Poverty: Its Illegal Causes and Legal Cure

Part First

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CHAPTER I. ILLEGAL CAUSES OF POVERTY.

The existing poverty would be rapidly removed, and future poverty almost entirely prevented, a more equal distribution of property than now exists accomplished, and the aggregate wealth of society greatly increased, if the principles of natural law, and of our national and state constitutions generally, were adhered to by the judiciary in their decisions in regard to contracts.

These principles are violated by the judiciary in various ways, to wit:

1. In a manner to uphold arbitrary and unconstitutional statutes against freedom in banking, and freedom in the rate of interest; thus denying the natural and constitutional right of the people to make two classes of contracts, which will hereafter be shown to be of vital importance, both to the general increase and to the more equal distribution of wealth.

2. In a manner to extend the obligation of certain contracts beyond their natural and legal limit, and hold men liable to pay debts no longer due; thereby condemning large numbers of men to perpetual poverty and destitution, by making their expired debts a burden upon their future acquisitions, and an obstruction to their obtaining credit for the capital necessary to the successful employment of their industry.

3. In a manner to reduce the obligation of the contracts of corporate bodies below their natural and legal limit, and thus enable the privileged debtors, who have the means of payment, to withhold payment of debts actually due, and make themselves rich by making others poor.

4. In a manner to deny the legal rights of creditors, relatively to each other, in the property of their debtors; enabling and, in cases of insolvency, compelling debtors to swindle one portion of their creditors for the benefit of another; making it impossible for capitalists to determine, with any reasonable accuracy, the value of personal security for loans; rendering it unsafe for them to loan capital at all to mere laborers; and thus preventing the natural and more equal diffusion of credit among all those poor men, who are in want of capital upon which to bestow their labor, and who, for the want of such capital, are compelled to sell their labor to others for a price much below the amount of its actual products.

These erroneous decisions of the judiciary are made, in some of the cases, in obedience to arbitrary and unconstitutional legislation; in others, through ignorance of the natural law applicable to contracts, where no special legislation has been had.

It will be the object of the following essays to establish the illegality of these various decisions, and to explain their effects in obstructing the increase and more equal distribution of wealth.

But before proceeding to any legal discussions, let us, state certain economical propositions, that are obviously conducive, if not indispensably necessary, to the greatest aggregate increase, and most equal distribution of wealth, that can be accomplished consistently with the natural right of each man to the control of his own property. Having stated these propositions, we will then see whether those principles of natural and constitutional law, which our judiciary are bound to adhere to, would secure the establishment or realization of the propositions themselves.

CHAPTER II. ECONOMICAL PROPOSITIONS.

Proposition 1.

Every man—so far as, consistently with the principles of natural law, he can accomplish it—should be allowed to have the fruits, and all the fruits of his own labor.

That the principle of allowing each man to have, (so far as it is consistent with the principles of natural law that he can have,) all the fruits of his own labor, would conduce to a more just and equal distribution of wealth than now exists, is a proposition too self-evident almost to need illustration. It is an obvious principle of natural justice, that each man should have the fruits of his own labor; and all arbitrary enactments by governments, interfering with this result, are nothing better than robbery. It is also an obvious fact, that the property produced by society, is now distributed in very unequal proportions among those whose labor produced it, and with very little regard to the actual value of each one's labor in producing it. And this fact is not the result except in a partial degree—of the superior mental capacities, which enable some men, consistently with honesty and fair competition, to compass more of the means of acquiring wealth than others; but it is the result, in a very important measure, of arbitrary and unjust legislative enactments, and false judicial decisions, which actually deprive a large portion of mankind of their right to the fair and honest exercise of their natural powers, in competition with their fellowmen. That such is the truth will be seen hereafter.

That the principle of allowing each man to have the fruits of his own labor, would also conduce to the aggregate increase of wealth, is obvious, for the reason that each man being, as he then would be, dependent upon his own labor, instead of the labor of others, for his subsistence and wealth, would be under the necessity to labor, and consequently would labor. The aggregate wealth of society would therefore be increased by just so much as the labor of all the members of society should be more productive than the labor of a part. It would also be increased by the operation of another principle, to wit: When a man knows that he is to have *all* the fruits of his labor, he labors with more zeal, skill, and physical energy, than when he knows—as in the case of one laboring for wages—that a portion of the fruits of his labor are going to another. Under the influence, then, of this principle, that each man should have all the fruits of his own labor, the aggregate wealth of society would be increased in two ways, to wit, first, *all* men would labor, instead of a part only; and, secondly, each man would labor with more skill, energy, and effect, than hired laborers do now.

Proposition 2.

In order that each man may have the fruits of his own labor, it is important, as a general rule, that each man should be his own employer, or work directly for himself, and not for another for

wages; because, in the latter case, a part of the fruits of his labor go to his employer, instead of coming to himself.

Proposition 3.

That each man maybe his own employer, it is necessary that he have materials, or capital, upon which to bestow his labor.

Proposition 4.

If a man have not capital of his own, upon which to bestow his labor, it is necessary that he be allowed to obtain it on credit. And in order that he may be able to obtain it on credit, it is necessary that he be allowed to contract for such a rate of interest as will induce a man, having surplus capital, to loan it to him; for the capitalist cannot, consistently with natural law, be compelled to loan his capital against his will. All legislative restraints upon the rate of interest, are, therefore, nothing less than arbitrary and tyrannical restraints upon a man's natural capacity and natural right to hire capital, upon which to bestow his labor. And, of consequence, they are nothing less than arbitrary and tyrannical restrictions upon the exercise of his right to obtain all the fruits, that he honestly can obtain, from his labor.

The rate of interest, which the capitalist will demand, will depend upon a variety of circumstances, and especially upon the risk of loss attendant upon the loan—in other words, upon the character of the security offered by the borrower for the payment of the loan. This security and consequent risk will differ in the cases of different individuals. The legislation, therefore, that prescribes a fixed rate of interest, beyond which no contracts may go—especially if that limit be, as it usually is, the lowest at which capitalists will loan money on the most approved security—in effect deprives all those, who cannot offer the most approved security, of their right of hiring capital at all.

The great mass of those, who, by reason of not having the most approved security to offer, cannot borrow capital at all at six per cent., could yet, without difficulty, borrow enough to employ their own hands upon, (say from two to ten hundred dollars,) on the credit of their skill, industry, integrity, and ability, and of the value which their labor would add to the capital borrowed, if they were allowed to contract for seven, eight, nine, or ten per cent. interest—enough to pay for the risk of life, health, losses by fire, theft, robbery, &c.; which risks it is perfectly right that the capitalist should be guarded against by an additional rate of interest.

The effect of usury laws, then, is to give a monopoly of the right of borrowing money, to those few, who can offer the most approved security. A man offering the most approved security, can obtain money at six per cent.; while another, whose security is not so acceptable, but who, nevertheless, could obtain money as readily at seven, eight, or nine per cent., as the other does at six, cannot now obtain it at all, simply because he is forbidden to contract for such a Tate of interest as would, in the average of loans, compensate capitalists for the additional risk or inconvenience attendant upon the only kind of security he has to offer.

The consequence is that the loanable capital of society is monopolized almost entirely by those few, those very *few*, who wish to borrow, and can offer the most approved security while the mass of those, who have not capital of their own, but who, if left free to make their own

contracts, would be able to obtain a portion sufficient to employ their own hands upon, are now, for the want of capital on which to bestow their labor, compelled to sell their labor to those who have, by means of the usury laws, monopolized the capital. And they are compelled to sell their labor at such a price as will enable the employer to make a large profit upon their labor; or, in other words, enable him to put into his own pocket an important portion of the fruits of *their* labor. All this is the effect of the usury laws. The same laws that enable him to monopolize the loanable capital, enable him also to monopolize the labor of those who cannot borrow capital on which to bestow their labor.

To illustrate the operation of this principle, let us suppose that a capital of five hundred dollars is necessary to employ the labor of one man; that, under the usury laws, A, owing to the approved character of the security he has to offer, can borrow, and does borrow, at *six* per cent. interest, five hundred dollars capital more than he wants to employ his own hands upon; that B is a poor man, who cannot borrow capital at six per cent., and, therefore, owing to the prohibition of the usury laws, cannot borrow it at all; that he is consequently compelled to sell his labor to A, who has borrowed the necessary capital to employ his labor; that A buys B's labor for a year, and, after paying his wages, and the interest on the five hundred dollars on which he has employed B to labor, he (A) realizes one hundred dollars profit.

This probably is not an extravagant supposition; for it is probable that employers, who borrow their capital at six per cent., and manage their business judiciously, do generally realize at least an hundred dollars profit from the labor of each adult male laborer they employ.

Now it is plain that if B had been allowed to borrow, and had borrowed, (as he probably could have done,) this same five hundred dollars capital at *nine* per cent., and had then employed his own hands upon it, he could have put into his own pocket eighty-five dollars more of the fruits of his labor than he did when laboring for A for wages—for he could have had *all* the fruits of his labor, (that is, the amount both of his wages and the profits made by A,) with but this abatement, viz., that be must have paid three per cent. more interest for his capital than was paid by A. This three per cent. interest, on five hundred dollars, would be fifteen dollars—which, deducted from the hundred dollars that went into A's pocket as profit, leaves eighty-five dollars to go into B's own pocket, over and above the amount he received as wages when laboring for A.

This supposition illustrates fairly the operation of usury laws, in depriving the mass of men of the fruits of their labor. These laws give a monopoly of the loanable capital to a few individuals. These individuals, having a monopoly of capital, are able to take advantage of the necessities of all those who have not capital of their own, and are forbidden to borrow any, on which to labor. They thus compel them to sell their labor at a price that will give their employer a large slice out of the products of their labor. The laws themselves are the contrivances, not of the retired rich men, who have capital to loan—for they, of course, wish to carry their money to the largest and freest market—but of those few "enterprising" "business men," as they are called, who, in and out of legislatures, are more influential than either the rich or the poor; who control the legislation of the country, and who, by means of usury laws, can sponge money from those who are richer, and labor from those who are poorer than themselves—and thus make fortunes. And they are almost the only men who do make fortunes—for almost all fortunes are made out of the capital and labor of other men than those who realize them. Indeed, large fortunes could rarely be made at all by one individual, except by his sponging capital and labor from others. And the usury laws are the means by which he does it.

The reason given for usury laws is, that they protect the poor from the extortions of the rich. But this reason is a false one—for there is no more extortion in loaning capital to the best bidder, than in selling a horse, or renting a house to the best bidder. The true and fair price of capital, as of everything else, is that price which it will bring in fair and open market. And those who falsely pretend to be interested to prevent the rich extorting money from the poor, in the shape of interest on capital, are the very men who want nothing but an opportunity for themselves both to extort capital from the rich, and labor from the poor, that they may thus fill their own pockets at the expense of other men's rights. The protection they offer to the poor, is the protection of forbidding them to borrow capital on which to employ their labor, and thus compelling them to sell their labor at a price that enables the purchaser to make a large profit upon it; it is the protection, which, as in the case already supposed, would really extort from them eighty-five dollars of their labor, to save them from the pretended extortion of fifteen dollars in the shape of interest. Leave the rich and the poor to make their own bargains in regard to the interest of capital, and it is as certain as the laws of nature, that capital will find its way into the hands of those who are to perform the labor upon it. In fact, the usury laws impliedly admit that such would be the result—else why do they prescribe such rates of interest as must necessarily confine all loans to a few individuals?

Of all the frauds, by which labor is cheated out of its earnings by legislation, and of all the monopolies established by legislation, probably no one is more purely tyrannical in its character, or more destructive at once of the natural right of individuals to make their own contracts, and of the just distribution of wealth, than that monopoly of the right of borrowing money, which forbids the mass of men to obtain capital, on which to bestow their labor, and thus compels them to sell their labor at a price far below the amount of its actual products.

The law, that allows all men, without distinction, to borrow capital, provided they can borrow it at six per cent. interest, is, in the equality of its operation, like a law that should allow every man perfect freedom to profess and enjoy his own peculiar religion, provided his peculiar religion was the particular arid only one that was allowed by the State to be professed and enjoyed by any one.

A statute, that should forbid one man to borrow, at any rate of interest whatever, more capital than lie could manage by his own labor alone, would not be tolerated, for the reason that it would be an infringement of men's natural rights to borrow all they could; yet it would not be half so unequal or pernicious, nor so unjust an infringement of individual rights, nor probably so destructive of the equal distribution of wealth, as are the usury laws, which allow one man to borrow enough to employ a hundred laborers upon, while they forbid the hundred laborers to borrow each enough to employ his own hands upon.

What a change would be wrought upon the face of society, if each adult male laborer, who is now obliged to sell his labor, were to receive, during the prime of his life, eighty-five dollars annually of the fruits of his labor more than he does now; and if all older and younger persons, and females, who are Dow obliged to sell their labor, were also to receive a similar greater proportion of the fruits of their labor. Yet if the supposition before made be correct, what prevents such a result? If the abolition of the usury laws alone would not accomplish it, the abolition of these and the other tyrannical and unconstitutional restraints upon the freedom of industry, and men's rights of contract, hereafter to be pointed out, would, I think, certainly accomplish it, at least in the case of all honest, industrious, and ordinarily skillful laborers.

Proposition 5.

The laborer not only wants capital, on which to bestow his labor, but he wants to obtain this capital at the lowest rate of interest, at which, in the nature of things, he can obtain it. That he may obtain it at the lowest possible rate of interest, it is necessary that free banking be allowed.

The correctness of this proposition will be seen, when it is; considered what banking really is. Banking is loaning one's credit, (for circulation as currency,) instead, of loaning money.

If a man can afford to loan money for six per cent. interest, he can certainly afford to loan his credit for three. And why 1 Because whatever profit a man makes by loaning his credit, is clear gain. It costs him nothing; for he, still enjoys the use of the houses, lands, or other property, on which his credit is based, in the same manner as if he had not loaned the credit based upon them. But the income, which a man derives from the loan of money itself, is obtained only by the sacrifice, or at the expense of the crops, rents, or other incomes, which he might derive from the lands, houses, or other property, which his money would purchase. If, therefore, a man can afford, for six per cent. interest on his money, to give up all the crops, rents, and other incomes, which he might obtain from the lands, houses, or other property, which his money would purchase, it is plain that for three per cent. he could afford to loan his credit, which costs him nothing but the risk and trouble attendant upon the loan, (which risk and trouble, by the way, are not materially, and, in general, perhaps no greater, than in the loan of money.)

It can hardly be said that there is any profit in loaning money itself; for the interest obtained is generally no more than a fair price or equivalent for the crops, rents, or other incomes, which the property that might be purchased with the money, would yield. But in the loan of credit, there is an actual profit of the whole amount that is received as interest, after paying the trouble and risk of banking.

It is clear, therefore, that if money can be loaned, as it now is, for six per cent. interest, credit could be loaned at two, three, or four per cent.

Since, then, all banking profit is a net profit without cost, and not, like the interest on money, an equivalent for the crops, rents, and other incomes of property, that the lender might have retained and enjoyed; and as the materials for banking credit are abundant, and almost superabundant, it is obvious that if free competition in banking were allowed, the rate of interest on banking credit would be brought very low, and bank loans would be within the reach of everybody whose business and character should make him a reasonably safe person to loan to. Probably every such person could borrow, at six per cent, capital enough to employ his own hands upon; and many would doubtless be able to borrow it for five, four, or even three per cent.

Suppose such were the result, and suppose five hundred dollars capital to be enough to employ each man's labor, the only difference between the annual income of a man, who should own his capital, and of one who should borrow his) would be barely the interest paid by the latter—that is, fifteen, twenty, twenty-five, or thirty dollars, according as he should pay three, four, five, or six per cent. interest. What a change would be rapidly wrought in the condition of mankind by a system that should supply all the destitute with the use of capital on such terms as these.

If free banking were allowed, the loanable credit could not be monopolized by a few borrowers, as the loanable money now is. The materials for banking credit are so immense, so nearly illimitable indeed, and exist in such a variety of shapes, and are distributed among so many proprietors, that it would be impossible to concentrate them, as money is now concentrated, in the

hands, or bring them under the control of a few corporations, or confine the loans based upon them to a few favorite individuals.[1]

Banking credit is the best kind of credit for the borrower—and for these reasons.

1. It is obtained at the lowest possible rate of interest.

2. It then enables the borrower to buy, at cash prices, whatever he wishes to buy.

3. Circulating like money itself, and divisible like money itself into small amounts, it enables the borrower to buy his commodities, or materials, in such quantities, of such qualities, and of such persons as it will be most for his interest to buy them—instead of his being compelled, as he is when he buys his commodities on credit, to buy them in such quantities, of such qualities, and of such persons, as it may chance that he can buy them on credit.

So great are the necessities of the poor for materials upon which to bestow their labor, and for the necessaries of life, such as food, clothing and fuel; and so great are the difficulties in the way of getting cash to make their purchases with, that they are compelled to make most of their purchases on credit; to make them of persons who do not wish to give them credit, and who will not give them credit, except at extravagant prices; and also often to buy commodities not the best adapted to their wants. In making their purchases tinder these circumstances, they not only suffer serious losses in the kinds and qualities of the commodities purchased, but they are also obliged to pay five, ten, fifteen, or twenty per cent. more for them, than they would have to pay if they had cash to buy with. Probably also the retailer (of whom many of their purchases are made) has himself bought his goods on credit of the wholesale dealer, and paid five, ten, or fifteen per cent. more than if fie had bought with cash. And this increased price, paid by the retailer, finally falls upon the consumer, in addition to the increased price which the consumer also pays on account of his own want of cash to buy with. Free banking wonld obviate almost entirely these enhanced prices of commodities, and these losses from the want of adaptation in the commodities to the wants of the purchasers; because, if free banking were allowed, almost everybody, who was worthy of credit at all, both retailer and consumer, could obtain it at the

[1] One of the greatest—probably the greatest—of all the evils resulting from the existing system of privileged corporations for banking purposes, is that these incorporations amass, or bring together, and place under the control of a single directory, the loanable capital that was previously scattered over the country, in small amounts, in the hands of a large number of separate owners. If this capital had been suffered to remain thus scattered, it would have been loaned by the separate owners, in small sums, to a large number of persons; each of whom would thus have been supplied with capital sufficient to employ his own hands upon, with the means of controlling his own labor, and thereby of securing to himself all the fruits of his labor, except what he should pay as interest. But when all this scattered capital is collected into one heap, and placed under the control of a single directory, it is usually loaned in large sums, to a few individuals—generally to the directors themselves and a few other favorites. It probably is not loaned to one tenth, one twentieth, or one fiftieth as many different Persons, as it would have been if it had been suffered to remain in its original state, and had been loaned by its separate owners. Individuals, instead of borrowing one, two, three, or five hundred dollars to employ their own bands upon, as would be the case but for these incorporations of capital, now borrow fives, tens, and hundreds of thousands of dollars, upon which to employ the labor of others. This process of concentration, monopoly, and incorporation, by means of which one man, a director, or a favorite of a bank, is enabled to borrow capital enough to employ the labor of ten, twenty, or an hundred men, of course deprives ten, twenty, or an hundred other men of the ability to borrow even capital enough to employ their own hands upon. Of consequence it compels them to sell their labor to him who has monopolized the capital. And they must sell their labor to him at a price that will give him a profit—generally a large profit. That is, they must sell it for much less than the amount of wealth it produces. In this way ten, twenty, or an hundred men are literally robbed of an important portion of the fruits of their labor, solely that a single monopolist may be gorged with wealth. It is thus that the legislation, which creates these large incorporations of privileged bankers, operates to plunder the many of the fruits of their labor, and pamper the few with the spoils.

banks, and then make his purchases for cash; and, having ,cash to purchase with, he would be under no necessity to buy only such commodities as were best adapted to his wants.

It would probably be a moderate estimate to suppose that the poor suffer an average loss—including the losses on price, quality, and adaptation to their wants—of fifteen or twenty per cent. on all their purchases, over what they would pay tinder a system of free credit currency. Supposing their purchases to be from two to four hundred dollars a year, their losses, at the rate mentioned, would be from thirty to eighty dollars annually—an amount sufficient, if lost, to keep them poor; or, if saved, to give them a competency.

Proposition 6.

All credit should be based upon what a man has, and not upon what he has not. A debt should be a lien only upon the property that a man has before and when the debt becomes due; and not upon his earnings after the debt is due. If, therefore, a man be able to pay a debt when it becomes due, he should pay it in full; if unable to pay it in full, he should pay to the extent of his ability; and that payment should be the end of that transaction. The debt should be no lien upon his future acquisitions.

The only exceptions to this rule should be, 1, where the debtor, previous to the debts becoming due, has dishonestly squandered or misapplied the means, which be should have retained for the payment of his debt; and, 2, where he has omitted to do something, which he was plainly bound to do, towards putting himself in a condition to pay. But if he have been honest and faithful in the performance of everything, that, on his part, he was bound to do, the debt should be binding only to the extent of his ability at the time the debt should become due. And this, it will be seen hereafter, in the chapters on the legal nature of debt, is the whole *legal* obligation of a debt in any case; and, in the case of most debts, it is also the whole moral obligation.

Under the operation of this principle, nearly all debts would be settled at once on their becoming due; and be then settled finally and forever. The creditor would then know what he had got, and would have no occasion to spend any further time, thought, or money, in harassing the debtor by attempts to get more. And the debtor, on his part, would know that he was a free man; and would at once engage in the best employment he could find, without being liable to be disturbed or obstructed by his former creditor, in the prosecution of it. Thus creditor and debtor would be likely thenceforth to be more useful, both to themselves and society, tinder this arrangement, than tinder the opposite one, which makes the creditor the enemy of the debtor, and incites him to an expensive, cruel, perpetual, destructive and generally profitless war upon him, his family, and his and their industry.

It may be supposed by some, that credit would Dot be given, if the legal obligation of debts were limited in this manner. But men would as lief give credit on this principle, as on any other, if they were to understand, when the contract was made, that such was its legal effect; and if they were also to be at liberty to make their own bargains in regard to the rate of interest—for they would then charge an additional interest sufficient to cover the additional risk, if any, that they might suppose to result from this principle, And it would be far better for debtors to pay a slight additional interest, and have the benefit of this principle, than to make their contracts under all the liabilities of the Opposite one. The payment of a slight additional interest would be

equivalent to paying a slight premium for being insured against the calamity of an arrearage of debt and perpetual poverty, in case of any miscalculation or misfortune on their part.

