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*The William and Mary Quarterly* is published in January, April, July, and October by the Institute of Early American History and Culture, Williamsburg, Virginia. The Institute does not assume responsibility for statements of fact or of opinion made by the contributors.

Yearly subscription, \$5.00; student subscription, \$2.00; Armed Forces subscription, \$3.00; single copies, \$1.50.

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# The WILLIAM AND MARY QUARTERLY

THIRD SERIES, VOL. XXII, No. 3

JULY 1965

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Given the facts of the domestic situation, it is not altogether surprising that the clergy should renounce its previous endorsement of the Revolution. Probably in most instances the reversal was not simple expediency but reflected a genuine change in feeling toward events in France. But it was events at home, not abroad, that had wrought the dramatic reversal of clerical attitudes toward France and led finally to Morse's spectacular charges of 1798.

## The Insolvent Debtor in Rhode Island 1745-1828

Peter J. Coleman\*

RHODE Island was by no means the first American colony to legislate in the insolvency field, but it was the only one to devise a system of relief which survived both the Revolution and the adoption in 1800 of a national bankruptcy law. This continuity is all the more impressive in view of the fact that Connecticut did not adopt enduring general legislation dealing with insolvency until 1820, and that Massachusetts resisted this innovation even longer—until after the Panic of 1837.<sup>1</sup>

If Rhode Island could make some claim to distinction, even she delayed developing a system of relief for insolvent debtors until September

\* Mr. Coleman is editor of the Society Press of the State Historical Society of Wisconsin.

<sup>1</sup> The Connecticut law discharged the insolvent debtor from prison but left his obligations intact. This system remained in effect until 1853 when the law was changed to give the debtor who paid 70 or more cents on the dollar a complete discharge. See *The Public Statute Laws of the State of Connecticut . . . 1821* (Hartford, 1821), 282-285; and *The Statutes of the State of Connecticut . . .* (New Haven, 1854), 507-512, 512-523. The Massachusetts law of 1838 was a full bankruptcy measure, but it applied only to those who owed at least \$500. However, the General Court had before this been relatively liberal in its treatment of poor debtors, exempting from attachment a long list of things which included household items, tools, schoolbooks, and livestock and providing that no debtor could be imprisoned for petty debts. In 1831 it had forbidden the imprisonment of females for debt and in 1834, the imprisonment of any citizen for debt. See Theron Metcalf and others, eds., *General Laws of the Commonwealth of Massachusetts, 1836-1853* (Boston, 1854), 83-99, 203-204, 230-231, 316-320, 381-382, 477-481, 520-521, 674-675, 783-784, 829, 833-834, 868; Theron Metcalf, ed., *The General Laws of Massachusetts, From the Adoption of the Constitution* (Boston, 1823-35), I, 315-317, II, 151-152, 272, III, 374-375, IV, 179-180; and Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *Mississippi Valley Historical Review*, XLVIII (1961-62), 252-269.

Maryland was probably the first colony to adopt insolvency legislation. There was continuity in the handling of the problem of insolvent debtors in New York; but the basic law was a post-Revolutionary innovation. See F. Regis Noel, *A History of the Bankruptcy Clause of the Constitution of the United States of America* (n.p., n.d.), 43-45; and *Laws of the State of New York, 1781-1801* (Albany, 1802), I, 428-439.



1745. The law adopted by the General Assembly in that year permitted an insolvent debtor (one whose debts exceeded his assets) to be released from prison provided he assigned his property for the benefit of his creditors and gave a bond guaranteeing payment of his debts in full at the end of a five-year period of grace. Thus the remedy discharged the person from prison and prevented his being rearrested for the same debts, but it did not discharge the debts themselves.<sup>2</sup>

In adopting this law, the General Assembly reasoned that neither society, nor the economy, nor the creditor class benefited from a law which, by casting a debtor into jail and holding him there until he had met his obligations, reduced rather than increased the likelihood of his ever becoming solvent. Although most debtors could work either in the prison building itself or within the jail limits (an area sometimes encompassing the town's commercial district), the system of imprisonment for debt frequently failed to stimulate the debtor to try to extricate himself. Indeed, it often had the opposite effect, and the debilitating experience pushed many a debtor into a more or less permanent state of pauperism. The law of 1745, therefore, was a tentative step in the direction of providing for the rehabilitation of the honest but hapless victim of misfortune and wrongheadedness. It sought to prevent the useless dissipation of the debtor's productive energies.

The General Assembly balanced its compassion for the honest but unfortunate debtor by prescribing savage punishments for the rogue who took advantage of his creditors. A debtor who perjured himself or who attempted to defraud his creditors was liable to be pilloried for three hours, to have his ears cropped, to be barred from holding public office, to be deprived of his voting privileges, and to be disqualified from giving evidence in any court of law.

A decade later, in June 1756, the General Assembly enacted a piece of temporary legislation which soon became the basis for a full-fledged system of bankruptcy relief.<sup>3</sup> The preamble to the measure shrewdly fended off any potential royal veto by announcing that the General Assembly desired to follow "the example of our Mother Country," and then went on to declare that many unfortunate debtors had been for a long time confined in prison and that others, "dreading the Miseries of a Gaol,"

<sup>2</sup> Rhode Island Colony Records, V (1729-45), 720-722, Rhode Island State Archives, State House, Providence.

<sup>3</sup> *Rhode Island Acts and Resolves* (n.p., n.d.), 24-29.

had either concealed themselves or absconded, to the detriment of their creditors and, "more especially in these troublesome Times," to the "Prejudice" of the colony.

Simply stated, the act permitted insolvent debtors, whether imprisoned, concealed, or absconded, to apply for relief to the Superior Court of Judicature, the colony's highest court. If granted, the debtor was required to deliver and assign all his property (reasonable and necessary bedding and wearing apparel for himself and family excepted) to three court-appointed commissioners who, in turn, were to distribute the proceeds among the creditors on a proportional basis. Both the debtor's body and his debts were then discharged against all executions except those due the Crown. Any property subsequently inherited by the insolvent debtor could be attached by his creditors. Although this last provision seemingly modified the relief granted, it merely authorized the creditors to realize upon all the assets, actual and potential, inventoried by the insolvent in his petition. Moreover, the act did give the relief absolutely essential in any thoroughgoing bankruptcy legislation: the protection from attachment of all property earned in the future. Without this provision, the debtor lacked the incentive necessary to self-rehabilitation.

This law went far beyond contemporary English practice by giving relief to all insolvent debtors, not just traders. But it extended only to those debtors who were insolvent on June 1, 1756, and was, therefore, a temporary measure characteristic of so much eighteenth-century legislation. Nevertheless, it apparently proved so effective that individuals and co-partners soon began to petition the legislature seeking the benefit of the act. Within a decade these memorials had become sufficiently numerous to warrant passage of a general law requiring that a property inventory be annexed to each petition.<sup>4</sup> If granted, the prayer of the memorial became a special act of insolvency which, in effect, authorized and directed the Superior Court to appoint commissioners, supervise the assignment of the debtor's assets, and issue a certificate of discharge. What began as a temporary device to relieve hardship during the opening phase of the French and Indian War thus became the routine method by which insolvent debtors obtained special acts of bankruptcy.

