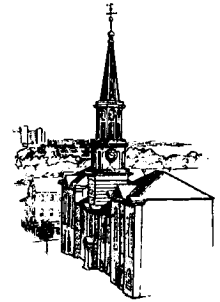


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Commercial Credit in Eighteenth Century Alexandria: Default and Business Failure

by H. Talmadge Day and Barbara Morgan

This article is the fifth in a series of papers presented by leading historians at the symposium "The Foundations of Future Prosperity: Alexandria, 1749-1819." This program was held at The Lyceum on October 15 and 16, 1999, sponsored by the City of Alexandria 250th Anniversary Commission, and featured presentations by eight scholars including the authors. (The following article is based upon the second part of their presentation (see HAQ, Summer 2000, for part one).

This article examines commercial credit defaults and business failures as features of Alexandria's eighteenth-century economy. As discussed in the prior article,¹ eighteenth-century Alexandria was a credit-based economy because of a chronic shortage of cash. Extension of credit was therefore essential to the commercial relationships of eighteenth-century Alexandrians, and defaults on their credit obligations were likewise inevitable.

For a number of reasons, defaults and business failures were even more of a risk in eighteenth-century Alexandria than they are today. First, because the economy was based almost entirely on agriculture, severe weather such as early frost, storms or a drought could disrupt trade and unexpectedly lead to financial hardship, with little or no opportunity for relief. Second, because most significant trade was international, it was subject not only to the risks of transatlantic shipment, but was repeatedly interrupted by wars and revolutions both here and abroad. Third, while land speculation appealed to many people as a means to acquire great wealth during both the colonial and federal periods, it also produced numerous business failures. Finally, because of the absence of banks, there was an extensive network of private credit relationships in which individuals served both as creditor and debtor. The failure of one party to pay could lead to a chain reaction and multiple personal and business failures.

This article is sponsored by Mr. Oscar P. Ryder

Until late in the century, the only public institutions in place for resolving debt-related issues were the county courts, which made these courts and the justices who presided over them an integral part of the colonial and early federal credit system. After the Revolution, both the Virginia and Federal legislatures attempted to provide more comprehensive relief for business failures through the enactment of bankruptcy laws, but these experiments met with only limited success.

With a focus on defaults and business failures, this article reviews the structure and role of the local courts, the means of enforcement employed when commercial obligations went into default, and the relief available to debtors who were either temporarily or permanently unable to satisfy their obligations.

I. THE ROLE OF THE LOCAL COURTS

The courts sitting in Alexandria were an integral part of its business structure until the end of the eighteenth century because of their role in hearing and deciding debt claims. From 1749 until Alexandria was incorporated in 1779, leading merchants were prominent both as trustees of the town and justices of the Fairfax County Court, which was located in Alexandria from 1752 until 1799.² Following the incorporation of Alexandria in 1780, substantially the same pattern continued: the town mayor, recorder and aldermen assumed the responsibility of the Trustees, and a Hustings Court was established in Alexandria to handle most of the matters that were formerly determined by the Fairfax County Court.³

During the colonial period, the county courts were responsible for numerous administrative functions in addition to hearing both criminal and civil cases. The local courts “maintained order, directed the construction of roads and

public buildings, levied taxes and paid the bills, settled claims against the county, licensed taverns and warehouses, supervised the care of the indigents and orphans, directed the administration of estates, administered the conveyance of property, appointed subordinate officials, supervised elections, and sat in judgment in all cases of law or chancery, including criminal cases, except those involving outlawry.”⁴

Colonial statutes fixed one day every month as court day for civil matters and quarter sessions (once every third month) for criminal matters, but it does not appear that the Fairfax County Court strictly observed this schedule while located in Alexandria. Because of their multiple and varied functions, the county courts were frequently overburdened; in August 1771, for example, the monthly court session lasted for five days rather than one, with nearly 200 matters docketed for the court’s attention.⁵

The officers presiding over the county court and, later, the Alexandria Court of Hustings, were designated “justices of the peace.” As in other parts of colonial Virginia, the list of justices was a roster of the community’s most responsible citizens. Fairfax County justices included John Carlyle, Robert Adam, Bryan Fairfax, Lord Thomas Fairfax, George Mason, William Ramsay, George Washington, Alexander Henderson, and Daniel McCarty.⁶ Before the Revolution, the Governor appointed these “gentlemen justices” as they were known, for life, and the sitting justices recommended replacements when vacancies arose. As a result, the county courts effectively became self-perpetuating.⁷

Justices were not paid for their services, were not necessarily trained in the law, and often served solely out of a sense of civic duty as community leaders. Each was given a book on the law at the time of his appointment to

serve as a guide on legal matters that might arise during the sessions. In the words of the book's author, a justice of the peace in New Kent County, Virginia, the guide was intended as a "practical and useful guide."⁸ Anticipating critics, the author included the following admonition to the justices:

My Design and Methods being new, I make no Doubt but critics will be Carping at the Performance; tho' 'twere better, they'd be less ill-natured: My Advice to these Gentlemen, is, That they mend it by some of their own ingenious Compositions, their Work will be the easier, now I have found and clear'd a Road; if they do not, the World will have Room to suspect their Ability.