But the probability is, that the risk to creditors would be no greater, not even so great, under the operation of this principle, as it is without it—and for these reasons.

1. This principle would bring about a general practice of short credits, and prompt settlements; which, for a variety of reasons, too obvious to need enumeration, are altogether safer and better for both debtors and creditors.

2. The debtor, under this principle, has a much stronger motive than he has under the opposite one, to the practice of honesty, industry, and frugality, and—if unable to pay the whole of his debt—to the payment of the most that it is in his power to pay, when the debt becomes due. For he knows that he can thus not only cancel his debt, at its maturity, and be free from it forever, but save his character and credit also. But under the principle of perpetual liability, whenever a man finds that he has made an error in his calculations, and that it will be impossible for him to pay his debt in full, that no exertion on his part can save him from an arrearage of debt, he is apt to think and feel that he is ruined, not only in his present fortune, but in his future credit and prospects. He therefore becomes disheartened, and perhaps idle, prodigal, and dishonest—saying to himself. "I may as well die for a large sum as a small one." So far as this feeling operates upon the debtor—and that it will operate to a greater or less extent upon all debtors is inevitable—the creditor suffers a corresponding percentage of loss on his debt—a loss that, under the opposite principle, would have been saved.

But when a debtor contracts a debt with the knowledge that, at its maturity, all that can be required of him by his creditor, will be, that he shall have practised integrity, industry, and frugality, and that he shall make such payment as the practice of these virtues may have enabled him to make, and that, under these circumstances, Dot only his debt will be cancelled, but his character and credit saved, he has the stimulus of all these motives operating upon him during the whole period from the time the debt is contracted, until it becomes due. And when a man is governed by these motives, during the whole period mentioned, he will almost uniformly be able to pay, at their maturity, all such debts as were *prudently* contracted; unless he meet with some unusually hard fortune. And even in the case of hard fortune, he would still be able generally to pay the greater part of his debt; for it is not often, if ever, that a man, in the short interval between the time of contracting a debt, and the time the same debt becomes due, meets with such heavy misfortunes as to swallow up everything in his hands.

3. If this principle of law were acted upon, we should have no insolvent or bankrupt laws, as now, discharging men from their contracts arbitrarily, without regarding whether they have been honest or dishonest, prudent or profligate, frugal or extravagant, fortunate or unfortunate. Under the present system, insolvent and bankrupt laws are indispensable to save *honest* debtors from hopeless and perpetual poverty and want. Yet as these laws apply to large numbers of debts, instead of a single one, it is impossible that they should make such discriminations between the honest and dishonest, the frugal and the extravagant, the fortunate and the unfortunate debtor, as would be made in the case of a single debt, debtor, and creditor. The consequence is, that under the present system, creditors have, and can have, little other security for the honesty of their debtors, than what the principles and interests of the latter may afford. But under the other system, the debtor would be held liable, on each debt, to the scrutiny of his creditor; and would fail of a release from his liability, if dishonesty, profligacy, or extravagance were proved against him.

Which of these two systems affords the best securities to creditors, it hardly needs further argument to demonstrate.

4. Under the present system, debtors, under certain circumstances, are almost *compelled*, by the necessities of their condition, to wrong their creditors. For instance—a debtor, before his debt becomes due, finds that it will be out of his power to pay the whole of his debt at the time it becomes due. He knows that this arrearage will be a burden upon his future acquisitions, and that, if he suffer it to become known, it will also be an obstacle to his obtaining such further credit as may be necessary for the successful prosecution of his industry. But his debt not being yet due, and his insolvency not having yet come to light, he has still a credit in the community. He avails himself of this credit in the desperate hope to retrieve his fortune, and save his credit; or, if this cannot be, with the intention of putting as far off as possible the evil day of open insolvency and ruin. He adopts the principle that he will never stop payment so long as his credit is available. (And public opinion justifies him in adopting this principle. The public generally regard a man as a fool, or a coward, who submits to open insolvency so long as he can get credit.) He, therefore, makes new debts to pay old ones; borrows money at ruinous rates of interest; makes desperate moves in his business; every struggle to extricate himself only sinks him deeper in the mire; finally he gets to the end of his credit; his race is run; the insolvent laws come in to settle the matter; and his whole arrearages of debt, and the consequent losses of his creditors, are perhaps ten, twenty, or fifty times greater than they would have been, if he had settled with his first creditor, by paying all he had to pay, when be first found that he was in arrears. Which of the two systems, then, is the best for creditors, as a class?

5. Creditors, as a class—men who have money and capital to loan—have an interest that their customers, the borrowing class, should cancel their debts, by paying what they can, as soon as they find themselves in serious arrears, not only for the reason that their arrears will then usually be many times less than when settlements are postponed, as now, to the latest possible period, but because the debtors will then become good and safe customers to the money lenders again.

6. The principle, that a debt is obligatory only to the extent of the debtor's means when the debt becomes due, would nearly, if not wholly, put an end to a class of contracts, that are immoral and fraudulent, in intent, if not in law, on the part of the *creditors*, and which ought never to be enforced against debtors. These contracts are of this kind. An old and experienced man takes advantage of the inexperience and the sanguine anticipations of a young man, to sell him property at enormous prices, giving him credit for the whole, or a part, but well knowing, from his own superior judgment and experience, that the young man will not at all realize his anticipations, or even realize enough from the property to cancel his liability. But he sells the property to him on the calculation that the latter will be able to pay at least the real value of the property; and that, as for the balance, *he is a young man, he will be able to work it out;* or his friends will pay it for him; or the possession of this property will enable him to get credit of others, and thus he will be enabled to pay this debt by throwing an equivalent amount of loss upon somebody else. Such contracts are plainly immoral and fraudulent, on the part of the creditor, both towards the debtor, and towards others[2]—although their immorality and fraud are of a character not susceptible of being legally proved and defeated in particular cases. The only way of defeating them seems to be, to adopt the principle that no contract is binding beyond the limits of the debtor's means.

[2] Mutual benefit is the only foundation for the morality of contracts; or, at least, to be moral, a contract should contemplate no injury to either party.

But it is unnecessary, in this place, to go into a detail of all the benefits, that would result to both debtors and creditors from the adoption of the principle, that a debt is a lien only upon the debtor's means at the time the debt becomes due. These benefits are obviously of the most important character. And we shall hereafter see that the principle is one of natural law, which all courts, without the aid of legislation, and in defiance of all legislation, are bound to maintain and carry into effect.

Proposition 7.

Creditors should have liens upon the property of their debtors, in the order in which their debts are contracted; (with same exceptions hereafter to be named;) and the creditor having the first lien, should be paid in full, before the second receives any portion of his debt. And this principle should apply to all the creditors respectively—each prior creditor having a right to full payment, before a succeeding creditor can receive anything. And it should be held legally fraudulent in a debtor, (except in cases hereafter mentioned,) to pay a subsequent creditor to the prejudice of a prior one.

These principles are just in themselves—they are the principles of natural law—and the effect of them would be much better, for both debtors and creditors, than those that now prevail.

That they are just in themselves, as between creditors, is obvious from the fact, that a personal debt, as, for instance, a promissory note, or a book account, is, *in equity*, a lien upon *all* a debtor's general property, in very nearly the same manner, except in form, that a mortgage is a lien upon a specific parcel of real estate. The second creditor, therefore, in a personal debt, stands in the same relation to a prior creditor, with reference to the general property of the debtor, that a second mortgagee does to a prior one, with reference to a specific parcel of real property, on which they both hold mortgages. He, in effect, takes a second lien upon the debtor's general property; and he, of course, takes it, subject to the incumbrance of the prior lien, which is entitled to be first satisfied.

One great obstacle in the way of capitalists loaning capital to poor men, under our present system, is, that the creditor holds no claim upon the capital he himself has loaned, or its proceeds, for the security of his debt, in preference to subsequent creditors. If be could hold the first lien upon the capital loaned, and upon the value that should be added to it by the labor of the borrower, it would then generally be safe to lend capital to men who were destitute of any other property.

It is a great defect in the doctrine of liens, as now administered, that it in general recognizes the principle of lien only in relation to specific articles of property; which articles can be used by the debtor, but cannot be exchanged by him for any other property better adapted to his use. This principle does not enable a borrower to give his creditor security upon *money*, which his creditor loans to him to be employed in business, and which must be exchanged, and perhaps pass through half a dozen different forms before it is repaid to the creditor. What is wanted in order to secure a creditor for *money*, which he has loaned to be employed by the debtor in business, or for property of any kind which he sells on credit, and which the debtor is to be permitted to convert into property of another kind, is, that he (the creditor) should have a prior right, over any subsequent creditor, to the proceeds of that money, or other property, into whatever shape it may afterwards be converted by the debtor. And this object can be accomplished only by adopting the

general principle, that a prior creditor has a prior lien upon the general property of his debtor, for the full satisfaction of his debt.

If A loan capital to Z, when Z is free of debt, it is certainly right that A should be paid out of the proceeds of the capital he himself has loaned, in preference to anybody else. It is therefore right that his debt should be a lien upon that capital, or its proceeds, in the hands of Z; and that Z should have no Tight, without the consent of A, to dispose of it, or its proceeds, to the prejudice of A, for the benefit of any third person. And he should have no more right to dispose of it, to the prejudice of A, for the benefit of a subsequent creditor, than for the benefit of any other person.

If, therefore, B subsequently give credit, or loan capital to Z, before the debt of A is paid, (or has expired for want of payment,) he gives him credit subject to all the disadvantages of the prior lien that A has upon the property of Z. And this prior lien, which A has upon the property of Z for the capital first loaned to him, will be a lien also upon the capital loaned him by the subsequent Creditor, (B,) unless B, at the maturity of A's debt, shall be able to prove that particular portions of the debtor's property, *still remaining distinguishable from the rest*, are parts, or proceeds of the specific capital loaned to him by himself, (B.) That is, the first creditor, when his debt becomes due, will have a *prima facie* lien upon *all* the property in the hands of the debtor; and the burden of proof will be upon the subsequent creditors to show that specific portions of the property, which can still be distinguished from the debtor's general property, were loaned to the debtor by themselves, and were therefore not included in the first creditor's lien. All those portions of the subsequent loans, or their proceeds, which shall have become indistinguishably mixed with the first loan, or its proceeds, or which the subsequent creditors shall have no legal proof to distinguish from the first loan, or its proceeds, will be held absolutely liable for the satisfaction of the first creditor's debt.

This principle, of the priority of rights on the part of creditors, will be more fully illustrated hereafter, in the chapters on the legal nature of debt; and the principle will then be shown to be a legal one, which courts are bound to carry into effect. In this place, I shall only point out some of the economical results, that would flow from its adoption.

1. One of these results would be that it would be *safe* for a capitalist to loan capital to a poor man, if the latter were but free of debt, were a man of integrity and frugality, of ordinary capacity for business, and were engaged in a business that was ordinarily profitable; because the capitalist would have a lien for his debt, not only upon the capital itself, that he had loaned, (or its proceeds,) but also upon all the value that should be added to it by the labor of the debtor. If, for instance, a capitalist should sell to a shoemaker, on credit, two hundred dollars' worth of leather, or should loan to him two hundred dollars of money with which to buy leather, to be wrought by the latter into shoes, be would hold a lien, in preference to any subsequent creditor, not only upon the leather itself, but upon the shoes manufactured from that leather. All the additional value, that should be given to the leather by its being wrought into shoes, would add so much to the creditor's security for his debt.

The principal drawback upon this security is this, viz., that the laborer and his family must have their subsistence out of the proceeds of their labor—in other words, from the sale of the shoes manufactured. The amount of this drawback will depend upon the number, health, economy, and industry of the debtor's family. In the case of a young man, just setting out in life, with a wife, and without children, the necessary cost of a frugal subsistence, such as a prudent and reasonable person would be satisfied with, (at least until he had accumulated capital enough of his own to, employ his own hands upon,) would probably not consume even one half the value that would

be added to the capital by his labor. In the case of larger families, a large proportion of this value would be consumed. But in few or none, unless it were in case of sickness, would it be so nearly consumed as to impair the creditor's security. This is evident, from the fact that laborers now support their families simply 'upon the wages they receive for their labor, although their wages do not amount to more than one bait, two thirds, or three fourths of the value, which—their labor adds to the capital on which they are employed, (the rest going into the pockets of their employers.) If, then, they were to have—as, when they were their own employers, they would have—the whole of the value that should be added to the capital by their labor, they could not only subsist as well as they do, now, but have considerably more than enough beside to repay the capital borrowed, with interest—because the capital borrowed will itself be sufficient to repay the loan and interest, if but six, seven, eight, nine, or ten per cent., (according as the rate of interest may be,) shall be added to its value by the laborer. Any laborer, having ordinary capacities, could add this amount of value to two, three, or five hundred dollars capital, and still have nine tenths of the whole value or proceeds of his labor left, with which to subsist himself and family. And these nine tenths of the whole value or proceeds of his labor, (when he had two, three, or live hundred dollars capital to work with,) would unquestionably amount to much more than he would receive as wages, when he sold his labor to an employer.

The other drawbacks on the security mentioned, (in addition to the subsistence of the laborer and his family,) are the risks of the health and life of the borrower, and the risk of accidents by fire, &c. These risks, on the aggregate of loans, would be small, and would be guarded against by creditors, by small additional rates of interest, (if usury laws were abolished,) by life insurance, and by insurance on the capital against fire. The costs of guarding against all these risks would amount to no more than a small addition to the rate of interest on the capital, and, being thus provided for, would interpose no serious impediment to the loan of capital to poor men.

One principal, if not insuperable obstacle, in the way of loaning capital to poor men, in the present state of things, is that the creditor has no legal security that the debtor will not contract other debts afterwards, and that the capital, which be has loaned to him, will not be applied, either by the debtor himself, or by the insolvent laws, to the payment of these debts to other men. This obstacle would be entirely removed by the adoption of the principle of the prior right of the prior creditor.

2. Another result of this principle would be the general distribution of credit. A capitalist, about to loan money, would be very cautious of loaning to a person already in debt for capital borrowed of others—lest the capital loaned by himself should become indistinguishably mixed with that borrowed of the prior creditors, and be devoted, in whole or in part, to the payment of such prior creditor's claims. He would, therefore, seek for borrowers who were free of debt, that he might at least hold a secure lien upon the capital, which he himself should loan to them. The principle would thus obviously prevent the accumulation of large credits in the hands of single individuals. And by preventing large accumulations of credit in the hands of single individuals, it would promote the distribution of the same aggregate amount of credit, in smaller parcels, among a larger number of individuals. And the same aggregate amount of credits, that now exist in the community, if properly distributed, would probably put into the hands of nearly or quite every laborer in the country ail amount of capital sufficient for him to employ his own hands upon.

This principle of the prior right of the prior creditor would be no obstacle to banking, nor to a banker's paying a second note while a prior one was still in circulation—because a banker's

notes are payable on demand, and are due immediately on their being issued. If, therefore, the holder do not present them when due, (that is, if he do not present them immediately on their being issued,) such omission is a voluntary waiver, on his part, of his right to priority of payment, and allows the banker to pay his notes in the order in which they are presented for payment. The same principle would apply to all other debts that were not demanded when due.

Again; although this principle, of the prior right of the prior creditor, would be an obstacle in the way of a debtor's getting a second credit, (unless of the same creditor,) *before* a prior one had become due, it would be no such obstacle *after* the former one had become due, even though he should have been unable to pay the first credit in full—because, at the maturity of the first credit, he would—if the principle of "Proposition 6" be correct—cancel it by paying to the extent of his means, which would leave him thenceforth a free man.

The result of the two principles stated in propositions 6 and 7, viz., 1, that a debt is binding upon a debtor only to the extent of his means; and, 2, that a prior creditor has a prior lien on his debtor's property, would be to induce capitalists individually to seek out separate laborers, of capacity, industry, and integrity, who were free of debt, and furnish them respectively with what capital their business should require; and thus save borrowers from the necessity of getting credit, as they do now, in petty parcels, of several different persons. That such would be the result is obvious—because, 1, a capitalist would prefer, as a general rule, not to become the second creditor of a debtor; and, 2, as capitalists would not wish to become the second creditor of a debtor, it would be indispensable, as a general rule, that the first creditor should advance capital enough to enable the debtor to prosecute his business advantageously, else he might lose a part of what he should loan him. The debtor, having a right to cancel his debt, by paying to the extent of his means, would do so whenever the creditor should refuse to furnish sufficient capital to enable him to prosecute his business profitably. And the creditor, when he should see that his debtor was using capital advantageously, would choose to advance to him whatever might be necessary, because such advance would be a profitable investment of his capital. Oil the other hand, whenever he should find that his debtor was not using capital advantageously, he would withhold any further advances, and, at the maturity of the credit given, close the connexion with as little loss, if any, as possible, by accepting payment to the extent of the debtor's means, in full discharge of the debt.

The operation of these principles, therefore, would be the establishment of a sort of partnership relation between the capitalist and laborer, or lender and borrower—the former furnishing capital, the latter labor. Out of the joint proceeds of this capital and labor, the laborer would first take enough for an economical subsistence while performing the labor—as it would be necessary that he should, in order that he might perform it. On all the remaining proceeds the capitalist would hold a lien for the amount of capital loaned, and also for such an amount of the increased value given to it by the labor, (say six, seven, eight, nine, or ten per cent.,) as should have been agreed on between them, under the name of interest.

This *quasi* partnership between the capitalist and laborer, by which the latter is made sure of his subsistence while laboring, and by which the capitalist is made to risk his capital on the final success of the enterprise, without any claim upon the debtor in case of failure, is the true relation between capital and labor, (or, what is the same thing, between the lender and borrower.) And why? 1. Because capital produces nothing without labor; and it is impossible that the laborer should perform the labor, without having his subsistence meanwhile. For these reasons, it is right

that the subsistence of the laborer, while bestowing his labor upon the capital, should be the first charge upon the joint proceeds of the capital and labor."[3]

2. It is right that the capitalist should be made to risk his capital on the final success of the enterprise, without having any claim upon the debtor in case of failure, (that is, when the debtor performs his part in the enterprise honestly and faithfully;) because, beyond this point, the capital must be risked by somebody, (the capitalist or laborer,) in every enterprise. And inasmuch as profit (in the shape of interest) is as much the object of the capitalist, in furnishing the capital, as (in another shape) it is of the laborer in furnishing labor, it is as much right that he should take the risk of losing his capital, as it is that the laborer should take the risk of losing his labor, (that is, all over and above his subsistence.) The risk is then fairly divided between them; whereas it would not be, if the laborer were to risk both his labor and the capital. If the profit is to be divided in case of profit, the loss ought to be divided in case of loss. It is sufficient to make the enterprise a joint one, if the profit is to be divided in case of profit. And if it be a joint enterprise, it is as much right that the risk of loss should be jointly borne, as that the chance of profit should be jointly enjoyed.

But this joint risk, between the capitalist and laborer, or lender and borrower, as to the final result of an enterprise, in which the labor of the one and the capital of the other are to be jointly employed, for their joint profit, is not only right as between the immediate parties, but it is also right and expedient on general principles of economy—and for this reason, viz., that when both capitalist and laborer are interested in the risks and results of an enterprise, the enterprise will then have the benefit of two heads, instead of one, in judging of its feasibility and probable results, and also in deciding upon the best plan of execution. Injudicious enterprises will then be more likely to be avoided; and less labor and capital will, therefore, be wasted on such enterprises than now are. When a capitalist loans money to a laborer, and knows that he will have a claim on the subsequent earnings of the laborer for any capital that may be sunk in the enterprise, he (the capitalist) does not look, for himself, into the merits of the enterprise as he would if he knew that his ultimate security for his capital depended solely upon the success of the enterprise, instead of depending also upon the subsequent earnings of the laborer.

[3] If the capitalist were to hire his labor, instead of the laborer hiring the capital, the subsistence of the laborer would still be as much a charge upon the capital, as it is when the laborer hires the capital, and makes his own living the first charge upon ,the joint proceeds of the capital and labor.

CHAPTER III. ECONOMICAL RESULTS FROM THE PRECEDING PROPOSITIONS.

The last four of the preceding propositions assert the following principles, to wit:

1. The right of the parties to contracts to make their own bargains in regard to the rate of interest.

2. The right of free competition in the business of banking.

3. That the legal obligation of a debt, with specific exceptions, is extinguished by the debtor's making payment to the extent of his means, when the debt becomes due.

4. That the several creditors of the same debtor hold successive liens upon his property, for the full amount of their debts, in the order in which their debts respectively were contracted.

It will hereafter be shown that these several principles are legal ones, founded in natural and constitutional law, that is binding upon all our judicial tribunals, and incapable of being invalidated, or set aside, by any legislative enactments that are within the constitutional power of any of our governments.

It has already been shown, in part, how these principles are adapted to the accomplishment of the following objects, to wit:

1. That of enabling each poor man to obtain, on credit, capital sufficient to employ his own hands upon.

2. That of enabling him to obtain this capital on the most advantageous terms as to interest, and in the most advantageous form for his use.

3. That of enabling him to obtain this capital on credit, without the risk of incurring an arrearage of debt in case of misfortune, or of miscalculation, on his part, as to his ability to pay in full.

4. That of enabling capitalists to loan capital to poor men, and hold the first lien upon it, in the hands of the debtor, for their payment; and without the risk of having the capital so loaned taken and applied, either by the law, or by the debtor, to the payment of debts to other men.

If such be the operation of these principles, it seems to follow, that, if they would not fully, they would yet very nearly accomplish the object of securing to every poor man, who was honest, industrious, and ordinarily skilful, the enjoyment of his right to labor to the best possible advantage, (by enabling him to obtain capital upon which to labor,) and also of his right to the possession of all the fruits of his labor, except what, in the nature of things, must be paid for the use of the capital upon which he labors.

If there can be any doubt as to such being the result of these principles, it can arise only from a doubt whether capitalists would loan their capital to laborers, or poor men, if the principles of law applicable to the loan, were such as have been described. This question, therefore, becomes important, viz., whether capitalists would loan capital to poor men under such circumstances?