The court seems to have acted as only the agent of the legislature. Apparently it had no independent authority to pass on the substantive

<sup>4</sup> *Acts and Laws of the English Colony of Rhode-Island and Providence-Plantations, in New-England, in America . . .* (Newport, 1767), 207.



merits of the petitioner's claim to bankruptcy relief.<sup>5</sup> But this was in keeping with the special status of the Rhode Island General Assembly. As it was wont to do, the Assembly acted first in its judicial capacity by examining witnesses, weighing evidence, and making a determination on the merits of the petition, then in its legislative capacity by passing a special act of insolvency. The separation of powers lay almost a century into the future, and it was to require a constitutional revolution—the Dorr War—to achieve it.

It is difficult to tell from the printed record that an orderly bankruptcy system existed in Rhode Island, for most references to it were obscure, indirect, or scattered. Neither the petitions nor the special acts of insolvency were printed in the *Acts and Resolves*; nor did J. R. Bartlett print them in his *Colonial Records* (1856-65). There are oblique references, usually to procedural questions, scattered through the session laws;<sup>6</sup> most legislative sessions concluded with a resolution continuing all pending petitions, not just insolvency ones, to the next meeting;<sup>7</sup> the 1798 revision of the statutes included the brief article requiring petitioners to submit inventories of their general property, but buried it in a long statute dealing with petitions in general;<sup>8</sup> and, finally, the 1810 session laws included a reprint of the 1756 statute as an appendix.<sup>9</sup> It was as if the legislature

<sup>5</sup> The original act, apparently, gave the courts jurisdiction; thereafter they acted only as the legislature's agent. For examples, see Records of the Superior Court of Rhode Island, IV (Mar. 1789-Sept. 1801), 88-89, 134-135, 204-205, 205-208, 320-322, 323-324, 332-333, 333-334, 334-335, 335-336, 337-338, 368-369, 382-387, 439-441, 463-464, in the office of the Clerk of Rhode Island Supreme Court, Providence. Neither the petitions themselves nor the legislative journals indicate why the General Assembly voted to grant some petitions but to deny others. In all probability, a petitioner who demonstrated through his inventory that he was indeed insolvent, who appeared before the Assembly to plead his case, and who secured the support of his creditors stood a good chance of obtaining relief. In a state as small as Rhode Island it was difficult for a man claiming to be insolvent to conceal the true state of his affairs from either his creditors or the legislature. On the other hand, the conduct of politics was frequently intensely partisan and many petitions may have been denied out of pure spite.

<sup>6</sup> For oblique references, see Feb., June, Sept. 1768, Oct. 1800, Feb. 1803, June 1806, June 1812, Oct. 1817, Feb. 1818, *Rhode Island Acts and Resolves*, 74-75, 28-29, 35 and 48, 37, 54, 88-89, 149, 243 and 255, and 257.

<sup>7</sup> For examples, see May 1785 and May 1791, *ibid.*, 37, 25.

<sup>8</sup> *The Public Laws of the State of Rhode-Island, 1798 . . .* (Providence, 1798), 134-135.

<sup>9</sup> *Public Laws of the State of Rhode-Island and Providence Plantations, passed since the session of the Hon. General Assembly in January, A.D. 1798* (Providence, 1810), 133-140.

assumed that Rhode Islanders were thoroughly conversant with the bankruptcy system, or that the General Assembly deliberately sought to conceal its existence from residents of other states.

With one minor and one major exception, this system of dealing with insolvent debtors remained in effect in Rhode Island from 1756 to 1828. The minor exception involved scattered efforts between 1767 and 1771 to draft and enact a general bankruptcy law. These efforts succeeded in August 1771, but the statute was short-lived, being repealed the following May. It authorized the insolvent debtor, not his creditors, to initiate proceedings, and permitted the debtor to retain up to 5 per cent of the net proceeds of his estate if he repaid three quarters or more of his obligations. Except for what was due the Crown, the law discharged both the person and his debts.<sup>10</sup>

The major exception, adopted in 1820, fundamentally altered the nature of the relief granted. It provided only for the release of the insolvent debtor from prison. Thus the debts themselves were not excused, and any property the debtor later acquired could be attached by his creditors. The insolvent was entitled to retain up to \$150 worth of chattels—wearing apparel, bedding, furniture, and implements of trade or husbandry. All the rest had to be assigned for the benefit of his creditors.<sup>11</sup>

This retreat from a full bankruptcy law was prompted by the decisions handed down the preceding year in the cases of *Sturges v. Crowninshield* and *McMillan v. MacNeill*.<sup>12</sup> The *Crowninshield* case tested the constitutionality of a New York certificate of discharge issued for a debt which had been contracted before the passage in 1811 of a general law of bankruptcy. The Supreme Court of the United States seemed to rule unanimously against the validity of such a discharge. Although it could have been inferred from the decision that all contracts entered into after the 1811 statute made the bankruptcy law an implied condition of the contract and thus constitutional, the more common view in business and

<sup>10</sup> Aug. 1771, May 1772, *Rhode Island Acts and Resolves*, 50-59, 16. For earlier efforts, see June 1767, June 1768, Oct. 1768, and June 1771, *ibid.*, 33, 31, 62, 31.

<sup>11</sup> *Public Laws of Rhode Island passed since the February, 1817 session* (Providence, 1820), 294-302. For contemporary reactions to the change, see the *Providence Gazette*, Feb. 28, Mar. 2, July 3, 17, 1820. No significant changes in this law were made for the next generation. See *Public Laws of the State of Rhode-Island and Providence Plantations, . . . 1844* (Providence, 1844), 210-219; and *The Revised Statutes of the State of Rhode Island and Providence Plantations . . .* (Providence, 1857), 489-496.

<sup>12</sup> <sup>4</sup> *Wheaton* 122-208, 209-213.



legal circles was that the Court would soon prohibit all state bankruptcy legislation.

These fears were strengthened by the decision in the MacNeill case in which the Supreme Court threw out a certificate of bankruptcy obtained under a Louisiana statute. Perhaps the justices objected to a state law having extraterritorial effect (the insolvent debtor had entered into his contract in South Carolina); but, unlike in the Crowninshield case, the contract had been made after, not before, the passage of the Louisiana statute. Although the Court failed to announce its position in clear, unambiguous language, taken together these two decisions seemed to indicate that all bankruptcy discharges, whether retrospective or prospective, would eventually be declared unconstitutional.

Rhode Island, of course, was not directly affected as in 1819 it had no general bankruptcy law. Nevertheless, the Crowninshield and MacNeill decisions jeopardized the discharges granted to Rhode Island petitioners by special acts of insolvency, and it was to protect the parties to such bankruptcy proceedings that the General Assembly acted in 1820 to limit the scope of relief to the mere discharge of the insolvent debtor from prison. Either because they did not know about the statute of 1820, or because they sought a discharge of their debts as well as their persons, many petitioners continued to ask for the benefit of the 1756, not the 1820, act.

The Supreme Court finally clarified its position in *Ogden v. Saunders* (1827)<sup>13</sup> when the justices divided four to three in upholding prospective bankruptcy statutes and in denying them extraterritoriality; but the Rhode Island General Assembly made no effort to take advantage of this favorable ruling to restore full bankruptcy relief to insolvent debtors. Instead, it left the more limited 1820 statute on the books. This is all the more inexplicable in view of the Supreme Court's decision in a Rhode Island case, *Mason v. Haile*,<sup>14</sup> which was also decided in 1827 and which spoke directly to the validity of the full relief which Rhode Island had traditionally granted its insolvent debtors.

