

**THE POLITICAL
ANNALS OF SOUTH-
CAROLINA; PP. 1-50**

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JAMES DUNWOODY BROWNSON DE BOW

**THE POLITICAL
ANNALS OF SOUTH-
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THE
POLITICAL ANNALS

OF

SOUTH-CAROLINA.

—
BY A CITIZEN.
—

By James Dunwoody Brownson De Bow.

PREPARED FOR THE SOUTHERN QUARTERLY REVIEW.

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CAROLINA POLITICAL ANNALS.

STEMMATA quid faciunt? is the caustic interrogatory of the Roman satirist;—but, after all, we are much concerned about these questions of pedigree, and “Ponticus” might well be justified in not esteeming so lightly the *pictos vultus majorum*, as our poet would have had him. It is the part of the man, as of the nation, to trace out with peculiar care his origin and descent. The “golden grasshopper” on the Grecian’s head, gave expression to a law universal. We claim no exemption from the law.

Our Legislature, in 1827, proposed a search of the English colonial offices for the documents of the State’s early history. The search was not made, to be sure, but then the principle was at work in the suggestion. We might be pardoned for wishing a double portion of this spirit infused into our people. It would kindle up in them a higher zeal for digging down into the treasuries of past experience. There are spaces in our history yet to be touched with rays of light, and sombre outlines to be filled up with life and colour.

When the suggestion we have mentioned was made, “darkness” indeed “prevailed over the great deep.” If South-Carolina knew any thing of her pristine days, the knowledge was confined to her favorite few. It was a kind of State secret,—concealed from the people, or existing only in confused legends. But, thanks to some generous spirits, there has dawned a new era on the progress of historical research. In 1834, the first volume of Bancroft’s History of the United States was issued from the press, lavishing upon the early chronicles of our State many an admirable chapter. Two years afterwards, Mr. Carroll published his “Collections,” bringing to the public eye not a few antique and almost forgotten historical records, pamphlets, essays, et cetera, on the

same interesting subject.* In 1840, Mr. Simms presents himself as the historian of South-Carolina. Something has been done,—much is yet to be done. The disposition to do it is sufficiently general. With proper legislative and popular encouragement, the result must be in the last degree gratifying. That Vandal spirit which buries in oblivion, or destroys, the monuments of the past, can no longer have a place. The "light of other days" is being, and must of necessity be, shed upon us. We can meet and brave the future, when we anticipate it from an enlightened experience of the past. It is here that History performs her proper mission, and merits the magnificent panegyric of Cicero,—*Historia vero testis temporum, lux veritatis, vita memorie, magistra vite, nuntia vetustatis, qua voce alia, nisi oratoris, immortalitati commendatur.*†

Leaving, however, the general history of our State,—the records of its progress in wealth,—in population,—in arts and in letters,—in agriculture and in commerce,—in deeds of arms and martial prowess,—we come to a department, interesting, important, and but partially explored,—its political, legal or constitutional history. About this only shall we concern ourselves at present. A wide field opens itself here,—a field, into which, whatever the intrepidity involved, we have determined to hazard an entrance. We would gather up the elements, as they lie strewn and scattered about, condensing them into a whole, sufficiently clear, brief and popular. We anticipate much more than our pains, too, for the difficulties which must be surmounted. The article must have interest for the general reader, and it is for him that we particularly intend it. Nor only this; the interest cannot be local in a matter which relates to one of the oldest and proudest of the "Confederated Thirteen." The Southern Review will give us circulation; let the merits of the subject ensure the rest. We deprecate as a motive the mere *insanabile scribendi cacoethes* of Juvenal. We look higher. The *homo sum* of Terrence rather stimulates us, or what Bacon has often said as to every man's obligation to advance and elevate his profession.

* Among the writers included in this "Collection," are Hewitt, Chalmers, Wilson, Oldmixon, Milligan, Governors Archdale and Glen, etc. There is also an introductory part by Mr. Carroll, and a map.

† Cic. De Or. lib. ii., sec. 9.