The true answer to this question is, that, although they might not do it immediately, they yet would do it speedily—and for the following reasons:

1. It is obvious that, *other things being equal*, it would be much more *safe* for capitalists, especially when they loan on personal security, to loan their capital in small sums to a large number of individuals, who were each their own employers, than in large sums to a small number, who employed the labor of others. It would, for instance, be much more safe to loan fifty thousand dollars, in sums of five hundred dollars each, to one hundred men, who should each bestow their own labor upon it, than to loan the whole fifty thousand to one man, who should employ an hundred other laborers in the management of it. Each of the one hundred men would be more likely to repay the whole of his five hundred dollars, than the one man to repay the whole of his fifty thousand dollars. And why? Because a man can manage, with far less risk and waste, and with much more comparative profit, a capital of five hundred dollars, on which he expends his own, and only his own labor, skill, and calculation, than he can a capital of fifty thousand dollars, on which he is obliged to employ the labor of an hundred others, whose skill, industry, and economy he cannot stimulate to the same degree, to which they would be stimulated, when laboring for themselves. Small borrowers are also less likely to squander their loans in extravagant living, and in extravagant, fanciful, and hazardous enterprises, than large borrowers. The command of large borrowed capitals often intoxicates men with the conceit of their superior judgment in the management of property, or with a vain ambition for display, or with dreams of sudden wealth, or with a passion for magnificent schemes—the consequences of all which are told in deep, perhaps ruinous losses to their creditors. On the other hand, a man who borrows merely capital enough to employ his own hands upon, avoids this intoxication entirely. He thinks only of results, and of skill, industry, and frugality, as the means. The small borrower is therefore much more likely, than the large borrower, to be *able* to repay his loan. He is also much more likely to be *willing* to repay it. The temptation to fraud in his case is trivial, compared with that in the case of the other.

2. In the case of small loans to a large number of individuals, each individual is not only more likely, for the reasons already given, to repay the loan, than the single individual is in the case of a large loan, but there is this further security, which is of great consideration with capitalists, who loan money, viz., that in cases of misfortune or fraud on the part of a debtor, the loss is small, not ruinous. If the hundredth debtor fail to pay, the ninety-nine are still solvent. The capitalist is not ruined. He loses but one per cent. of his whole capital. But in the case of the large loan, if the debtor fail, the creditor is ruined, or seriously injured—simply because he has embarked a large freight in one ship.

Capitalists understand these principles, as we see in the case of insurance companies, which act uniformly on the policy of taking a large number of small risks, in preference to a few large ones.

3. There is still another consideration in favor of small loans to a large number of individuals, who are their own employers, over large loans to a small number, who employ the labor of others. It is this. The labor of individuals, who labor for themselves alone, being, for the reasons already given, much more productive, economical, and profitable, than the labor of hirelings, individuals could afford to pay a higher rate of interest—much higher if it were necessary for the little capital that each man needs to employ his own hands upon, than they can for capital on which to employ the labor of hirelings.

The higher self-respect also, which a man feels, and the higher social position he enjoys, when he is master of his own industry, than when he labors for another, would induce him, *if it were*

necessary, to pay even such a rate of interest for capital as would cut down the net profits of his labor to the same amount that he would receive as a laborer for wages.

The inevitable result of these principles would be that the class of employers, who now stand between the capitalist and laborer, and, by means of usury laws, sponge money from the former, and labor from the latter, and put the plunder into their own pockets, would be forced aside; and the capitalist and laborer would come together, face to face, and make such bargains with each other, as that the whole proceeds of their joint capital and labor would be divided between themselves, instead of being bestowed, in part, as now, as a gratuity, upon an intermediate intruder. The capitalist would not only get all he now gets as interest, and the laborer all he now gets as wages, but they would also divide between themselves that sum which now goes into the, pockets of the employer. What portion of this latter sum would go to the laborer, and what to the capitalist, would depend upon the circumstances and bargains in each particular case. The probability is that for the first few years after these principles went into operation, capitalists would ask and obtain a pretty high rate of interest. The competition among laborers, in their bids for capital, would produce this effect. But as the general safety of the system should be tested, and as laborers should gradually make accumulations, which would serve as some security for loans, and as the business of banking should be increased, the rate of interest would gradually decline, until—probably within ten or twenty years—capital would go begging for borrowers, and the current rate of interest would probably not exceed three or four per cent. And all the proceeds of labor and capital, over and above this interest, would go into the pockets of the laborer.

There obviously would be little or no risk in loaning capital to the generality of laborers, if the lender could hold the first lien upon the capital loaned; for industry, guided by ordinary skill and judgment in the application of labor, is almost certain to add more value to the capital employed than is necessary for the comfortable subsistence of the laborer. The cases, where it would fail of doing this, are few, and even in those few cases the deficiency would be very small. The principal risk, then, in loaning to a poor man, would be the risk of his death, and of loss in winding up his affairs. But this risk could be guarded against by the debtor's keeping his life insured. The cost of keeping his life insured for an amount equal to the capital be hired, would not ordinarily be more than one, or at most two per cent. upon that capital. And he would thus accomplish the double purpose of giving his creditors a guaranty for their loans in case of his death, and of securing something for the support of his family.

The risk of loss to the creditor, from the death of his debtor, is now made altogether greater than it otherwise would be, by those laws that give to a deceased debtor's family, (at the discretion of a Probate Judge,) the whole, or a part, of the effects in his bands, in preference to applying them to the payment of his debts. Such laws are as injurious towards debtors, *as a class*, as they are unjust towards creditors. They virtually forbid capitalists to loan capital to a poor man, under penalty of being compelled to contribute the amount of such loans to the support of his family, in case of his decease. Such absurd and dishonest legislation defeats the very object it professes to have in view. Instead of its accomplishing the purpose of compelling creditors to support the families of Poor men, it only serves, as a general rule, to deter capitalists from becoming the creditors of poor men at all. Thus the laws not only fail of providing for a poor man's family after his death, but they contribute largely to make it impossible for him, while living, to borrow capital upon which to labor, and thus to make any accumulations of his own for their support.

There is no justice, or even appearance of justice, in such laws. If A have loaned capital to B, and taken a note for it, he, in equity, holds a lien upon that property for his debt. It is unreasonable

to expect him to loan his capital to a poor man on any other condition. And there is no more reason why he should be compelled to support the debtor's family, by losing his lien, in case of the debtor's decease, than there is why any other particular individual should be compelled by law to support them by gifts from his own pocket. If, under these circumstances, a debtor die, leaving his family destitute, they must depend, for their support, upon their own labor, and the assistance of relatives and friends, or upon such provision as the public make, by general taxation, for the support of all who have no other means of subsistence. There is no justice in compelling those few individuals, who may have befriended, or loaned capital to the debtor, in his lifetime, to assume the burden of supporting his family after his death, by giving up to them their lien on the capital they have loaned him. If a poor man wish to provide for his family, in case of his death, he should keep his life insured. He will thus provide for his family, and his creditors too.

One object of these laws is to throw upon the creditors of a deceased person a burden, that might otherwise fall upon the public at large. But their effect is to create ten times as much pauperism as they prevent—because they deter capitalists from loaning capital to poor men, and thus prevent the latter from making such accumulations, in their lifetimes, as they otherwise might, for the support of their families after their death.

It will be shown, in a subsequent chapter, that all legislation, of the kind mentioned, which destroys a creditor's lien, on the effects of his, debtor, in order to give them to the debtor's family, is unconstitutional and void.

If the risk of loss to the creditor, by the death of the debtor, were obviated in the manner now suggested, and if the prior creditor held a prior lien upon the property of his debtor, there would be little or no danger in loaning capital to poor men, in amounts sufficient to employ their own hands respectively.

The risk of the debtor's success in business would be small—as small as the risk of success can be in any business, in which capital is hazarded—because the business, in which each debtor would employ his borrowed capital, would be such as both himself and his, creditor should have approved—inasmuch as the creditor would not of course loan his capital to a poor man, unless he should have first ascertained the business in which it was to be employed, and satisfied himself that it was a safe one. The business, therefore, in which each debtor would employ his borrowed, capital, would be such as commended itself, (in its prospects of profit,) to the judgments of both debtor and creditor. Such business would ordinarily be more safe than that, in the planning of which the judgment of only one person had been consulted.

The risks from fire, theft, sickness of the debtor and his family, and other extraordinary misfortunes, would be no greater than those to which property is always liable, and would be guarded against by the creditor by the rate of interest.

The only remaining risk, to the creditor, is that of the frugality and industry of the debtor.

There are undoubtedly persons, who, if they could borrow money, would be idle and prodigal so long as it lasted, with little regard either to the rights of their creditors, or to their own subsequent interests. But such persons are very few, and their prodigal habits generally become so publicly known that capitalists would be in very little danger of loaning money to them through ignorance of their characters.

But the mass of men, when they have, in their hands, the means of bettering their condition, are zealous to do it; and if they could borrow capital, on which to bestow their labor, and could have all the fruits of their labor except what they should pay as interest, they would almost universally exert themselves, both by industry and frugality, to make such accumulations as

would place themselves beyond the reach either of poverty, or of dependence upon loans from others. And where such exertions were made, they would be successful, with but few exceptions; and those few exceptions would generally be the result only of some such unusual misfortune as property and business are always liable to. In few or no cases would any considerable portion of the loan be sunk by mismanagement, or erroneous judgment, on the part of the debtor—for as loans would usually be made for no longer than three or six months each, there would not be opportunity for much waste of capital, unless by mismanagement that was so gross as to be culpable, or by misfortunes of rare and extraordinary character. In all other cases, then, capitalists would either obtain the whole of their loans with interest, or at least the greater part of their loans. The probability is, that in the aggregate of loan, the whole amount of losses would not be one fifth, or even one tenth as great as capitalists stiffer under the present system. The system, as a system—at least during the first few years of its operation—would be altogether better for capitalists than the present one—for the losses would be less, and the rates of interest higher. Competition on the part of borrowers would produce this result.

But it is to be understood that this state of things—this competition among borrowers, arising from poverty on the part of so large a portion of the community as are now poor—could continue but a short time. Most of them—particularly those in the full vigor of life—would at once begin to realize more from their labor than would be necessary for their subsistence, and the payment of their interest. The work of accumulation would be at once begun; amid they would speedily be in possession of sufficient acquisitions of their own to serve as security against all reasonable risks in their business; and such persons would then be able to borrow money at lower rates of interest than at first. In a very few years they would have made stuck accumulations as would be sufficient to employ their own hands, independent of loans from others. In a few years more they would themselves have small amounts to loan to others. The tendency of the system would be to individual accumulations by the mass of the people. The number of borrowers would decrease; the rate of interest would decline, until finally it would probably be no more than three or four per cent., and capital would have to go in search of borrowers at that.

The manifest tendency of the system would be to give to each man separately the use of sufficient capital to employ his own hands upon; to give him the use of this capital at the lowest possible rate of interest, that is consistent with free competition among borrowers; and to give him the entire fruits of his labor, except what he pays as interest. What more, consistently with the rights of property, can he done to distribute wealth justly among those who earn it, or to equalize the pecuniary condition of mankind?

The result of the system would be, that the future accumulations of society, instead of being held, as now, in large estates, by a few individuals, while the many were in poverty, would be distributed in small estates among the mass of the people. The large estates already acquired by single individuals, would, in two or three generations, at most, become entirely scattered. Afterwards we should see no such inequalities in the pecuniary conditions of men as now exist. There would probably never be any very large estates accumulated on the one hand, nor would there be any general poverty on the other. Some few incompetent or improvident individuals might always be poor; but there would be no such general poverty as now prevails among those who were honest, industrious, and frugal.

The aggregate accumulations of society would probably be greater than they are now—for then every man being dependent upon his own labor for his subsistence, all would of necessity labor, instead of a part only as now. Men laboring for themselves would also labor with more skill

and energy, and practise more economy in the use of capital, than when laboring for others. There would be less capital squandered in luxury and display, and in extravagant and fanciful schemes, than now, because few or none would ever have fortunes large enough to enable them to indulge in ostentation and prodigality. The consequence, so far as these causes alone were concerned, would therefore probably be, that the aggregate accumulations of society would be greater than they now are. But it is of little moment whether they would be greater or less. Distribution is of infinitely more consequence than accumulation. Our present accumulations are quite large enough, if not altogether too large, unless they can be more equally distributed. The luxury, the vices, the power, and the oppressions of the overgrown rich, and of those who are becoming such at the expense of other men's rights, are probably much greater evils than the simple poverty of the poor would be, if it were the result of natural and necessary causes.

But the power of the one great agent of accumulation—labor-saving machinery—would be greatly increased, under the system proposed, beyond what it is, or ever can be under the present 'system. And why? Simply because the extreme, neither of poverty, nor of wealth, is favorable to invention. The man, who has much wealth, is either too much engrossed by the care of it, or too much sunk in the luxurious indulgencies it affords, to have either time or inclination left for such mental exertions as are required for mechanical invention. On the other hand, the man, whose extreme poverty leaves him no respite from manual toil, and affords him no accumulations beyond his daily bread, has no opportunity to cultivate any mechanical genius with which nature may have endowed him, or to mature and realize any mechanical conceptions that may visit his mind—because to do so would require leisure, subsistence, arid some little capital with which to make experiments. Thus the two extremes of society contribute nothing to the list of mechanical inventions. Neither the serfs nor the nobles of Russia, neither the slaves nor the slaveholders of America, neither the nobility nor the starving portion of the population of England and Ireland, make labor-saving inventions. On the other hand, in New England, where wealth is more equally distributed than perhaps in any other portion of the world, more labor-saving inventions are probably made than by any other people of equal number on the globe. And if the wealth of New England were distributed still more equally among the population, and if men labored more for themselves respectively, and less for others for wages, the number of valuable inventions would undoubtedly be still greater—because, if the wealth were more equally distributed, few or more would be so rich as to have their inventive powers smothered or stupefied by luxury, or overwhelmed by the care of their wealth; and, on the other hand, few or none would be so destitute as to have their powers fettered by poverty. But all, or nearly all, would be precisely in those moderate circumstances, that would at once stimulate their minds to the greatest activity, and also afford them leisure and capital for experiments. The practise of each man's laboring for himself, instead of laboring for another for wages—which practice would be greatly promoted by a greater equality of wealth—would also contribute to the increase of labor-saving inventions—because when a man is laboring for himself, and is to have all the proceeds of his labor, he applies his mind, with his hands, much more than when he is laboring for another. And this habitual use of men's minds, along with their hands, in labor, would undoubtedly give birth to multitudes of inventions that would otherwise never be made.

When we consider the almost incalculable amount of labor that is performed by labor-saving machinery, and the incalculable wealth it produces—how many times greater this labor and wealth are than those performed and produced by mere manual toil, we can hardly avoid forming some conception of the importance of labor-saving inventions to the wealth and comfort of man,

and of the importance of such a distribution of wealth as will most tend to increase the number of such inventions in future. Without these inventions, we should be little else than savages. It is these inventions that give us our comfortable, neat, and even elegant dwellings, and our comfortable, beautiful, and abundant clothing. They also give us abundant food, both by improving the implements with which we cultivate the soil, and by supplying our other wants (than food) so easily as to leave us abundant time to cultivate the soil. They also give us numerous and easy roads, amid easy and elegant carriages. They give us the rail-road car and the steamboat. The labor-saving printing press gives us those abundant means of knowledge, which prevail in civilized over savage life.

Although the surplus accumulations, made by labor-saving machinery, over and above consumption, are now held mostly by a few hands, yet it is not the fault of the inventions themselves that it is so; but of the causes that have heretofore been pointed out as obstructing the general distribution of wealth. So far as actual consumption is concerned, the benefits of labor-saving inventions are distributed as equally among rich amid poor, as are the benefits of manual labor. It is to labor-saving machinery that the poor, no less than the rich, are indebted for their present comfortable dwellings, abundant clothing, abundant food, good roads, good carriages, and such means of knowledge as the printing press affords them. It is to labor-saving inventions that we are all of us mainly indebted that we are not now savages, living in wigwams, clothed with the skins of beasts, and comparatively destitute of knowledge. All, then, are interested in the increase of these inventions, and in such an equalization of wealth, as, (in the manner already suggested,) will most promote their increase.

One such invention as Fulton's adds more to the wealth of the world than the mere manual labor of a whole generation. Yet how many Fultons, in the past ages of the world, have had their genius smothered by luxury, or starved by want; and how has poverty been entailed upon the world in consequence. Who can conceive what would have been the present wealth of the world, but for the want of opportunity, on the part of inventors to enrich it by the productions of their genius? But war, and monopoly, (which is but a species of war,) have ever been employed in killing and starving mankind; when, with peace and equality of privileges, the labors of inventors would have made the earth one universal garden, and given, in profusion, to what then would have been its countless population, knowledge, comfort, and plenty.

The mind, of man is fertile of invention almost beyond conception. All it needs is stimulus and opportunity to develop itself. And since every invention, made by a single individual, enures to the benefit of mankind at large, mankind at large are interested in placing each individual in such a pecuniary condition as that his mind will receive the proper stimulus, and enjoy the proper opportunity. And that condition is one neither of poverty, nor riches; but of moderate competency—such as will neither enervate him by luxury, nor disable him by destitution; but which will at once give him an opportunity to labor, (both mentally and physically,) and stimulate him by offering him all the fruits of his labor.

CHAPTER IV. SOCIAL, MORAL, INTELLECTUAL, AND POLITICAL RESULTS FROM THE PRECEDING PROPOSITIONS.

Social Results.

To appreciate, in some measure, the important social influences of the preceding propositions, it is only necessary to consider that that portion of human virtue, which consists in one's doing good to others than himself, depends almost entirely upon sympathy—upon one's susceptibility of being affected by the feelings of others; and that this sympathy, or susceptibility, is mostly, if not wholly, the result of his having had, in some measure, a similar experience with others, or of his having had social relations with them. Thus those who have been sick, sympathize with the sick; the sorrowful sympathize with the sorrowful; the merry with the merry; the rich sympathize with the rich; the poor with the poor; the learned with the learned; the vicious with the vicious; kings with kings; slaves with slaves; amid all men more or less with their immediate personal acquaintances. And it is from the sympathy, thus excited by personal intercourse, or by a similarity of experience, that much, perhaps most of the kindness, shown by one human being towards another, results. On the other humid, much of the indifference, or want of kindness, manifested by one man towards another, is the natural result of his having had little or no similar experience, or little or no personal acquaintance with him. Thus kings sympathize little with the people, and the people little with kings; slaves sympathize little with masters, and masters little with slaves; the rich sympathize little with the poor, and the poor little with the rich; and few sympathize much with strangers.[1]

So again, most, or all, of the hatred and injustice, felt and practised by one man towards another, results from the fact, that the points of collision in men's characters and interests are not rounded, and smoothed, and softened by the kindly influences of sympathy and acquaintance. Much of the hatred existing among mankind is the hatred of class against class—of classes against other classes, with whom they have little personal acquaintance, or little common experience. The rich do not hate the rich, as a class; nor the poor, the poor. But the rich hate and despise the poor, and the poor hate and envy the rich; and it is solely, or principally, because these two classes have not sufficient personal acquaintance, and sufficient similarity of experience with each other, to awaken their sympathies, and thins soften or avert the collision of their feelings, interests, and rights. Thus the rich will often defraud, oppress, amid insult the poor, and the poor defraud and commit violence upon the rich, with less compunction than the same individuals would have defrauded, injured, or insulted one of their own number. And every man, who will defraud others at all, will more willingly defraud a stranger thin an acquaintance.

[1] There is, of course, some sympathy between all men, for a common nature compels it; but it is not quick or strong between opposite classes or strangers, as it is between similar classes and acquaintances.

Such being the laws of men's minds, and such the conditions on which so large a portion of men's virtue towards each other depends, it is obviously a matter of the highest social importance, that men—so far as it can be effected without infringing their individual liberties and rights—should occupy such situations amid circumstances relatively to each other, as will promote the widest personal acquaintance, and the nearest similarity of experience among them all. To the accomplishment of this end, perhaps nothing is more conducive or indispensable, than an approximation to equality in their pecuniary conditions. Extremes of difference, in their pecuniary circumstances, divide society into *castes;* set up barriers to personal acquaintance; prevent or suppress sympathy; give to different individuals a widely different experience, and thus become the fertile source of alienation, contempt, envy, hatred, and wrong. But give to each man all the fruits of his own labor, and a comparative equality with others in his pecuniary condition, and *caste* is broken down; education is given more equally to all; and the object is promoted of placing each on a social level with all: of introducing each to the acquaintance of all; and of giving to each the greatest amount of that experience, whelm, being common to all, enables him to sympathize with all, and insures to himself the sympathy of all. And thus the social virtues of mankind would be greatly increased.

Moral Results.

Important moral results, other than those already mentioned as social, would be accomplished by carrying into operation the principles that have been set forth in the preceding propositions. To be convinced of this, we have only to look at all the criminal and vicious individuals in the community, and see how many of their crimes and vices calm be traced either to their superabundant wealth, their extreme poverty, their desire for wealth, or their fear of poverty.

1. Those grosser offences against the rights of property, that are punishable by society as crimes, such as theft, robbery, forgery, and swindling, result, not from the love of crime, but almost without exception from one or another of these three sources, viz., the sufferings of actual poverty; the fear of coming poverty; or a desire for those luxurious displays amid indulgences, which the perpetrators see to be enjoyed by the possessors of wealth. And all these motives to crime are aggravated, and individuals are often goaded to recklessness and audacity by that hatred of society, and that sense of outrage and wrong, which result from the observation of those gross inequalities of condition, those extremes of poverty and wealth, which are brought about by that monopolizing and iniquitous legislation, which, while it deprives the many of their natural right to obtain capital on which to labor, and of their natural right to all the fruits of their labor, arbitrarily gives to the few the command of all the loanable capital, and consequently the control, and a large part of the fruits of other men's labor.

But if the principles of the preceding chapters were administered as law, the crimes resulting from these sources would mostly disappear. The causes now impelling to the commission of them would rarely exist. Nearly every man would be able to control his own labor, and secure to himself the whole of its fruits, (except what lie should pay as interest on his capital;) amid these would save him from that extreme poverty which instigates to crime. Monopolies also being broken down, there would be little or no great wealth, in the hands of single individuals, to excite his envy, or his desire for luxury and display. He would be able, without crime, to maintain a position near enough to the general level of society to save him from the temptation to crime.