The facts were that Haile, a debtor from the town of Foster in Providence County, had given his bonds to his creditor Mason in March 1814, pledging to remain in prison "until he shall be lawfully discharged." Three months later he applied to the General Assembly for the benefit of the

<sup>13</sup> 12 *Wheaton* 213-369.

<sup>14</sup> 12 *Wheaton* 370-383.

Act of June 1756. The legislature received his petition and authorized him to give his bond to the sheriff that he would return to prison if and when his petition was denied. Haile was released from prison contrary to the bonds he had given Mason, and he enjoyed a stay of execution throughout the period in which his petition was pending. Mason then brought an action to recover the original bonds, arguing that Haile stood to forfeit them because he had not remained in prison as he had promised to do. The validity of the special act of the legislature discharging Haile's debts, passed in February 1816, was not an issue in the case.

Speaking for the majority, Justice Smith Thompson declared that the legislature's discharge of Haile from prison had not impaired the obligation inherent in the original contract—Haile's promise to repay his debt to Mason. Rather, Thompson argued, the state had merely discharged Haile from the obligation inherent in the remedy attached to the contract—Haile's promise, secured by bonds, to stay in prison until he discharged the debt. Anyway, Thompson continued, the General Assembly had followed long-established Rhode Island practice.

Justice Bushrod Washington disagreed with Thompson's argument. He contended that there was only one obligation in the contract—to remain in prison until the debt was lawfully discharged. Although he conceded that the Rhode Island system of relief was an ancient one, and although he did not deny the constitutional power of a legislature to abolish imprisonment for debts acquired in the future, he asserted flatly that the General Assembly had impaired the original contract and that, according to the Crowninshield rule, it had done so retrospectively.

Over the course of the seventy-two years, from 1756 until 1828 when the pressure of business prompted the legislature to transfer original jurisdiction to the courts,<sup>15</sup> a total of nearly 2,400 insolvency petitions were submitted to Rhode Island's General Assembly. Despite the unsavory reputation for preferring debtors over creditors pinned on Rhode Islanders by Federalist propagandists at the time of the struggle over ratification of the Constitution, the General Assembly proved to be a consistent and

<sup>15</sup> The General Assembly took the first step in transferring original jurisdiction in Oct. 1825, but suffered several changes of heart during the next few years. As a consequence, petitions for relief were still being submitted to the legislature as late as 1831. See Oct. 1825, Jan., June 1826, Jan., May 1828, Jan. 1829, Jan., May, June, Oct. 1831, Jan. 1832, *Rhode Island Acts and Resolves*, 44 and 75, 31, 41, 20 and 52, 51, 52 and 53, 50, 50, 62, 39, and 3 and 5.

INSOLVENCY PETITIONS  
SUBMITTED TO THE RHODE ISLAND  
GENERAL ASSEMBLY, 1756-1828

|         | Granted | Denied | Total |
|---------|---------|--------|-------|
| 1756-63 | 1       | 4      | 5     |
| 1764    | 11      | 11     | 22    |
| 1765    | 9       | 5      | 14    |
| 1766    | 8       | 6      | 14    |
| 1767    | 11      | 11     | 22    |
| 1768    | 11      | 5      | 16    |
| 1769    | 5       | 2      | 7     |
| 1770    | 18      | 2      | 20    |
| 1771    | 2       | 0      | 2     |
| 1772    | 0       | 0      | 0     |
| 1773    | 3       | 1      | 4     |
| 1774    | 6       | 4      | 10    |
| 1775    | 2       | 1      | 3     |
| 1776    | 2       | 0      | 2     |
| 1777-83 | 0       | 0      | 0     |
| 1784    | 1       | 0      | 1     |
| 1785    | 11      | 0      | 11    |
| 1786    | 13      | 0      | 13    |
| 1787-88 | 0       | 0      | 0     |
| 1789    | 3       | 0      | 3     |
| 1790    | 2       | 1      | 3     |
| 1791    | 13      | 0      | 13    |
| 1792    | 30      | 0      | 30    |
| 1793    | 2       | 0      | 2     |
| 1794    | 11      | 0      | 11    |
| 1795    | 11      | 2      | 13    |
| 1796    | 11      | 4      | 15    |
| 1797    | 21      | 13     | 34    |
| 1798    | 14      | 9      | 23    |
| 1799    | 13      | 19     | 32    |
| 1800    | 23      | 24     | 47    |
| 1801    | 11      | 33     | 44    |

|        | Granted | Denied | Total |
|--------|---------|--------|-------|
| 1802   | 13      | 41     | 54    |
| 1803   | 9       | 43     | 52    |
| 1804   | 20      | 46     | 66    |
| 1805   | 26      | 52     | 78    |
| 1806   | 24      | 33     | 57    |
| 1807   | 21      | 54     | 75    |
| 1808   | 13      | 49     | 62    |
| 1809   | 43      | 60     | 103   |
| 1810   | 20      | 46     | 66    |
| 1811   | 24      | 43     | 67    |
| 1812   | 28      | 52     | 80    |
| 1813   | 39      | 28     | 67    |
| 1814   | 35      | 33     | 68    |
| 1815   | 41      | 58     | 99    |
| 1816   | 63      | 90     | 153   |
| 1817   | 58      | 102    | 160   |
| 1818   | 127     | 40     | 167   |
| 1819   | 20      | 25     | 45    |
| 1820   | 16      | 43     | 59    |
| 1821   | 25      | 35     | 60    |
| 1822   | 14      | 18     | 32    |
| 1823   | 40      | 29     | 69    |
| 1824   | 54      | 48     | 102   |
| 1825   | 31      | 30     | 61    |
| 1826   | 0       | 8      | 8     |
| 1827   | 0       | 22     | 22    |
| 1828   | 2       | 4      | 6     |
| TOTALS | 1,085   | 1,289  | 2,374 |

jealous guardian of property interests. Out of 166 petitions submitted between 1756 and 1788 it rejected almost one third, and out of 2,172 petitions submitted between 1789 and 1828 it rejected almost one half.<sup>16</sup>

These petitions provide a running commentary on Rhode Island social

<sup>16</sup> Compiled from Granted Petitions of the General Assembly, volumes 9-36 (1756-1828), and Denied Petitions of the General Assembly (1756-1831), mostly unbound, Rhode Island State Archives.

and economic history. They are particularly useful as an index to business conditions, especially after 1789. On the average, sixteen petitions were submitted annually in the seven years following the Treaty of Paris in 1763. Except for the year 1774, when the General Assembly received ten petitions, the years immediately preceding the Revolution were not marked by a high incidence of insolvency. This suggests that the commercial restrictions imposed by the imperial authorities were not, in Rhode Island at any rate, as burdensome as the colonial propagandists would have us believe. No insolvency petitions were submitted during the years from 1777 to 1783 because debtors enjoyed a stay of execution throughout the Revolution. The so-called Critical Period seems not to have been unduly difficult in Rhode Island; only twenty-eight petitions were submitted in the six years from 1784 to 1789, or an average of less than five a year. This contrasted sharply with the next decade. The incidence of insolvency rose from three cases in 1790 to thirty in 1792. After a temporary decline the following year, the number of bankruptcy petitions traced a steadily upward curve reaching seventy-eight in 1805, then soaring to over one hundred in 1809 following the imposition of the Embargo and the closing of the slave trade. The average stood at almost seventy a year until 1815, but it shot up to 160 during the years of the postwar depression, 1816-18. The Panic year of 1819 saw the General Assembly dispose of a mere forty-five petitions. It seems clear from this pattern, as well as from a comparable one in the two years preceding the depression of 1825, that these economic crises were the climactic consequences of the increased incidence of insolvency. By comparison, the panics themselves—and their aftermaths—produced relatively fewer business failures.