But where are we to gather these constitutional or legal facts? In works of general history, in reports of judicial determinations,* in records of past legislation. Abundance of all this material is at hand; the difficulties will be in the selection. A folio edition of our laws, for instance, was published in 1736, by Chief Justice Trott, who was a great man in his day; a similar one from Judge Grimke in 1790; a continuation by Faust down to 1805; Brevard's digest reaching to 1814. In 1834, a compilation of the State Laws was directed by Act of Legislature. Dr. Cooper, of Columbia, was the man of all others for the undertaking, and he was appointed. He lived to complete the fifth volume, but died before its publication. The part executed by him has many important notes and useful suggestions. To Mr. M'Cord the conclusion of the work was entrusted; who, following in general the plan laid out by his distinguished predecessor, brought down the whole to 1838; adding to it a full and complete index. The profession and the public cannot but be greatly benefitted by such a publication. Not a little will the study of our jurisprudence be facilitated by it: long has something of the kind been demanded. We may expect improvements in the public code, when, at a single view, all the enactments relating to a particular subject may be comprehended. Formerly it would have been a labored undertaking to have attained this: and the result—laws without the clearest reference, and even repugnant to antecedent laws, ultimately—perplexed litigation. Sir Wm. Blackstone complained of this in his day. His work suggested many important changes and improvements; heterogeneous and conflicting enactments were to be harmonized into a single enactment. We have lately had a specimen of this ourselves in the Militia and Patrol Laws; in the laws for the regulation of Magistrates, Sheriffs, etc. Could not an intelligent jurist find room for his patriotisms to work in such a sphere as this? We suggest the undertaking. As early as 1721, a commit-

* The South-Carolina Law Reporters are in the order stated, and cover the period from 1783 to the present time. Bay 2 vols.; Brevard 3; Treadway 2; Mills 2; Nott & M'Cord 3; M'Cord 4; Harper 1, (extended by Riley); Bailey 2; Hill 3; Riley 1; Dudley 1; Rice 1; Cheves 1; M'Mullan 2; Spears 2—29 vols.

The Equity Reporters are: Desaussure 4 vols.; Harper 1; Bailey 1; Hill 2; Riley 1; Dudley 1; Rice 1; Cheves 1; M'Mullan 1; Spears 1—14 volumes, extending back to the Revolution.

tee of the Assembly was charged with the revision of all the laws of the province: nothing further is known of the committee. In 1785 an act was passed providing for a digest. The convention which framed the constitution of 1790, earnestly recommended such a work. "When this edition of the Statutes at Large is finished," says Dr. Cooper, (3 vol. 785) "the labors of a revising committee will be indispensably necessary. What can be the objection to condensing in one single comprehensive law, ten or a dozen acts scattered through the book?" *Est quoddam prodire tenus si non datur ultra.* New-York, Massachusetts, Pennsylvania and Virginia, are far ahead of us in these particulars. We leave the matter with whom it may concern,—our business is more with the political, or constitutional, than the legal history of the State.

The charter of 2 Charles (1663) in strictness, should be our starting point. There are some antecedent matters, however, necessary to be understood: an explanation or two, and we dismiss them. The first grant of the country is from England. Whence her right to the territory so lavishly bestowed? If by "prior discovery," was it not defeated by *adverse* "prior occupancy?" The Cabots under Henry VII. certainly reached the continent before Columbus or Amerigo Vespucci. Oldmixon, and others, deny that they ever reached as far South as Florida. The date here 1497. The Spaniards put in claim to Carolina, or Florida as they call it, in virtue of Ponce de Leon, Vasques de Ayllon, Pamphilio Narvesi, and Fernando de Soto's discoveries. By right of discovery Florida belonged to Spain. She claimed too much, however; in Spanish geography Canada was a part of Florida.* Two colonies of Frenchmen were expelled from Carolina (so called from IX Charles of France) prior to 1565. The Spaniards were the first discoverers—the French the first occupants. Then came England, and England is never long in want of a title. She first reached the continent. She had a Papal bull.† She found the country unsettled, and a wilderness. We do not

* Bancroft's Hist. U. S., vol. 1, p. 30.

† So says Mr. Carroll, 1 Hist. Col. S. C. p. x. note. He quotes Bancroft's Hist. U. S., vol. 1, p. ii., as authority; but has strangely misquoted him. Mr. Bancroft does not say that "the claim was founded on a grant of the Roman Pontiff."

stop to settle points of casuistry. Not a Frenchman or a Spaniard had been in Carolina for a hundred years.