2. Those innumerable frauds that pervade every department of traffic, hut are not of that tangible character that can be proved and punished by society, result, in an important portion of the cases, from a fear of poverty, and, in another important portion, from a desire of that superior wealth, which the few acquire by means of monopolizing legislation, and which constitutes one of the principal distinctions of society. But if the propositions, advocated in the preceding chapters, were carried into effect, the motives to these frauds would be, in a great measure, extinguished; because, 1, there would be no such liability to extreme poverty as now; and 2, there being then few or no great fortunes in society, but, on the contrary, a somewhat general equality in wealth, large fortunes would not, as now, constitute the foundation for castes and distinctions; consequently they would not be objects of such general ambition as now; and, of course, would not prompt men, so often as now, to the commission of frauds for the sake of obtaining them. Neither would the possession of them, when acquired by fraud, be such a salve to a man's character, as now. Wealth is now such a mark of distinction and honor, that society palliate, if they do not justify, almost any measure, short of open crime, to secure it. But under a system, where every man could easily obtain capital, on which to labor, and could have all the fruits of his labor; and where there was such a general equality of wealth as would necessarily result from those two causes, there would be no caste or distinction founded on wealth; *superior* wealth would not be at all necessary to give one reputation; all men, as a general rule, could *honestly* obtain all the wealth that would be necessary to their respectability; and they would have little temptation, as *now,* to forfeit their character for integrity, for the sake of acquiring a degree of wealth that would give them no marked importance in society.

It is manifest also that the present *precariousness* of men's pecuniary condition is a great provocative to injustice and fraud. It is not natural to mankind to desire to defraud or injure each other. But the wheel of fortune, in the present state of timings, is of such enormous diameter; those on its top are on so showy a height; and those underneath it are in such a pit of debt, oppression, and despair; and its revolutions are so rapid, unsteady, and convulsive, that it is no subject of wonder that those on its sides should feel compelled, by the necessity of self-preservation, to jostle and cheat each other out of their footing, in order no seize a secure one for themselves. But under the system proposed, fortune could hardly be represented by a wheel; for it would present no such height, no such depth, no such irregularity of motion, as now. It should rather be represented by an extended surface, varied somewhat by inequalities, but still exhibiting a general level, affording a safe position for all, and creating no necessity, for either force or fraud, on the part of any one, to enable him to secure his standing.

3. Intemperance is another of the vices attendant upon superabundant wealth, and extreme poverty. The rich often become luxurious, gluttonous, and drunken, apparently because life hangs heavy on their hands. Being relieved from the necessity to labor, they feel little motive to that healthful industry, which is the companion and guardian of temperance; and their minds having been starved while they were engaged in hoarding their wealth, they are now incapable of intellectual pursuits, and have little or no resource against *ennui* but in animal indulgences. On the other hand, the intemperance of the poor is the natural consequence of the extremities of their condition. The excitement, or the stupor of intoxication, brings at least a temporary relief from the anxieties that harass and unsettle their minds, and drive them to desperation.

4. Gambling also naturally results from too much wealth, and too severe poverty. The rich gamble for excitement, and because they can afford, or think they can afford the risks. The poor

gamble in the hope of gain—tempted by the prospect of fleecing the rich, or driven to it by the hopelessness of their own condition.

5. Lewdness—the destroying vice of society—is enormously increased, if not mainly supported, by the precariousness and the inequality of men's pecuniary condition. The rich become lustful and libidinous from idleness and luxury, and their wealth enables them to purchase the gratification of their desires. The poor become reckless from want, or from envy of the rich; and sell their virtue for bread, or for the means of display. Purity dwells with moderate competence, with the simple board, with the modest garb, and with cheerful industry.

The ruin of the young, particularly of young females, is mostly accomplished by means of their absence from home. They are generally safe in their father's house. But the same want of capital that compels a poor man to sell his own labor, compels him also to sell the labor of his children and to send them, in their youth, beyond his own roof or farm, to occupy some menial situation in a rich man's service, where toil, oppression, insult, neglect, amid loud ness are their lot; where few or no kind counsels meet their ears; where no friendly eye watches over their ways, and no guardian hand protects them from the dangers that crowd around them. What armies of the youth of both sexes arc annually driven, by poverty, from the parental roof, and parental care, to seek menial employment in manufacturing and commercial towns, and to fall sacrifices to their own inexperience, and the enticements of the libertines that swarm in such places.

If every man could obtain the capital necessary to employ his own hands and the hands of his family, children would be reared at home much more generally than now. It would rarely be necessary for daughters to go abroad for employment; and never to occupy servile and degraded situations as now. And if daughters only were to be reared uniformly at home, society would be pure compared with what it is now. It would often be necessary for sons to go from home to learn sonic different calling from that followed by their fathers; but they would not be driven from home by poverty. And not being driven from home by poverty, they would not be driven into servile and degraded situations, where their loneliness and misery would urge them into vice. As there would then be no such extremes of poverty and wealth, as now, a son heaving his father's house for employment, would not leave an abode of want to become a menial in the mansion of the rich; he would merely leave one comfortable and virtuous home for another of like character, in a family situated in pecuniary respects much like his own, and in which he would be an equal and respected, perhaps cherished member, instead of a menial and an outcast. In such a situation his morals would be much more safe than when driven by poverty into a servile and lonely condition, where he would meet no sympathy from the family with which he lived, and find no virtuous companionship to keep him from vice.

That general equality of condition, and that pecuniary independence, which should enable parents always to roar their children at home, or which should merely save them from the necessity of placing them abroad, except in situations and families where the want of parental kindness and watchfulness would be, in sonic good measure, supplied to them, would save almost countless multitudes of the youth of both sexes from the ruin that now overtakes the neglected and outcast children of poverty.

But the system proposed would promote chastity in still another, and perhaps even more effectual way, to wit, by making marriage nearly universal, and by inducing it in early life. Celibacy is the great cause of licentiousness. If all men were to be married in early life, there would be very little libertinism—for although libertinism now invades married life, it does not originate

there. Its principal source is in the unnatural and solitary state of large numbers of both sexes. The sexes are so nearly equal in number that if all of either sex were married, there would not, be enough of the other left unmarried to give rise to any general profligacy.

The desire of matrimony is so strong and universal, amid manifests itself so early in life, that nearly all would be married at an early age, if their pecuniary circumstances would admit of it. The causes, of a pecuniary nature, that prevent universal and early marriages, are these:

1. Young men cannot establish themselves in business of their own, immediately on attaining their majority, because they cannot obtain capital on which to employ their labor. Until they can obtain capital, and thus establish themselves, they do not wish to marry, because their station in society will not be agreeable, or because their income, while laboring for others, will not give them a sufficient support. But if freedom in banking, and freedom in the rate of interest, and the prior right of the prior creditor to the property of the debtor, were recognized as law, there would be no difficulty in a young man's borrowing capital enough to employ his own hands upon; and his being married would improve, instead of injuring his chance of obtaining it; because his being married would afford his creditor an additional guaranty for his industry, economy, and morality. Other things being equal, a married man can always obtain both credit and employment, in preference to an unmarried one.

2. Men's fortunes, in the present state of things, are so precarious—there is so much danger that a man, who is in comfortable circumstances to-day, may, by sonic of the hazards of trade, lose his property to-morrow; and not only lose it, but be left with a debt upon him, which will be a charge upon his future earnings, and an obstacle in the way of his borrowing the capital necessary to make his industry lucrative—there are so many dangers of this kind, that a prudent man dare not marry until he has accumulated, as he thinks, property enough to protect him, to some reasonable extent, against the chances of misfortune, lie therefore lives unmarried for years solely to make this accumulation. But if the obligation of debts attached only to the property that a man should have when his debt should become due, and not to his earnings afterwards, so that he should always acquit himself of his debts by paying to the extent of his means, this danger of being overwhelmed in debt and consequent poverty, would be removed. He would know that he could always be at least a free man, if not a rich one; and that he could always be sure at least of his earnings for the support of his family; and that. if he could get capital, (as he could under the system proposed,) sufficient to employ his own hands upon, he could always support them in a condition of respectability.

3. A third motive, with many persons, for postponing matrimony, is the desire of first accumulating sufficient wealth to enable them to maintain a domestic establishment of such elegance and cost as will bring them within the caste or circle distinguished by wealth and display. But if the system proposed were carried into effect, it would produce such a comparative equality in men's conditions, that there would be no rank or caste founded on such distinctions; amid thus this motive to the postponement of marriage would lie removed.

Thus the various motives, of a pecuniary nature, which now operate to dissuade or deter men from early matrimony, would he, in a great measure, removed by the system proposed; and the morals of society would be very greatly purified by the change.

Under the present system, we see society agitated by the efforts of individuals, associations, and of society at large, to check the several crimes, frauds, and vices, that have now been enumerated, amid that seem sometimes to threaten all human virtue. Legislatures, courts, prisons, churches, schools, and moral associations of all sorts, are sustained at an immense cost of time,

labor, talent, and money. Yet they only mitigate, they do not cure the disease. And like all other efforts to cure diseases, without removing the cause, they must always be inadequate to the end in view. The *causes* of vice, fraud, and crime, to wit, excessive wealth amid excessive poverty, must be removed, before society can be greatly changed. Just in proportion, or very nearly in proportion, as these causes are removed, will the ignorance, the vices, the frauds, and the crimes of all sorts naturally resulting from them, disappear.

Intellectual Results.

The intellectual advancement of society would be immensely promoted by the adoption of the system proposed. To be convinced of this, we have only to consider the following facts:

1. The mental independence of each individual would be greatly promoted by his pecuniary independence. Freedom of thought, and the free utterance of thought, are, to a great degree, suppressed, on the part of a large portion of the poem in all countries, by their dependence upon the will amid favor of others, for that employment by which they must obtain their daily bread. They dare not investigate, or if they investigate, dare not freely avow amid advocate those moral, social, religious, political, and economical truths, which alone calm rescue them from their degradation, lest they should thereby sacrifice their bread by stirring the jealousy of those out whom they are dependent, amid who derive their power, wealth, and consequence front the ignorance and servitude of the poor.

2. The mass of the poor in all countries have but little leisure, or means, or opportunity for intellectual cultivation. Wherever capital is in the hands of the few, the competition for employment among laborers becomes so great as to reduce the price of labor to a sum that will give the laborer but a mean and wretched subsistence in return lot—the severest toil of which his body is capable. Under these circumstances, intellectual culture, to any considerable extent, becomes impossibility. Even the desire of it is in a great measure crushed, and but feebly animates the breast of the mass of them. Their thoughts are confined, by the pressure of their physical necessities, almost wholly to the questions of what they shah eat, and how they shall live.

When it is considered how large a portion of the human race have in all ages been thins condemned, by extreme poverty, to an almost brutish and merely animal existence; that their minds were, nevertheless, naturally susceptible of the same cultivation amid development as those other minds that have been cultivated and developed; that they needed, for their growth, but such an opportunity as all might have enjoyed, if each man could have controlled his own labor, and possessed its fruits; that their intellects, thus enlightened, would have contributed their share, equally with others, to the general progress of knowledge; that among them must have been a due proportion of superior minds, capable of becoming discoverers in science, inventors in the arts, amid teachers in morals, religion, and law; when we consider these facts, we cannot entirely shut out the idea, although we can form no adequate idea, of what the world might now have been, if so large a portion of its intellectual light had not been thus needlessly and wickedly extinguished.

3. The system proposed would speedily result in the universal education of children. The universal education of children can, in the future of things, never be accomplished except through the universal ability of parents to provide the means of educating their own children respectively. In some snail portions of the most civilized parts of the world, educational systems have been

established, which give knowledge to the children of the poor, at the public expense. Yet under these systems children are but partially and poorly educated, in comparison with what they would be, if all parents were able to meet the necessary expenses of educating their own children. These systems too, defective and inadequate as they are, prevail in but small districts of the world; and if extended at all, can be extended but slowly. Moreover they arc but the unnatural and forced productions of an unnatural state of society, consequent on the unnatural distribution of wealth. They merely constitute one of the remedies, by which government attempts to mitigate the evils of its own injustice, to wit, the evils of that monopolizing legislation, by which they keep capital in the hands of the few; deprive the many of their right to labor independently for themselves; rob them of the fruits of their labor; and thus render it impossible for them to educate their children. Such being the character of public systems of education, their perpetuity cannot be relied on; nor can it even be advocated, except on the supposition that a large, or at least somewhat considerable, portion of the people are always (cm remain too poor to educate their own offspring. And if they cannot be relied on as permanent institutions where they already exist, still less can they be looked to as the means by which the world at large is over to be universally educated. The universal education of children can, in the nature of things, never come from any other source then the universal ability of parents to provide for their education. And this universal ability of parents can come from no other sources than their liberty to labor; their liberty to borrow capital on which to labor; and their liberty thus to secure to themselves all the legitimate fruits of their labor.

4. The intellect of society would be *much better directed,* tinder the system proposed, than under any that has ever existed. It would be directed more to the service and improvement of man, as man; and less to the aggrandizement of one portion of mankind, at the expense of the other portions, than it is, or ever has been under system where wealth and power are distributed by arbitrary, instead of natural and equal laws. This system would present no such great prizes, either of wealth or power, as are presented by existing systems, to tempt the avarice and ambition of those stronger minds, that have great capacities for both good and evil, and that generally follow good or evil according to the respective influences of each upon their own elevation. The system proposed would bring such men down very nearly to the same social, political, and pecuniary level with the mass of men; and place entirely beyond their reach and their hopes those great fortunes, and that great political power, which can now be obtained, and which can only be obtained, by moans of those arbitrary political arrangements that produce a corresponding poverty and subjection on the part of the masses.

So long as society, or its institutions, offer a few great prizes, either of wealth or power, for the acquisition of any one, so long many of the more powerful minds will be engrossed in the pursuit of them. Unable to obtain them, (inasmuch as they are in their nature unattainable,) consistently with the equal rights of all, they will propose to secure them by sacrificing the rights of a part, and sharing the spoils with their adherents, by means of partial and monopolizing legislation. Thus their contests with each other will be made to involve the interests, welfare, and rights of every other titan—for every other man is to be made either a victim or a beneficiary of some one or more of the various schemes proposed by the different competitors. Thus nearly every individual mind in the community becomes occupied, necessarily occupied, as a party interested, on one side or the other, in these strifes, where power and plunder are the objects of the assailants, and defence and retaliation the objects of the assailed. Such contests not only necessarily suspend, to a great degree, all those labors and studies that really advance man as an intellectual and

moral being, or promote the impartial welfare of the race, but they actually divert a vast mass of mind into pursuits—of monopoly and war—that have for their objects, injury amid destruction to mankind at large. Much of the intellect of society, tinder such circumstances, is not merely wasted, as regards purposes really beneficial to all mankind; it is worse than wasted; it is exerted for purposes of positive detriment and injury.

Such selfish, absorbing, and destructive agitations could evidently find no place under institutions, which, instead of offering dazzling prizes to the few, should, on the contrary, secure to each individual, without discrimination, the full enjoyment of his right to labor, to hire capital on which to labor, and to hold all the legitimate fruits of his labor. The mass of men, under such circumstances, could not be withdrawn from the quiet enjoyment of their just and natural rights, and the pursuit of their highest interests, to enlist, as they now do, as mercenaries under the lead of ambitious, rapacious, and unprincipled men, or to lend themselves as tools in their iniquitous enterprises of avarice and aggrandizement. Ambition, therefore, for want of troops, if for no other reason, would be obliged to abandon its war upon the equal rights of men; and to apply itself to achievements that promise good, instead of evil, to man in the aggregate. Thus preeminent minds, that are now employed and exhausted in the projection and execution of great plans of rapacity and power, in fierce struggles for the elevation of the few, and the corresponding prostration of the many, would be driven, by a sort of moral *necessity,* to seek more peaceful employments. And these other employments would generally be of such philosophical, scientific, or literary kinds, as active minds delight in, and such as conduce to the physical, intellectual, or moral advancement of the human family at large. And mankind at large, being thus relieved from many of those turbulent collisions, which now inflame their passions, and pervert their judgments, and having more leisure and quiet for intellectual pursuits, would rapidly acquire a more humane and intellectual character.

Political Results.

If the several propositions stated in chapter second, were recognized as law, and if their effects upon the pecuniary conditions of men should be such as it is here claimed they would be, the only true and rightful ends of all political institutions, so far as they relate to man's pecuniary conditions, would seem to be very nearly accomplished. For what rightful objects have political institutions, in reference to pecuniary matters, beyond that of securing to each individual the free exercise of his natural right to acquire all he can by honest and moral means, and of his right to the control and disposition of all his honest acquisitions? Each man has the natural right to acquire all he honestly can, and to enjoy and dispose of all that hue honestly acquires; and the protection of these rights is all that any one has a right to ask of government in relation to them. It is all that he *can* have, consistently with the equal rights of others. If government give any individual more than this, it can do it only by taking it from others. It, therefore, in doing so, only robs one of a portion of his natural, just, and equal rights, in order to give to another more than his natural, just, and equal rights. To do this, is of the very essence of tyranny. And whether it be done by majorities, or minorities, by the sword, the statute, or the judicial decision, it is equally and purely usurpation, despotism, and oppression.

Labor is one of the means, which every man has a natural right to employ for the acquisition of property. But in order that a man may enjoy his natural right to labor, and to acquire all the

property that lie honestly can by it, it is indispensable that he enjoy fully and freely his natural right to make contracts; for it is only by contract that he can procure capital on which to bestow his labor. And in order that he may obtain capital of the best possible terms, it is indispensable that his natural right of contract be entirely mm restricted by any arbitrary legislation; also that all the contracts hue makes he held obligatory fully to the extent, and only to the extent, to which, according to natural *law,* they calm be binding.

But nearly all the positive legislation, that has ever been had in this country, either on the part of the general or state governments, touching man's right to labor, or their right to the fruits of their labor, or their rights of contract—whether such legislation has had reference directly to banks and banking, to the rates of interest, to insolvency and bankruptcy, to the distribution of the debtor's effects among his creditors, or to the obligation or enforcement of contracts—nearly all has been merely an attempt to substitute arbitrary for natural laws; to abolish men's natural rights of labor, property, and contract, and in their place establish monopolies and privileges; to create extremes in both wealth and poverty; to obliterate the eternal laws of justice and right, and set up the naked will of avarice and power; in short, to rob one portion of mankind of their labor, or the fruits of their labor, and *give* the plunder to the other portion.

Some of this legislation has probably been the result of art ignorance of natural law; but very much of it has undoubtedly been the result of deliberate design.

The system proposed would take men's pecuniary interests, in a great measure, out of the hands of the legislative branch of the government, and leave them to rest import immutable principles of natural law, to be ascertained by the judiciary. If this were accomplished, the "natural, inherent, and inalienable right of individuals to acquire, possess, and dispose of property," would then have at least a semblance of reality in actual life; and would cease to be treated, as it now is, as a mere privilege to be enlarged, contracted, or utterly withholden, as those who administer the government may arbitrarily dictate. But so long as this right is admitted to he a subject of arbitrary legislation, so long it will be perpetually infringed, invaded, and denied, by innumerable legislative devices of the cunning arid the strong, which a large portion of society, the ignorant, the weak, and the poor, can neither ferret out, nor resist.

If the judiciary should assert and maintain, (as they are constitutionally bound to do,) the natural right of all men to acquire, possess, and dispose of property, in accordance with the principles of natural law, they would do such a deed for freedom, humanity, and right, as has never yet been done since government was instituted. And why do they not do it? Many, if not all our state constitutions declare, either in form or substance, that "the right to acquire, possess, timid dispose of property, is a natural, inherent, amid inalienable right." The legal authority of this constitutional declaration, is to prohibit and annul all legislative enactments whatsoever, that would infringe the right of *any* individual to acquire and dispose of property on the principles of natural law. This principle may not, perhaps, be distinctly asserted in *all* our state constitutions; but it is, nevertheless, everywhere law; law, by an infinitely higher authority than constitutions and statutes. The right, (whether practically acknowledged, or not,) is an "inherent, essential, inalienable right" o*f human nature:* it is the natural and necessary right of providing for one's own subsistence; and can no more be surrendered to government, (which is but an association of individuals,) than to a single individual. It is, therefore, in the nature of things, impossible that any government can have the *right,* (however it may have the power,) to infringe it. Why, then, do not the judiciary sustain this principle, and annul all the arbitrary legislation against banking? against particular rates of interest? and all the other legislation, by which individuals are deprived of their

natural right to make contracts, naturally lawful, for the acquisition and disposal of property? and by which a few monopolists are enabled to control so large a portion of the labor and capital of the community? Is the reason to be found in their ignorance? their cowardice? their bigotry? or in their corrupt subserviency to the other departments of the government, from whom they receive their appointments and salaries, and to whom alone they are made amenable for their conduct?

Were the judiciary to assert this principle, (that is, the natural right of men to make all contracts, that are in their nature lawful, for the acquisition amid disposal of property,) amid carry it out in all its ramifications, as they are morally amid legally bound to do, government would no longer be, what it now, to a great extent, everywhere is, an organized system of plunder, usurpation, and tyranny, by which the intelligent, the rapacious, and the strong continually prey upon the ignorant, the weak, and the poor.[2]

Should the judiciary ever take this ground, government will then be reduced to a very simple and harmless affair, in comparison with what it now is. All those innumerable, arbitrary, conflicting, and over changing legislative enactments, which annually come upon us like visitations from some incarnated spirit of anarchy amid injustice, to elevate, depress, and change the relative values of different kinds of property, (thereby putting into one set of pockets fortunes taken from others,) and to enlarge, diminish, and deny men's natural and equal rights of acquiring their subsistence, will then give place to judicial decisions founded upon the unchanging principles of natural law, and affecting uniformly the rights of all; and to a few simple legislative provisions for carrying these decisions into effect.

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[2] The judiciary probably would assert this principle, in this country, (and under a system of universal suffrage they would be sustained in doing it,) were it not that, by our constitutions, they are placed, in a great measure, beyond the reach of either the approbation or censure of the people at large, and made dependent upon, and the mere creatures of, the very departments, whose usurpations they are, in theory, designed to restrain. They receive their offices and salaries from, and are made amenable by impeachment solely to the other departments; and, as might be expected, they servilely and corruptly sustain all their arbitrary measures, in defiance of all the moral and constitutional obligations they are really under in the premises.

Although the natural rights of all men to acquire, possess, and dispose of property—which, of course, involves the right to make all the contracts, naturally lawful, by which property may be acquired or disposed of—is so clearly announced in most of our constitutions; although, as a principle of natural law, it is too manifest to be doubted, or denied; although it is a right, in its nature vital to the well being, and even to the self—preservation of every man; and although all our statute looks abound with enactments, infringing, denying, or withholding this right, on the part of a greater or less portion of the people; it is nevertheless hardly probable that a single one of all these thousand enactments has ever yet encountered the veto of the judiciary. What a sickening proof this, of the degradation, corruption, and servility of that branch of the government which holds all our rights in, its hands.

