may be credited. The truth may be disbelieved. But as this cannot be foreknown, it affords no reason for exclusion. There may be error after the hearing of a witness, and with all the means of a correct judgment thus afforded. But to exclude for presumed falsehood without hearing, is to convict without proof.

But the danger is not of undue credence. Those who would exclude a respondent from presumed untrustworthiness (notwithstanding the counter-presumption of innocence), will be little likely to be too credulous in regard to testimony they are unwilling to hear. Neither the position of the criminal nor his surroundings are such as to induce too implicit a reliance on his statements. The danger is, not that being false they will be believed, but rather that being true, they may not be credited.

I anticipate from the change proposed a greater certainty of correct decision in criminal proceedings. The guilty will be less likely to escape. The danger of the unjust conviction of the innocent will be diminished.

I am, with great consideration,

Very truly yours,

JOHN APPLETON.

Hon. D. E. WARE.

EARLY BANKRUPT LAWS.

The Act of 34 and 35 Henry VIII. c. 4 (A. D. 1542–3) is conceded to be the first English statute on the subject of bankruptcy. It is entitled "An Act against such persons as do make Bankrupt," and defines the status of bankruptcy in the preamble, namely: "Where divers and sundry persons, craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any of their creditors their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men for their own pleasure and delicate living, against all reason, equity, and good conscience."

This statute operated upon *all* persons, whether traders, or merchants, or not. The 13 Elizabeth, cap. 7 (A. D. 1570), entitled "An Act touching orders for Bankruptcy," introduced into English jurisprudence the restriction of the status of bankruptcy to merchants or traders; and this statute was evidently

made to prevent the landed aristocracy or gentry of England from being compelled to remain honest. It is probably the want of attention to this distinction between these two early statutes of the mother country, which has occasioned the many subtle, but really untenable, arguments against the jurisdiction of Congress to pass a law operating on all alike, without distinction of trade or profession.

The language of the Constitution is, "to establish uniform laws on the subject of bankruptcy throughout the United States." This is an *unlimited grant of legislative power;* for Congress is *to establish the laws.* The National Legislature can therefore declare what shall be the status of bankruptcy. Congress is not confined to the strict technical legal definition arising under the 13th Elizabeth.

The first legislation in Holland was in 1531, by Charles V., King of Spain, governing that country. He then published a decree against bankrupts. He published a further decree on the 4th of October, 1540. (The interesting article in the June number of the Law Register dates the bankrupt proceedings in Holland as of 1643, a century later.) This ordinance declares bankrupt "All men or women, traders, and other debtors of whatsoever condition or quality, who shall absent themselves from their places of residence without paying or satisfying their creditors, and clandestinely carry away or conceal their property with intent to defraud." We give this as a literal translation from the text now before us.

This legislation was adopted in France. In 1560 Charles IX., in 1609 Henry IV., and in 1673 Louis XIV., legislated on this subject; and these ordinances are the basis of the modern French legislation, part of the Code de Commerce.

The very earliest ordinance which we have been able to trace, is the Statute of Genoa, printed in 1498. This law constituted an officer of bankrupts, "Officium ruptorem," who had jurisdiction on the application of a creditor, and for cause, to arrest and examine a "suspected" debtor, to examine him, his books of account, to take inventory of his stock, &c.

Congress, being sovereign, has the undoubted right to declare the status of bankruptcy, and to legislate upon its consequences. As to whether Mr. Jenckes's bill covers the whole ground, we do not assume to express an opinion.

P. J. J.