As a practical matter, the clerk of the court, who managed the court docket and recorded the proceedings, often advised the justices on legal issues.⁹

Because of the significance of commercial matters in Alexandria, the officers most attentive in the Fairfax County Court were the Alexandria merchants serving as justices, particularly John Carlyle and William Ramsay, both of whom also served as Trustees. On a daily basis, the Alexandria merchant justices handled the bulk of the commercial disputes. Merchants were similarly important figures as officers of the incorporated town government and, therefore, as justices of the Alexandria Hustings Court. Hustings Court Justices included Robert T. Hooe, Philip Fendall, John Fitzgerald, Dennis Ramsay, and William Herbert.¹⁰

The sheriff (or "sergeant" as he was known after the Hustings Court was established) was an indispensable figure in the local legal landscape. The sheriff was responsible for executing writs for the collection of judgments

and also ran the county jail, including the debtor's prison. The court selected the sheriff from a list of the senior justices and the Governor issued his commission. Unlike the justices, the sheriff was well paid for his services.¹¹

The development of law as a profession was just beginning in Virginia in the mid-eighteenth century, and there were no provisions for training lawyers. Before 1750, most lawyers were self-taught. The three leading lawyers in Fairfax County before the Revolution, George Johnston, William Ellzey and Hugh West, did not have extensive practices until after 1750.¹² Further, with the division of the bar in 1748, Virginia lawyers were required to choose between practice before the General Court in Williamsburg or in the counties. Most professional lawyers chose to live and practice in Williamsburg during the colonial period since practice in the county courts was both less prestigious and less financially rewarding, and involved the administration of a rough form of "country justice."

As a result, most actions to collect debts in the county courts were not handled by lawyers. Merchants with claims, or other persons acting as their "attorneys" who were not lawyers, appeared to assert claims if the debts could not otherwise be worked out.¹³ For out-of-town merchants, the "attorney" would commonly be a local Alexandria merchant who would expect reciprocal courtesies in the local courts of the other colonies.

With the establishment of Virginia District Courts in 1787 and the Federal District Courts in 1789, each of which was presided over by professionally-trained judges, the legal profession developed and became more sophisticated. In the eyes of some, however, this did not amount to progress. William Allason, a plaintiff in Fairfax County debt

cases from time to time, expressed his views on this subject colorfully in a letter to Thomas McCulloch in 1791:

Times are greatly altered here from what you know them, in order to come at a little money we are oblig'd to wade through a Law Suit that is generally tedious, and consequently very expensive by the Lawyers unreasonable requisitions, altho' we have four times as many of that profession as is really necessary.¹⁴

These new courts, however, were remote from Alexandria. It was not until 1801, when a division of the Circuit Court for the District of Columbia and a United States District Court were established in Alexandria, that Alexandrians would have easy access to courts of the same caliber.

II. CREDITOR ENFORCEMENT MECHANISMS AND DEBTOR RELIEF

During this period, English common law customarily required that a plaintiff follow specific procedural "forms of action," which were based on the proof of various facts. The actions filed in the Fairfax County Court (and later the Hustings Court) relating to debt obligations accordingly followed these procedures, with some modifications, such as special rules for proof of book debt. Actions for "debt," "trespass on the case," and "petitions" relating to smaller actions, were the most common forms.

Debt: A suit would be brought as a "debt" action when a certain sum was owed at a fixed date, based on a contract or a sale.¹⁵ The "warrant" or "declaration" filed to commence a debt action was simple, and the proof at trial emphasized production of the signed document.

Action on the Case: An "action on the case" was a general action for the redress of wrongs and injuries done without violence.¹⁶ It was "on the case" because the whole case was laid out in a declaration at the beginning, except for the time and place where the wrong occurred. Actions on the case included "nonfeasance" (failure to perform) on promises. The action could cover a claim for goods or merchandise sold and not paid for, regardless of whether there was a fixed amount due or a specific due date.

Petition: A "petition" was used to file a small claim. In 1771, almost half of the actions to recover debts in Fairfax County Court were presented as petitions and involved less than £5 or 1000 pounds of tobacco (about one hogshead).¹⁷

Other: Actions designated as "attachments," "scire facias," and "replevy bonds" were also related to debt matters. Attachment was a method of seizing the debtor's assets prior to judgment and could be used when the creditor was concerned that the debtor would flee the jurisdiction or conceal assets.¹⁸ *Scire Facias* was a writ that revived a judgment that had been obtained previously but had not been executed for a year and a day.¹⁹ A debtor (or a surety for the debtor) could give a creditor a replevy bond which gave him additional time to arrange for payoff of a judgment debt before his assets would be sold in satisfaction of the debt. If the debtor was not able to satisfy the judgment during the period of delay and did not produce the replevied goods at the day of sale, the creditor would have an action on the bond as well as any assets he could find and sell.²⁰

<i>Debt Enforcement Actions in Fairfax County Court - 1771*</i>								
<i>Action</i>	<i>Agreed</i>	<i>Default</i>	<i>Confessed Judgement</i>	<i>Dismissal</i>	<i>Creditor Judgement</i>	<i>Debtor Judgement</i>	<i>Other</i>	<i>Total Actions</i>
<i>Debt</i>	10	15	37	1	11	3	5	82
<i>Petition</i>	22	-	-	13	101	-	2	138
<i>Trespass on Case</i>	17	2	11	10	15	7	6	66
<i>Attachment</i>	5	-	-	5	22	-	-	32
<i>Scire Facias</i>	-	2	1	-	2	-	1	6
<i>Replevy Bond</i>	-	-	-	-	6	-	-	6
<i>Other</i>	1	-	-	-	-	-	5	6
<i>Total Dispositions</i>	55	19	49	29	157	10	18	336

*Source: Fairfax County Court, *Minute Book, 1771*, reprinted in 12 Y.B. FAIRFAX COUNTY, VA., HIST. SOC'Y (1973).

As shown in the above table, in 1771, the Fairfax County Court heard 336 debt-related disputes, the vast majority of its civil docket. In over ninety percent of the cases the creditor prevailed. Most of the matters not explicitly resolved in the creditor's favor on the record were dismissed, suggesting that the debts had been paid.