The judiciary should be made entirely independent of the executive and legislative branches of the government. They should neither receive their appointments nor salaries from them; nor be amenable to them by impeachment. We might then hope that they would act as a check upon their usurpations, instead of acting as they generally do now, as mere pimps and panders to them, lending the covering of their sanction to hide the crimes of the legislatures from the era of the victims. Judges should he elected by the people; for short terms; their salaries should be fixed by the constitutions; and they should be amenable, by impeachment, to independent tribunals specially instituted for the purpose. They should also be separately chosen as separate periods, and by separate districts of the people — that no party however powerful in the nation, or in the state, might be able to choose the whole of the judiciary.

The judiciary is altogether the most important department of the government; or rather would be so, if it were properly constituted. Indeed, if judges were lint honest and capable, there would be very little for the legislative department to do, in regard to property, except to provide the means for carrying the decisions of the judiciary into effect.

No reasonable objection can be made to this doctrine on the ground that natural law, in its application to all possible cases, is not already fully and absolutely known. If it he not, in any particular case, known, that is only a reason why it should be sought after, and ascertained, (by the proper tribunal, the judiciary;) and not why it should be arbitrarily set at defiance where it is plain and palpable. The truths of mathematics are not fully known in their application to all possible cases; yet is that any reason why they should not be adhered to so far as they are known, or can be ascertained? Is it any reason why the ruling power of a state should innovate upon mathematical principles by legislation, and enact that three and four shall be counted as fifteen, and eight and six as forty; and that the amount of men's dimes to each other shall be determined by such processes as these? As much reason would there be in such a procedure, as there is in legislatures attempting to prescribe men's rights of property, or their rights to the acquisition of property, in defiance of the principles of natural law. Natural law is the science of men's rights, as mathematics is the science of numbers and quantities. It is impossible, in the nature of things, that men can have any rights, (either of person or property,) in violation of natural law—for natural law is justice itself. And justice is a science, to be learned; not an arbitrary rule, to be made. The nature of justice can no more be altered by legislation, than the nature of numbers can be altered by the same means.

Natural law, in regard to all human rights, is capable of being ascertained with nearly absolute certainty. There are no Gordian knots in it, that must be cut by legislation. It has been said with very great reason, and probably with entire truth, that nothing approaches so near the certainty of mathematics, as the reasonings of the law. Sir William Jones, a man preeminently learned in the laws of different nations, ancient and modern, says, "It is pleasing to remark the similarity, or rather identity, of those conclusions, which pure unbiased reason, *in all ages and nations,* seldom fails to draw, in such juridical inquiries as are not fettered and manacled by positive institutions."[3]

The science of justice, then, is, in its nature, certain; and its truths are susceptible of being ascertained, to a very great extent, as absolutely as any other truths of an abstract nature. We have also, in this country, greater facilities for progress in the science of the law, (if law were suffered to rest on natural principles,) than in any other country. Individual rights, the only basis of natural law, are already acknowledged to a greater extent here than elsewhere. We have also a large number of separate states, each having aim independent judicature. The decisions of these separate courts are continually coming under examination in all the others. If an error is committed by one of them, through want of investigation, or any other cause, the same question, when it arises in the others, is independently and more thoroughly scrutinized, and thus the truth is nearly certain to be ascertained. The science of the law, therefore, but for that legislation which innovates upon it, and sets all natural principles at defiance, would be carried further towards perfection in this country than it ever has been elsewhere.

If, however, the arbitrary commands of legislative bodies are bettor standards of right, than the everlasting principles of justice and natural law, why are not the former substituted for the latter in all cases whatsoever? Why do not legislatures make thorough work in demolishing, obliterating, and erasing everything like natural right? We have still, nearly whole branches of law, on which legislation has not yet dared to lay its Vandal hand. Why are they spared? Is it because the utter extinction of justice would defeat the purposes of rapacity itself, by not allowing men to produce enough to be worth the robbing? Or is it because knowledge, and

[3] Jones on Bailments, p. 133

consequent power, have at length become so far diffused among the mass of mankind, that no very considerable portion of them can now be reduced by the others to unqualified servitude?

CHAPTER V. THE LEGAL NATURE OF DEBT.

The nature of debt, amid the extent of its moral and legal obligation, have been very much misunderstood; and from this misunderstanding, and the erroneous judicial decisions consequent thereon, have resulted perpetual ruin to a large proportion of debtors: utter confusion, and the violation of all natural law in regard to the rights of creditors, as against each other, in the property of their debtors; and the destruction, in a great measure, of all credit, that is sound in itself, and safe and beneficial to both debtor and creditor.

This chapter and the succeeding one will attempt to prove that a debt—such as is evidenced by a promissory note, for instance—has *no legal* obligation, and generally no moral cite, beyond the means of the debtor to pay at the time the debt becomes due.

Some illustrations will hereafter be given of cases, where a moral obligation to pay may remain, after the legal one has expired. The effect also of fraud, fault, neglect, and the violation of good faith, on the part of the debtor, will be explained in a subsequent part of the chapter. At present, the argument will have reference solely to the *legal* obligation of debt, and to cases where there has been no fraud, fault, neglect, or violation of good faith on the part of the debtor. That the debt, in such cases, is *legally* binding, at most, but to the extent of the debtor's means of payment at the time the debt becomes due, is proved by the following arguments.

1. The law requires no impossibilities of any man. If, therefore, a man contract to perform what proves to be impossibility, the contract is valid only for so much as is possible.

Neither is a man bound, before he enters into a contract, to know, (because it is impossible that he should know,) the utmost extent of his ability; nor to foresee, (because it is impossible that he can foresee,) all the contingencies and accidents that may occur to defeat his purposes. He is, therefore, bound only to the faithful exercise of all his powers, and the faithful application of all his means. As this is the most that the debtor can contract for, the creditor is bound to know it, and, of course, must always be presumed to have understood the contract, subject to that limitation. A creditor is, therefore, as much bound to judge for himself, whether the means and ability of the debtor will he sufficient to enable him to fulfil his contract to the letter, as is the debtor himself, unless the debtor do something intentionally to mislead him in his judgment of them.

2. A contract to perform a *manifest* impossibility is an immoral and absurd contract; and a contract, that is either immoral or absurd, is void from the beginning. It has no legal obligation whatever. And if a party pay value, as a consideration for such a contract, lie must lose it, unless the receiver voluntarily restore it. The law will neither restore it to him, nor compel the fulfilment of even the possible portion of the contract.

Every contract would be an immoral and absurd one, and therefore void from the beginning, if it were a contract to perform a particular act, or to pay a particular amount of money, at a particular tune, *at all events,* and without any implied reservation for contingencies, accidents,

and misjudgments, that may make it impossible to fulfil the letter of the contract. The only way, therefore, to make any contract a moral, reasonable, and, therefore, valid one, is to understand it subject to the limitation of all contingencies that may make its fulfilment impossible; and as binding only to the extent of what shall be possible.

If then, the contract be entered into, with these limitations implied, it imposes no obligation upon the debtor to make good, out of means that he may acquire after the contract shall have expired, any short comings, that were occasioned, not by his fault, neglect, or bad faith, but by causes, which fixed a limitation upon his original liability, and of whose effects the creditor of course took the risk.[1]

3. *Time* is a material element of the contract. All the *legal* obligations of the contract, of necessity, come to maturity at the time agreed upon for its fulfilment; else the whole of the debt would not be due at that time. At the maturity of its legal obligations, it is plain that the contract can attach only to the property *then* in the hands of the debtor—for there is nothing else for it to attach to. And it is plain that it can attach to nothing acquired by the debtor subsequently—because to allow it to do so, would be to extend the obligations of the contract beyond the time to which they were originally limited. It would be equivalent to creating a new contract, for a new period of time. Or it would be equivalent to saying that the obligations of the contract had *not* come to maturity at the time agreed upon for its fulfilment.

But further. Although the preceding considerations are sufficient to prove that a debt has no *legal* obligation beyond the means of the debtor at the time the debt becomes due, they, nevertheless, do *not* convey a full and clear idea of the true nature and obligation of the contract of debt. And this leads to another proposition, as follows:

4. A contract of debt is a mere contract of bailment, differing, in no, essential clement of the contract, from other contracts of bailment.[2]

That it is so, is easily shown. Thus a promise to *pay* money, for "value," that has been "received," is evidently a mere promise to *deliver* money, which has been sold and paid for; because the "value," that has been received" by the debtor, is nothing else than the equivalent, or price, paid by the creditor, for the money which the debtor promises to deliver, or pay to him,

The right of property, in this money, that is to be delivered to the creditor, (or in a quantum of value, in the hands of the debtor, sufficient to purchase the money,) *obviously passes to its purchaser, the creditor, at the time he thus buys, and pays for it; and not, as is generally supposed, at the time it is finally delivered, or paid to him;* for it is absurd to say that when a man has bought and paid for a thing, he does not, *from that time,* own it, merely because it is not *delivered* to him at that time. *A promise to deliver,* or pay money, especially when coupled with an acknowledgment that the equivalent, or price of the money promised, has been "received," is as good evidence that

[1] A promissory note has been defined to be "a written promise to pay money absolutely, and at all events." (Bailey on Bills, p. 1. Kent's Commentaries, Lect. 44.) And courts now act on that theory, and on the theory that such a contract is binding. But if such were the legal meaning of the contract, it would plainly be an immoral, absurd, and, therefore, void contract — of no legal obligation whatever.

[2] A bailment is where one person is temporarily intrusted with the property ofanother, either for safe keeping, as in the case of a special deposit; or to be used, as in the ease of a horse lent for a Journeys or to be sold, as in the case of goods intrusted to a commission merchant; or for some other purpose; under an agreement, express or implied, that he will comply with the conditions on which it is intrusted to him, and finally restore it to the owner, (or its equivalent, if it be sold,) or otherwise dispose of it agreeably to the owner's directions. The owner is called the bailor— the person intruded, the bailee. If the property be lost or injured in the hands of the bailee, without any fault, or culpable neglect on his part, the loss falls on the owner.

the right of properly in the money, (or in an amount of value sufficient to purchase the money,) *has already passed to the purchaser, as is a delivery itself.*

The obligation of *debt,* then, on the part of the seller of the money, arises simply from the fact that the money, (or an amount of value sufficient to purchase the money,) which he has thus sold, and received his pay for, *and the right of property* in *which has already passed to the purchaser,* is, by agreement, to remain, for a time, in his, (the seller's,) hands, for his use. And the sum of his obligations, *as a debtor,* is, not, *at all events,* to preserve and deliver, but *to use due diligence* to preserve, and, (at the time agreed upon,) to deliver to the purchaser, the money, or value, which he has thus sold to him.

A debtor, then, is a mere seller of value, (generally measured by money,) which lie is to deliver to the purchaser at a time subsequent *to* the sale. And a creditor is a mere purchaser of value, that is to be delivered to him, (generally in the shape of money,) at a time subsequent to his purchase of it.

But the material point to be regarded, is, *that the right of property,* in the money, (or in the amount of value to be measured by money,) which is thus bought and sold, *passes to its purchaser, by the sale, and, of necessity, at the time of the sale, and not at the time of final delivery, as is generally sup posed.*

The common error on this point, viz., *that the right of properly,* in the value thus purchased and paid for by the creditor, *does not pass to him* until the final delivery of it to him in the shape of money, (or in whatever other shape it may be agreed to ho delivered,) is the source of all our erroneous notions of the nature and obligations of debt; for if the right of property, in the value purchased by the creditor, passes to him at the time of the purchase, then the seller, or debtor, from that time until the time agreed on for its delivery, holds the value, thus sold, merely as the bailee of the purchaser, or creditor; and his obligations are only similar to the obligations of bailees in other cases. The value itself is at the risk of the purchaser, (or creditor,) from the time of the sale, unless it be lost through some fault, or culpable neglect, on the part of the seller, (or debtor.) The seller, (or debtor,) is only bound to due fidelity and diligence in the preservation of the value, and not for its absolute preservation. If it perish in his hands, or be lost out of his hands, without any fault or culpable neglect on his part, he is not answerable. The loss falls on the purchaser, and real owner, whose bailee he (the debtor) is from the time of the sale.

The contract of debt, therefore, presupposes a prior contract of sale, to wit, a sale, by the debtor to the creditor, of the money or value, which the debtor is to bold, for a time, as the bailee of the creditor, or purchaser.

It is important to be borne in mind, that this contract of sale, which, in point of law, precedes, although in point of time it is simultaneous with the contract of bailment, is, in reality, a sale, not of the specific money promised, but of a *certain quantum of value,* out of the debtor's whole property, to wit, a quantum of value sufficient to produce or purchase the amount of money promised; and which is to be converted into money by the time agreed on for the delivery.

This double contract of sale and bailment of necessity implies that the debtor has property in his hands, both for the sale and bailment to attach to—otherwise there would be no validity in either contract.[3] No contract, either of sale, or bailment, is of any validity, unless there be property

[3] The value sold by the debtor to the creditor may often be the same "value," which he has just "received" of the creditor. It must be the same, where the debtor has no other property. But where he has other property, the value that he sells to the creditor is merged in the value of his whole property, and continues so until it is finally separated from it to be delivered to the creditor.

for the contract to attach to, *at the time it is made.* It is in the nature of things impossible that a man *can* make a contract, either of bailment or sale, that can bind property, or convey any right to property, unless he have property, *at the time,* for the contract to attach to. All contracts of debt, therefore, whether morally void, or not, are *legally* void, unless the debtor have property, *at the time,* for the contract to attach to, and bind.[4]

A contract of debt, then, in order to be valid, *must* attach to such property as the debtor has *at the time of the contract*—because there is nothing else for it to attach to, and it must attach to something, or be utterly invalid. Its validity, as a *legal* contract, depends upon its attaching to something, *at that time;* and, of consequence, it has no validity beyond the property to which it *then* attaches, (and such as may become indistinguishably mixed with it prior to its delivery;) its validity lives only in the life of the property to which it attaches; and when the property, to which it attaches, is exhausted, its validity, as a contract, is exhausted. The obligation of the contract is fulfilled, when all the property, to which it attaches, and which it binds, is delivered to the creditor.

This contract of bailment, or debt, differs from other contracts of bailment, in no important particular, unless in those, viz.:

1. That the bailment is of *a quantum of value*—to wit, enough to purchase the amount of money promised—existing in a form not designated by the contract, instead of a bailment of a specific thing. But this is obviously a difference of form merely, and not of principle.

2. That it is always of a quantum of value, that has just been sold by the debtor to the creditor. Indeed the bailment is one of the conditions of the sale. The debtor sells the value to the creditor, with a proviso that he (the debtor) shall be allowed to retain and use it for a time agreed upon.

3. That this quantum of value, not being designated, or set apart by the contract, from any other value, that the debtor may have in his hands, is, in reality, merged in the value of all the property, that the debtor, or bailee, has in his hands.

4. That this value is finally to be converted into some particular form, (generally that of money,) for delivery to the creditor, or bailor.

5. That the debtor, during the bailment, while bestowing his care and labor upon the whole property in his hands, in which the value bailed to him is merged, is allowed to take his necessary subsistence out of the mass; by reason of which it may sometimes happen, in cases of sickness, misfortune, or accident, that the value bailed may itself be diminished, or consumed.

6. The debtor, or bailee, is allowed to traffic with the whole property in his hands, and of course with the value bailed, which is merged in that property.

In this respect, however, the bailment of debt does not differ, in principle, from bailments to agents, factors, and commission merchants, who are authorized to traffic with, and exchange or sell the property intrusted to them. Where this is done, the same right of property, which the bailor had in the original commodity bailed, attaches to the equivalent which the bailee receives for it. And it is the same in the bailment of debt. The right of property, which the creditor has in the original quantum of value bailed to the debtor, follows that value, and clings to it, through all the forms and changes to which the labor and traffic of the debtor may subject it.

Some of these points will be further discussed and explained in the next chapter.

That a contract of debt is a mere contract of bailment, as has now been described—that is, a mere bailment, by the creditor to the debtor, of a quantum of value hold by the latter to the former,

[4] On this point more hereafter.

and to be formally delivered in the shape of money, but in the mean time to remain merged in the general property of the debtor—seems to be too nearly self-evident to render a more elaborate argument, *at this point,* necessary. It will, however, be further discussed in the next chapter.

If debt be but a bailment, the value bailed is at the risk of the owner, (that is, of the creditor,) from the time he buys and pays for it, and leaves it in the hands of the seller, or debtor, until the time agreed on for its delivery to himself. If it be host during this time, without any fault or culpable neglect on the part of the bailee, or debtor, the loss falls on the owner, or creditor. All the obligations of the owner or debtor are fulfilled, when he has used such care and diligence, in the preservation of the value bailed, as the law requires of other baitees, and has delivered to the creditor, or owner, at the time agreed upon, the value bailed, or such part thereof, if any, as may then be remaining in his hands.

If such be *not* the natural limit to the obligation of the contract of debt, then there is *no natural* limit *to* it in any case, short of the absolute delivery of the amount mentioned; a limit, that requires a debtor to make good any loss that may befall the property of the creditor in his hands, whether the lose be occasioned by his fault, or not; and whether he ever be able to make good the loss, or not; a limit, which, in many cases, condemns the debtor and his family to perpetual poverty, and a liability to perpetual oppression from the creditor, for a misfortune, or accident, to which property is always liable, and for which the debtor is not morally responsible; a limit very nearly allied, both in its legal and moral character, as welt as in its practical effects, to that, which, in former times, required the debtor and his family to be sold into slavery for the satisfaction of a debt, which the debtor could not otherwise pay.[5]

If such be *not* the natural limit to the *legal* obligation of debt—that is, if debts be *naturally* binding beyond the debtor's means of payment when the debts become due, then all insolvent and bankrupt laws arc palpable violations of the true and natural obligation of debts, and, consequently, of the rights of creditors; such violations as no government has the moral right, (however it may have a constitutional authority,) to perpetrate.

On the other hand, if such *be* the natural limit to the legal obligation of debt, thou we have no need of insolvent or bankrupt laws at all, for every contract of debt involves, within itself, the only honest bankrupt law, that the case admits of.

If such be the natural limit to the obligation of debt, *then there is, as a general rule, no moral,* any more than legal obligation to pay, beyond the means of the debtor at the time the debt becomes due; and any subsequent promise to pay, is gratuitous and void.[6]

[5] To say that value entrusted to a debtor was lost through his incapacity for the judicious management of it, (as it often really is, instead of by accident,) makes the case no stronger in favor of the perpetual liability of the debtor; because a want of capacity is nothing for which the debtor is culpable, or for which he can rightfully be held liable. The creditor, therefore, must judge for himself, and mutt always be presumed to have judged for himself, and to have taken the risk of the debtor's capacity, or incapacity, before he entrusted his property to him. All he could expect, or have a right to require of the debtor, was the faithful exercise of whatever capacity he possessed. It is neither policy, equity, nor law, that a man shall be protected against the legitimate consequences of his own negligence, or be permitted to throw them even upon another person equally negligent; much less upon an innocent person. The law requires diligence of all. This principle, therefore, forbids that a creditor, who has been so negligent as to entrust his property to an incompetent debtor, should hold the debtor responsible for its loss, when the latter has faithfully exercised his best ability for its preservation.

[6] If I shall hereafter have occasion to speak of the exceptions to this rule, and to show in wham cases a moral obligation to pay may remain, after the legal one has expired.

Taking it for granted, for the remainder of *this* chapter, that it has now been shown that a debtor is a mere bailee of the creditor, let us see some of the consequences, that follow from that proposition.

1. As a contract of debt does not designate the specific value, to which it attaches in the hands of the debtor, it cannot be said to attach to any one part of the value in his hands more than to another. It therefore attaches to all. And if it attaches to all, it necessarily operates as a lion upon all that the debtor has in his hands, *at the time the debt is contracted;* also upon all that may become indistinguishably mixed with that, prior to its delivery or payment to the creditor.[7] This being the fact, each debt of course becomes a lien *in the order in which it is contracted relatively to the others.*[8]

[7] This point will be more fully established in the next chapter.

[8] That is, each debt becomes a lien in the order in which it is contracted, *if the debtor practise no fraud.* But if a debtor should fraudulently conceal a former debt, when contracting a succeeding one, the first creditor might thereby lose his prior lien, and the second creditor become entitled to it, in preference to him. The principle, on which the debtor's fraud would have this effect against the rights of his first creditor is this. Possession is *prima facie* evidence of property. There is no exception to this rule, unless in cases of real estate, where legislation has substituted public records, for possession, as evidence of property. There being no exception to the rule as to personal property, all persons are bound to know it, and govern themselves accordingly. If, therefore, A put his personal property into the hands of B—no matter on what private agreement between themselves, whether on the bailment of debt, or any other bailment—he thereby *virtually* and *legally* asserts, *to the world*, that B is the owner of it; and he cannot retract that assertion to the injury of any third person, who has been deceived by it, or who has purchased, without notice of the contrary, and actually paid value for the property. The sale, will, therefore, be a valid one to the purchaser, and the original owner can look only to his bailee for the damages.

This principle makes it necessary that the owner of property should take upon himself the risk (as he evidently ought) of any dishonest sales of by those, to whom he voluntarily intrusts it, and whom he holds out to the world as the owners, instead of enabling him to throw this risk upon innocent and ignorant purchasers, who proceed according to law in presuming, (where they are not informed, or put upon inquiry to the contrary,) that the one having the property in his possession, is thin true owner of it.

On this principle, a second debt, (which involves a sate of value in the debtor's hands,) contracted by concealing from the creditor the existence of a former debt, might he valid against the prior creditor, and operate as a prior lien on the debtor's property.

But there would be little or no danger of such transactions; because, first, the habit of obtaining credit is so general, as to serve as reasonable notice to put creditors on inquiry; and every creditor would therefore be hound either to take the risk of any prior debts, or to make special inquiry of his debtor, before giving him credit, whether he were already in debt? If his debtor were to answer falsely, and thereby induce him to give him credit on the idea that his (the debtor's) property was free from any prior lien, the act would be one of swindling towards the prior creditor, and would be properly punishable as swindling, especially if the prior creditor should suffer any actual harm from the second lien; and perhaps it would be the same if he did not suffer any. The case would be parallel to that of a man, who, after having given one mortgage of land, should afterwards, before that mortgage was recorded, give another mortgage to another person, who hash no knowledge of the first mortgage; wish should thereby deprive the first mortgagee of his prior lien.

