A LETTER ADDRESSED TO THE LORD VISCOUNT MELBOURNE

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A Letter Addressed to the Lord Viscount Melbourne by C. Fane

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C. FANE

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Trieste

A

LETTER

ADDRESSED TO THE

LORD VISCOUNT MELBOURNE,

BY

C. FANE, ESQ.

ONE OF THE COMMISSIONERS OF HER MAJESTY'S

COURT OF BANKRUPTCY.

RELATIVE TO

THE JURISDICTION OF THAT COURT IN CASES OF CONTEMPT.

LONDON:
S. SWEET, 1, CHANCERY LANE, FLEET STREET,
Law Bookseller & Publisher.

1837.

L. Eng. fl. 21 c. 54

PREFACE.

THERE can be no doubt, that the Bankrupt Law, and the system, by which it is administered, require a thorough revision, and very extensive reform. Numberless cases might be cited to establish this; one will suffice. Mr. Chambers was declared bankrupt in 1825; twelve years have since elapsed, and it remains undecided, whether he was a bankrupt or not; meanwhile £170,000 have been collected, £49,500 have been expended in litigation and its consequences, prodigious waste has been occasioned by mismanagement, not one farthing has reached the general creditors, and the balance in hand does not amount to £8000. Such are the fruits of an absurd system!

When that great man and sincere Law Reformer, Lord Brougham, entered on the subject of Bankruptcy Reform, he gave a clear outline of his plan: he said, "I will reform the Bankrupt Law, and

the Bankruptcy Tribunals; but I will reform the tribunals first; for the reformed tribunals will be themselves the instruments of reforming the law, by the information, they will acquire and communicate, and the suggestions, which experience will enable them to furnish." He accordingly limited his endeavours, in the first instance, to the reform of the Tribunals, and his great principle was to make them *Courts*. From the most ancient times the existing system had been a violation of first principles; for it is a first principle, that, whenever disputes arise about property, or public aid is to be given in the administration of property, the subject-matter shall be placed under the jurisdiction of a *Court;* yet Bankruptcy had, from time immemorial, been subject to the jurisdiction of tribunals, if indeed they deserved the name, which were not Courts, but were called Lists of Commissioners. "This," he said, "I will put an end to; I will put Bankruptcy, like all other subjects of judicial investigation, under the jurisdiction of *Courts*." Accordingly he carried a measure, which, as far as words went, was amply sufficient to effect his intention: but to make a law is one thing, to interpret it another; and it is vain for the Spirit of Reform to preside at the making of a law, if

the Spirit of Anti-Reform is to preside over its interpretation: three years after the Act was passed, the question arose, whether the most important branches of the New Establishment, namely, the Tribunals of the Commissioners, did or did not constitute *Courts;* and it was decided, that they did not.

The writer of the following letter had for some time fancied, that he had observed in some quarters, not only an unwillingness to advance in the course of reform originally contemplated by Lord Brougham, but a disposition to recur to old errors, and their consequent abuses; and he determined on this occasion to make an appeal to the Head of the Government. He accordingly prepared the following Letter, and printed it for private circulation amongst those who were likely, either from duty or inclination, to take an interest in the subject. Two Sessions of Parliament having since elapsed, producing nothing but attempts at reform, so abortive, as to have given rise to suspicions of insincerity, the Letter is now published, with a view of calling upon the commercial world seriously to consider, whether it is for their interest, that Six Tribunals, sitting daily in the City of London, entrusted with the performance of duties of the highest importance, and

established for the very purpose of more effectually repressing the gross and monstrous frauds,* notoriously perpetrated under the shelter of the Bankrupt Law, should be held not to be Courts, and therefore not armed with those powers of instantly and summarily repressing contempts, which the common law accords to the lowest Courts in the kingdom, and without which it is impossible for any Court to perform its duty efficiently in those very cases, in which its interference is *most imperiously* demanded.

* A very remarkable case, which occurred in 1831, will be found in the Appendix. See Note A.

A LETTER,

&c.

My Lord,

I feel it to be my duty to address a letter to your Lordship, for the purpose of calling the attention of his Majesty's Government to the situation, in which the Commissioners of his Majesty's Court of Bankruptcy have been placed by a decision, pronounced in June last by the Court of Exchequer, in the matter of a fine, imposed by myself upon a gentleman for contempt of court.

The circumstances, under which that fine was imposed, were shortly these :—In January, 1835, I was informed by the official assignee in the matter of Kensington, a bankruptcy prosecuted before me, that Messrs. A., G., F., and Co., the solicitors to that bankruptcy, claimed to have a bill of 46*l.* 14*s.* 8*d.* paid to them out of the bankrupt's estate; that the bill had been taxed at 44*l.* 9*s.* 2*d.*, which he had offered to pay, but that he had received the following letter :—

"*Re* KENSINGTON.

"16th *Dec.* 1834.

"SIR,

"Believing, as we do, that no improper charge has been made in *our account against Mr. Jones*, we shall not submit to a reduction of one shilling. So soon as you send us a cheque for the amount and the deeds, we are prepared to pay 500*l.*

"I called several times at your office this morning, but unfortunately did not see you.

"I am Sir (for partners and self),

"Your obedient servant,

"G. F.

"*Mr. W. Whitmore.*"

Upon inquiry it appeared, that this bill was not the usual bill, which a solicitor to a bankruptcy has against the estate, but a bill against a Mr. Jones, the father-in-law of the bankrupt and petitioning creditor, who had purchased the whole of the estate, and for whom Messrs. A. & Co. had acted, first, in taking out the fiat, and afterwards in the matter of the purchase, though still acting for the estate. After carefully inquiring into the facts, I was of opinion, that there was no pretence for burthening the estate with this payment, and I sent for Mr. F., *as the legal adviser to the estate*, and communicated to him this opinion; and upon his resisting it, and, as I thought, clearly shewing a disposition to take part *against* the estate, I expressed, I believe, disapprobation of his conduct in acting for Mr. Jones in the