Jury trials were held in 28 of these cases. In seven cases the court ordered that the facts or accounts be examined by one or more independent third parties who issued a report recommending a resolution for the case, that the court adopted as its judgment. The "examiners" in these cases were either individual justices or persons who regularly sat on juries. For example, in a matter involving a dispute between Daniel McCarty and Abraham Barnes over an agreement they made with regard to certain "Sugar Lands" in Colchester and a bond that McCarty gave to attorney George Johnston on Barne's account, the court appointed Bryan Fairfax, Alexander Henderson, Harry Piper, and John Dalton to consider the evidence and allegations of the disputes and report back to the court.²¹

The list of litigants in 1771 included many of Alexandria's prominent citizens and gentlemen justices. Alexander Henderson, a

justice and the resident partner of John Glassford, the Scottish factor who controlled a major part of the Chesapeake tobacco trade, excused himself from acting as judge in 19 cases where his firm, Messrs. Glassford & Henderson, was the creditor. Similarly, William Ramsay, John Carlyle, Daniel McCarty, and George Mason were parties in a total of 19 cases heard in 1771. Based on the volume of cases handled by the court, it appears that the court and its justices served a valuable function in recording debts and facilitating voluntary arrangements for payment or settlement of obligations.

However, even when these prominent figures were involved, most of the debts that were at issue in the Fairfax County Court were relatively small matters. While the county courts may have been a reasonably effective institution for resolving or facilitating the voluntary resolution of local disputes, they were not friendly to foreign creditors and did not provide relief against debtors who did not reside in or had left the county. Even after the Revolution, each former colony effectively was a separate country with its own currency and government. It was not until after the Federal government was formed and functioning that there was a meaningful way to pursue these claims.²²

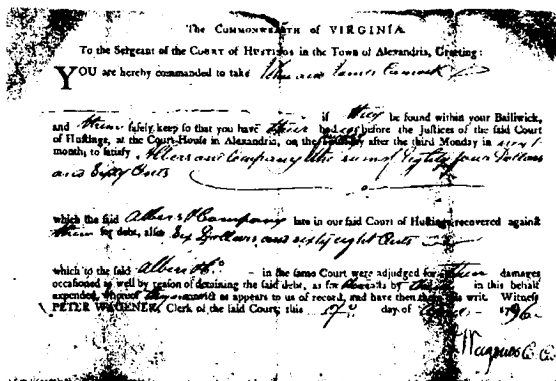
III. METHODS OF ENFORCING JUDGEMENTS

Writs: Obtaining a judgment against a creditor was only the first step in getting paid. With some modifications, a creditor in eighteenth-century Virginia had available the “writs” developed under English common law to enforce judgments. Virginia statutes specifically provided for the *writ of fieri facias*, the *writ of elegit*, and the *writ of capias ad satisfaciendum*, which ultimately led to debtors’ prison.

A *writ of fieri facias* could be obtained to enforce a judgment against personal property. The form of the writ was prescribed by statute and printed in bulk to be completed by creditors. Rights to foreclose on slaves were subject to specific limitations to ensure that personal property other than slaves would be seized when sufficient to satisfy a judgment.²³

The *writ of elegit* allowed a creditor to obtain income from a debtor’s land, but did not provide a means to sell the land itself in execution. This limitation on execution on land under Virginia law conflicted with British law governing the colonies. Following the Revolution, the Virginia legislature relaxed this restriction somewhat to permit debtors to tender land or slaves in satisfaction of judgment debt through a judicially supervised valuation procedure. However, the change in law did not go so far as to authorize involuntary executions on land or slaves.

Completed Writ of Capias ad Satisfaciendum (Original in The Library of Virginia)



A *writ of capias ad satisfaciendum* authorized the sheriff to seize the debtor’s person, bring him before the court, and commit him to prison until the debt was paid or the creditor agreed to his release. Debtors’ prison could yield mixed results, however, because the debtor was prevented from working himself out of debt. Sympathetic local courts could be quite creative in extending the “bounds” or “rules” for imprisoned debtors. Although debtors’ prison bounds were defined by statute, the bounds could be extended or defined so that “imprisoned” debtors could continue to conduct their affairs, even purchasing homes in which they resided while “imprisoned.”²⁴ A further disadvantage to the creditor of imprisoning a debtor was that costs of imprisonment were borne by the petitioning creditor. Under the Act of Assembly of 1726, creditors were liable for the costs of a debtor’s imprisonment after the first 20 days.²⁵ With the increase in indebtedness during the period, the liability of a petitioning creditor for imprisonment costs was also expanded. Under the Act of Assembly of 1772, a creditor became liable for costs of imprisonment as of the first day of imprisonment.²⁶

Once imprisoned, a debtor could obtain release by taking an “oath of insolvency.” Such an oath required that the debtor disclose all property and surrender it to the sheriff for liquidation. The *writ of capias ad satisfaciendum* accordingly operated as a feature of insolvency law in providing relief to the debtor. Because of its drawbacks, however, it is likely that seeking a *writ of capias ad satisfaciendum* was a practical remedy only in cases involving substantial indebtedness where imprisonment could operate as a compelling incentive to disclose significant assets.

Several prominent Alexandrians were imprisoned for debt at the end of the century. One such instance involved Phillip Fendall’s

financial failure as a result of land speculation in southwest Virginia with business partners Robert Young and Lewis Hipkins. Following the collapse of his speculative ventures, Fendall ultimately went to debtor's prison in 1800.²⁷ Similarly, Revolutionary War hero "Light Horse Harry" Lee and Alexander Henderson, the resident agent of Scottish tobacco factor John Glassford, also were confined in prison for debt.²⁸

Judicial Deferral of Collection: Both debtors and creditors could seek court-ordered relief as an equitable remedy, but relief to debtors in such cases was uncommon in the absence of a bond. In an action to enforce a writ of *fiery facias*, a debtor could avoid execution on his assets by giving a bond. Two types of bonds were authorized, surety bonds and replevy bonds.