Debtors would have little or no temptation to practise such frauds; for it would not only make them liable as swindlers, hut also liable in damages, where any actual loss should be suffered by the first creditor; and for those damages their future earnings would be liable *forever*, as will hereafter be shown, and not merely their present property, as in case of debt. If, therefore, a debtor should he unable to obtain a second credit on account of the lien of a prior one on his property, his true course would be to do the best ho could with the means in his hands, until his present debt should come to maturity, then pay it, or pay to the extent of his ability, and thus cancel it. He would then be free to contract a new one.

It perhaps might be expedient for debtors, when contracting second debts, to take written acknowledgments from their creditors that their former debts (naming them) were disclosed to them. This would put it out of the power of creditors to impute fraud to their debtors; and would also prevent any collision between creditors as to the order of their respective rights. Probably, however, this precaution would be unnecessary, for the burden of proof would always

2. A *second* creditor, by selling value to a debtor, and giving him credit for it, *would hold a lien for his debt upon the specific value so sold to him, so long as it should be kept separate and clearly distinguishable from the value on which the prior creditor had a lien;* because the first creditor could claim a lieu only on that value, which was in the debtor's hands, and to which his contract attached, *at the time it was entered into;* and on such other value, as, (by labor done on the property, or otherwise,) might become *indistinguishably* mixed with that, prior to its delivery, or payment to him, the creditor.)

If B mingle his property, as grain, wine, or money, for instance, indistinguishably with property of the same kind belonging to A, without the knowledge of A, or without any agreement, express or implied, that, in case of a diminution of the mass by accident or otherwise, there shall be a division of the remainder according to their original proportions respectively, the loss of any diminution that may befall the mass, falls upon B. On this principle, if a second creditor should suffer the value, which he should sell *to* a debtor, and on which he had a lien in the hands of the debtor, to become indistinguishably mixed with value in the same debtor's hands, on which a prior creditor had a lien, and there were no agreement between the two creditors, for a division in case of loss, the first creditor would be entitled to take his whole debt out of the mass before the second creditor should receive anything; for it could not be presumed, without an express agreement, that a prior creditor would authorize his debtor to give a second creditor an equal lien with himself on the whole property in the debtor's hands, even though the second creditor should pay an equal amount of value into the mass with that paid by the first creditor; because the first creditor might suppose the debtor incompetent to manage the two loans so advantageously, or so beneficially for his (the creditor's) security, as he would have managed one only, and might therefore not have consented to the mixture of the two loans. on the footing of equal liens. The first creditor might also think it necessary for his security, that the whole labor of the debtor should be bestowed on the first loan; and might therefore have objected to the mixture of another loan with it, to take an equal lien with his own. And especially it could not he supposed, without an express agreement to that effect, that a creditor would have such confidence in the judgment of the debtor, as to be willing that he should take capital from others, at his (the debtor's) own estimate of its value, mix it with that received front himself, and place these

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be upon the second creditor to show the fraudulent concealment, and not upon the debtor to prove his disclosure, or that no disclosure was asked. The second creditor's own testimony would be inadmissible to give himself a prior lien; and, uncorroborated, it would be suspicious testimony even in a criminal prosecution for swindling. The probability, therefore, is, that for want of proof of any fraud, if for no other reason, there would be no collision among creditors, as to the order of their respective liens, unless second creditors, at the time of giving credit, should take *written* declarations from their debtors that there were no prior liens on their property. And debtors would not, of course, dare to put *false* declarations of that kind in writing, because they would thereby convict themselves of swindling. So that there would be no collision among creditors on this ground unless in some few cases, where debtors might be such open villains as to put their fraudulent representations in writing.

The principle stated in this note would be no obstacle to a debtor's selling or exchanging any property in his hands for an equivalent value of a different kind, provided he should act according to his best judgment, and with no intent to lessen the value of his creditor's security; because the lien of his creditor is not a special lieu on specific articles of property, (none such being designated by the contract,) but upon the *amount of value* that adheres in all the property in his hands—which *value* he has an implied authority from the creditor to convert into different forms, by labor and traffic, at his discretion, (as will be more fully shown in the next chapter.) And when he soils an article for money, or makes an exchange of it for another commodity, the exchange is a mere conversion of the same value into a different form. The creditor's right attaches to it, or adheres to it, in its new form, in the same manner, and to the same extent, that it did in its original one.

subsequent creditors on the same footing with himself, as to their rights in the mass. The first creditor would wish an opportunity to judge for himself, instead of leaving it wholly with the debtor to judge, whether the value contributed to the mass by the succeeding creditors, was such as that his security would not be weakened by allowing them to share that security equally with himself, in proportion to their debts.

3. If each creditor holds a lien upon the value of all the debtor's property, in the order in which their debts respectively were contracted, it would of course be fraudulent for a debtor to pay a second creditor, before paying a first, especially if the first should suffer a loss in consequence.

For such a fraud the debtor would be liable to a prosecution for swindling, and would also be liable in damages, if any damages should be suffered by the first creditor in consequence of it; and for these damages his future earnings would be liable forever, as in the case before mentioned, and not merely his present property, as in case of debt.

But the first creditor, in such a case, would have a right to recover, of the second creditor, the amount thus fraudulently paid to the latter by the debtor, on the ground that he (the second creditor) was not an innocent purchaser for value; that he had merely received, on a debt already contracted, value that belonged to a prior creditor; and that he (the second creditor) not having, either innocently or otherwise, paid any additional value to the debtor, as an inducement to the debtor's payment to him, would be no worse condition on restoring the value to the first creditor, than he would have been if it had not been wrongfully paid to him.

This right of a prior creditor to recover of a succeeding one, any value that should be paid to the latter in fraud of the prior creditor's rights, taken in connexion with the debtor's liability as a swindler, and his perpetual liability for any damages caused to the prior creditor by such fraudulent payment, would be an effectual prevention of such payments. The principle of the prior right of the prior creditor, would thus be firmly established in practice; all those endless frauds, by which the value rightfully belonging to ono creditor, is now with impunity appropriated to the payment of another, would be prevented; and credit would be placed on the secure basis of each creditor's knowledge of the property liable for his own debt.

4. If a creditor should not demand his debt at the time it became due, his neglect to do so would be a waiver of his prior right to payment, and would make it lawful for the debtor to pay a subsequent debt, if the latter should become due before the prior one was demanded.

For this reason, (as has before been mentioned,) the principle of the prior right of the prior creditor, would be no obstacle to banking, by the issue of notes payable on demand; nor to the payment of a subsequent note while a prior one was still in circulation—because a note payable on demand is due as soon as it is issued, and if its payment be not immediately demanded, the neglect is a waiver of the right of priority.

5. If a debt were not paid immediately on its becoming due, the creditor could not take interest for the delay out of the debtor's property, to the injury of a succeeding creditor—for interest, after a debt is due, is no part of the debt itself; it is only the damage that is allowed for the detention.[9] The first creditor holds a prior lien on the debtor's property only for his debt; and not for any damage he may sustain by reason of his debt not being paid when due. This claim for damage, being a separate matter from the debt itself, would not legally attach to the debtor's property, until its amount was legally ascertained and adjudged; and it could then attach to it only in its order with reference to other claims, and not to the prejudice of any prior ones.

[9] Ogden vs. Saunders, 12 Wheaton, p. 340

The effect of this principle would be to make creditors prompt to collect their debts immediately on their becoming due, especially when there was any doubt as to the solvency of the debtors—because, as their claims for damage would not be entitled to the same priority as their debts, they would be liable to lose them entirely, or to be under the necessity of holding them against the debtor until he should have made some accumulations over and above his debts.

But the debtor would choose to pay when due, because for any damage occasioned by his delay, (unless the delay were occasioned by some other cause than fault on his part,) his future earnings would be liable, as in any other case of damage occasioned by his fault.

6. If a creditor should not demand, and, in case of nonpayment, sue for his debt, immediately, or at least very soon after the debt became due, the delay would afford a presumption that the debt was extinct, by reason of the debtor's inability to pay. And if, at a subsequent time, the creditor should sue for the debt, the burden of proof would then be upon himself to prove that, at the time the debt became due, the debtor actually had means in his hands to satisfy it.

So if a creditor should obtain judgment for his debt, and that judgment should remain unsatisfied for any considerable time, that fact would afford a presumption of the debtor's inability to pay, and throw upon the creditor the burden of proving that, at the time the judgment was obtained, the debtor had the means of paying it; because a judgment, founded merely on a debt, (and not on a wrong,) would attach only to the property that the debtor had in his hands at the time it was rendered.

7. If a debtor should be unable, when his debt became due, to pay the whole of it, it would be his duty to tender the most that it was in his power to pay. If the amount tendered should not be accepted in full discharge of the debt, it would be his duty to preserve it, (for the creditor's future acceptance,) separate and distinct, both from subsequent acquisitions of his own, and also from any future loans that he might procure.

In case of a tender made by a debtor, the creditor could afterwards obtain judgment only for the amount tendered, Unless he should prove—at least to the reasonable satisfaction of a jury—that the debtor had not tendered all that it was in his power to pay. But it would not be necessary for a creditor, in order to obtain judgment for more than the amount tendered, to prove, by actual witnesses of the fact, that the debtor had a larger amount in his hands at the precise time the debt became due. It would be sufficient for him to show that the debtor had not reasonably accounted for all the property that he had had in his hands either when the debt was contracted, or at any time previous to its becoming due. For these reasons, it would be important for debtors, especially for those who had little or no property in their hands more than enough to pay their debts, to keep such accounts and vouchers of their dealings, as would enable them always to account for any losses that might happen prior to their debts becoming due.

8. If a debtor be merely the bailee of his creditor, then the laws, which, on the death of a debtor, give the property, that was in his hands, to his family, to the prejudice of his creditors, are all void—as much so as would be laws, that should arbitrarily give any other men's property to the same debtor's family.

9. If a debtor be merely the bailee of the creditor, a fine imposed upon the debtor by the government, as a punishment for an offence, cannot be satisfied out of property in his hands to the prejudice of his creditors. It can only attach to his property in its order relatively with other claims.

10. If a debtor be the mere bailee of the creditor, his obligations in regard to the preservation of the value bailed to him, are similar to the obligations of bailees in other cases.

The degree of care, which the law requires of a bailee for *hire,* is that degree of care, (incapable of being measured with perfect accuracy, and therefore only capable of being judged of by a jury in each case separately,) which reasonable and prudent men ordinarily take of their own property. The law, however, does not require of a bailee, that he possess an equal *judgment* with other men, for the management of property. The bailor, or owner of the property, must take the risk resulting from any defect of judgment, on the part of the bailee—for weakness of mind is no fault; and the bailor, therefore, must judge for himself of the mental capacity of the bailee, before he entrust his property to him. All that the law requires of the bailee is, that whatever judgment he may possess, be exercised honestly, in good faith towards his bailor, and with such care and diligence in the use, custody, and management of the property entrusted to him, as prudent men generally exercise in the use, custody, and management of their own property.

In the case of a *gratuitous loan,* the bailee is bound to exercise still greater care and diligence, in the preservation of the property bailed, than in a case of bailment for hire.

A bailment of debt, however, differs from other bailments, in this particular, to wit, that the value bailed is merged in, and indistinguishably mixed with, the general property of the debtor. The debtor must, of course, take the necessary subsistence of himself and family out of the whole mass of property in his hands; and hence arises an obligation somewhat peculiar to this species of bailment, to wit, an obligation to practise such a degree of economy and frugality in one's mode of living, as is obviously necessary to save the amount bailed from consumption, and enable the bailee to repay the whole loan to his bailor. *Good faith* requires this of the bailee; and the law of bailments requires of the bailee, in all cases, everything that is essential to good faith. But what that economy and frugality are, which good faith towards a creditor requires of a debtor, may depend upon a variety of circumstances, and be very different in different cases. If, for example, a man owed but one thousand dollars, and had ten thousand dollars of property in his hands, he could, consistently with good faith towards his creditor, maintain substantially the same style of living that a prudent man would, who possessed nine thousand dollars, and owed no debts at all. On the other hand, if a debtor had no property at all, in his hands, except what had been loaned to him; and out of that and the value added to it by his labor, he was under the obligation of paying his debt and supporting his family, good faith towards his creditor would require that he practise such a degree of economy, (a stringent frugality even where the case plainly demanded it,) as would be likely to enable him to accomplish both objects; because it cannot reasonably be supposed that his creditor would have loaned him the capital, except upon the understanding that he should practise all the economy that would be *obviously* necessary, (setting aside unusual and unexpected contingencies,) to enable him to repay it. Nevertheless, in the case of debt, the precise measure of duty, on the part of the debtor, or bailee, cannot be defined with perfect accuracy, any more than in the case of any other bailment. All that can be said is, that the debtor is bound to do all that good faith towards his creditor requires, under the particular circumstances of each case; and the *general* rule is, that a bailee must practise the same care, diligence, and economy, in the management of the property bailed to him, that prudent men generally use in the management of their own property, in like circumstances; and the judgment of a jury is the final criterion for determining whether the care, diligence, and economy observed by a bailee have been such as are usually observed by other men.

11. If a bailee, or debtor, be guilty of any fraud in procuring the bailment, or of any fault, culpable neglect, or want of good faith in the custody, use, or management of the value bailed, whereby any loss should accrue to the bailor, or creditor, the bailee or debtor will be liable, *not on*

his contract, but in an action on the case for damages; and for the satisfaction of these damages his future acquisitions will be liable *forever,* and not merely his present property, as in the case of debt. The reason of this distinction is, that the ground of his liability, in the former case, is a wrong done by him; in the latter, a contract. For a wrong done to another, the wrong doer can obviously be discharged from his liability only by making reparation. But from a contract he is discharged when he has delivered all the value, which the contract attaches to, and binds.

12. If a debtor do not pay his debt at the time it becomes due, (unless he have some valid excuse for not paying it at that time,) and all the property in his hands should afterwards be lost, even by accident—by such an accident as would have excused him forever from the payment, if it had happened *before* the debt became due—who will be liable in damages, (and his future acquisitions be responsible;) because, but for his fault in withholding the value beyond the time agreed on for its delivery, (or payment,) it would not have been exposed to the accident, by which it was lost. Such is the rule in other bailments; and the principle would apply with equal propriety to the bailment of debt.

13. If a debtor, before his debt becomes due, should use the value bailed to him in a manner wholly or plainly different from what could be reasonably presumed to have been the agreement of the parties that it should be used, and the creditor should suffer loss in consequence, the debtor would be liable in damages, and his future acquisitions will be responsible.

14. If a debtor, previous to his debt becoming due, should commence any wasteful, profligate, or manifestly unfaithful expenditure of the value bailed to him, whereby he should be plainly endangering his creditor's security, the creditor would have a right to the interference of a court of equity to restrain the debtor, and, if need be, compel him to make payment of what he had in his hands before the time agreed upon for the payment; for all the rights of the debtor, to hold the property, by virtue of the contract, are at an end the moment he violates the conditions of the bailment, if the creditor choose to avail himself of the violation to cancel the contract, and recover the property bailed.

Such are some of the leading principles, drawn from the general law of bailments, and applicable to the bailment of debt, if debt be but a bailment. How much more beneficial these principles are to the interests of, both creditors and debtors; how much more strongly protective of the rights of creditors, and how much less barbarous and absurd towards debtors; how much more promotive of sound, safe, and generally diffused credit, than are the principles, (if arbitrary rules, that violate all principles, and acknowledge none, can themselves be called principles,) that are now acted upon by legislatures and courts of law, in reference to the same subjects, need not be particularly set forth; for light and darkness, truth and falsehood, reason and absurdity, justice and injustice, present no stronger contrasts than those two systems do to each other. One system is founded in natural law, and, hike all the principles of natural haw, is defensive of all the rights, and benign in its influence upon all the lawful interests that it reaches. The other is a mere relic of that barbarous code, (as false in theory, as merciless in practice,) which sold the debtor and his family into slavery, or, (in later days,) doomed him to prison, like a felon, whenever, by reason of contingencies, to which all property is liable, and which he could not foresee, nor be expected to foresee, he proved unable to fulfil the *letter,* instead of the true law, of his contract.

It remains, in this chapter, to suggest the nature of the cases where a moral obligation to pay, may remain after the legal one has expired.

Where the contract has been entered into by both parties, creditor as well as debtor, with a view to profit only, and as a mere matter of business, and the loss has occurred from the necessary

hazards of business, or the contingencies to which property is always liable, and not from any fraud, fault, neglect, or bad faith on the part of the debtor, *no* moral obligation will remain after the legal one is extinct.

But where the creditor has entered into the contract, and advanced capital to the debtor, not with a view to profit for himself, but as a matter of favor or kindness to the debtor, there a moral obligation will remain after the legal one has expired; because we are all under a moral obligation to save our friends from suffering any loss by reason of any kindnesses they may do for us.

Again. Where it was the intention of the creditor, that the only property, in the hands of the debtor, to which the contract of debt attached, or could attach, should be consumed by the debtor—as, for example, where one man should sell food to another, who was so destitute that he had nothing for his contract of debt to attach to, except the food itself which he had just bought of the creditor, and which it was the intention of the creditor that he should eat, there the moral obligation to pay would remain after the food was consumed, and after the *legal* obligation of the contract was consequently extinct.

There are some cases, where there would be a moral obligation to pay, where no *legal* one had ever accrued at alias, for example, where a physician should render his services to a sick man, who had no property in his hands for a legal contract of debt to attach to.

It may be thought an objection to the system here advocated, that it makes no provision for the legal enforcement of moral obligations of so palpable a character as those here mentioned. But the objection ought to vanish, when it is considered how very few such cases would need to arise, if the *whole* system of credit, which natural law authorizes, and which has been here advocated, were in operation; for few persons only, if any, would then be so destitute as to have nothing for a legal contract to attach to, or as to need to receive pecuniary assistance on such grounds as these cases contemplate. Besides, there is no more reason why compensation should be enforced by law, for every kindness of a pecuniary nature, that one man does to another, than for kindnesses of any other sort. The honor, gratitude, and sense of duty of mankind may be safely trusted to make suitable returns for all the kindnesses which men will be likely to show to each other, where they have no legal guaranty of compensation. Such is the prudent character of men's benevolence generally, that the number of such benefits conferred will not be so great as to bring any serious injury to their authors, even if some of them should actually go unrequited. Besides, the sense of gratitude, on the part of receivers, is generally commensurate with the generosity of givers. The cases, where the former falls short of the latter, are too few to be a matter of any concern to the government.

CHAPTER VI. THE LEGAL NATURE OF DEBT.—(CONTINUED.)

Some persons may not have been convinced, by the arguments already offered, that debt is but a bailment. The doctrine is also too important to be dismissed without offering all the arguments that go to sustain it. Some further explanations of collateral questions are also necessary. These additional arguments and explanations have been reserved for a second chapter, for the reason that, to many minds, I apprehend, they will be unnecessary, and therefore tedious; and for the further reason that the matter will be simplified by presenting them separately from those in the preceding chapter.

There remain two lines of argument, which go to prove the same point, to wit, that debt is but a bailment—and which, for the sake of distinctness, will be presented separately. It will be impossible, in presenting them, to avoid entirely a repetition of some of the ideas already expressed.

FIRST ARGUMENT.

In order to get at the true nature and obligation of debt, it is necessary to consider that a promise to pay money is of no *legal* importance, except as *evidence* of debt. It does not, of itself, create the debt. It only aids to prove it.

Neither do the true nature and obligation of debt consist in, nor even rest at all upon, the merely *moral* obligation of a promise to pay. A naked promise to pay money is of no obligation, *in law,* however sincere may have been the intention of the maker to fulfil it. The *legal* obligation of debt never arises from the fact that a man has made a promise to pay money. It is entirely immaterial to the validity of a debt, whether the debtor have made any promise or not. The debt does not arise from the promise; the promise is only given as evidence of the debt.

The legal obligation of a debt, then, is something entirely distinct from the moral obligation of a promise, or the moral obligation to keep one's word. The promise is given merely because the debt is dime, and as evidence that the debt is due. It is no part of the legal obligation of the debt itself.

If a promise be made when no debt is due, the promise is of no importance in law. On the other hand, if a debt be due, and no promise have been given, the debt is equally valid, as if a promise had been given. These facts show that the promise is nothing material, either to the existence or to the obligation of a debt. A debt may be created without giving a promise; and a promise may be given without treating a debt.

In order, therefore, to get at the true nature of debt, it is necessary to separate it entirely from the idea of a promise. It is this false idea of the legal obligation of a promise, that interposes itself before our minds, and prevents our seeing the true nature and obligation of the debt.

But it is said by the lawyers, that when a man has "received value," as a "consideration" for his "promise," his promise is binding. But it is an entire misstatement of fact, and conveys wholly erroneous ideas of the nature of debt, to say that the debtor receives value, as a consideration for his *promise.* A man never pays a consideration for a *promise*—for a promise, as we have seen, has, of itself, no legal obligation, and is of no consequence to the validity of a debt. To say, therefore, that a man pays a consideration for a *promise,* is equivalent to saying that a man pays his money for nothing—for that which has no value of itself, and is of no legal obligation.

If, then, the creditor do not pay "value" to the debtor as a consideration for the debtor's *promise,* for what does he pay it to him? Obviously as the consideration, or price, of the *thing promised*—that is, as the price of the equivalent, which the debtor sells to him in exchange. If, for instance, A sells to B a horse for an hundred dollars, and takes B's promissory note therefor, he does not sell the horse for the note, but for the hundred dollars; and he takes the note merely as evidence that he has bought the hundred dollars, and paid an equivalent (or value) for them, *and that they are therefore now his,* by *right of property;* also as evidence of the time when they are to be delivered to him.

This brings us to a perception of the fact, that the "value received" by the debtor from the creditor, and the sum, or value, which the debtor promises to pay or deliver to the creditor, are merely equivalents, which have been mutually sold or exchanged for each other.

If these equivalents have been mutually sold, or exchanged for each other, each equivalent has bought and paid for the other; and, of necessity, the right of property in each equivalent passed to *its* purchaser, at the same time that the right of property in the other equivalent passed to *its* purchaser—that is, at the time of the contract.

