

**MEMORIAL**

OF

**THE CITIZENS OF CHARLESTON,**

PRAYING THE ESTABLISHMENT OF AN UNIFORM

**System of Bankruptcy.**

---

**FEBRUARY 8, 1822.**

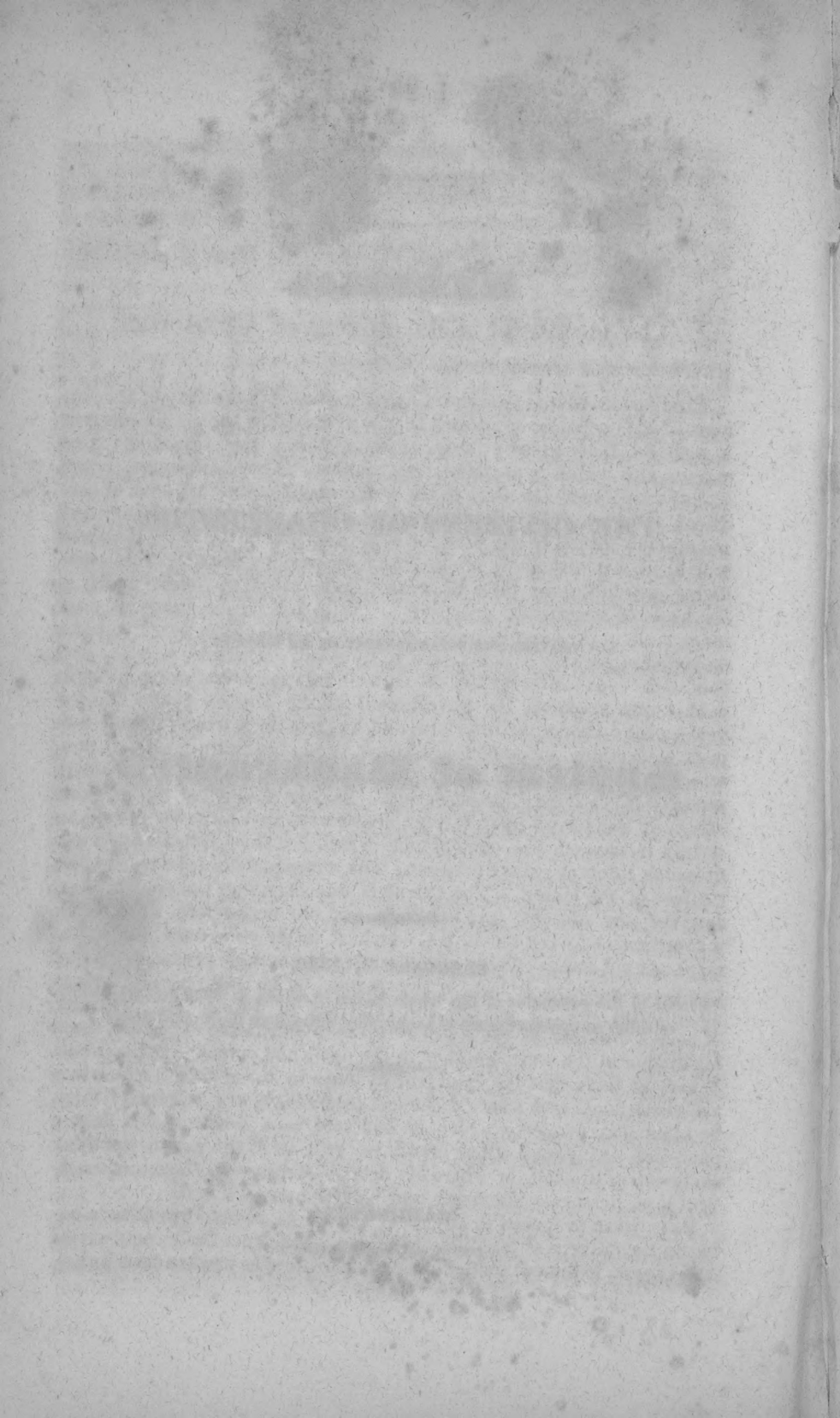
Referred to the committee of the whole House to which is committed the bill to establish an uniform system of bankruptcy throughout the United States.