The bankruptcy procedure was of greater significance in the economic history of Rhode Island than this bald statistical recitation may indicate. Until 1817 an important feature of the system was a provision that a debtor enjoyed a stay of execution so long as his petition was pending before the General Assembly.<sup>17</sup> This served to release him from prison temporarily, or, if he were merely anticipating failure, to keep him at liberty. As the legislature quickly got into the habit of not acting on a petition in the same session in which it was presented, the mere request for an act of insolvency gave the debtor a respite of at least three months

<sup>17</sup> *Public Laws of Rhode Island passed since the 1817 session*, 243. See also pp. 255 and 257 for laws passed in 1817 and 1818 abolishing the right of insolvent petitioners to be heard in argument but granting them freedom from arrest during session time. An earlier law passed on June 21, 1816, had amended the kinds of



and generally longer. Time after time, the Assembly was too burdened to dispose of petitions expeditiously; many memorials for relief were continued from session to session until the stay of execution had stretched over several years.<sup>18</sup> These prolonged delays proved a boon to many insolvents, especially merchants. For some, the delay meant time in which to weather a temporary embarrassment until a ship, quite literally, came home—or even time in which to fit out a trading venture to the Guinea coast or to the Caribbean.

Persons more or less directly dependent upon maritime trade dominated by a wide margin the list of applicants for acts of insolvency. Laborers ranked second in number, but many of them were formerly petty merchants, tradesmen, and craftsmen who had fallen on evil days. Then came farmers and yeomen, carpenters and blacksmiths, gentlemen and esquires, coopers and bakers, and a host of other businessmen and artisans. As might be expected, the shifting occupational pattern of insolvency reflected changes in the Rhode Island economy. This was particularly the case after 1815 when the number of petitions from insolvent cotton manufacturers rose sharply.<sup>19</sup>

Nor, with one interesting exception, are there any surprises in the geographical pattern reflected in applications for acts of insolvency. More than one quarter of the petitions (almost 700) originated from Providence. Though this proportion reflected with considerable accuracy the town's relative importance as a center of population, it very much understated the town's soaring importance as a commercial, financial, and industrial center. In short, the community which produced about one third

property that were exempt from attachment. The list included a bed and bedding, necessary wearing apparel, one cow or hog, tools up to \$15 in value, and, for each family member, a chair, knife, fork, plate, cup, and saucer up to a combined total for the entire family of \$50. See *Public Laws of Rhode Island passed since the session of the General Assembly in September, 1814* (Providence, 1817), 226.

<sup>18</sup> For examples, see *Granted Petitions*, XXIV, 153 (from Mar. 1787 to Mar. 1789); XXXVI, 39 (from May 1803 to July 1805); XXXIX, 98 (from Feb. 1808 to Oct. 1810); XL, 101 (from Oct. 1805 to Feb. 1812); and XLII, 17 (from June 1812 to Feb. 1814).

<sup>19</sup> The occupations listed most commonly by the petitioners were as follows: merchants and traders, 196; laborers, 194; farmers and yeoman, 84; mariners, 68; carpenters, 54; cordwainers, 48; blacksmiths, 30; gentlemen and esquires, 21; coopers, 18; shipwrights, 17; bakers, 15; tailors, 15; shopkeepers, 14; cabinetmakers, 13; masons, 13; innkeepers, 12; physicians, 11; butchers, 10; widows, 10; cotton manufacturers, 9; and weavers, 8. Another 56 occupations were listed on other petitions; 69 petitioners gave no information.

of the state's tax revenue and an even higher proportion of its wealth produced only one quarter of its insolvent debtors. In an oblique way this underscored Providence's economic vitality and resilience. Newport supplied a high proportion of the petitions submitted during the colonial period, mainly because it was the commercial center of southern New England and the largest town in the colony. But it was in the decade after 1815, when Newport gradually sank into the economic torpor from which it has never really recovered, that the incidence of bankruptcy there rose to its highest level.

An unusual situation prevailed in the northwestern hill country, a sparsely inhabited, economically backward, semi-depressed section of the colony and state. It produced 214 insolvent debtors, a figure exceeded only by Providence and matched only by Newport. The incidence of bankruptcy was about three times as high as in comparable communities further south along the Connecticut border. There is no obvious explanation for these figures, but it is worth noting that this was the Rhode Island equivalent of Shays'-Rebellion country, given over to marginal farming, woodcutting, and charcoal burning. One of the towns, Glocester, which produced 126 insolvency petitions, had a tradition of political radicalism and was the only backwoods town in the state to become a Dorrist stronghold during the constitutional upheaval of the early 1840's.<sup>20</sup>

Rhode Islanders became insolvent for a wide variety of reasons. Some petitioners merely recited a standard formula of "inevitable and unforeseen misfortune," but many of them described their difficulties in meticulous detail, thereby leaving a valuable source of social and economic data.

Wartime losses figured prominently in many petitions. Handley Chipman claimed that the Seven Years' War had broken up his Newport rum-distilling and soap-boiling business and that his efforts to save himself through a trading voyage had ended in disaster. Thomas Binket and Stephen Walkly of Providence attributed their insolvency to the bad debts they had acquired in supplying soldiers of the Rhode Island regi-

<sup>20</sup> For a fuller discussion, see the author's *The Transformation of Rhode Island, 1790-1860* (Providence, 1963), 254-294, especially p. 290. In numerical order, the petitions originated as follows: Providence, 696; Newport, 212; Smithfield, 138; Glocester, 126; Johnston, 91; South Kingstown, 82; North Providence, 80; Warwick, 78; North Kingstown, 77; Bristol, 75; Cumberland, 61; East Greenwich, 60; Scituate, 58; Foster, 54; Cranston, 50; Exeter, 40; Warren, 37; Coventry, 35; Burrillville (set off from Glocester in 1806), 34; Portsmouth, 30; Hopkinton, 24; Tiverton, 24; West Greenwich, 20; Richmond, 17; Charlestown, 16; Westerly, 13; Little Compton, 8; New Shoreham, 4; Barrington, 3; unknown, 43.



ment in 1761. Though the partners had been able to attach the pay of the soldiers, they had never recovered sufficient money to reimburse themselves for their trouble and expense, let alone the goods that they had sold.<sup>21</sup> John Andrews of Cranston also blamed bad debts for his difficulties. He explained that because he had held a lucrative position in the service of the King, he had been labeled a Tory when the Revolution broke out. To demonstrate his fidelity to the American cause, he had lent large sums to soldiers and officers. Their failure to pay their debts eventually (in 1794) reduced him to bankruptcy.<sup>22</sup> The widow Sarah Balch of Providence traced back the origins of her insolvency to the death of her husband almost ten years earlier in 1776 and to the destruction of their house by British soldiers during the wartime occupation of Newport,<sup>23</sup> while Charles Shearman of Warwick attributed his poverty to the depreciation of Continental currency.<sup>24</sup> Bela Jacobs, a Newport shipwright, pointed to the same cause. He asserted that his troubles had begun when, through ignorance, he had held on to Continental money. He had tried to recoup his losses by taking a voyage to the "southward," but he had contracted smallpox and had utterly failed to achieve prosperity.<sup>25</sup> William Tyler of Providence claimed in 1800 that he too had suffered heavy wartime losses, including a half share in a sloop and its cargo, and a third share in a schooner. He had also sustained heavy losses in 1783 when the Treaty of Paris sharply reduced the value of his two privateers and a large supply of military stores. Moreover, during the war he had imported paint and oil at an enormous premium in freight and insurance only to see prices plummet with the peace.<sup>26</sup>

Many individuals became insolvent indirectly. Simeon Pendleton, for instance, became executor of his father's estate in 1761; and, assuming that there were ample funds to meet all claims, he paid each creditor on demand. Soon creditors began appearing from as far north as Boston and as

<sup>21</sup> June 1758, May 1764, in *Granted Petitions*, X, 58; XI, 125.

