

American Legal History – Russell

2 David Ramsay, *The History of South-Carolina, from Its First Settlement in 1670, to the Year 1808* at 391-401, 425-33 (Charleston, David Longworth 1809).

[*391] Drunkenness may be called an endemic vice of Carolina. The climate disposes to it, and the combined influence of religion and education, too often fail to restrain it. The free perspiration which takes place especially in summer, calls for a great proportion of liquid to replace the discharged fluid. Several persons are contented with the beverage of nature, and maintain good health and spirits without any artificial liquor whatever; but a much greater number drink water only when they can get nothing else. The most harmless substitute that has ever yet been found for that pure element is beer. This communicates strength while it quenches thirst, and in its most common forms does not readily intoxicate. Unfortunately for carolinians cheap fermented liquors do not suit with their climate, especially in the summer when they are most [*392] wanted. Recourse is generally had to spirituous liquors; medical theories are made to bend to appetite. Accommodating professional men by their example and advice, recommend it as a corrector of the water. Such opinions are readily received and acted upon. The general position being once admitted that the addition of rum, gin, brandy, or whisky, is an improvement of water, it is no easy matter to stop at the precise point of temperance. The reasoning powers are so far the dupes of sense, that a little more and a little stronger is taken without hesitation. Thirst makes the first drink a plentiful one: a few supplementary draughts complete the business of intoxication, and induce an oblivion of all cares. A repetition of the pleasing delusion takes place: an habit of ebriety is insensibly formed. To resist a growing fondness for liquor in its first stage is possible, but it requires much fortitude and perseverance. When the habit is completely formed, reason is dethroned: the remains are surrendered to appetite, and the unhappy man is hurried on from bad to worse till he becomes a nuisance in society.

All these temptations to intoxication are increased by idleness. Men are so constituted as to be incapable of total stagnation. Something to stimulate the senses, employ the body or occupy the mind, is a matter of absolute necessity. He whose vacant mind cannot amuse itself with reading, reasoning, reflecting, or the reveries of imagination; whose inclination disrelishes and whose

circumstances elevate him above bodily labor, has only one avenue left to save himself from the painful sensations of being without any employment for mind or body; that is, to rouse his senses by the poignancy of something that acts directly and strongly upon them. This may be done by tobacco, opium, and some other irritating substances, but by nothing so readily or so conveniently as by ardent spirits. The draught which at first excited the senses, soon becomes inadequate. The quantity must therefore be increased. A pernicious habit is thus insensibly formed from having nothing to do.

The hard laboring man is assailed by temptations of a different nature. Labor in warm weather excites great thirst. The attending depression of spirits is supposed to require something cordial. The quantity of water which nature requires, dashed with only a common portion of ardent spirits, makes in the whole too much of the latter for health or comfort. Habits of intoxication in this manner grow on persons of this description while they are without any apprehensions of their transgressing the rules of temperance. Thus a considerable proportion of the laborers who take up their abode in Carolina, either lose their healths or their lives in the course of a few years. Dropsies, complaints of the liver, dyspepsia or bad digestion close the scene with people of this description.

To these may be added the gentlemen who spend their afternoons and evenings over their wine. By the help of semi-annual fits of the gout they sometimes make out to live for several years, though they seldom go to bed sober. Their habits are expensive, destructive of time, and inconsistent with close application to business; but their lives are not so directly and immediately threatened as in the case of those who in shorter spaces drink equal quantities of spirituous liquors.

Perplexity, from debt and other embarrassments or troubles, is in Carolina a common case of inebriation. This state of mind produces a physical effect which resembles the pressure of a bar across the breast. To remove that sensation, and to drown care, recourse is had to the oblivious draught. Being often repeated, it disqualifies the sufferer from manly exertions to extricate himself. Instead of more industry and economy, it too often happens that more ardent spirits are taken till the case becomes hopeless.