---

**WASHINGTON:**

**PRINTED BY GALES & SEATON.**

**1822.**



## MEMORIAL.

*To the Honorable the Speaker and Members of the House of Representatives of the United States.*

**The memorial of the citizens of Charleston**

RESPECTFULLY REPRESENTS:

That your memorialists are of opinion, that it is the duty of the citizens of this republic to submit to your honorable body, in Congress assembled, those great grievances under which they may at any time suffer, and which you alone can redress. They, therefore, crave leave to call your attention to the embarrassing situation both of creditors and debtors in this commercial nation. The extraordinary and anomalous spectacle has been for some time exhibited to the civilized world, of a government whose chief support is derived from commerce, providing no laws to protect that system of credit which is the basis of mercantile prosperity. With full power, and, as your memorialists presume to think, under imperious obligations, to make an uniform system of bankruptcy, by which a single, simple, and consistent code shall regulate the various relations subsisting between debtor and creditor, the government of the United States has for years past forborne to interfere, and has left the parties to those unjust, uncertain, incomplete, unequal, and conflicting regulations, which above twenty different states have made, and are continually modifying, changing, or repealing. To say nothing of the ruinous effects of these laws upon foreign commerce, in which we are all so deeply interested, the obstructions which are thus thrown upon our domestic intercourse are pregnant with consequences injurious to the welfare of the Union. The extent of our territory; the enterprising spirit of our citizens; our interests, and our necessities, give rise to a commerce between the states, which, if fairly conducted, would cement our yet happy alliance, and lead to an enviable prosperity. But can that commerce be fair, or prosperous, or lasting, where there is no uniform law to govern the relations of debtor and creditor? Where a creditor of the south receives one measure of justice from his debtor in the west, another in the east, and a third in the north? Where he finds that the insolvent systems in these different quarters are discordant, and where dishonest preferences are given, by which he often sees property which he had sold on a credit to his debtor parcelled out among other creditors, real or fictitious, to the utter exclusion of himself, or where his debtor, sheltered by his state insolvent law, preserves his estate and laughs him to scorn?

If it were proposed to devise a scheme to destroy confidence between the citizens of the different states; to obstruct their commercial intercourse; to foment sectional animosities, and to weaken their union,

none could probably have been invented by the most mischievous intellect, to accomplish more effectually such baneful purposes, than a neglect or refusal in the general government to act under these powers, so especially delegated by the people. Your memorialists would point out to your honorable body the defects which exist in the respective insolvent laws of the states, but the details would not only be voluminous but unnecessary. They deem it sufficient to say, and they apprehend their assertion will not be denied, that these laws are very distinct in their objects from bankrupt laws; are all defective in important particulars, and especially in those in which the excellence of a bankrupt system consists. They do not prevent unjust preferences, nor expedite the surrender of property, nor enforce the equal distribution of assets, nor relieve from future liability the property of the debtor who has fairly surrendered his effects. Neither can the states pass any laws, were they so disposed, that could have this latter operation. In some of the states, but it would be invidious to name them, these insolvent laws appear to be calculated to promote fraud by holding out encouragement to dishonesty; in others to produce a species of bondage in the miserable debtor, from which death alone can relieve him. In a word, creditors, foreign and domestic, are as much the victims of these multifarious and unwise systems as the debtors themselves; and, if the Congress of the United States have the power to put an end to these evils, it is most earnestly and fervently desired that they would exercise it.

Your memorialists are aware that the interests of the various sections of the Union will produce a conflict of opinions upon the details of any bill which can be introduced for this purpose; and they are satisfied that, in this, as in all other measures affecting the people of all the states, mutual concessions must be made, for nothing will be done. They do not imagine that human talents can devise any system which is perfect, but they feel a consoling confidence that the intelligence of your honorable body is fully equal to the enactment of such provisions on this subject as shall be most conducive to the general welfare. We have not only the experience of many of the European governments, with their well digested systems, particularly those of Scotland and England, where centuries have confirmed the importance of those parts which are salutary, and exposed such as were defective, but we have the experience which resulted from the short existence of the act of 1800. Unfortunately for this country, that act, instead of being judiciously amended and gradually ripened into excellence, was prematurely torn from your statute book at a moment when its benefits were beginning to be felt. With such lights, and a steady view to the welfare of the people, your memorialists trust much good, and but little evil, will result from your enactments. They presume not, therefore, to suggest any particulars whatsoever of a bill, but confine themselves within their legitimate province of making known their complaints and petitioning for redress. They desire, however, to express their opinion on the power and obligation of your honorable body to pass this law, and on its importance

to the country. They regard your power to act as both *full* and *exclusive*. It is *full*, for the grant of power to make an uniform system of bankruptcy comprises every thing which can be included in the terms in their most general acceptation; consequently, should the act impair the obligation of contracts, or operate retrospectively, (which it must do in order to be beneficial) it would strictly conform to the meaning of the constitution. It is *exclusive*, for the states have expressly deprived themselves of the right to impair the obligation of contracts, which seems to be included in the power to pass a bankrupt law. It is impracticable, therefore, for the states to exercise this power, and it is essentially necessary to the prosperity of the commerce of the United States, and the happiness of a large proportion of the people, that it should be exercised. The framers of the constitution were of this opinion when they penned the clause in that instrument, and the several states when they sanctioned it. The language of Mr. Madison on the propriety of it was as follows: "The power of establishing uniform laws of bankruptcy is so essentially connected with the regulation of commerce, and *will prevent so many frauds* where the parties live, or their property may lie, or be removed into different states, that the expediency of it seems not likely to be drawn into question." As, then, your power is both full and exclusive, and the exercise of it not only expedient but necessary, your memorialists most respectfully submit to your honorable body whether, having undertaken to fulfil the trusts with which you are clothed by the people who framed that constitution which has called you into existence, you can now decline acting?