<sup>22</sup> Oct. 1794, *ibid.*, XXIX, 34.

<sup>23</sup> Aug. 1784, *ibid.*, XXI, 138.

<sup>24</sup> Mar. 1789, *ibid.*, XXV, 99.

<sup>25</sup> Feb. 1793, *ibid.*, XXVIII, 62.

<sup>26</sup> Oct. 1800, *ibid.*, XXXIII, 86. At various times in the 1780's, Tyler owned or had interests in a number of Providence vessels. They included the brigantine *Diana*, the schooner *Nancy*, and the sloops *Polly*, *Two Sisters*, and *York*. See items 802, 2425, 2725, 3428, and 3666, in *Work Projects Administration, comp., Ship Registers and Enrollments of Providence, Rhode Island, 1773-1939* (Providence, 1941), I, pts. 1-2.

far south as New York. Their demands quickly exhausted the estate, and then plunged Pendleton himself into insolvency.<sup>27</sup> Similarly, Samuel Knight of Cranston gave security for his father's debts in 1783 and, when his father died at sea almost immediately afterward, the son became insolvent trying to meet the obligations he had assumed.<sup>28</sup> Uriah Mowry, a Gloucester farmer, was forced into debtor's prison in similar circumstances. His difficulties began when he gave bond for his brother's debts. Over the next twelve years he gradually became impoverished by the death of his brother, and the demands of a wife and ten children.<sup>29</sup> Thomas Hammond, Jr., of Newport also became insolvent by making himself responsible for the obligations of another—Benjamin Weeden of Jamestown. When Weeden was jailed for failing to support Susannah Fowler's bastard child, Hammond gave bond for the support payments. Though Weeden married Miss Fowler, he neglected to make good the payments owed to the town. Hammond was then imprisoned on the bond and thereby forced into insolvency.<sup>30</sup>

Two other examples illustrate the range of cases of insolvency by indirection. It was Benjamin Thurber's son-in-law who impoverished him. The pair carried on a profitable mercantile partnership in Providence between 1781 and 1784, but the agreement had to be dissolved when Samuel Chandler, the son-in-law, became deranged. Taking pity on him, Thurber paid his debts. By the time that Chandler died insolvent in 1789, Thurber himself had been reduced to want.<sup>31</sup> Another Providence merchant, Williams Thayer, was reduced to insolvency by the actions of his correspondents. Between 1783 and 1796 he carried on a lucrative partnership with Josiah Sturgis of Charleston, South Carolina. Deeply involved in the speculative rice trade to Europe, Thayer and Sturgis agreed to purchase \$300,000 worth of provisions for the account of their correspondents and to guarantee payment by endorsing their correspondents' paper. When the price of rice fell, the correspondents refused payment, thereby forcing Thayer into insolvency.<sup>32</sup>

Josiah Munro also failed through assuming obligations as the endorser of commercial paper. Between 1806 and 1811 he earned a comfortable liv-

<sup>27</sup> Aug. 1773 in *Granted Petitions*, XV, 58.

<sup>28</sup> Oct. 1792, *ibid.*, XXVII, 103.

<sup>29</sup> Feb. 1808, *ibid.*, XXXIX, 98.

<sup>30</sup> May 1774, *ibid.*, XV, 81.

<sup>31</sup> May 1790, *ibid.*, XXV, 34.

<sup>32</sup> June 1799, *ibid.*, XXXII, 30.



ing in a mercantile partnership with Caleb Greene. When the partners Samuel Lopez and Horatio S. Dexter failed in 1811, Munro and Greene lost about \$5,000. They dissolved their partnership and Munro tried to carry on alone, first by opening a grocery store in Bristol and then by running a boardinghouse in Providence. But a combination of sickness, the pressure of the times, bad debts, and the failure of others steadily reduced him to poverty. By 1817 he was himself insolvent.<sup>33</sup>

The case of Thomas Parker of Coventry illustrates how long the downward slope into insolvency was for many Rhode Islanders. In his petition of May 1791, he explained that he had once been in comfortable circumstances but, having many years earlier given bond for various persons, he had had to assume their debts when they failed. These obligations had pressed him so severely that he had been forced to sell out during the Revolution and had taken additional losses from accepting payments in depreciating Continental currency. To recoup, he then moved just across the border to Plainfield, Connecticut, where he bought a farm. When his creditors continued to harass him, he again sold out, moving this time to Saratoga, New York. But some of his creditors pursued him with their demands. Sickness, followed by the death of his wife, prompted him to return to Rhode Island to live with his son. As soon as he arrived in the state, however, his creditors thrust him into prison.<sup>34</sup>

Excessive competition wiped out some businessmen. Such was the fate of a Newport shopkeeper, Caleb Gardner, who protested in 1770 that newcomers had opened what he called "cash shops." He responded by cutting his prices below cost in the hope of forcing them out of business. His efforts misfired, and he soon found himself insolvent.<sup>35</sup> Competition also contributed to the insolvency of Benjamin Jenks of North Providence.

<sup>33</sup> May 1817, *ibid.*, XLVI, 51. Munro had been in business as a petty trader as early as 1795. In that year he was reported as part owner of the sloop *Lively* and in the following year of the sloop *Delight*. See items 430 and 1178 in W. P. A., comp., *Ship Registers and Enrollments of Newport, Rhode Island* (Providence, 1938-41), I. Greene did not fail but instead became affluent. For his shipping interests, see item 631, *ibid.*, and items 24, 656, 819, 825, 1543, 1099, 1193, 2354, 2782, 3522, 3526, in *Ship Registers of Providence*, I.

<sup>34</sup> Granted Petitions, XXVI, 21.

<sup>35</sup> June 1770, *ibid.*, XIV, 32. Gardner's inventory included a three-quarter interest in a Negro man named "Pero." With his petition granted, Gardner was able to make a fresh start. Within a few years he was an affluent and influential merchant and had at various times interests in no less than 14 trading vessels. Some were large craft and were employed in foreign trade. See items 128, 140, 197, 471, 646, 740, 927, 1086, 1438, 1590, 1775, 2000, 2062, and 2091 in *Ship Registers of Newport*, I.