But that, which makes one of these parties the debtor of the other, when there has been merely an exchange, or a mutual purchase and sale of equivalents, between them, is simply this, viz., *that the value, which is sold by one of (he parties to the other, is, by agreement, to remain, for a time, in the hands of the seller, for his use.*

A debtor, therefore, is one, who, having sold value to another, *and passed the right of property in it to the purchaser,* retains it for use until a time agreed upon for its delivery. At the end of this time, the creditor can claim this value, *because it is his,* he having previously bought it, and paid for it—and *not* because the debtor has *promised* to deliver it at that time. The debtor's promise to pay, or deliver, this value to the creditor, at the time agreed upon, is not of the essence of the contract, by which the creditor acquired his right of property to the value promised; and it is of no importance whatever except as evidence that the value, thus promised to be paid, or delivered to the creditor, has been already sold to him, paid for by him, and now belongs to him; and that the debtor has no right to retain it, for use, beyond the time when he has promised to deliver it. The promise, therefore, instead of being evidence that the right of property, in the value promised, has *not* passed to the creditor, is only evidence that it *had* (in point of law) passed to him before the promise to deliver it was made.

The right of property, in, the value to be paid by the debtor, *must* have passed to *its* purchaser, the creditor, at the same time that the right of property, in the "value" paid by the creditor, passed to *its* purchaser, the debtor—that is, at the time of the contract; else the *creditor* would have parted with his "value," or property, (that which he paid to mite debtor,) without receiving any equivalent for it. He would merely have received a promise, which, as we have seen, is of no legal value, of itself, and could be used only as evidence. And it could be used as evidence only to prove that the creditor had paid value to the debtor in exchange for an equivalent; that he had thus bought the

equivalent; and that lie was then, of course, the owner of the equivalent thus bought and paid for—notwithstanding it wore still remaining in the hands of the debtor.

The promise, therefore, would be of no avail, even as evidence, unless the right of property in the value promised to be paid, or delivered, had already passed to the creditor—for that is the only fact, (in case of debt,) which the promise can be used to prove.

But perhaps it will be said, (and this is all that can be said on the other side,) that the promise, and the acknowledgement of the receipt of value, by the debtor, maybe used to prove that the creditor has paid value to the debtor in exchange for an equivalent, which the debtor was to deliver, or pay, to the creditor at *a future* time. True it may; it can be used for that purpose, and no other. But that is, in reality, only asserting, instead of contradicting, what has already been stated, viz., that the promise may be used to prove that the creditor has bought value of the debtor, and paid for it; and that it, (the value thus bought and paid for,) is therefore now his, (the creditor's,) *by right of property,* and has been his ever since he bought and paid for it, to wit, ever since lie paid his value to the debtor—for (as has before been mentioned) it is absurd to say, when a man has bought and paid for a thing, that he does not own it, (has not the right of property in it,) merely because it was left for a time in the hands of the seller.

The essential error in the common theory of debt, is, that it supposes that the creditor acquires no *present* right of property—at the time the contract is made, or at the time he pays *his* value to the debtor—in the equivalent which the debtor promises to pay or deliver to him; that lie only acquires a right of property in this equivalent when it is finally delivered, or paid to him—which may be days, months, or years after he has really bought it and paid for it. It supposes that he pays *his* value to the debtor, and passes his right of property in it to the debtor, without at the time acquiring, in return, any equivalent right of property in the value which the debtor is to pay, or to deliver to him.

This error results, in part, in this way, to wit; because the value sold by the debtor to the creditor, is, at the time of the sale, merged in the whole value of all the debtor's property, amid is to remain so merged until it is finally separated and converted into money, for the purpose of delivery, we overlook the fact, that the right of property in it has nevertheless as much passed to the purchaser, (that is, to the creditor,) as if it were already separated from the mass of the debtor's property, and delivered to the creditor.[1]

This error is further strengthened by our confounding, in the first place, the idea of a promise, and the obligation of the debt; and, in the second place, the right of property, and the delivery of the property itself. The promise, and the obligation of the debt, as we have already seen, are

[1] Suppose A sells to B, and receives his pay for, an hundred bushels of grain, out of a certain mass consisting of a thousand bushels; and A promises that he will separate the hundred bushels from the mass in which they are merged, and deliver them to B In one month from the time of the contract. In this case the right of property in the hundred bushels, passes to B, the purchaser, at the time of the contract—and if the mass should be destroyed before the delivery, (without any fault on the part of A) the loss of the hundred bushels would fall upon B, the purchaser and owner of them. And this is but a parallel to the ease of debt, where A should sell to B, and receive his pay for, an hundred dollars' worth of value out of his (A's) whole estate; and should promise that this hundred dollars worth of value should be separated from the mass of his estate, (in which it is merged.) converted into money, and delivered to II, the purchaser, (or creditor,) in one month from the time of the contract. In this case, as in the case of the grain, the right of property in the hundred dollars' worth of value, would pass to B, the purchaser of it, at the time of the contract; and if the whole estate of A, in which B's hundred dollars' worth of value—was merged, should then be lost or destroyed prior to the delivery, without any fault or culpable neglect on the part of A, (the bailee, or debtor,) the loan of the hundred dollars' worth of value would fall upon 13, the purchaser and owner of it.

entirely distinct matters. So also the right of property, and the delivery of property, are entirely distinct matters. Neither depends at all upon the other.[2] The right of property is acquired when it is bought and paid for; the delivery only gives the owner the *possession* of what was already his. A creditor, therefore, acquires a right of property in the value promised to him, at the time he pays *his* value for it—whether the actual delivery or payment of the value promised takes place at that time, or months, or years afterwards. If this were not so, the creditor, during the whole period, between the time when he pays *his* value to the debtor, and the time when the debtor finally delivers or pays to him the equivalent value, is without any right of property at all, either in the value he has parted with, or in the value that he is to receive for it. And if he has no rights of property, during all this time, to either of these values, he has, of necessity, no rights at all in reference to them; *and never can have by virtue of his contract.* He only holds a promise, which could be used as evidence of his rights of property, if lie had any such rights; but which, on the theory that he has lit) such rights, can be of no use whatever.

If it be now established, that the value paid by the creditor to the debtor, and the value promised by the debtor to the creditor, are merely equivalents, that are mutually bought and sold for each other; and if it be also established that the right of property, in each of these equivalents, passes to *its* purchaser, at the same time that the right of property in the other equivalent passes to *its* purchaser, to wit, at the time of the contract, instead of at the time of delivery, these facts furnish us with an explanation, or definition of the true legal obligation of a debt. They define this obligation to be the obligation of a seller to preserve for, and deliver to his purchaser at a time agreed upon, value, which he has sold him, and the right of property in which has already passed to him.

If this definition be correct, a debt (or sum due) is merely an amount of value, which has been sold by one person to another, and is to be delivered to him at a time subsequent to the sale. And a debtor is merely one, who has sold value to another, but retains the custody and use of it for a time after the sale, and is bound to deliver it to the purchaser, on demand, or at a future time agreed upon.

If these definitions of debt, debtor, and the obligation of a debt, are correct, they prove that from the time the contract (by which the debt is created) is entered into, up to the time the value due is to be delivered, the debtor is the mere bailee of the creditor; for a man, who continues to hold property, that he has sold to another, is merely the bailee of the purchaser; lie is the mere holder, user, and hirer of the value, which he himself has sold, but not delivered; and all the necessary consequences of bailment follow; and the legal principles of bailment apply. One of these principles, as has before been stated, is that if the property bailed he lost or injured during the bailment, without any fault or culpable neglect on the part of the bailee, the loss falls on the bailor, or owner.

[2] The delivery may sometimes be important as evidence of the right of property, when there is no other evidence of it. But it is of no importance to the right itself, if the right can be proved by any other testimony. And a promise to deliver property, and an acknowledgment that the property has been paid for, (as in the ease of a promissory note,) are as good evidence that the right of property has passed to the promisee, as is the delivery itself.

SECOND ARGUMENT.

It is a principle of natural law, that a contract for the conveyance of property is void, unless there be property owned by the maker, for the contract to attach to, *at the time it is* made. If, for instance, A should give to B, a deed of a farm, which A did not own, the deed would be void. It would convey no rights to B, simply because A owned no such farm for the contract to attach to—or, what is the same thing, because it is, in the nature of things, impossible that he could convey to B any rights, which he did not himself possess. And even if A should afterward become the owner of the farm, the deed that he had previously given of it to B, would give B no title to it. To convey the farm to B, a new deed would have to be given, simply because, at the time the first deed was given, A had no right of property in the farm, for his contract to attach to and convey. His first deed being void, at the time it was given, it could never afterwards be made a legal conveyance of rights subsequently acquired.

Again. If A should make a contract, purporting to convey to B his (A's) right, as heir, in his father's estate, while his father was yet living, the contract would be void, simply because, while his father was living, he had no right, as heir, in his estate. And even after his father should have died, and he should have become heir to his estate, B could not hold it under any contract that had been made prior to A's becoming entitled as heir—all for the simple reason, that at the time the contract was entered into, there was no legal right or property in A, for his contract to attach to and convey. And if it attached to nothing at the time it was entered into, it never could attach to anything. No contract, that a man can enter into at one time, can, in the nature of things, be made a legal conveyance of any rights which he did not then possess, and which he should only acquire subsequently.

If A were to give to B, a bill of sale of a horse, which he (A) did not own, B would acquire no rights to the horse by it; simply because A had, at the time, no ownership, or right to the horse, that he could convey. And even if A should afterwards become the owner of the horse, B could not hold him, or claim him, under the bill of sale that had been previously given—solely for the reason that, as there was no right of property, in A, to the horse, at the time the bill of sale was given, the contract was void. It conveyed nothing, because the maker of it had no rights that his contract could convey. There was nothing for the contract to attach to. The contract being void at the time it was entered into, nothing that might happen afterwards could make it a valid conveyance of rights subsequently acquired. B could then get the horse only by a new sale, or a new contract, to be made after A had become the owner of the horse.

In all these three cases, that have been named, where the sale proved void, for Want of any right in A to the thing purported to be sold, B could recover back his consideration money, on the ground of its having been paid without any equivalent, or value received. And in an action to recover it, he could use the deed, bill of sale, or other contract, as evidence that he had paid the consideration money; but the contract itself would convey him no rights, either to the land, the inheritance, or the horse, simply because A, at the time of making the contract, had no rights that lie could convey. And B would recover his consideration money, *solely because the grant or contract had conveyed him no rights.*

These cases are put simply to illustrate the principle, that a contract, for the conveyance of property, is void, and conveys no rights whatever to the grantee, unless the grantor be the possessor, at the time the contract is entered into, of the rights his contract purports to convey. Any subsequent ownership, that lie may acquire, is not transferred to the grantee by any contract

made previous to his becoming the owner. There being, in the grantor, at the time the grant is made, no such rights as the contract purports to convey, the contract is void, inoperative; and being void at that time, nothing can give it validity at a future time. It can only be used as evidence that the grantee has paid his money without consideration, and ought to recover it back. And if he wishes to acquire the specific property contracted for, whenever it may afterwards happen to come into the hands of the grantor, he must do it by a new contract—the old one being absolutely inert, lifeless, invalid, *for any purpose of a conveyance.* And it is equally invalid, so far as any conveyance of rights is concerned, whether the grantee have actually recovered his consideration money, or not. It may be useful, as evidence, to enable the grantee to recover the motley lie has paid; but it is incapable of any validity as a conveyance.

The force and justness of this principle will be more clearly seen, when it is considered what a contract really is. It is merely a consent, agreement, assent—a mere operation of the mind. The written instrument, called a contract, is only the evidence of the mental contract, or consent. It has no validity otherwise than as such evidence. The only really material matter is the mental operation, or assent.[3] Now this mental exercise, or assent, can obviously produce no effect, except while it is in action. It must therefore pass the right of property *then,* or never. If, while it is in action, the right of property be in the person who experiences this assent, the assent passes the right of property to another. But if the right of property be not in him, while experiencing this sensation of assent, the sensation accomplishes nothing, because there is nothing on which it can operate. And if the person should ever after become the proprietor of the thing to be conveyed, he must experience the sensation again, *in* order to make the conveyance, because his former consent was of no force except while it continued.

This principle being established, that a contract for the conveyance of property, has no legal force, or validity, as a *conveyance*—that is, that it attaches to nothing, and conveys no right to anything—unless the maker, at the time the contract is made, be the owner of the rights he purports to convey, let us apply the principle to the case of a promissory note.

A promissory note is a contract (or, more accurately speaking, the evidence of a contract) for the conveyance of property—that is, of money. It is a bill of sale of money, that has been sold and paid for, and is to be delivered at a future time. It differs, in some particulars, from the contracts just mentioned, in regard to land, a horse, &c.; but it does not differ from them, in any particular that is essential to the principle just stated, to wit, that a contract for the conveyance of property, attaches only to the property that a man has when the contract is entered into—(and, of consequence, to such other property as may become indistinguishably mixed with it prior to the delivery.) The rights, which a creditor acquires by a promissory note, (or by the contract of which the note is the evidence,) are rights which attach to the debtor's property the moment the contract is entered into, even though the money is not to be delivered for months or years afterward. And if the debtor have no property for the contract to attach to, at the time the contract

[3] The validity of this assent, for the conveyance of property, results from the facts that men have an inherent right to dispose of their property; that they can dispose of only by the consent, or assent of their mind, or wills to do so; and that, consequently, whenever this consent, or assent, takes place, it actually passes the right of property, (in the thing to which it applies,) to the person to whom the proprietor designs it to go. It is true the law requires some outward manifestation of this assent — such as a delivery of the thing sold, or a written or oral contract as proof of it — before it (the law) will declare that the right of property has actually passed to another — but this is required, not because the outward manifestation is of any intrinsic importance, but because we can have no evidence of a man's mental sensations except from some outward exhibition of them.

is entered into, the contract is void, and can never afterwards attach to anything. And this is on the same principle, that a deed of a farm attaches to the farm from the moment the deed is made, and that the right of property in the farm *passes,* at that moment, from the seller to the buyer, even though the possession of the farm is, by agreement, not to be delivered for months or years afterwards. So also a bill of sale of a horse, attaches to the horse, and the right of property in the horse *passes* from the seller to the buyer at the moment the contract of sale is entered into, even though the horse, by agreement, is not to be delivered until a subsequent time. On the same principle, the right conveyed by a promissory note, (which is merely a contract for the sale and delivery of money,) attaches to the debtor's property, and the lien *passes* to the creditor at the moment the contract is entered into, even though the money is not to be delivered until months or years subsequent. The right of the creditor *must* attach at the time the contract is entered into, or, for the reasons already given, it can never attach at all; and would therefore convey no rights at all to the creditor.

The principal points, in which a deed of land, or a bill of sale of a horse, (where the possession is to be delivered at a time subsequent to the contract,) differs from a promissory note, are these:

1. A deed of land, or a bill of sale of a horse, necessarily describes or designates a particular piece of land, or a particular horse; and it necessarily applies or attaches only to the one so described, because there is, and can be no other precisely like it. But a promissory note does not describe the particular dollars, that are sold, or are to be delivered, but only the number of them. It therefore does not apply, or attach to, any particular dollars; and it is not necessary that it should, because all dollars are of equal value, and therefore it is immaterial what particular dollars shall be delivered.

2. As a promissory note does not describe or designate the identical dollars sold, it cannot apply, or attach to any particular dollars, any more than to any other dollars that the debtor may have.

3. As a promissory note does not describe, designate, or attach to any particular dollars, in preference to others, it does not imply that the identical dollars, that are finally to be delivered, now exist in the hands of the debtor. And if it does not imply that those identical (dollars now exist in the hands of the debtor, it does not oven imply that the amount of value, which the dollars contain, or (in other words,) the amount of value which the note conveys, now exists (in the hands of the debtor) *in the shape of dollars,* any more than that it exists in any other particular shape, from which it can, by the time agreed on for the delivery, be converted into the particular dollars that shall finally be delivered, or into any dollars that the debtor may have a right to deliver in fulfilment of his contract. As the note does not describe or designate the identical dollars, that are sold by the contract, it does not imply or describe the particular shape, in which the amount of value sold, now exists; for if it do not imply that it exists in the shape of the identical dollars than are to be delivered, it does not imply that it exists in the shape of any other dollars, any more than that it exists in the shape of cost, wool, or iron. It only implies, therefore, that it exists, (that is, that the *amount* or *value* conveyed by the note exists,) in the hands of the debtor, in *some* or *other,* from which it is susceptible of being converted into dollars by the time agreed on for the delivery.

4. As the note does not describe the particular shape in which the value conveyed by it now exists, and does not even imply that it now exists in the shape of dollars, the note is, in effect, an lien upon all a; man's property for the number of dollars mentioned in the note; or it is a sale of so much value, existing in some shape or other, as will procure, or exchange for the number of

dollars mentioned in the note, rather than a sale of any particular dollars themselves. That such is the fact, is evident from two considerations, to wit; *first,* that the identical dollars sold are not described, and therefore cannot be known; and, secondly, that the debtor is to have the use of them until the time agreed upon for the delivery. As the dollars, while remaining in the specific shape of dollars, can be of no use to the debtor, and can, be used by him only by converting them into other commodities, and as they are to be left in his hands, for a certain time, *solely that he may use them*, it follows that it must have been the intention of the parties that the debtor should have the right of converting them into other commodities that might he productive, or susceptible of use in the mean time—that is, until the tune of delivery; and, therefore, that the creditor should have his lien upon them, or upon an amount of value equivalent to them, into whatever shape they might be converted, or through whatever changes they might pass, previous to delivery; and that, in time for the *delivery,* this amount or value was to be converted again into dollars for that purpose.[4]

5. As the contract, to be of any validity, (that is, to convey any rights,) must, from the moment it is entered into, attach to something or other in the hands of the debtor; and as it does not designate, or therefore purport to attach to the identical dollars that are to be delivered, it can only attach to the general property of the debtor, as a lien for the number of dollars to be delivered. Unless it thus attach to the general property of the debtor as a lien, it would, of necessity, be a nullity, having no legal operation whatever, simply because there is nothing else for it to attach to.

A promissory note, therefore, for an hundred dollars to he delivered at a future time, is, in reality, a contract of sale of so *much value,* existing, in some shape or other, in the hands of the debtor, as will produce an hundred dollars. Such a contract is, in effect, a lien, for that amount, upon a man's whole property, even though his whole property should be equal to all hundred times that amount—and why? Because, as the particular amount of value, or property, to which the contract, attaches, is not described, or set off distinctly from the rest of his property, the debtor can never show, as long as any portion of his property remains in his hands, and the debt is unpaid, that the portion remaining in his hands is *not* the portion that was sold, and promised to be delivered. Besides, if, by the time of delivery, it shall appear that all his property has disappeared except a single hundred dollars, it is more reasonable to suppose that he has disposed of his own property, than that he has disposed of that to which his creditor had an equitable right.

A promissory note, then, for an hundred dollars, is a mere bill of sale of an hundred dollars, that are to be delivered at a future time; or rather a bill of sale of *so much value,* (now existing, or presumed to exist, in some other shape than that of the identical dollars which, are to be delivered,) as will purchase an hundred dollars at the time agreed upon for the delivery. Although, then, a promissory note differs from a bill of sale of a horse, or a deed of land, in not describing or designating the identical dollars sold, and therefore in not attaching to any particular dollars which the debtor may have on lined at the time the contract is entered into, it is nevertheless precisely like a bill of sale of a horse, or a deed of land, in this respect, to wit, that the rights of

[4] Although a deed of land, or a bill of sale of a horse may contain an agreement that the possession shall remain in the seller for a time; and although such an agreement would imply that the horse or form was left in his possession to be used by him, still it would not, as to the case of a note, (or bill of sale of dollars,) imply that the horse or farm might, in the mean time, ha converted into any other shape for use, or be exchanged for any other commodity; because the horse and form, unlike the money, are productive and useful in their present shape.

the creditor attach, from the moment the contract is made, to an *amount of value,* (existing in the hands of the debtor, in *some shape or other*,) sufficient to produce, or be converted into, the number of dollars mentioned in the note.

But perhaps some may be disposed to deny that there is any such analogy, as I have supposed, between a promissory note and a deed of land, or a bill of sale of a horse; or any analogy that makes it necessary that there should be any property, in actual existence, for the contract expressed in the note, to attach to. And perhaps they will say that the different form of a promissory note from that of a deed, or bill of sale—the former being a "promise to pay" at a future time, and the two latter being express grants in thin present tense—implies that the note conveys no such *present* right of property to the payee, as a deed does to the grantee, or a bill of sale to the vendee.

To see the fallacy of this objection, it is necessary to get rid of words, and get at ideas; or rather to get rid of that confusion of ideas, which results from the habit of arbitrarily using different words to convey the same essential ideas. For instance. We "pay" money for a horse, and we "sell" a horse for money—such is the common use of words. Yet, in reality, we as much *"pay"* the horse for the money, as the money for the horse. And we as much *sell* the money for the horse, as the horse for the money. The horse *buys* the money, as much as the money buys the horse. The horse and the money are equivalents, which are mutually exchanged for each other; which mutually *buy* each other; which are mutually *sold* for each other; which mutually *pay* for each other. In every exchange of equivalents of this kind, there are two purchases, and two sales. One of the parties sells his horse for money, the other his money for a horse. One of the parties buys a horse with money, the other buys money with a horse. And this is the whole matter.

When, therefore, a man sells a horse for money, and promises to deliver the horse at a future time, the contract is of precisely the same essential nature as where a man sells money for a horse, and promises to deliver, or "pay" the money at a future time. The horse and the money are the equivalents, that are exchanged for each other; that is, *the* right *of property* in each is exchanged for *the right of property* in the other. And the right of property in each equivalent *passes* at the same instant that the right of property in the other equivalent passes—else the contract is not reciprocal, mutual, or equal, and one of the parties receives no equivalent, or consideration, for the property he sells. And it is of no consequence when the *delivery,* either of the horse, or of the money, actually takes place—whether in a month or a year alter the contract—or whether the delivery of both equivalents takes place at one and the same lime, or not. The right of property in both equivalents passes at the time of the contract, whether the delivery of either or both takes place then or not. The delivery is a mere incident to the contract, and is of no importance in itself, as affecting the rights of property, which each of the parties has acquired by the contract. Alter the contract is made, the horse belongs to *its* purchaser, as much before it is delivered to him as afterwards; and, by the same rule, the money belongs to *its* purchaser as much before it is delivered, or "paid" to him, as afterward. The same is true in regard to the sale of land. The right of property in the land passes at the time the contract is made, or the deed given, though the possession of the land itself be not delivered until a subsequent time. And, of consequence, the right of property in the equivalent, the consideration, the money, for which the land is sold, or exchanged, passes also at the time of the contract, though this equivalent, or money itself, be not delivered, or paid, until a subsequent time—else the contract would not be mutual, reciprocal, or equal, and the seller of the land would have parted with his right of property in the land, without receiving any consideration therefor—that is, without receiving any equivalent right of property

in exchange. The delivery of money, then, on a note or contract made previously to the delivery, corresponds with a delivery of the possession of land, on a deed that has been previously given. The delivery has nothing to do with the right of property in either case—for that (the right of property) has previously passed, to wit, at the time the contract was entered into.