If a creditor sued for judgment, a debtor of consequence could find someone to "stand surety" for payment of the debt and thereby obtain an additional three months to pay.²⁹ Following the Revolution, the provision for such bonds was repealed, but the repealing act made available substantially greater relief under replevy bonds where the judgment debtor's goods could not be sold for three-fourths of their value.³⁰

Even after entry of a judgment, and even when a debtor could not obtain a stay for a set period of time under a surety bond, a debtor might still hold or recover possession of goods that had been seized by "giving sufficient security." The goods could thereafter remain in the debtor's possession, at the debtor's risk, until the time set for the sheriff's sale. This limited relief afforded a debtor a brief period of time in which to find a means to pay the debt, together with damages and costs. Upon such a showing, a debtor could obtain a stay avoiding the sheriff's immediate execution on a judgment. As enacted in 1748, the stay

provided on this "replevy bond" only provided relief until the scheduled time of a sale.³¹

During the depressed conditions following the Revolution, the provisions for replevy bonds were liberalized to provide that if the goods to be sold at execution could not be sold for three-fourths their value, the debtor could gain an additional twelve months to pay the debt, together with costs and lawful interest, by giving additional security, the sufficiency of which was judged by specially appointed commissioners.³²

As a general matter, the replevy bond system helped only those whose standing in the community was such that someone of means would be willing to stand surety for the bond. A further problem was that if the debt was not settled during the period of the stay and the goods were not delivered at the scheduled time of the sale, the creditor needed to commence a new suit on the bond and could then be compelled yet again to accept security after obtaining another writ of *fiery facias*.³³ The law was accordingly amended to provide that if the debtor had neither paid nor delivered the goods and chattels as required by the replevy bond, the sheriff was to deliver the bond to the clerk of the court from which execution had issued. The bond would thereafter draw interest and have the force of a judgment, and no further security could be given on that judgment to delay collection a second time.³⁴

IV. BANKRUPTCY AND INSOLVENCY RELIEF

When a business person encountered financial difficulties or failed, more than a single creditor might seek relief against him. In cases in which the debtor did not have sufficient assets to satisfy all of his creditors, mechanisms were needed to address repayment of the debts, allocation of the assets

available, and the debtor's future. Insolvency and bankruptcy laws were the legal tools that could be used to address these issues. In general, an *insolvency law* released from confinement a debtor who had been imprisoned for debt, but did not discharge his debts. A *bankruptcy law*, on the other hand, provided the debtor with a discharge from debt, upon liquidation of his assets and distribution of the proceeds to creditors.

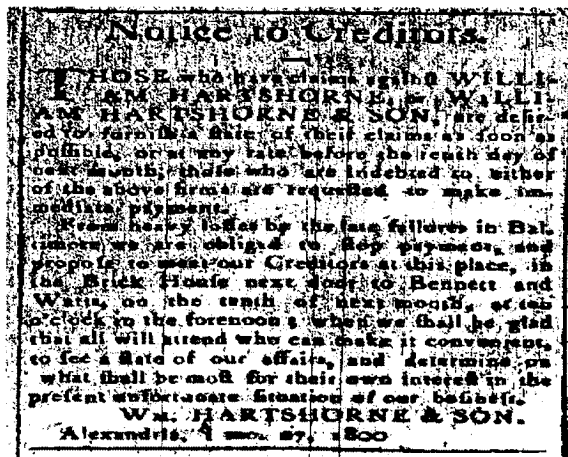
Many eighteenth-century legal thinkers argued that bankruptcy laws should only be available to merchants and traders who could suffer a financial reversal as a result of matters quite beyond their control, such as the sinking of a ship. Thus, bankruptcy statutes were enacted in England to provide merchants with a discharge from their debts in those circumstances. However, because the British laws on insolvency and bankruptcy were based on statutes that were not enacted in the colonies, separate statutes were needed in Virginia and the other colonies to provide relief to insolvent debtors. Although Virginia had a long history of insolvency laws, it never implemented a bankruptcy law.³⁵

Virginia Insolvency and Bankruptcy Laws: A series of insolvency laws were passed in Virginia beginning in 1726, and all of these statutes followed the same basic pattern of the "jail delivery system." Under this system, after a debtor had served a period of time in jail, he could be released from confinement by taking the statutorily prescribed "oath of an insolvent debtor." The oath required the debtor to deliver a schedule of his whole estate, including debts owed to him, and to affirm that he had no other assets with which to pay the judgment creditor and that he had not conveyed any assets to third parties to avoid paying the judgment.³⁶ Because a debtor was not *discharged* from the debts as a result of taking the oath, a creditor could continue to execute against any assets the

debtor had or later obtained to satisfy the debt.³⁷ Also, because the insolvency laws did not provide for a collective proceeding, a second creditor could imprison the same person for a different debt owed to him.