In May 1797 he reported that he had first gone into debt through the depreciation of paper currency. In an effort to recover, he had turned to the manufacture of snuff, but the competition of larger, more efficient mills, a quarrel over water privileges, and changes in the excise law had made the venture unprofitable. His final effort to recoup, a trading partnership with Samuel Benchley, had also failed.<sup>36</sup>

Manufacturers came under heavy pressure after the War of 1812, and many of them proved unable to withstand the postwar depression. John S. Tripp of Providence, for example, complained that he had suffered many losses from the failure of his debtors, that he had been forced to pay as much as 24 per cent to get his paper discounted, and that he had slashed the price of his cotton goods in a futile effort to raise sufficient cash to meet his own obligations. These maneuvers delayed but did not prevent his failure.<sup>37</sup> Jonah Steere, a partner in the Columbian Manufacturing Company of Glocester, found himself largely responsible for the company's debts when one of the partners died, another absconded, and two others failed. Still another partner, Thomas Smith, failed when Steere's insolvency shifted the entire burden of the company's obligations on to him.<sup>38</sup> Such chain reactions were inescapable in Rhode Island since the legislature did not incorporate the first manufacturing enterprise until 1829 and did not authorize the system of limited partnerships until 1837. The privilege of limited liability was looked upon with suspicion by many businessmen, especially those whose antecedents were in maritime rather than manufacturing enterprises.<sup>39</sup>

The postwar depression was not the only cause of manufacturing

<sup>36</sup> Petitions Granted, XXXI, 71. Jenks probably recovered, for he was reported in 1808 to be part owner of the 44-ton schooner *Britannia*. See item 451, in *Ship Registers of Providence*, I. See also June 1764 in Petitions Granted, XI, 154, for the petition of Robert Prowd, a Newport watchmaker who also claimed to have failed because of excessive competition.

<sup>37</sup> Feb. 1816, in Petitions Granted, XLV, 42. Tripp had entered the cotton business late in 1814 with \$500 in capital advanced by his father. See also Feb. 1815, *ibid.*, XLIII, 48, for the memorial of Salmon Arnold of Providence, a cotton manufacturer who was granted a special act of bankruptcy. For Arnold's earlier maritime interests, see items 387, 1063, 1279, 1669, 2239, in *Ship Registers of Providence*, I.

<sup>38</sup> See Feb., June 1816, and Oct. 1818 in Petitions Granted, XLV, 42, 44; XLVII, 52. Compare, Feb. 1810, June 1816, May, Oct. 1818, Feb. 1819, and Jan. 1822, *ibid.*, XL, 14; XLV, 50; XLVII, 14, 57, 61, 84; and L, 95, for other petitions from shareholders in manufacturing enterprises.

<sup>39</sup> For a fuller discussion of the incorporation and liability questions, see Coleman, *Transformation of Rhode Island*, 110-118.



insolvencies. Joseph Herring of Bristol, a steel manufacturer, claimed that he piled up \$12,000 in debts between 1808 and 1810 trying to get into production. His first and second furnaces collapsed because he had used defective bricks and because the construction was faulty. By the time he had solved these problems by trial and error, he found that Rhode Island coal was not suitable for burning in his ovens and that he had neither the capital nor the credit to experiment further.<sup>40</sup>

Throughout the two generations from 1756 to 1828, petitioner after petitioner stressed illness and the high cost of medical treatment as basic causes of insolvency. Grindall Rawson, a shop joiner of Providence, ascribed his difficulties "to the severe visitation of Divine Providence, to which he desires to be resigned, in afflicting his Family with sickness for many years";<sup>41</sup> James Tew, a Newport housewright, blamed chronic rheumatism contracted in a British prison during the Revolution for his impoverishment;<sup>42</sup> Gideon Fowler, a South Kingstown laborer, explained that apoplectic fits prevented his repaying the debts for which he became responsible as deputy sheriff when some debtors absconded;<sup>43</sup> and Cassander Kingman, a Providence cordwainer and leather dresser, cited as the causes of his insolvency the loss of a vessel at sea, the debts he had paid for others because of sureties he had given, and the large and exorbitant medical bills he had incurred.<sup>44</sup> These perennial complaints about the high cost of medical care notwithstanding, physicians were about as prone to in-

<sup>40</sup> June 1810 in *Granted Petitions*, XL, 22. Compare June 1816, *ibid.*, XLV, 49, for the memorial of a Providence jeweler, Richard Smith, who attributed his insolvency to three factors: bad trading bargains, the forced sale of his property, and the high cost of money (9 per cent a year).

<sup>41</sup> Feb. 1767, *ibid.*, XII, 66.

<sup>42</sup> Aug. 1785, *ibid.*, XXII, 108.

<sup>43</sup> Mar. 1787, *ibid.*, XXIV, 153.

<sup>44</sup> June 1808, *ibid.*, XXXVIII, 96. See also the memorial of John Beverley (Mar. 1787, *ibid.*, XXIV, 155) which the General Assembly voted to grant with the proviso that the act was not to discharge him for any malfeasance in his former office as High Sheriff of Providence County; the memorial of Jeremiah Brown (Feb. 1806, *ibid.*, XXXVII, 31), a Providence mariner, who asserted that all Providence physicians had assured him that only a speedy discharge from his debts would restore him to sanity and preserve him from becoming a lifetime town charge; the memorial of John Harry (Oct. 1811, *ibid.*, XLI, 69), a Narragansett Indian from Charlestown, who claimed to have been gravely wounded during the Revolution; and the memorial of Prince Vaughan (Oct. 1818, *ibid.*, XLVII, 56), a Negro sailor from Providence, who claimed to have seen service during both the Revolution and the War of 1812.

solveny as cabinetmakers and butchers, innkeepers and masons. However, physicians became insolvent as traders, not as doctors.<sup>45</sup>

Two petitioners blamed their misfortunes on the depreciation of land values, one of them arguing that Shays' Rebellion caused the decline; a third attributed his downfall to a severe drought; a fourth fixed the blame on a disastrous fire; and a fifth, George Robinson, a famous Providence shipbuilder, accounted for his insolvency by losses amounting to \$4,200 incurred in the construction of three large vessels, the brigantines *Fame* and *Taber* and the ship *General Hamilton*.<sup>46</sup>

Several insolvents claimed not to have recovered from periods of imprisonment for debt. Allin Brown of Providence, for example, claimed he had been jailed on three separate occasions and had spent a total of four years in prison. John Phillips of Hopkinton said that he had spent almost eleven years in jail, and Simon Hazard of South Kingstown reported that he had been jailed three times for petty debts. On one occasion the debt itself was only 48 cents but the incidental fees had raised it to \$3.25. Amos Stone of Cranston said much the same thing: that his creditors had hounded him over a six-year period for the payment of small debts, the court costs and collection fees on which usually exceeded the debts themselves.<sup>47</sup>

Abner Wilcox also accounted for his insolvency through an extended period in debtor's prison. He wryly explained in 1815 that his difficulties had begun eight years earlier when his wife Comfort, justifiably dissatisfied with his conduct, had secured a divorce and an award of \$300 in alimony. Wilcox was imprisoned in August 1807 for failing to pay and had been in jail ever since. Soon after being committed, he explained, he had conveyed a small parcel of realty to one Lydia Manchester who, in return, had promised to furnish him with the necessities and comforts of life. She had kept her bargain for two years, and then had ceased visiting him. Perhaps, Wilcox observed ruefully, she had done as much as the realty was worth. In any event, although he was utterly impoverished

<sup>45</sup> For an example of a physician, Preston Mann, who went bankrupt as a trader, see Oct. 1794, *ibid.*, XXIX, 22.

<sup>46</sup> June 1766, June 1792, Aug. 1774, Feb. 1770, Oct. 1811, *ibid.*, XII, 39; XXVII, 38; XV, 89; XIV, 11; LXI, 58. For data on Robinson's three vessels, see items 1069, 1259, and 3317, in *Ship Registers of Providence*, I, and item 427 for data on the sloop *Blue Bird* in which Robinson had a part interest in June 1795.

