less than 20s. in the pound, and who subsequently acquires a sum of money amounting to say £1,000, or upwards, or is in the receipt of an annual income of £500, or upwards, above all subsequently contracted

debts and liabilities, may be compelled by any creditor, at any time or times before payment of the debt in full, through the medium of the Bankruptcy Court (and that court only), to appropriate say one-fourth of such sum of money or income towards the payment of his scheduled debts, unless it should be shown, to the satisfaction of the court, that such appropriation would greatly cripple his trade or leave him an insufficiency for reasonable family expenditure. But as the foregoing provision would not meet all the cases which would be desirable, I further propose, that in any such case as before stated, where the bankrupt's debts amounted to less than £1,000, and should he subsequently become possessed of a sum of money amounting to one-half, or be in the receipt of an annual income equal to one-fourth of the aggregate amount of such debts, that then, in like manner, any creditor might apply to the Court of Bankruptcy for an order that one-fourth of such money or income be appropriated towards payment of the debts due at the time of his bankruptcy.

In order that my proposition may be the better understood, and least it should be considered impracticable, I will illustrate it by a suppositious case. Suppose A. B. becomes a bankrupt, owing £6,000, and that his assets realise £2,000, which pays a dividend of 6s. 8d. in the pound to his creditors. He obtains a certificate and is thereby freed from all legal process respecting his scheduled debts issuing from any court except the Bankrupt Court, under such circumstances as those hereinafter mentioned. He then starts anew in business, is successful, and in the course of a year or two accumulates a sum of £4,000 over and above all his subsequent debts and liabilities, or perhaps he is left a legacy of that amount. Of this fact one of his creditors becomes aware, and makes an application to the court, on due notice to the bankrupt, grounded on an affidavit stating the several facts connected with the bankruptcy, and his belief that the bankrupt has such sum of £4,000. On the motion the bankrupt may appear and deny it, or admitting it, may prove that if any portion of such sum were taken from him it would ruin his business or leave himself and family without adequate means of support. If he satisfies the judge on either of these two points, the motion will be refused, but if he fails to do so a conditional order will be made, directing him to lodge one-fourth of the money he has, viz., £1,000, with the official assignee. Notice of this order should then be either published in the newspapers or forwarded to all parties who might have become creditors since the bankruptcy, calling upon them to show cause against such conditional order if they think fit. This would be necessary in order to prevent collusion between a bankrupt and any scheduled creditor for the purpose of defeating the claims of any subsequent creditors. Supposing no cause to be shown, or having been shown, to be disallowed, the order is made absolute, and £1,000 is distributed among the creditors, being a dividend of 3s. 4d. in the pound in addition to the 6s. 8d. previously paid. But after the lapse of another year this fortunate bankrupt from some other source is in the receipt of an income of £1,200 a year, and one of his creditors knowing of this, applies in the same way to the court for an order directing him to pay one-fourth of such income, viz., £300 a year, to the official assignee every year

until his scheduled debts be paid off in full. The same forms having been gone through respecting this order, a yearly dividend of 1s. in the pound is paid to the creditors, who at the end of ten years receive *all* their demands in full.

Although I have thus fully, and perhaps wearisomely, gone into details, I wish it to be distinctly understood that I have done so only for the purpose of illustrating the general proposition advanced, and of showing that it is not impracticable. Nor am I wedded to any of the particulars or proportions stated. If a better scheme can be devised (and probably it can) I shall be pleased to see it adopted; for all that I insist upon here is, that it would be just that *some* portion of a bankrupt's *after acquired property* should be, under certain circumstances, appropriated towards the payment of debts due at the time of his bankruptcy.

Surely this is a proposition which no honest trader can condemn, nay, I believe (and I may state that I have some grounds for my belief), that if the mercantile community of this city were polled as to whether such a measure should become law, the vast majority of them would vote in favour of its enactment. It could not cripple trade, for the proportion appropriated would be too small for that, and if in any individual case from peculiar circumstances it would have this effect, the order would be refused. On the contrary, such a law would be beneficial to commerce, inasmuch as it would teach traders that they must pay their creditors 20s. in the pound before they can accumulate wealth for themselves, and it would prevent the possibility of any man in insolvent circumstances, but with almost immediate expectations, from becoming a bankrupt for the purpose of being released from his debts by paying only a small dividend, and then enjoying the whole of any after acquired property.

In conclusion, let me repeat shortly the two suggestions I propose for the amendment of the Irish Bankruptcy Law. First—That the Judge of the Bankrupt Court should be empowered to punish by imprisonment any bankrupt who may have committed any fraud or offence against the Bankruptcy Laws, or whose insolvency is attributable to rash speculation or unjustifiable extravagance, or who may have been guilty of any misconduct in relation to his trade. And secondly—that every bankrupt who shall pay less than 20s. in the pound, and who shall at any time subsequently acquire a certain sum of money or yearly income, shall from time to time be compellable to apply a portion of such money or income towards the payment of his debts due at the date of his bankruptcy, until same be paid in full.

I do not pretend to say that the above propositions, if made law, would render our bankruptcy code perfect, for there are other defects which require to be remedied, and more provisions of the new English Act might with advantage be extended to this country, but I feel confident that such enactments as I have submitted would be greatly calculated to diminish fraud and recklessness, to check rash speculation and extravagance, and that a marked line of distinction, which does not at present exist, would thereby be drawn between honest bankruptcies arising from misfortune and those tainted with fraud.