

## The overthrow of estate and credit: Bankruptcy Commissions in Chancery 1626 – 1640

A bankrupt:

any merchant or other person using or exercising the trade of merchandize, by way of bargaining, exchange, rechange, bartry, chevisance, or otherwise, in gross or retail, or seeking his or her trade of living, by buying or selling.

The study of early modern bankruptcy has been severely hampered by the difficulty of finding sufficient and representative evidence. This paper is based upon 1084 Chancery docquets, which relate to bankruptcy commissions issued by Thomas Coventry during his tenure as Lord Keeper.<sup>1</sup> Although the series is not complete, the docquets do represent probably the most comprehensive source available for an examination of the operation of the bankruptcy laws in the early seventeenth century.

Bankruptcies were initiated by creditors petitioning the Lord Chancellor for a commission of bankruptcy.<sup>2</sup> If he was satisfied that the creditors had a legitimate case, he would appoint a commission to determine whether the debtor was a trader and whether he had committed a fraudulent act of bankruptcy. In the seventeenth century there was no permanent list of commissioners, but at least in London there were lawyers who regularly performed the task. If satisfied, the commissioners could take any steps they deemed necessary to collect the estate. They were authorised to seize the bankrupt, examine him and his wife under oath, gain forcible access to his house and to sell his goods and lands. The money they recovered was distributed among all the debtor's creditors, not simply those who had originally petitioned for the commission. From 1624 traders whose failure had not resulted from 'casual loss', but were deemed to have acted fraudulently, might be pilloried and lose an ear. Only a trader could be bankrupt. Everyone else found to be without resources was insolvent. This distinction continued in force until the 1861, although the precise definition of trader varied over time. Initially skilled craftsmen were excluded, but in 1592 a shoemaker was found liable as a buyer and seller of leather. This extension led to the inclusion of other crafts within the compass of bankruptcy commissions.

In his magisterial study of English bankruptcy<sup>3</sup> W.J. Jones calculated that before the Restoration bankruptcies were infrequent and that the annual average for the late

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<sup>1</sup> The docquets used here were listed in Jan Broadway, Richard Cust & Stephen K. Roberts eds., *A Calendar of the Docquets of Lord Keeper Coventry 1625-1640, Part 3* (Lists & Indexes Society, Special Series 36, 2004). When calendared the records were in the archives of Birmingham Central Library. They have since been moved to the Worcestershire country archive. Additional docquets from the Coventry Estate have been added to the collection following the move. These have not been examined by the author.

<sup>2</sup> No Lord Chancellor was appointed after the sacking of Francis Bacon in 1621. Coventry was one of a succession of Lord Keepers of the Great Seal.

<sup>3</sup> W.J. Jones, 'The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period', *Transactions of the American Philosophical Society* 69 (3), (1979), 1-61. See also I.P.H. Duffy, 'English bankrupts, 1571-1861', *American Journal of Legal History* 24 (1980), 283-305.

Elizabethan and Jacobean period may not have risen much above 10. He concluded that bankruptcies, as distinct from failures, were not common, and that their number was in stark contrast to the amount of critical attention devoted to the subject. In his study Jones was obliged to rely on evidence that was 'dispersed and nebulous'. He based his assumptions on the reporting of payments for only 4 commissions issued in London and its vicinity in the 6 months to March 1631 and the number of enrolled commissions during the Civil War and Interregnum. Between 1642 and the execution of Charles I the annual average was around 25. The numbers were higher during the Interregnum, but the 68 commissions enrolled in 1642 was exceptional.

The docquets included in this study included 934 commissions of bankruptcy, 28 renewals of commissions, 114 supersedeas (stays) and 7 procedendo (order to proceed). This suggests a raw average of 60 commissions a year during Coventry's tenure as Lord Keeper, although gaps in the series suggest the average should have been somewhat higher.<sup>4</sup> In 1638 Coventry authorised the issuing of at least 130 commissions of bankruptcy. There are several reasons between the average number of commissions calculated by Jones and that revealed by the Coventry docquets. Firstly a small number of commissions were actually renewals of existing commissions and a proportion were suspended by supersedeas. The proportion of commissions issued for bankrupts outside London and its environs was greater than Jones allowed. He may also not have allowed for the slowness with which some of the commissioners worked. The renewal of a commission against John White of London, tallow chandler necessitated by the death of James I, for example, was not requested until April 1627.