<sup>47</sup> Feb. 1770, May 1803, Oct. 1805, Feb. 1814, in *Granted Petitions*, XIV, 30; XXXVI, 39; XL, 101; XLII, 19.



he could not take the poor debtors' oath because he had transferred property after being sent to prison. Unless the General Assembly took pity upon him, he pleaded, he would have to languish in prison for the rest of his life.<sup>48</sup>

The majority of insolvent debtors, of course, ascribed their impoverishment to a combination of causes. Difficulty had first overtaken John Dexter of Cumberland in 1760 when many of the customers of his general store failed to pay their bills. He turned to the lime-burning business in Massachusetts but soon found that the income was much lower than he had expected and the expenses much higher. By 1766 this circumstance, together with losses he had sustained in an unsuccessful trading voyage and in his capacity as director in five lotteries, had completely impoverished him.<sup>49</sup> Robert Colwell of Gloucester attributed his insolvency to the expenses of raising a growing family, the bankruptcy of several of his debtors, and the losses he had suffered when the local bank failed in 1808. James Greene of North Providence also blamed "breaking and absconding" debtors for some of his difficulties, but cited in addition losses in six different trading voyages and the debts he had piled up trying to recoup his fortunes in the iron-forging business.<sup>50</sup> Much the same story was recounted by Elisha Brown of North Providence. For many years he too had carried on a successful trading business only to encounter heavy and extraordinary losses, after 1765. He claimed to have lost five vessels and their cargoes and to have achieved only three return voyages. Even those had proved unprofitable. He had been burdened as well by the loss of four Negro servants, by flood damage to his mill dam, and by the outright failure of many men who owed him money.<sup>51</sup> Finally, there was the Warren trader, William M. Hubbard, who cited four different calamities as the cause of his bankruptcy: the loss of his shop and tools through fire; the loss of quarter shares in two schooners, the *Traveller* and the *Betsey*; the failure of a number of other merchants whose notes he had endorsed; and his capture and imprisonment by the British on three different occasions during the War of 1812.<sup>52</sup>

More than any other group, of course, it was the maritime traders who

<sup>48</sup> Feb. 1815, *ibid.*, XLIII, 31.

<sup>49</sup> June 1766, *ibid.*, XII, 29.

<sup>50</sup> June 1812, Feb. 1768, *ibid.*, XLII, 17; XIII, 12.

<sup>51</sup> Sept. 1770, *ibid.*, XIV, 62.

<sup>52</sup> June 1823, *ibid.*, LII, 47. W. P. A., comp., *Ship Registers and Enrollments . . . Issued out of the Port of Bristol-Warren, Rhode Island, 1773-1939* (Providence, 1941)

assumed the greatest risks and who were the most prone to insolvency. David Burr of North Providence, for example, explained that in the two years from 1764 to 1765 he suffered losses on four separate ventures. Although, like most Rhode Island merchants, he never owned a vessel or its cargo outright but rather spread his risks by owning shares in several trading voyages being carried on at the same time, the cumulative impact of these losses was sufficient to bankrupt him.<sup>53</sup> Haile Turner, a Bristol mariner, told the General Assembly that "in the Course of his Small trade to sea" he had been "five times cast away to the Loss of Vessells and Cargoes," and that in 1768 the Newport customs officials had seized a vessel and cargo of his, a disaster from which he had never recovered.<sup>54</sup> Sometimes an insolvency was caused by the loss of more than a vessel and its cargo. In 1784 Elizabeth Christian of Newport asked that her husband's estate be declared insolvent, explaining that he had not been heard of since he had sailed from New London, Connecticut, on the brig *Romulus* more than a year earlier.<sup>55</sup>

Many Rhode Island merchants were bankrupted by the errors or defalcations of their agents and associates. Such was the case with Jacob Comstock in 1791. He cited an incident which had occurred sixteen years earlier, when the master of his sloop *Friendship* had sold the vessel and cargo, then absconded to parts unknown.<sup>56</sup> Benjamin Smith, a West Greenwich innkeeper, reported a similar cause—that three merchants trading to North Carolina and the Caribbean had failed to remit the money which he had lent them.<sup>57</sup>

reports only one vessel in which Hubbard had an interest, the 35-ton sloop *Hannah and Nancy*. See item 397.

<sup>53</sup> Feb. 1767, *Granted Petitions*, XII, 68. Compare memorials of Nathan Potter (May 1813, *ibid.*, XLII, 3), a Westerly blacksmith; of John P. Hellen (June 1815, *ibid.*, XLIV, 21), a Providence merchant; of partners Samuel N. Blake and Nathan Bardin (Feb. 1816, *ibid.*, XLIV, 41, 45) of Bristol; of Thomas H. Hazard (June 1816, *ibid.*, XLV, 88), a Newport trader; of Samuel Snow and Benjamin Munro (Feb., Oct. 1808, *ibid.*, XXXVIII, 89, 102) of Providence, partners in a once affluent firm trading especially to the Far East. For data on Potter's shipping interest, see items 765 and 1205 in *Ship Registers of Newport*, I; on Bardin's, see items 436, 797, and 872 in *Ship Registers of Bristol*; and on the Snow-Munro partnership's, see items 689, 1476, 1579, 1669, 2216, 2295, 2326, 2560, 2634, 2793, 2866, 3462, and 3674 in *Ship Registers of Providence*, I.

<sup>54</sup> May 1770, *Granted Petitions*, XIV, 5.

<sup>55</sup> Feb. 1784, *ibid.*, XXI, 29.

<sup>56</sup> Mar. 1791, *ibid.*, XXVII, 17.

<sup>57</sup> June 1792, *ibid.*, XXVII, 68. Henry DeWolf of Bristol was bankrupted in similar circumstances. He eventually recovered and was reported in Sept. 1817 to be



Ozias Danforth, a Providence trader, became insolvent not once but twice. His record of misfortune extended over a period of more than twenty years. In October 1794 he joined Benjamin Hodges in a mercantile partnership. They traded to the south where in 1795 Danforth was laid up for three months with yellow fever. Two voyages from North Carolina to the West Indies then proved unprofitable due to fluctuating markets, and a third, to Hispaniola, proved disastrous. When the crew became sick the vessel put into New Providence, where the cargo had to be sold at a loss. The partners used the meager proceeds to buy fruit for the Charleston market, but when they arrived at the South Carolina port in June 1796, they found the city in flames and no buyers for their produce. Danforth then took a trading voyage up the Wagaman [Waccamaw?] River in South Carolina to take on a cargo of lumber. At Georgetown he again fell ill and had to be confined for a month. The vessel went on to Charleston without him. There the master, John Sampson, also became ill. The crew abandoned the vessel, and when Danforth had recuperated sufficiently to make his way back to Charleston he found Sampson on the point of death and he himself utterly destitute. Somehow he managed to return to Providence where, at the urging of his creditors, he petitioned for an act of insolvency, which was granted.