The Virginia insolvency laws were liberalized over time, in part because of the costs of confinement (which creditors were not interested in paying) and in part because it became obvious that a debtor was more likely to be able to repay his debts if he was not in jail. As a result, by 1792, a debtor could apply to take the oath as soon as he was sent to jail.³⁸

Non-judicial Remedies: Because creditors did not have an effective bankruptcy law providing for a collective proceeding, they often recognized that it could be better to "work out" their claims outside the courthouse and the debtors' prison. A good illustration of this technique involves the business of William Hartshorne, an Alexandria merchant and former Bank of Alexandria president. In February 1800, Hartshorne, published a notice



from Alexandria Gazette, February, 1800

in the Alexandria Gazette that, by virtue of "heavy losses by the late failure in Baltimore," his partnership, William Hartshorne & Son, was required to stop payments to creditors. The partners proposed to meet with their creditors the following month so the creditors

could “see a state of our affairs and determine what shall be most for their own interest in the present unfortunate situation of our business.”³⁹ The following week the creditors were notified that they could review a statement of the partnership’s business affairs and a proposal for paying off the debts at the offices of John Dunlap. Creditors who agreed to the payment proposal were requested to sign the proposal and those who had unsettled accounts were to call and have them adjusted.⁴⁰

Federal Insolvency and Bankruptcy Laws:

After the Revolution, Americans throughout the former colonies recognized the importance of bankruptcy laws to the commerce of the new nation. As adopted in 1789, the Constitution specifically provided that “Congress could pass uniform laws on the subject of bankruptcy.”⁴¹ It is noteworthy that during the very first session of the First Federal Congress, when only the most essential subjects were considered, bankruptcy was one of those subjects.⁴² It was not until nine years later, however, after the business failures of notable individuals such as Robert Morris, James Greenleaf and John Nicholson, who invested in speculative real estate ventures in the District of Columbia and elsewhere, that the first legislation was introduced.⁴³

The bankruptcy bill introduced in 1798 followed the English act of 1785 by providing relief for merchants and traders but not for other debtors. The bill was supported by Federalists and merchants and opposed by the Anti-Federalists, including Thomas Jefferson and other prominent Virginians. The opposition argued that farmers and planters did business with country traders on credit, making payments when crops come in. Frequently, their payments were late, and a bankruptcy law would enable city merchants to unfairly press the country traders, and in

turn the farmers, into bankruptcy.⁴⁴ They also objected to the fact that, under the proposed law, a debtor’s land would be subject to forfeiture, whereas under Virginia law, land could not be taken in execution of a judgment.

In contrast, advocates of the bill saw the law as necessary for any nation which “is commercial in a considerable degree, because extensive commerce, required extensive credit.”⁴⁵ In their view, the insolvency laws that existed in many states were insufficient because they did not provide for a discharge of claims against property, only a discharge of a person from imprisonment.

As finally enacted in December 1800, the first Federal bankruptcy law applied to discharge debts of traders and merchants only. By its terms, the law was to be in effect for five years. All cases were involuntary liquidations and could only be commenced by a creditor whose claim exceeded one thousand dollars. Upon the filing of a petition, three “commissioners” were appointed to hear evidence as to whether there had been an “act of bankruptcy” entitling the creditors to relief.⁴⁶ Over the next 90 days after the case was filed, the commissioners heard evidence from the debtor as to the extent of his assets and from all creditors as to their claims. The commissioners then appointed an “assignee” to liquidate the bankrupt’s property and recommended that the debtor be discharged from his debts. After liquidation of the debtor’s assets, a *pro rata* distribution was to be made to creditors after deducting court costs. The debtor was entitled to retain a portion of the liquidation proceeds if the creditors’ recovery exceeded fifty cents on the dollar.⁴⁷

Relatively few cases were filed under the Act of 1800.⁴⁸ Alexandria cases were heard by the Federal District Court for the District of Columbia, at Alexandria. The records of two

cases involving Alexandria merchants have survived as depictions of turn of the century business realities in Alexandria.⁴⁹

V. CASE STUDIES

Andrew and William Ramsay: William Wilson, an Alexandria merchant, filed a bankruptcy petition against Andrew and William Ramsay on December 9, 1801, claiming that they owed him \$10,239.19.⁵⁰ Duncan Niven, another creditor of the Ramsays, testified at the first hearing (held at the Washington Tavern in Alexandria)⁵¹ that he had known the Ramsays since 1791 and that they had been in the business of "merchandise" under the name Andrew & William Ramsay until the end of August or beginning of September, 1801. He testified further that after the Ramsays went out of business, they left the District of Columbia and went to Dumfries to avoid having process served on them. Based on this evidence, the three Commissioners---James Keith, James Bruce Nickolls, and John C. Herbert---determined that the Ramsays were bankrupts.

At subsequent meetings, the Ramsays appeared and produced a schedule of their effects and the creditors appeared and proved their accounts. The creditors who participated in the case were an array of family members and business concerns: Campbell Wilson of Wilson & Co.; Peter Ramsay; John Potts; Duncan Niven; Sloper & Allen of the City of London, represented by John Potts; Elizabeth Ramsay, represented by Peter Ramsay; Parkers & Co. of the City of Lisbon, Merchants, represented by Robert Ferguson; William Wilson; William Ramsay Wilson, represented by William Wilson his father and guardian; Thomas Mundell; N. Ramsay.

The creditors appointed John McIver as assignee to liquidate the Ramsays' effects and distribute the proceeds to creditors. The

commissioners issued their report concluding that the Ramsays had become bankrupt on June 1, 1800, and on April 4, 1802, the court entered a decree discharging their debts. Following entry of the decree, it took nearly twenty years to conclude the case. Finally, the commissioners notified the creditors that the final distribution would be made at Claggett's Hotel in Alexandria on November 22, 1821.⁵² At that time, Mr. McIver held \$2,741.19 to distribute to creditors, which amounted to a dividend of 7 cents on the dollar.

Alexandria Advertiser & Commercial Intelligencer, August 5, 1803

COMMERCIAL INTELLIGENCER
FRIDAY, August 5, 1803.

WILLIAM RAMSAY
HAS OPENED
A Grocery Store in Prince Street
Next door to Dr. Pak's,
where he intends keeping a general assortment
of genuine articles in that line, and
supplies for sale on moderate terms,
particular
Madeira,
Portwines and bottles,
Cognac and Malaga
Old St. Julian and Malaga Claret in
cases of a dozen each,
White Wine Muscat,
and other various kinds,
and Cognac Brandy,
Bottled and
Lard Oil, and other kinds of Sugar,
and other articles.