The name of Raleigh, says Bancroft, belongs to American history. His great soul looked to the new world and its developments. Elizabeth granted him every thing he could desire—a vast empire, and almost unlimited power. His proprietary grant covered part of Carolina under the title of Virginia. In the vicinities of Albemarle and Pamlico were unsuccessful colonies. In 1585 Raleigh assigned his proprietary. In 1606 "The London Company"—noblemen—gentlemen—merchants, obtained a charter; Carolina, north of Cape Fear, was included in it. This, the first colonial charter granted to Englishmen in America, was despotic; it violated *magna charta* itself. The hardy spirits who were to brave the dangers of the new world, were to do it with the yoke about their necks. James the First drew up a code for this new government. Hence the origin of our chartered governments; hence perhaps, too, the idea of written constitutions so universal in the American States. The pretence under these charters was "the propagation of christianity." Alas that such a "multitude of sins" should be covered under so fair a guise! New England was granted to men jealous of civil and religious freedom—men yearning after liberty. *The New England charters were essentially free.* Noblemen, knights, and gentlemen coveted wealth from Southern climes; there the rivers washed out golden sand. These men needed plantations—not States; power—not liberty; estates—not homes. *The Southern charters contained no element of popular rights.*

Sir Robert Heath, Attorney General to the King, obtained, in 1630, a grant covering from 31 to 36 degrees of latitude. It passed through the Earl of Arundel to Dr. Coxe, whose son published an account and map of the country. Tradition says there were attempts under the grant to colonize;—the patent was long after declared void. If Heath did nothing, however, Massachusetts and Virginia did. The former sent a small settlement to Cape Fear;—the latter, in 1663, granted land to George Cathmaid, "as a reward for establishing sixty-seven persons in Carolina."

The Charter of Charles the Second is at last before us. The constitutional history of South-Carolina, of right, begins with it. To eight of the most distinguished men in England, is secured all the territory south of the 36° parallel

to the St. Matheo (now the St. John's) River. The historian, Clarendon; the *novus homo* Albemarle, (so celebrated as Gen. Monk at the Restoration;) Craven, a cavalier and a soldier; Ashly Cooper, Chancellor of the Exchequer, (history's dissolute but eloquent and philosophic Shaftsbury;) Colleton, the royalist; two Berkleys; and Sir George Carteret, were invested by the instrument with almost absolute power,—“to enjoy the same,” says the charter, “as amply as any Bishop of Durham,”* etc., etc. Allegiance alone was reserved to the crown. “Avarice is the vice of declining years; most of the proprietors were past middle life. They begged the country under the pretence of a pious zeal for propagating the gospel, and their sole object was the increase of their own wealth and dignity.” The opposing claims of Spain—the London Company—the Massachusetts settlers, were soon disposed of. Sir John Yeamans, who came over from Barbadoes with a colony of planters about this time, was constituted Governor of all the territory south of Cape Fear. Thus the history of the first charter. There was a second two years after, suited to the ever grasping hands of the proprietors.† It extended half a degree further north; southward to 29°; westward to the ocean; covering an almost illimitable territory. All of the present North and South-Carolina, Georgia, Tennessee, Alabama, Missis-

* Durham was a *County Palatine*. The Bishop had in it *jura regalia* as fully as the King in his palace. All offences were against his peace. All forfeitures accrued to him. He exercised the right of pardoning; appointed judges, etc. Most of these privileges Henry VIII. and Elizabeth abolished; but this did not affect the proprietors; they having all the Bishop's *original* rights.

† The proprietors held by free and common socage tenure, with an annual rent of twenty marks, and one half of all gold and silver ore. They had the fullest powers to constitute a government. To make all laws, etc., analogous to the laws and customs of England, with consent of the freeholders. They might create titles of nobility not used in England; and might—but only if they pleased, for so I understand it—grant liberty of conscience and full toleration to all dissenters. The charter evidently contemplated a large production of tropical commodities, admitting as it does into England for several years free of duty from Carolina, wines, currants, raisins, silks, capers, wax, almonds, oil, and olives. The hope was never realized. A magnificent empire, too, was anticipated, or why those rights of “erecting fortifications,” “making war,” “exercising martial law,” “raising revenues,” etc. lodged in the proprietors. From this latter right, however, they expected most to their private fortunes. Every thing was accorded them. “Nothing was neglected,” says Baneroff, “but the interests of the English crown and the rights of the colonists.” And yet Clarendon, the Chancellor, was impeached not long after for introducing the arbitrary power of the crown into the plantations. 2 Car. Coll. p. 288.