Your memorialists do not observe, in the light in which they have been represented, the alleged evils resulting from the establishment of a bankrupt system; it is said that it cannot be equitably enforced, because it is radically unjust; that it will encourage extravagant speculation; be productive of frauds and perjuries; add to the criminal code; and impair our attachment to the laws. But why, it may be asked, cannot this system be as equitably enforced, as any other part of the code of laws? Can there be any thing peculiarly iniquitous in a law, whose primary objects are to protect the interests of the creditor; the future welfare of the honest debtor; the punishment of the fraudulent one; the equal distribution of an insolvent's assets; and the promotion of individual, commercial, and national prosperity? Have we really attained a more perfect commercial knowledge than the Dutch, French, Scotch and English? Are we ourselves, in short, satisfied that state insolvent acts, confused in their provisions, and limited in their efficacy by the constitution, are sufficient for these purposes? or is public opinion audibly expressed in almost every commercial city of the union, on the necessity of the measure? That system, then, whose objects are so excellent, your memorialists trust, cannot, under the regulations of a wise legislature, be inequitably enforced.

The argument which attempts to prove that this law, however constructed, will encourage extravagant speculation, inasmuch as the



debtor when he gains, makes his fortune, and when he loses, only becomes a bankrupt, to begin again, overlooks the obvious consideration that the difficulty of obtaining credit will be in the same ratio with the facility of procuring a discharge. It seems, also, to be forgotten, that the most honest bankruptcy must be more or less injurious to the mercantile reputation of any individual, and will not therefore be carelessly incurred. That frauds and perjuries will be committed under any system, your memorialists freely admit; they are, unfortunately, the daily subjects of legal investigation and punishment in all your courts, and most of your laws are made to prevent their commission. But it is not observed that so many frauds can result from a proper bankrupt system, as from the respective insolvent laws, which afford peculiar facilities, both from their number and imperfections, to the accomplishment of nefarious schemes; and it is most manifest to your memorialists, that the latter produce infinitely more injustice. It is true, the bankrupt act may be abused, and converted into an instrument of fraud, but so may and are all other human laws, however perfect, and however valuable.

If it were true, that the establishment of this system would add to our criminal code, and, by deluging our country with blood and misery, impair our attachment to the government, your memorialists certainly would deprecate the measure, but its sanctions must be prescribed by your own decree, and the wisdom of your honorable body will certainly impose no other punishments for the commission of frauds, than those which the common feelings of mankind can approve. This, so far from making a frightful addition to the criminal code, will in many instances be less rigorous than state inflictions for similar offences against the insolvent laws. The experience of mankind points to moderate but certain punishments, as best adapted to prevent crimes; and the wisdom of Congress will never subject so excellent a system to so fatal an objection.

Your memorialists cannot conclude without recalling to the recollection of your honorable body, the great number of persons whose interests are most deeply involved in this matter. They do not now allude to the people of the Union generally, though they are all remotely or immediately interested; nor to creditors whose fortunes are directly concerned; but to the thousands and tens of thousands of our wretched fellow-citizens, overwhelmed by debts that grind them to the earth, and whose only hope of relief, under Heaven, rests on Congress. These men are now deprived of all honest and open employment; the product of their industry (where industry is exerted) enures to the benefit of others, or is concealed from view; their families are either miserably sustained by clandestine and immoral gains; or abandoned to want, ignorance, and vice; whilst the wretched parent drowns his despair in intemperance. To a government that loves to watch over the happiness and virtue of the people, this view of the subject would suggest the most interesting considerations. Your memorialists can only thus hint at them; but should your honorable body, contrary to their expectations, regard it

as unmanly or unwise, to yield to the voice of humanity, unless seconded by policy, they trust, that, in this particular, they are in unison. The passage of the act will enable a majority of these miserable persons again, in the face of day, to resume their former industrious habits; they will once more feel a warm affection for their country, they will hasten to reform their morals, and to educate their offspring; and thus, by becoming useful and enterprising citizens, will relieve society from a weight which now oppresses it, and swell the coffers of the state; surely the political advantages which must thus result from the increase of active population are not to be despised.

Your memorialists have thus, as briefly as possible, laid before your honorable body their grievances, which are not peculiar, but are felt in every part of the Union. They submit the subject with this, their earnest petition, that an uniform system of bankruptcy may be passed, in such form and manner, as, to the wisdom of Congress, shall seem best calculated to promote the welfare and happiness of our beloved country.

And your petitioners will ever pray.

JAMES HAMILTON, JR.

*Intendant of the City of Charleston, and chairman of the meeting.*

SAMUEL TRIOLEAU,

J. N. CARDOZO,

JOS. JOHNSON.

JOHN D. HEATH,

ALEX'R BLACK,

*Committee.*