For Sale, or to Rent,
A two story BRICK HOUSE on Duke
Street, with every necessary building ad-
joining to it. Also,
A vacant Lot on Cameron Street, ad-
joining the Bank. For terms apply to
Lawrence Hooff,
July 21, 1803

WINES
JAMES BACON
HAS OPENED
A Grocery, Tea, Wine and
Liquor Store,
In King Street, next door but one to Wash-
ington Street, where he offers for sale,
the following genuine articles, viz:
1st and 2d quality Mus-
cated Raisins,

James Gillies: On May 6, 1802, William Hodgson⁵³ filed a bankruptcy petition against James Gillies who resided in the town of Alexandria and was in the business of "apothecary." The first hearing in the case was held at the tavern of John Gadsby, where Chief Judge Kilty presided over the proceedings and two of the three commissioners found Gillies to be a bankrupt.

At subsequent meetings, Gillies produced a schedule of his effects and turned over all of his property; the commissioners returned to him his silver watch and \$7.60. As in the

Ramsays' case, John McIver was appointed assignee and was directed to deposit any money collected in the Bank of Alexandria, to be divided among Gillies' creditors. Four creditors appeared and proved their accounts: William Hodgson; William Hartshorne as receiver for John Mandeville, who was owed money by a company comprised of William Armistead and Gillies; Bryan Hampson; James Wilson. On July 13, 1802, the court allowed Gillies a certificate of discharge as to his debts. Although Gillies' creditors fared better than the Ramsays' creditors in that they were paid a dividend of 31 cents on their claims, they also had to wait until late 1821 to receive their final payments.

This first federal experiment with a bankruptcy law met an early demise as the law was repealed in November 1803, after only three years.⁵⁴ The repeal of the law is attributed to the advocacy of John Randolph of Virginia, who argued that the law was an *ex post facto* law and was injurious to planters.⁵⁵ Other complaints about the law were that creditors received very small dividends, that the law was used collusively by rich debtors and speculators, and that it was difficult to travel to the distant and unpopular federal courts.⁵⁶ The minuscule amount of awards and nearly 20-year delays in their distribution in the Gillies and Ramsay cases, along with the active participation of the bankrupt's friends and relatives, gives credence to these complaints.

Nevertheless, on August 5, 1803, an article appeared on the front page of the *Alexandria Advertiser* announcing that "William Ramsay has opened a Grocery Store in Prince Street, next door to Dr. Dick's." Likewise, Dr. Gillies appears to have landed on his feet. At the time Dr. Gillies' estate was inventoried on October 24, 1807, his home contained "generally what you would expect in a prosperous household."⁵⁷ Thus, whatever the complaints

about the bankruptcy law, it appears to have accomplished the purpose of giving some merchants who had experienced business reversals a means of discharging their debts and making a fresh start.

After the 1800 Act was repealed, creditors were left with the old insolvency remedies.⁵⁸ Thirty-eight years would pass before another federal bankruptcy law would be enacted, and debtor's prison would not be completely abolished in Virginia until 1873.⁵⁹

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NOTES

1. H. Talmage Day and Barbara K. Morgan, *Commercial Credit in Eighteenth Century Alexandria and the Founding of the Bank of Alexandria*, *Historic Alexandria Quarterly* (Summer 2000).
2. See Laurence M. Mitchell, *Official Records of the Colonial Period in Fairfax County*, 11 Y.B. OF THE FAIRFAX COUNTY, VIRGINIA, HISTORICAL SOCIETY 75, 83-85 (Fairfax County justices of the peace); Laurence M. Mitchell, *The County Court of Fairfax County During the Colonial Period*, 5 YEARBOOK OF THE FAIRFAX COUNTY, VIRGINIA, HISTORICAL SOCIETY 16, 22 (1955-56) [hereinafter Mitchell, *Fairfax County Court*] (leadership roles of William Ramsay and John Carlyle). Appeals from the county court were to the General Court at Williamsburg. Because of the distance involved, what justice was to be had, was for the most part had locally.
3. See Act of Assembly October 4, 1779, 10 W. Hening, THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619, at 172-174 [hereinafter "Hening"] (incorporating the town of Alexandria and providing for establishment of Hustings Court with limited jurisdiction over debt disputes). In 1787, following the Revolution, the Virginia legislature organized a new system of Virginia District Courts and limited the jurisdiction of the county courts to smaller matters. 12 Hening 467-74. After Alexandria was ceded to the District of Columbia, in 1801 the jurisdiction of the Hustings Court passed to the newly formed Circuit Court for the District of Columbia. A division of the Circuit Court was located in Alexandria. Finally, with the establishment of the federal circuit courts in 1789, all substantial debt claims, including the pre-Revolutionary claims of British merchants, were prosecuted in the federal circuit courts in preference to the state courts.
4. See Mitchell, *Fairfax County Court* 21.
5. Mitchell, *Fairfax County Court* 21 (five sessions of one to eight days in 1751). Fairfax County Court, *Minute Book – 1771*, transcribed in 12 Y.B. FAIRFAX COUNTY, VA., HIST. SOC'Y (1973) [hereinafter Fairfax County Court, *Minute Book – 1771*](9 sessions of one to five days in 1771).
6. The attendance of Lord Fairfax, George Mason, and George Washington at the Fairfax County Court sessions was limited. Lord Fairfax attended on nine days in 1750, two in 1751, and two in 1768. After he was sworn in as a justice, George Washington was present on one day in 1768, nine days in 1769, five days in 1770, and eight days in 1771. George Mason, ultimately one of the loudest voices in favor of removing the county court from Alexandria and otherwise reforming the county court system, was seldom present. See Mitchell, *Fairfax County Court* 26.
7. See A.G. Roeber, FAITHFUL MAGISTRATES AND REPUBLICAN LAWYERS: CREATORS OF VIRGINIA LEGAL CULTURE, 1680-1810 14-5, 45-47 (1981) [hereinafter Roeber, FAITHFUL MAGISTRATES].
8. George Webb, first published in 1736 [hereafter, Webb,].
9. See Roeber, Faithful Magistrates 117.
10. The "midnight appointments" of Robert T. Hooe, Alexandria's first mayor, and Dennis Ramsay, who served twice as mayor, as justices of the peace for the District of Columbia Circuit Court of Alexandria are memorialized in the landmark Supreme Court case, *Marbury v. Madison*, 5 U.S. 137 (1803).
11. While the job could be lucrative, it could also be challenging. For example, Philip Fendall, recently discharged from debtors' prison, sued the Hustings Court sergeant, Charles Turner, for wrongfully failing to pay over to Fendall funds that Turner held from execution on a judgment that Fendall had won against John Towers. Rather than turn over the funds to Fendall, Turner had levied on the funds in favor of William Deneale,