The too early introduction of young lads into company has an unhappy effect on their habits. They need not the stimulus of strong drink, and are often indifferent and sometimes averse to it; but when fashion leads the way, they

have not fortitude enough to make a stand. They are apt to prefer social folly to singular wisdom. To be occasionally drunk in good company, is considered by their young companions as a proof of spirit. A duels are sometimes fought against the grain in compliance with custom, so habit of intoxication are contracted by young men not from any self indulgence in the beginning but merely to please other people. When once contracted they are rarely laid aside. The good natured, pleasant, accommodating youth, dies a sot before he attains to middle age.

When all the preceding classes are taken into view, the number of strictly temperate people is far short of what is generally supposed. On this sub[*395]ject medical men have much better opportunities of information than others. Let him that stands, take heed, lest he fall; for the temptations to drunkenness are so great and so common, as partly resulting from the climate, that great self command, prudence and fortitude, and a strict discipline of the passions and appetites, are absolutely necessary to maintain the empire of reason over sense.

A disposition to contract debts is one of the vices of carolinians. To this several local causes contribute. Agriculture is the employment of most, and is the original source of their wealth. As crops are annual, out-goings must precede in-comings. To limit the former to means in hands would greatly curtail the latter. Agriculture must be carried on by most planters partly on credit or carried on to little purpose. From the state of the country many annual debts are unavoidably contracted, and from the uncertainty of crops in a hazardous climate subject to storms, freshets, and hurricanes, must often remain unpaid at least for the ensuing season. When every thing is prosperous the profits are great. One crop will often purchase the fee simple of the land on which it is made. Two, three, or four, will in like manner pay for the negroes who make it. These are strong inducements to give and to take credit. In successful seasons neither the merchant nor the planter are disappointed. But a melancholy reverse often takes place: unseasonable frosts, insects, freshets, defects or excess of rain, and several other incidents, prevent the growth or maturation of the commodities of the country. When the crop is made and ready to be gathered, [*396]storms often, and hurricanes sometimes, in a few hours blast the labors of a year. When all is housed, circumstances both at home and abroad, beyond the control of the planters, frequently arise to reduce the price of country produce, and sometimes entirely to obstruct its sale. Planting in Carolina is like an annual lottery, in which on an average of

several years there are many blanks and many prizes. A few of the latter are very large, but the greatest number do not much exceed the price of the ticket. In the great chain of credit the planter forms the first link. When his crop fails, the failure involves multitudes in unavoidable breaches of contract, though they have no immediate connexion with agriculture.

If rational prospects of crops were the only foundation of credit, the debts of individuals would be far short of what they generally are. To these must be added an immense sum founded on speculation. In Carolina, where the price of marketable articles is as variable as the weather, a boundless field is opened to exercise the ingenuity of men who from an exact knowledge of the present state of things and an attentive retrospect of the past, can form shrewd conjectures of the future rise and fall of the market. Such men are called speculators. By lucky guesses a few of them make estates; but many others, less fortunate, not only lose what they possessed but involve innocent creditors in their speculations. The transition from riches to poverty, from good credit to insolvency is sometimes rapid. In other cases it is slow, but the more slow the more extensive is the ultimate crash. Where there are banks [*397]and many lenders, an artificial credit may be supported for some time. The affairs of the declining debtor are known to none but himself, and even he from self-love and sanguine hopes is often deceived. In the meantime others, misled by appearances, continue to trust him; while his substance is wasting away between usurers and brokers, lawyers and sheriffs.

The contiguity of the West-India islands to Charlestown affords temptations to many mercantile adventurers; which, as they may be commenced without solid capital, frequently prove ruinous to those concerned. The voyage is often begun and ended within sixty days, and the cargo furnished on the credit of a note for that period. When the speculation succeeds all is well. It pays expenses and yields a handsome profit; but orders or decrees from european sovereigns, storms, tempests, and sudden changes in the market price of commodities, not unfrequently blast the fairest prospects; and suddenly substitute a heavy load of debt and sometimes complete ruin, where immense profits were in a train of being realised.