The predominant reason for the discrepancy in the figures, however, appears to be that many commissions were issued but not effected. In November 1630 Robert Story of London petitioned Coventry for a commission against John Talbot of Swaffham, Norfolk, grocer. He claimed that a previous commission issued in July to a different set of Talbot's creditors had not been handed over to the named commissioners. The first set of creditors had used their possession of a commission to pressurize Talbot into coming to a settlement with them which would exclude his other creditors, such as Story. More commonly the commission was issued as a means of securing the position of the creditors, while a composition was reached with the bankrupt. For example, in 1629 James Hope of London, merchant, agreed a period of 3 years grace with the majority of his creditors in the hope of being able to clear his debts and petitioned that the one obdurate creditor should not be allowed to prevent the issuing of a supersedeas. Similarly in 1635 Robert Birkinshawe of Bungay, Suffolk reached an agreement with all his creditors except Thomas Soutley of London, draper. His request for a supersedeas was supported by a certificate from the other creditors. In 1636 Coventry endorsed a petition from the creditors of Isaac Dobson, haberdasher, that the commission might be issued to secure them against any fear of purveying away the estate. However, if Dobson's claim to have been seriously injured by gunpowder while training with

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<sup>4</sup> There are no docquets in the collection relating to the first few months following Coventry's appointment and very few for the period March 1628 to March 1629, suggesting that the archive was at some point stored chronologically and part of it was lost.

the militia was true, Coventry hoped that his creditors ‘will deal mercifully with him and shew such pity & commiseration as his case shall deserve, otherwise I shall take order to stay or suppress the commission’.

When we compare the geographical distribution of bankrupts as revealed in the docquets with that of the eighteenth century, we find striking similarities.<sup>5</sup> London dominates the figures in both cases, while the 12 counties that produced the most bankrupts in the reign of Charles I were still in the top 15 places in the aggregated figures for the eighteenth century. Only the position of Lancashire changed significantly, rising from 25<sup>th</sup> place to third.

#### ***Geographical Distribution of Bankrupts***

|    | <i>County</i>   | <i>1626-40</i> | <i>1688-1800</i> |      |
|----|-----------------|----------------|------------------|------|
| 1  | London          | 34.53          | 45.95            | (1)  |
| 2  | Suffolk         | 4.86           | 1.44             | (15) |
| 3  | Norfolk         | 4.54           | 3.35             | (6)  |
| 4  | Kent            | 4.44           | 1.94             | (9)  |
|    | Somerset        |                | 1.66             | (13) |
| 6  | Middlesex       | 3.27           | 3.94             | (5)  |
|    | Devon           |                | 2.35             | (8)  |
| 8  | Yorkshire       | 3.06           | 4.43             | (2)  |
| 9  | Wiltshire       | 2.75           | 1.52             | (14) |
|    | Gloucestershire |                | 4.08             | (4)  |
|    | Surrey          |                | 2.60             | (7)  |
| 12 | Essex           | 2.22           | 1.67             | (12) |
| 25 | Lancashire      | 1.06           | 4.27             | (3)  |

It should be noted that London’s dominance was far greater at the start of the 18<sup>th</sup> century. In 1701-10 over half of bankrupts were from London and it was only towards the end of the century that the capital’s dominance in this respect was declining to match that of Charles I’s reign. The reason for this would appear to be changes in the sectoral distribution of bankrupts across time. Outside London the urban centres with the highest numbers of bankrupts were Bristol (13, which was largely responsible for the position of Gloucestershire in the table), Norwich (12) and Bury St Edmunds (11).

The dominance of London was two-fold. Not only were bankrupts more likely to be from London, but a debtor with creditors in London was more likely to have a commission of bankruptcy issued against him. Further work needs to be done, including a full analysis of the geographical spread of named creditors, to reveal more fully how local tradesmen in early Stuart England were part of national trading networks.

When we compare the trades represented in the Coventry docquets with Hoppit’s data, it is clear that there is less variety in the earlier set. The designations of trade are also flexible. Of the 161 individuals who appear more than once in the Coventry docquets, 17 (10.5%) have differing descriptions. This reminds us that one man’s chapman is another’s mercer.

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<sup>5</sup> The 18<sup>th</sup> century figures are taken from J. Hoppit, *Risk and Failure in English Business 1700-1800* (1987).

The dominant sector across both sets of figures was Textiles and Clothing. The 17<sup>th</sup> century matching the variety of descriptions of the later period for this sector with mercers, drapers, clothiers and haberdashers dominating. By comparison the food sector showed far less variety in the Coventry docquets. The high proportion of bankrupts from the retail sector in the 17<sup>th</sup> century was not matched in the later figures. Since a third of bankrupts in the Coventry docquets were chapmen, this may indicate a change in status of itinerant sellers across the period and the reach of their trading networks.