another of Fendall's judgment creditors, who had also delivered a writ of execution to Turner on a judgment against Fendall. The matter ultimately reached the United States Supreme Court where Chief Justice John Marshall held in *Turner v. Fendall*, 5 U.S. 117 (1801), that the sergeant was obligated to turn over the funds to Fendall before he could levy on them in favor of Fendall's other creditor.

12. See Mitchell, *Fairfax County Court* 22-23.
13. This practice substantially continued in the Hustings Court following the Revolution. During the Revolution, debt causes were suspended by the legislature. See generally Myra L. Rich, *Speculations on the Significance of Debt: Virginia, 1781 - 1789*, 76 VA. MAG. 301, 313 (1968) [hereinafter Rich, *Significance of Debt*]
14. Letter of William Allason to Thomas McCulloch (Mar. 4, 1791) in Allason Letterbooks, Virginia State Library, quoted in Rich, *Significance of Debt* 316.
15. Giles Jacob, EVERY MAN HIS OWN LAWYER 2 (4th Ed.1750) [hereinafter Jacob, EVERY MAN HIS OWN LAWYER]. See e.g., *Executors of George Johnston v. Daniel McCarty* (action on bond executed by McCarty in favor of George Johnston as security for Abraham Barnes' obligation to Johnston), Fairfax County Court, *Minute Book – 1771*, at 98; *Wilson v. Lenox and Maitland*, 5 U.S. 193 (1803)(action by endorsee on bill of exchange against endorser, William Wilson).
16. Jacob, EVERY MAN HIS OWN LAWYER 31. See, e.g., *Daniel McCarty v. Abraham Barnes* (action for trespass on the case relating to obligations between them concerning rents from certain Sugar Lands), Fairfax County Court, *Minute Book – 1771*, at 98; *William Ramsay v. John Alexander* (settlement of accounts between them), *Id.* at 100; *William Ramsay v. Presley Cox* (same), *Id.* at 39.
17. See e.g., *William Ramsay v. Executors of Daniel French* (defendant owed 642 pounds of tobacco), Fairfax County Court, *Minute Book – 1771*, at 39.
18. See Webb, JUSTICE OF PEACE 22.
19. See Webb, Justice of Peace 287.
20. See 5 Hening 584; 8 Hening 326-27.
21. Fairfax County Court, *Minute Book – 1771*, at 98.
22. See Hobson, Recovery of British Debts 179-95.
23. 13 Hening 365 (prescribing circumstances under which slaves could be taken in execution for judgment).
24. See Gipson, *Virginia Planter Debts before the Revolution*, 69 VA. MAG. HIST. & BIOGRAPHY 259, 268 (1961) [hereinafter Gipson, *Virginia Planter Debts*] 275, relying on Petition of Virginia based Merchants (Nov. 2, 1764); Act of Assembly of 1765, 8 Hening 118-123 (Fixing prison bounds as an area not more than 10 acres or less than 5 acres). The sheriff was obligated to give a bond as security for performance of his responsibilities. In part because of judgments won by creditors against sheriffs who had allowed their prisoners to escape, the prison bounds system was curtailed by the Virginia legislature in 1805. An act passed that year limited bounds to twelve months, after twelve months in debtor's prison, a prisoner either had to take the insolvency oath or be returned to close confinement. See Peter J. Coleman, DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1697 – 1900, at 205 (1974) [hereinafter Coleman, DEBTORS AND CREDITORS].
25. See Coleman, DEBTORS AND CREDITORS 195; 4 Hening 26-28, 151-67.