Securityship is another source of debt. Bondsmen are required by the state from most of its public officers and frequently from private purchasers of property. A few years often make a material alteration both in the circumstances and character of the principal, which is neither known nor

suspected by his security. A safe act is at first contemplated, but time or unforeseen circumstances make it the reverse and involve an innocent man in the mis[*398]fortunes of his friend. The great advance in the price of articles sold on long credit, induces sellers to prefer that mode of selling; and the profits made by purchasers occasionally exceeding the usual rate of interest, induce purchasers to take the bait. This sometimes proves harmless, but often injurious both to them and their securities.

Speculators are the readiest to be extensively involved in the toils of debt; but the most cautious are sometimes unavoidably entangled. There are few countries in the world where the expenses of living, especially in a tolerably decent style, are higher than in Charlestown. In such a place even a temporary failure of business produces serious consequences. With many the profits and the labors of the day supply its wants. Though the first, from sickness or other causes, should fail, the latter go on and can only be supplied by credit. In this manner cautious honest men are sometimes involved. Debt, like a millstone, weighs them down so that their future extrication is always difficult and often impracticable. The plain furniture of a decent house for the accommodation of a new married pair bought on credit, sometimes involves embarrassments which last for years. So many debts are contracted from these various sources that few individuals are clear of them. Unembarrassed estates are rare, and their real value is seldom known till their owners die; especially where mutual credits are given and accounts remain for years, as is too often the case, without a final settlement. The banks have introduced a germ of punctuality among that class of [*399]people who do business with them; but these are not one in fifty of the whole inhabitants. He that commences business of any kind, with the means and the inclination to give general credit, must be both cautious and fortunate or he will lose not only profits but capital. His customers will be numerous; but their payments will be so tardy, irregular, and so often withheld, that no dependence can be placed on them. On these subjects a reform is beginning to take place. The necessity and advantages of punctuality are more generally known and its votaries increase. Credit is oftener withheld or more cautiously given than formerly. The necessity for it in agriculture has given it a currency in other cases, and has carried it so far as to make debt very common, and punctual payments very rare.

Insolvent debtors enjoy some peculiar privileges in Carolina. When taken into custody, if they give security for their keeping within prescribed bounds, they are indulged with ample limits comprehending in Charlestown a space equal

to two or three squares. On petition and a surrender of all their property to their creditors they may after ten days notice regain their liberty. To prevent this catastrophe, some make equivalent private surrenders to trustees for the benefit of their creditors. In the first case they are discharged from the claims of all creditors who have sued. In the latter, from all who accept of the terms of assignment. There is no bankrupt law in Carolina, nor any that bars a creditor who [*400]has neither sued nor compromised with the debtor from demanding payment from his future earnings. When this catastrophe takes place, new measures are generally adopted. The failing merchant commences broker. The planter whose property is taken from him becomes manager for some of his more fortunate agricultural acquaintances. In both cases they recommence business with a stock of experience that may be of immense service in their future operations. By the aid of industry and sobriety they may do well and retrieve what they have lost; but if they are so far broken down with their misfortunes as to give themselves up to habits of indolence and intoxication, they are gone for ever; and the sooner they die the better it is likely to fare with their families. If the property should be kept together during the life of its embarrassed possessor, when he dies new scenes open. The whole amount of debts and credits is then brought to view. The estate is found to be insolvent to the surprise of many, and especially of the unsuspecting widow. All her energy becomes immediately necessary for her helpless family. In such extremities the female character in Carolina has shone with peculiar lustre. Two obvious and common resources are open to the surviving parent. She may keep a lodging house, or open a school. In these or some other modes of making a livelihood widows engage, and often with surprising success. Steady to their purpose they pursue the present object without being drawn aside by splendid probabilities of remote advantages. By their judicious management, estates have been re[*401]trieved--families raised--sons and daughters, knowing that their prospects of paternal fortune are cut off, are educated strictly and early taught to depend on their own exertions for their future maintenance and advancement. From a mother's care they rise, by the fall of their father's and are presented to their country fortified with virtuous habits and honorable principles. Such have been the consequences both good and bad of the disposition to contract debt which abounds in the state.