### ***Sectoral Composition of Bankrupts***

| <i>Sector</i>       | <i>1626-40</i> | <i>1701-20</i> | <i>1721-40</i> | <i>1741-60</i> | <i>1761-80</i> | <i>1781-1800</i> |
|---------------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Agriculture         | 2.9            | 2.4            | 1.6            | 1.5            | 1.8            | 3.1              |
| Fuel                | 0              | 0.2            | 0.4            | 0.8            | 1.0            | 1.3              |
| Food                | 9.0            | 11.4           | 12.8           | 13.4           | 11.4           | 12.6             |
| Drink               | 6.8            | 11.4           | 14.3           | 11.2           | 8.8            | 8.6              |
| Construction        | 0.3            | 2.4            | 3.7            | 4.2            | 5.0            | 5.9              |
| Textiles & Clothing | 31.6           | 27.7           | 26.2           | 25.6           | 23.9           | 23.9             |
| Finance             | 0.9            | 1.6            | 1.1            | 1.3            | 2.1            | 3.7              |
| Transport           | 0.1            | 3.0            | 4.1            | 4.1            | 5.1            | 5.8              |
| Metal               | 1.3            | 3.3            | 3.4            | 4.0            | 5.6            | 5.6              |
| Wood                | 0.2            | 1.0            | 1.4            | 2.0            | 2.8            | 2.0              |
| Retail              | 33.6           | 9.8            | 10.1           | 9.1            | 8.7            | 7.6              |
| Wholesale           | 11.8           | 19.0           | 14.1           | 15.7           | 16.6           | 13.1             |
| Miscellaneous       | 1.5            | 6.8            | 7.0            | 7.1            | 7.2            | 7.2              |

The agricultural sector is relatively unrepresented in the figures, since farmers were excluded throughout the period and graziers from 1706. Similarly, builders and brickmakers were generally excluded, as they mostly owned land, thus reducing the representation of the construction sector. Conversely a preoccupation with fraud led to the inclusion of scrivenors within the statutes. The issuing of a commission against Augustine Mathewes of London, printer, in May 1638 indicates a degree of flexibility of the system, since printers were supposedly excluded.

Between 1592 and 1596 Jones found that chapmen represented a third of known bankrupts. This proportion is mirrored in the Coventry docquets. The 310 bankrupt chapmen came from all over the country, with only 6% being described as from London. Manchester, Maidstone, Kings Lynn, Coventry, Devises and Shrewsbury each had 4 chapmen in the data set. By contrast 57% of the 103 bankrupts who were described as merchants came from the capital. Other classes of docquets reveal that a further 9 merchants in this period sought royal protections against their creditors and 4 obtained licences to seek charitable donations because of their losses. The other significant trades represented in the Coventry docquets are mercer (75), grocer (62), draper (56), clothier (35), haberdasher (30), brewer (30), vintner (24) and grazier (23). More than half the grocers, drapers, haberdashers and vintners were drawn from London. The 24 vintners who went bankrupt in the period

may be set within the context of the issuing of 571 wine licences under the Great Seal in the period 1629-1639.

The level of debt mentioned in the bankruptcy commission would be that owed to the creditors requesting it and consequently was a minimum figure. A *de facto* minimum debt of £100 seems to have been established, as only 1 docquet records the issuing of the commission for a lower figure (£50). In 1706 it was established that a bankrupt had to owe at least £100 to one creditor, £150 to two or £300 to three or more. It is suggested that this took some traders out of the scope of the law, who would formerly have been liable.

***Levels of Debt among the Most Common Trades***

| <i>Trade</i> | <i>Percentage</i> |          |          |         |
|--------------|-------------------|----------|----------|---------|
|              | £100              | £150-400 | £500-800 | £1,000+ |
| chapman      | 37                | 44       | 12       | 7       |
| merchant     | 19                | 38       | 13       | 30      |
| mercier      | 38                | 43       | 14       | 5       |
| grocer       | 27                | 43       | 14       | 5       |
| draper       | 32                | 45       | 15       | 8       |
| clothier     | 19                | 57       | 19       | 5       |
| haberdasher  | 31                | 41       | 12       | 16      |
| brewer       | 27                | 38       | 19       | 24      |
| vintner      | 31                | 38       | 19       | 12      |
| grazier      | 19                | 62       | 0        | 19      |

Margaret Spufford described seventeenth-century chapmen as relatively poor, but the evidence of the Coventry docquets indicates that large numbers of them were able to obtain high levels of credit within an extensive trading network.<sup>6</sup> The reason for the eighteenth-century decline in the number of bankrupt chapmen is not clear. It may be that the number of chapmen as a whole was lower or it may be that credit became more difficult to obtain and consequently few of them were able to get into the position of becoming bankrupt.

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<sup>6</sup> Margaret Spufford, *The Great Reclotting of Rural England* (1984).