26. See 8 Hening 528-29; 9 Hening 418; Coleman, DEBTORS AND CREDITORS 195. If the debtor should thereafter become possessed of property, the imprisoning creditor could sue to recover the costs of the debtor's imprisonment. See 13 Hening 357, 377 (Oct. 1792) (codifying then existing law).
27. *Turner v. Fendall*, 5 U.S. 117 (1801).
28. Alexandria Daily Advertiser, December 20, 1805 (notice to creditors of Alexander Henderson that he was confined and would take oath of insolvency).
29. See 5 Hening 526, 534 (surety bonds).
30. See 12 Hening 457-58 (Jan. 1787) (repealing provision for three month bonds).
31. See 5 Hening § 12, at 533.
32. See 12 Hening 457, 458 (Oct. 1787).
33. See 8 Hening § 1, at 326 (stating in preamble problems with prior law on replevy bonds).
34. See 8 Hening. § 3, at 327.
35. In 1762, the House of Burgesses approved a bill that promised to be a progressive bankruptcy law for the time. As written, the bill provided that a debtor, either solvent or insolvent, could obtain a discharge of debts by delivering a schedule of his effects to any two or more principal creditors of the debtor's choice, who were thereupon given the power to manage his estate for 90 days. During the 90 day period, two assignees were to be chosen by a majority vote of creditors present at a meeting. The assignees would distribute the debtor's estate at which time the debtor would receive a certificate that he had conformed to the Act. By proving the certificate before a justice of the court to which the assignees had made a return, the court could discharge the debtor of all debts. See 8 Hening 549-563 (1762). London, Liverpool, and Glasgow merchants, however, objected to the bill because it contained no provision for voting by absentee creditors and put British and Scottish merchants residing in Virginia, at a disadvantage because their debts were subject to discharge. As a result of the merchants' petitions, the Board of Trade objected that the Act; and, based on Governor Fauquier's recommendation, the Assembly repealed the act before it became effective. See 7 Hening 643. See generally Gipson, *Virginia Planter Debts* 272.
36. See 5 Hening §24, at 588.
37. See 5 Hening §27, at 589 (providing for executions by a writ of *scire facias*, "to have execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire or be possessed of"); 8 Hening §8, at 329 (same).
38. It is difficult to ascertain how often the jail delivery system actually was used in Alexandria as the oath of insolvency was taken before a magistrate and did not become a matter of public record. See *Turner v. Fendall*, 5 U.S. 117. *But see* Fairfax County Court, *Minute Book – 1771*, 109 (recording the release of James Simmonds from Fairfax County jail upon giving the debtor's oath after 20 days in prison).
39. Alexandria Gazette, February 8, 1800.
40. Alexandria Gazette, February 13, 1800.
41. U.S. Const. art. I, § 8, cl.4.

42. See Charles Warren, *Bankruptcy in United States History* 10 (1935) [hereinafter Warren, *BANKRUPTCY IN UNITED STATES HISTORY*].
43. The Second Congress passed a federal insolvency law in 1792 that was similar to the law existing in Virginia at the time. The law provided that debtors' prison was authorized to be that of the state where the court was located and the debtors' oath could be taken before a United States judge or a general or superior court judge in the state where the debtor was imprisoned or where the creditor lived. 1 STAT. 265 (1792).
44. See Warren, *Bankruptcy in United States History* 15.
45. See J.M. Olmstead, *Note: Bankruptcy A Commercial Regulation*, 15 HARV. L. REV. 829, 835-836 (1902) [hereinafter Olmstead, *Note*].
46. 2 Stat. 19 (1800)[hereinafter Bankruptcy Act of 1800]. The "acts of bankruptcy" enumerated in the law were avoiding service of process, concealing property, fraudulently conveying property, giving false security, evidence of debt, confinement in debtors prison, or attachment of property within six months. Id.
47. Bankruptcy Act of 1800 § 34.
48. Fewer than 500 cases were filed in Pennsylvania, Maryland, New York, and the District of Columbia, the four jurisdictions where most advantage was taken of the law. See Warren, *Bankruptcy in United States History* 20.
49. See *Bankruptcy Proceedings*, Federal District Court for the District of Columbia, Virginia State Library (also available on microfilm in Alexandria Library, Lloyd House). Dr. Elisha Dick, one of George Washington's physicians; and Josiah Watson, King Street merchant, director of the Bank of Alexandria, and justice of the peace; and James Bacon, merchant, also were the subjects of bankruptcy cases. *Alexandria Advertiser*, March 2, 1802 (notice to creditors of Dr. Dick to meet with bankruptcy commissioners regarding dividend and claims); June 4, 1803 (advertising bankruptcy auction of Watson's furniture); July 18, 1804 (notice to Watson's creditors to meet with the bankruptcy commissioners at John Gadsby's City Tavern on July 27, 1804); and August 8, 1803 (notice regarding James Bacon bankruptcy).
50. As described in *Wilson v. Lenox and Maitland*, 5 U.S. 194 (1803), Lenox and Maitland had sued Wilson because the Ramsays failed to make payment under a bill of exchange drawn on the English firm of Findlay Bannatyne. This debt owed by the Ramsays to Wilson appears to be the same debt that is the subject of the lawsuit against Wilson.
51. Washington Tavern, later known as the Marshall House, was located on the southwest corner of King and Pitt Streets, where the Old Town Holiday Inn is located today.
52. Claggett's Hotel was the name of Gadsby's Tavern at the time. See Smith & Miller, *Seaport Saga* 38
53. Hodgson was an Alexandria merchant and director of the Bank of Alexandria. Hodgson's own financial situation deteriorated to the point that property he had mortgaged as security for debts he owed to the Bank of Alexandria was sold at public auction in 1810. *Alexandria Advertiser*, May 8, 1810.
54. See Warren, *Bankruptcy in United States History* 19.
55. See Olmstead, *Note* 836; Warren, *Bankruptcy in United States History* 21.S
56. See Warren, *Bankruptcy in United States History* 19.

57. William Seale, *Inventories from Alexandria: What Personal Objects Reveal About our Historic Buildings and Their Owners*, *Historic Alexandria Quarterly* 1, 6 (Spring 2000).
58. Thus, the bankruptcy laws were no longer available when Alexander Henderson was unable to pay his creditors in 1805. Instead, he followed the jail delivery process by offering up his property to his creditors and requesting that the Circuit Court for the District of Columbia administer the insolvent debtor's oath so that he could be released from confinement. *Alexandria Daily Advertiser*, December 20, 1805.
59. See Warren, *Bankruptcy in United States History*, 79. See Coleman, *Debtors and Creditors* 203.