CHAP. XI.

THE unexpected but successful struggle for independence unsettled every thing. To bring order out of confusion was no easy matter. In the course of the revolution many things were done on the principle of sacrificing minor objects to the public safety, which admit of no justification and can only be palliated by the plea of necessity. The prohibition of all exportation from the country was a measure early enjoined by authority, and enforced by sound policy. This brought after it an obstruction of the regular course of justice; for hard would have been the fate of planters to be compelled to pay their debts when their country forbade the sale of their crops. The commencement of hostilities required that troops should be raised, and that imposed a necessity of emitting bills of credit for their maintenance. To support the credit of these bills, they were made a tender in payment of debts. As they were emitted without solid funds for their redemption, they progressively depreciated. Many contracts made at different periods, payable in these bills, were yet to be fulfilled. Many debts contracted prior to the war, were wholly and others partially cancelled by these bills. When the war was ended, and real money introduced, to do justice in every case between debtor and creditor was impossible. It was necessary for the legislature to fix some rule. This occupied their attention at their first meeting after the evacuation of Charlestown. As the least of all possible evils, they agreed on a scale of depreciation which fixed the value of the paper bills at different periods in a relative proportion to the commodities of the country, compared with their prices anterior to the revolution. This scale began in April 1777 at £108 10s for £100, and ended May 10th 1780 at £5,248 for £100, and credits were accordingly to be given for payments on all subsisting contracts. Where the contract no longer subsisted, and the evidence of the debt had been destroyed on the receipt of nominal payment in depreciated bills, no redress could be obtained. This produced great inequality and injustice. No remedy in the power of the legislature could be applied on a general scale without producing greater injustice than it was intended to obviate.[Footnote omitted] The evils resulting from depreciation, and the best, though partial, rule of the legislature for lessening them, were soon followed by others of greater magnitude. The revolution took place at a time when immense sums were due from the inhabitants of Carolina to the inhabitants of Great-Britain. The non-exportation agreement of the americans, and the restraining acts of the british parliament, both of which took place in the first period of the revolution, made remittances impossible. To this load of old debt was added an immense mass of what was new. When the war ended, the planters found desolate plantations and very few laborers. To repair the one and purchase the other,

they were in some degree compelled to contract debts. Urged by speculation, they did not always content themselves with moderate supplies for necessary purposes; but in too many cases embarrassed themselves with pecuniary engagements for the discharge of which the most favorable seasons, largest crops, and highest prices for the same would have been scarcely sufficient. The merchants, knowing the value of the staple commodities of Carolina, were very liberal of credit to the planters; but on terms of enhanced price, as a security against losses and protracted payments. Misfortunes love a train. When plentiful crops were necessary to support the credit of the country, a series of unfavorable seasons, and of desolating freshets, impaired its resources. The little of gold and silver that was in circulation soon found its way to Great-Britain.