With his debts forgiven, Danforth made a fresh start. Hoping to secure a commission in the army, he spent money for a uniform and equipment, but he had to abandon his plan when the Adams administration failed to expand the military establishment. Instead Danforth joined the ship *Hazard* of Providence, commanded by James Rowan, on a sealing voyage to the South Pacific. After two years at the island of Massafuero, the ship sailed for Valparaiso with a valuable cargo of seal skins. There the Spanish authorities seized the vessel and crew and held them for six months. When they were released, they sailed for Canton with their cargo of 10,000 seal skins. Danforth stood to receive a commission of 5½ per cent, presumably for his services as supercargo. Even this came to nothing, for during the Pacific crossing rats almost destroyed the skins. Danforth tried to save himself by signing on the *Hazard* as second officer, but he left the ship at Owhyee to run a sandalwood business which he had purchased. That, too, proved unsuccessful and after six months he took passage for Canton on the *Eleanora*.

the owner of the 77-ton schooner *Sally*. Oct. 1811, *ibid.*, XL, 87; *Ship Registers of Bristol*, item 833.

A group of China merchants at Canton extended Danforth \$700 in credit with which to purchase tea for the American market, but when the shipment was unloaded in Providence it proved to be of such inferior quality that Danforth barely recovered his freight and insurance costs. Despite this succession of disasters and the growing doubt that Danforth would ever be successful, friends in Providence rallied to his support by raising \$1,000 in credit for a trading venture to South America. When Danforth reached his destination, however, he found the markets unsatisfactory. Hoping that conditions would be more favorable elsewhere, he sailed north to Havana where he placed his goods in the hands of commission merchants. Even this arrangement turned out badly, for when he returned to Providence expecting a remittance from his Havana agents he learned that the firm had failed and that he had lost his cargo.

After this series of misfortunes, Danforth apparently decided that he would be well advised to seek employment on shore. A succession of jobs followed. After serving as deputy sheriff and town constable in Providence, he began his own auctioneering business. None of these efforts proved lucrative, and he was burdened with the expense of supporting a young and increasing family, with a sickness which incapacitated him for almost a year, and, as might be expected, with an inability to secure the necessary credit to operate his auctioneering venture. By May 1817 he was again hopelessly insolvent with debts of more than \$2,900 and assets of less than \$300. In February 1818 the General Assembly granted him his second special act of insolvency.<sup>58</sup>

The case of Cyprian Sterry illustrates yet another facet of the bankruptcy process—the weaknesses inherent in the legislative method of providing relief. For many years during and after the Revolution, Sterry had been one of the most successful and affluent merchants in Providence. His extensive trading connections had taken his ships to Europe, the Orient, the Guinea coast, and the Caribbean. By one reckoning, in his prime he had been worth almost \$235,000, but in June 1798 he announced that he was insolvent, mainly, he said, because a number of serious trade losses had destroyed his credit. Although he listed his assets at more than 15,000 pounds sterling, he knew that they were insufficient to cover his outstanding debts, a sum which exceeded \$78,000. An incredulous Gen-

<sup>58</sup> June 1797, May 1817, *Petitions Granted*, XXXI, 68; XLVI, 81. For the case of Noah Steere, another mariner and petty trader whose career was dogged by a succession of misfortunes, see Oct. 1812, Feb. 1813, XLI, 84.



eral Assembly refused to accept this appraisal of his financial condition; and, rather than have his petition rejected outright, Sterry withdrew it. The former merchant prince renewed his petition for relief in 1799, only to be rebuffed. His creditors committed him to prison, hoping, so Sterry asserted, that his charitable neighbors would ransom him by paying off his debts. Year by year his situation became increasingly desperate as his remaining assets were used up, as his wife relinquished her dower rights in order to free more property for the satisfaction of his creditors, and as periodic confinement in prison without the benefit of the jail yard gradually undermined his health. Finally, in 1807, after nine years of misery and only after his assets had been reduced to a mere pair of feather beds, were his creditors convinced that he had no concealed assets. With their support, the General Assembly at last granted Sterry an act of insolvency.<sup>59</sup> But by that time there was little hope that he would ever regain his affluence.

Clearly the causes of insolvency in Rhode Island ranged widely, from the disruptive effects of war, revolution, and embargo to the inability to solve technical problems in manufacturing. These petitions show that insolvency could be the consequence of the bad luck, bad health, or bad judgment of the petitioner or his associates. Or it could result from general economic developments largely beyond the petitioner's control, such as inflation or the depreciation of land values. The common denominator, perhaps, was the frequency with which petitioners traced their difficulties to losses which had occurred twenty or more years earlier and their contention that, once in trouble, they had found it impossible to extricate themselves. This was particularly true of the petty trader. Although he usually spread his risks over several ventures and vessels, he rarely had the resources to withstand a series of minor losses. Insolvency may have been many years in the making, but, in retrospect, the petitioners thought that they detected a grim inevitability about their declining fortunes.

<sup>59</sup> Denied Petitions of the General Assembly, XXXII, pt. 2, p. 36; May 1807, Granted Petitions, XXXVII, 72, 77. In all Sterry had interests in 15 vessels ranging in size from the 37-ton sloop *Polly* to the 232-ton ship *Mary*. With the exception of the 90-ton brigantine *Industry*, title to which was transferred in 1783, and three vessels which were captured or lost at sea, ownership of all of these vessels passed out of Sterry's hands between 1794 and 1797. Apparently, either he had been trying to raise cash to meet his obligations or he had been making "wash" sales in an effort to put some of his property out of the reach of his creditors. It may have been allegations that he was pursuing the latter course which made the Assembly reluctant to grant him relief. See items 197, 384, 834, 929, 1008, 1255, 1257, 1508, 1667, 1712, 2072, 2215, 2429, 2743, and 2751 in *Ship Registers of Providence*, I.

## Pre-Emptive Rights in the Disposition of a Confiscated Estate

### Philipsburgh Manor, New York

Beatrice G. Reubens\*

IN New York during the Revolutionary era the confiscation of loyalist property was conceived as a punitive measure and was implemented as a fiscal device. Yet, on the basis of New York's treatment of tenanted loyalist estates it can also be maintained that confiscation "seemed on paper to be the most social revolutionary step taken by the American patriots."<sup>1</sup> New York's basic confiscation law of 1779 showed a marked solicitude for the patriotic tenants of convicted or attainted Tories, permitting tenants to become owners of their own farms through pre-emption, that is, the first right of purchase at fair market value.<sup>2</sup> This measure might be viewed merely as an attempt to win active adherents to the American cause, but the friction between landlords and tenants was so widespread and long-standing that a promise of land ownership to any tenants must be related to prewar conditions as well as to the politics and finances of the Revolution.<sup>3</sup>

John Watts drew no distinction between Tory and Whig landlords when he commented in 1777 on the vassalage of the Hudson River counties and declared that an offer to make freeholders of the tenants of

\* Mrs. Reubens is a Research Economist on the Conservation of Human Resources Project, Columbia University, and an assistant editor of the *Journal of Economic History*.

<sup>1</sup> Richard B. Morris, "Class Struggle and the American Revolution," *William and Mary Quarterly*, 3d Ser., XIX (1962), 23. See also, Catherine S. Crary, "Forfeited Loyalist Lands in the Western District of New York—Albany and Tryon Counties," *New York History*, XXXV (1954), 239-258.

<sup>2</sup> New York, *Laws*, 1778-1801 (Albany, 1886-87), ch. 25, 1779 (3 sess.).

<sup>3</sup> E. Wilder Spaulding, *New York in the Critical Period, 1783-1789* (New York, 1932), 77-79; Irving Mark, *Agrarian Conflicts in Colonial New York, 1711-1775* (New York, 1940), passim; Staughton Lynd, *Anti-Federalism in Dutchess County, New York* (Chicago, 1962), 46-51.