The people of Carolina had been but a short time in the possession of peace and independence when they were brought under a new species of dependence. So universally were they in debt beyond their ability to pay, that a rigid enforcement of the laws would have deprived them of their possessions and their personal liberty and still left them under incumbrances; for property, when brought to sale under execution, sold at so low a price as frequently ruined the debtor without paying the creditor. A disposition to resist the laws became common. Assemblies were called oftener and earlier than the constitution or laws required. The good and evil of representative government became apparent. The assemblies were a correct representation of the people. They had common feelings, and their situations were in most cases similar. These led to measures which procured temporary relief but at the expense of the permanent and extended interests of the community. Laws were passed in which property of every kind was made a legal tender in the payment of debts though payable according to contract in gold or silver. Other laws installed the debt, so that of sums already due only a third, and afterwards only a fifth, was annually recoverable in the courts of law. Numbers were clamorous for large emissions of paper money armed with the sanction of a legal tender. This old resource in cases of extremity, had been so overdone in the revolutionary war, that many doubted the possibility of attaching credit to any thing in the form of bills of credit. After some time an emission of £ 100,000 sterling secured by a mortgage of land, or a deposit of plate, was risked. The smallness of the sum, and the ample security of the fund on which it was emitted, together with the great want of some circulating medium, and an agreement of the merchants to receive it in payment at its nominal value, gave it credit and circulation.

The effects of these laws, interfering between debtors and creditors, were extensive. They destroyed public credit and confidence between man and man; injured the morals of the people, and in many instances ensured and aggravated the final ruin of the unfortunate debtors for whose temporary relief they were brought forward. The procrastination of payment abated exertions to meet it with promptitude. In the mean time interest was accumulating, and the expenses of suits multiplied by the number of instalments. At no time before nor since, were the fortunes of attorneys so rapidly or so easily made. At no period has an equal number of planters been involved in embarrassments from which they were never extricated, or only extricated by more than ordinary sacrifices.

The eight years of war in Carolina were followed by eight years of disorganization, which produced such an amount of civil distress as diminished with some their respect for liberty and independence. Several apprehended that the same scenes which had taken place in England in the 17th century after a long and bloody civil war, would be acted over again in America by a fickle people who had neither the fortitude nor the wisdom to govern themselves. Peace, and the most perfect liberty to make such laws and constitutions as the people pleased, had not hitherto brought in their train the blessings expected from them, but the power of making such alterations in both as promised to procure them were among the privileges of freemen. Peace and liberty were found inadequate to promote public happiness without the aid of energetic government. The axe of reform was laid at the root of the political evils under which the country groaned. A constitution to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty, was wanting. To obtain such an one Carolina concurred with the other states to meet in a general convention, and appointed Henry Laurens, John Rutledge, Charles Cotesworth Pinckney, Pierce Butler, and Charles Pinckney to attend and act in her behalf. They agreed upon and submitted to the people a plan of general government; by which every legislative power necessary for national purposes was vested in a congress, consisting of two branches, a senate and house of representatives. The former to be chosen by the legislatures and the latter by the people of the several states. And a supreme executive officer with the name of president, was charged with the execution of the national laws and the care of the national interests. A supreme judiciary was also organized to decide all questions to the decision of which state judiciaries were improper. Thirteen independent

states were formed into one nation as far as their common interests were concerned; and one uniform legislative, executive and judicial power pervaded the whole. The individual states were left in full possession of every power for their interior government, but restrained from coining money, emitting bills of credit, making any thing but gold and silver a tender in payment of debts, passing any bill of attainder, ex post facto law, or law impairing the obligation of contracts. This constitution was submitted to a convention of the people of South-Carolina consisting of 224 members, by which it was accepted and ratified [Footnote omitted] on behalf of the state on the 23d day of May 1788. Their acceptance of a constitution which, among other clauses, contained the restraining one which has been just recited was an act of great self-denial. To resign power in possession is rarely done by individuals, but more rarely by collective bodies of men. The power thus given up by South-Carolina, was one she thought essential to her welfare, and had freely exercised for several preceding years. Such a relinquishment she would not have made at any period of the last five years; for in them she had passed no less than six acts interfering between debtor and creditor, with the view of obtaining a respite for the former under particular circumstances of public distress. To tie up the hands of future legislatures so as to deprive them of a power of repeating similar acts on any emergency, was a display both of wisdom and magnanimity. It would seem as if experience had convinced the state of its political errors, and induced a willingness to retrace its steps and relinquish a power which had been improperly used.

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