What we call "paying" money on a note, is the mere delivery of money that line been previously sold and paid for, and the right of property in which has previously passed to the purchaser. And it is solely because the money has been previously sold and paid for, and the right of property in it has passed to the purchaser, that the money itself is paid, or delivered. It is because the money has been previously bought by another, and therefore belongs to him, *is* owned by him, is, in fact, his property, that it is paid, or delivered to him. If it he not paid to him for this reason, or if it be not his property before it is delivered, the delivery is a gratuity; it is what he cannot claim as a right—for plainly a man cannot claim, on a contract, that property be delivered, or paid to him, as his, unless he has, by the contract, first acquired the ownership of it.

Contract rights to things, then, are actual *bona fide rights of property* in and to the things contracted for. No other intelligible meaning can be given of contract rights to things. A right to a mere profuse, or a merely moral claim to the fulfilment of a promise, is nothing in law. The law, that governs men's title to property, cannot take notice of any such uncertain, intangible, and speculative rights, as that of a merely moral claim to the fulfilment of a promise, if such a claim, (depending, as it may, upon a thousand contingencies not in their nature susceptible of proof,) can be called a right. The law, in regard to property, can take notice of nothing less definite, certain, or tangible, than actual, proprietary rights, in actual, existing things. And unless a man acquire a *right of property* in a thing, by his contract, he requires, *legally speaking,* no right but all by his contract. There is no other legal right to or in things, that he can acquire by contract. And this proprietary right is acquired—in all cases when it is acquired at all—the moment the contract is made/ whether it be agreed that the delivery shall take place at that or a future time. And this principle applies as well to money that is sold for a horse, or for land, and is agreed to be delivered, or paid, at a future time, as it does to land, or a horse, that is sold for money, and is agreed to be delivered at a future time.[5]

But perhaps it will be said that the words, "I promise," which are contained in the note are not contained in the bill of sale of a horse, or deed of land; and that these words indicate some essential difference in the nature of these different contracts.

But the words, I "promise," are no essential part of the contract. Nor is a formal promise in any case essential to the validity of a debt—that is, to the obligation to deliver money that has been sold and paid for. A man may make as many naked promises to pay money, as he pleases, and they are of no obligation in low. On the other hand, if a man have received value from another, with the understanding that it is not a gift, or that am, equivalent is to be paid for it, the debt is obligatory—that is, the obligation to deliver the equivalent is binding—whether there he any formal promise to pay or not. This we see in the ease of goods sold, and charged on account. And the obligation to deliver the equivalent consists in this—that it, (the equivalent or money,) has been bought amid paid for, and now actually belongs to the creditor, or purchaser, as a matter of

[5] It will be understood, when I say that the right of property in the "money" passes to the purchaser at the time it is sold, or contracted for, (though not delivered until a future time,) that I mean, not the right of property in the identical pieces of money that are to be delivered, or paid, but (for the reasons heretofore given) the right of property in an amount of value, existing in some shape or other, in the debtor's hands, equivalent to the money, and which is to be converted into money in time for the delivery.

property. The promise, then, is a matter of mere form in any case, and of no importance to the validity of an obligation to deliver an equivalent, that line, by contract, (consent,) been exchanged for value that has been received. It may lie important us evidence of the contract; but it is no part of the contract itself; that is, it, of itself, conveys no rights of property to the promisee, and no rights of any kind, to the equivalent promised, which lie would not have without any formal promise.

But it may be said, (and this is the language of the lawyers,) that where a man has paid a *consideration* for a promise, there the promise is binding. But the truth is, (as has before liven stated,) that a man never pays a consideration for a *promise.* He simply pays an equivalent, a price, or consideration, for the *thing promised.* And his right of properly to the thing promised, of course, attaches at the time of the contract—at the time he pays the equivalent for it—or it can never attach at all. fluid *then* limo promise to deliver, or pay it, (the thing promised,) is made solely as evidence that it (the thing promised) has been sold, and now belongs to the promisee as a matter of property.

A promissory note, then, that is given for money, is, in its essence, precisely like a bill of sale, that is given of a horse, and that contains an agreement to deliver the horse at a future limo; or it is precisely like a deed that is given of land, and that embraces an agreement, or memorandum, that the *possession* of the land is to be given at a future time. Time language of these three contracts are, in their legal purport, essentially the same. For instance. The promissory note runs thus.

> "Thirty days from date I promise to pay A. B. one hundred dollars, for *value received.*" Signed C. D.

The bill of sale runs thus.

> A. B. bought of C. D. one horse, lobe delivered in thirty (lays from date. Received payment." Signed C. D.

Time deed of land runs thus.

> "In consideration of one hundred dollars, paid by A 13, the receipt of which is hereby acknowledged, I hereby grant, cell, and convey to A B, one acre of land, *possession* to lie delivered in thirty days from the date hereof." Signed C. D.

What difference is there in these three contracts, so far as a conveyance of proprietary rights to the thing promised to he paid, or delivered, is concerned? Obviously none whatever. The bill of sale says, in substance, that the horse has been sold, not just this "payment," the value, or the equivalent, has then "received;" and that the horse—which, having been thus sold and paid for, now of course belongs to the puchaser—is to be delivered to him in thirty days. The deed says that the laud is sold, and its equivalent, or "consideration," has been "paid" not "received and that the possession of the land—(which, having been thus sold and paid for, now of course belongs to the purchaser)—is to be given in thirty days. The note says that the "value"—that is, the equivalent, the "payment," the" consideration," for the money promised, has been "received," (which implies that the money promised has been sold, and now belongs to the purchaser,) and that the money is to be delivered, or paid, in thirty days.

What possible ground is there for saying that the right of property in the land, or in the horse, is conveyed by the contract expressed in the foregoing deed, or bill of sole, and that the right of property in the money, (or in an amount of value sufficient to purchase the money,) is *not* conveyed by the contract expressed in the note? None, none whatever.

Suppose A amid 14 should make a contract with each other for the exchange—or, whet is the same thing, for the mutual purchase and sale—of one hundred dollars in money, and a horse; that is, A should sell to B a horse for an hundred dollars in money, and 13 should sell to A an hundred dollars in money for a horse; amid that both the money and the horse are to be delivered in twenty days from the time of the contract. The promise of one would be to "pay" the money in thirty days, and of these then to "deliver" the horse in thirty days. Yet do not these mutual promises, or undertakings, mean precisely the same timing? And is not the contract, on, the part of each, precisely the same throughout, that it is on the part of the other? Tim also is the equivalent of the money, and the money of the horse. The money is *sold* for the horse, as much as the horse is sold for the money. Amid the horse *buys* the money, as much as the money buys the horse. Time again is reciprocal and equal in every respect. The mutual purchase and sale have beets a mere exchange of the rights of property in certain values, or equivalents. Why, then, attach a different meaning to the word "pay," when applied to the money, from which we attach to the word "deliver," when applied to the horse? Why say that time right of property in the horse *passes* to the purchaser of the horse at the time of the contract, limit then the right of property in the money, (or in an amount of value sufficient to purchase the money,) does not pass to the purchaser of the money until the delivery, thirty days afterwards? Clearly there is ho reason for it. Evidently, the right of property in one equivalent passes at this same time that the right of property in the other equivalent passes, to wit, at the time of the contract, without any regard to the time of the delivery.

The real, equitable, *bona fide* right of property in each of these articles, (the horse and the money,) is exchanged *by the contract,* and therefore necessarily *passes* at the time of the contract. The *possession* merely of each remains with the seller for thirty days. All will agree that the right of property *in the horse* passes at the time of the contract, and that the possession merely remains with the seller during the thirty days. Why does not the right of property, *in the hundred dollars,* (or in an amount of value equivalent to the hundred dollars,) *pass* equally at the time of the contract, mind the possession merely remain with the seller of the money for thirty days? The mutual purchase and sale of the horse and the money is a mere exchange of equivalents—a reciprocal and equal contract; and precisely the same rights of property, which pass to the purchaser of the horse, pass also to the purchaser of the money. Certainly, if the right of property in the horse, passes to the purchaser of the horse, *by force of the* contract, and at the time of the contract, the same right of property in the money passes also to the purchaser of the money, *by force of contract, and at* the *time of the contract.* No proposition, in law, it seems to me, can lie more self-evident than this.

Well, them, supposing this point to he established, that the right of property, in money that is promised—or rather in an amount of value existing, in some shape or other, in the hands of the debtor, sufficient to purchase the amount of money promised—passes to its purchaser at the time the contract is entered into, instead of the time of delivery—what follows?

From the time that property is sold, until it is delivered, the seller is the mere bailee of the purchaser; and the property itself is at the risk of the purchaser, unless the seller be guilty of some fault, or culpable neglect, in regard. to the custody or use of it.

For instance. In the case before supposed, where A sells to B a horse, for an hundred dollars, giving him a bill of sale thereof; and B sells to A an hundred dollars for the horse, giving him a promissory note therefor—the horse and money to be each delivered to their respective purchasers in thirty days from the time of the contract—A holds the custody oh the horse, for those thirty days, as the house of B. And if the horse, during those thirty days, die, be stolen, or otherwise lost or injured, by any of the casualties to which horses are liable, without any fault, or culpable negligence, on the part of A, the loss falls upon B, the purchaser. All lawyers will agree that this is the law in regard to the *horse.* On the same principle, them, that A is the mere bailee of the horse for those thirty days, B is the mere bailee of the money, (or of an amount of value equivalent to the money,) during the same time; that is, this money or value remains in the hands of B, for his use, the real ownership being in A; and if the money, during the thirty days that it is to remain in the hands of B, for his use, be lost by fire, or theft, or any of the accidents, or any of the casualties of *trade,* to which money is liable, without any fault, or culpable negligence on the part of B, the loss fells upon A, the purchaser and real owner of the money. Clearly the same principles apply to both the articles, horse and money. The right of property in each has been exchanged for the right of properly in the other; and the custody and use of each are to remain with its seller for thirty days. Each purchaser, of course, takes the same risk as the other, of the commodity he has purchased, while it remains in the hands of its seller.

If A, the seller of the horse, while the horse remains in his possession, after the sale, should use it in any mode different from what it was understood that he should use it; or should neglect to take such reasonable care, in the use and treatment of the horse, as good faith towards the owner of the horse required of him; and should thereby the cause of injury or death to the horse, he (the seller) would be still liable for the value of the horse; not, however, on his contract, nor in an action of trover for the horse itself, but in an action on the case for damages, for the loss occasioned by his intent, as has before been explained. By the same rule, if B, the seller of the money, while it remained in his possession, would intentionally or negligently expose it to any other than the usual risks, to which it was understood that it was to be exposed, and thereby the money should be lost, then he (the seller of the money) would be shill liable to the owner of it for the amount; *not, however, on his contract, nor in an action of trover for the money itself, but in an action on the case for damages, for the loss occasioned by his fault.*[6]

But if A, the seller of the horse, used the horse with such reasonable care, while it remained in his possession after the sale, as the law of bailments and good faith towards B; the owner of the horse, required of him, and the horse, nevertheless, canoe to injury or death, B, the purchaser and owner of the horse, must bear the loss. By the same rule, if B, the seller of this money, some such care in the preservation and management of it, while it remains in his possession after the sale, as the law of bailments and good faith towards A, the purchaser of the money, require of him, and it (the money) should, nevertheless, be diminished or lost, A, the purchaser and real owner of the money, must bear the loss.

Now the only objection which the lawyers will raise to this doctrine, or to the application of the principles of bailee and bailor to the cases of debtor amid creditor, is simply this: They will say that the specific property, to which the contract of debt (at the time it is entered into)

[6] This distinction between the liability of a debtor, on his contract, for the money itself, and his liability for the same amount, in an action on the case for damage, where the loss has been occasioned by his fault or negligence, is an important one in several respects, as regards both debtors and creditors, (as has heretofor been shown,) notwithstanding the amount recoverable in each case should be the same.

attaches, may, before the time agreed on for the delivery, be exchanged, by the debtor, for other property; and that the same contract, which attached to the original property, cannot attach to the new property for which that is exchanged.

They get this false idea from looking solely at the *general* rule it, regard to bailments, and keeping the exceptions and qualifications to the rule not of sight; which, in fact, these exceptions and qualifications cover nearly or quite as many cases, in actual life, as the rule itself. For instance the *general* rule, in bailments, is, that the specific thing loaned or entrusted to the bailee, is to be restored to the bailor. The exceptions or qualifications ore, where there is either an express, or implied authority given to the bailee to exchange the property hailed for something rise. Wherever there is either an express or implied authority given to the bailee to make such exchange, the same right of property which the bailor has in the original commodity hailed, attaches to the new commodity, or equivalent, for such that has been exchanged. In the cases of the various kinds of commercial agencies, where the agent is entrusted with commodities of one kind, to be exchanged by him for money, or other commodities, the right of property in the money or other commodities, received by the bailee as the equivalent of the commodities bailed, vests in the bailor on the instant of the exchange, amid never becomes vested in the hither. Many, perhaps in the larger numbers of cases of commercial agencies, the bailee receives *express* authority for making the exchange; but not all, nor nearly all. In mammy cases the authority is implied from collateral facts. And an, implied authority is as good, in low, its any case whatever, as an express authority. All that is necessary, is, that there be valid grounds for the implication.

Considering, then, the relations of debtor and creditor to be those of bailee or bailor, are there any valid grounds for the implication of an authority, from the creditor to the debtor, to exchange, and traffic with, the property bailed, or loaned to the creditor.

There are several.

Inasmuch as the contract makes no designation of the particular form in which the value, to which the contract attaches, exists at the time the contract is entered into, it, of course, describes no particular form it in which it must *exist at any time*, except at the time of delivery, when it must be in money. Since, then, there is, in the contract, no express or implied requirement that the debtor shall retain the value in any particular form, it inherently allows him to use all reasonable discretion as to the form in which it will be expedient to keep it. And such a discretion allows him to convert it, by exchanges, into such different forms as a prudent and careful man might reasonably deem beneficial. Unless he were allowed this discretion, he would not be allowed to convert it from a perishable commodity into a durable one; nor from an unproductive into a productive one.

2. The capital loaned, is loaned to be *used*. This must always be presumed, because no other reasonable motive for the loan can be supposed. And if it be loaned to be used, and the form in which it is to be used is neither expressed nor implied by the contract, (as is the case in the instance of a promissory note,) it must be presumed that it was intended, by the creditor, that the debtor should use it in such manner as prudent men use their own capital. And as the habit of prudent men is to convert their own capital, by exchanges, or traffic, from one form into another; and as, in many kinds of business, they are obliged to do so, to derive any profit from their capital, it must always be presumed, (in the absence of any express or implied prohibition,) that the debtor was to he allowed the same discretion in the management of the loan, arid in converting it from one form into another, by traffic, as prudent men exercise in the management of their own capital.

3. The contract of debt never describes the particular form, in which the amount of value, to which the contract attaches exists at the time the contract of bailment or debt is entered into; but only the form in which it is finally to be delivered, to wit, that of money. The contract, therefore, only implies that the amount of value exists, *in some shape or other,* in the bands of the debtor. If, therefore, the debtor have not money for the contract to attach to, at the time it is entered into, it must attach to value existing in some other form, else it would attach to nothing, and therefore be void. When, then, the contract does attach to value existing in some other form than money, it certainly implies an authority to exchange the commodities, (in which the value is invested,) for money, at least, if for nothing else; because the contract expressly prescribes that the value to which the contract attaches shall only be deliverable to the creditor in the shape of money, and the debtor, therefore, cannot fulfill his contract, unless lie could convert this value into money. And if the debtor is authorized to convert into money, the value to which the contract attaches, there is no reason, that I know of, why he has not all fair and reasonable discretion as to the mode of converting it into money; nor why he may not do it by means of a dozen intermediate exchanges, if he thinks he can thus do it more advantageously.

4. If the value, to which the contract attaches, do exist in the shape of money at the time the contract is entered into, (as in the case whore money itself is loaned, and the debtor has no other property, than the loan, for the contract to attach to,) then the contract certainly implies an authority to exchange that money for other commodities, and those commodities back into money; because the money is obviously loaned to be used; as is proved by the facts, that no other reasonable motive for the loan can lie supposed, arid that, in most cases the debtor agrees to pay uttered for its use, which he could not afford to do unless the money were to be made productive to him. Now money itself can neither be used, nor made productive, in any other way than by being exchanged for other commodities, or by being wrought into some other shape than coin. These facts, then, are enough to prove it must have been the intention of the lender, or bailor, that the borrower, or bailee, should be at liberty to exchange the money loaned, for other commodities. And then the fact that the amount of value promised to be paid to the creditor, is finally to he delivered to him in, the shape of money, proves that the debtor has the consent of the creditor to convert these other commodities back into money again.

Whether, therefore, the contract of debt attach, at the time it is entered into, either to value existing in the shape of money, or to value existing in any other shape, (not designated in the contract,) the contract and the collateral facts imply an authority to the debtor to traffic with the property or value to which the contract attached. And, if this be the fact, then the rights of the creditor, or bailer, follow the value, and cling to it, in every form that it may pass through in the hands of the debtor, from the time the contract is made, until it is finally delivered, or repaid to him, (the creditor,) in the shape of money.

If it has now been shown that the true relation subsisting between debtor and creditor is merely the relation of bailee and bailor; that a debtor is merely one who has sold value to another, and retains the possession and title of it for a time after the sale; and that the legal obligation of the debtor to pay money, end the legal purport of his promise to pay money, for value that hue has received, are merely an obligation and promise to deliver money, which he has sold and received his pay for, and the right of property in which has already passed to the creditor, it follows that the creditor's right, acquired by his contract, attaches to nothing except to such property as actually existed in the hands of the debtor for the contract to attach to, at the time the contract was made, and no such other value as may have become indistinguishably mixed

with it, between that the and the time agreed upon for its delivery or payment. And from *these* several propositions it also follows, that at the time a debt becomes due, a creditor has no claims, by virtue of his contract, upon anything except what remains of the property that he purchased by his contract, end upon such other value or property as may have become indistinguishably mixed with it, (unless the debtor have been guilty of some fault or culpable neglect in the use *or* custody of it, whereby it has been diminished or lost.)

The *utmost* extent, therefore, of the creditor's claim, (when the debtor has been guilty of no fault, neglect, or bad faith, in the custody or use of the property loaned to him,) is to the property actually existing in the hands of the debtor at the time the debt becomes due. He has a *prima facie* claim to the whole of this,[7] if it be necessary for the satisfaction of his debt. But if it be insufficient for the satisfaction of his debt—that is, if his purchase have been diminished in value or amount, while in the custody of the debtor, (without any fault or culpable neglect on the part of the debtor,)—he, the creditor, must bear the loss. The contract is extinct, fulfilled, on the delivery of whatever remains of the property originally bailed to the debtor. And if the whole of the value bailed have beams lost, without the fault of the debtor, the loss falls on the creditor.

There is no escape from this conclusion but by denying that the contract attached to anything at the time it was made. And such a denial, instead of proving that the debt was obligatory *beyond* the debtor's means of payment, would only be equivalent to a denial that it ever had any legal validity at all. In order to maintain the validity of the contract, we must maintain that it attached to something—that is, that it conveyed to the creditor a proprietary right to some value existing in the hands of the debtor at the time the contract was entered into. And if the contract had any validity—that is, if it attached to anything—at the time it was entered into, its validity lived only in the life of time value, or property to which it attached; and when that value expired, or became extinct, the contract, or, in other words, all the rights which the creditor acquired by virtue of his contract, necessarily expired with it.

Taking it for granted that it has now been shown that a debtor is, in law, the mere bailee of his creditor, it may be important to repeat the statement of the principle, by which this bailment operates as a lien upon the whole property of the debtor, even though his property he many times greater than the debt. The principle is this. Suppose the debt to be one hundred dollars; and the whole amount of property, in the hands of the debtor, to be one thousand dollars. The contract attaches to amid binds so much value, or property, in the hands of the debtor, as will bring one hundred dollars. But the contract does not designate the particular form, in which the value, or property, to which it attaches, exists. It, therefore, attaches to it in every form it exists in the hands of the debtor; simply because it cannot be shown that it attaches to that which exists in one form, any more than to that which exists in another form. Any portion, therefore, of the debtor's property, or the whole of it, if it should be necessary, is liable to be taken for the satisfaction of the debt; and this liability of the whole makes the debt a lien upon the whole. It is on this principle that a mortgage on land, for but a tenth part of the actual value of the land, is a lien upon the whole.

A promissory note, or other personal debt, where there is no designation of the particular articles of property, to which the contract attaches is, in fact, a *sale* of all the property the debtor

[7] This *prima facie* claim may be defeated as to any particular property in the hand of the debtor, clearly distinguishable from the bulk of his property, and which the debtor can show to have been either loaned or given to him since his debt was created.

has in his hands, subject to his right of canceling the sale by paying the amount of the debt in money, just as a mortgage is a sale of the unmortgaged subject to the right of the debtor to cancel the sale by paying in money the amount for which the mortgage is given.

In other words, a contract of debt, without any designation of the specific property to which the contract attaches, is a contract by which the debtor *pledges* his whole property for the delivery, or payment of the amount sold out of it to the creditor, viz., the amount of the debt. Such a pledge gives the creditor a special, or conditional ownership of the whole property pledged; and the debtor thenceforth holds the whole property as the bailee of that portion of its value, which actually belongs to the creditor, and is merged in the value of his, (the debtor's) whole property.

If the point be now established, that a debt is a lien upon the whole property of the debtor; amid if the debtor is the mere bailee of the amount of value sold and belonging to the creditor, it becomes necessary to show on what grounds it is, that the debtor has the right to appropriate for his subsistence, any portion of the property on which his creditor holds a lien. Where a debtor has mortgaged *land* to his creditor, he (the debtor,) has no right to sell any portion of that land, not even to provide himself with food. Why is it different in the case of the liens created by a personal debt, upon the whole property of the debtor? The reason is, that there is an implied permission given by the creditor to the debtor, to appropriate enough of the property ins his hands for his subsistence—subject to the condition that the debtor shall apply his care and labor to the increase and preservation of that property. This permission is to be implied from the following facts:

1. It is a self-evident fact that the debtor amid his family must live; and being a self-evident fact, it must have been taken for granted by the creditor as a part of the contract—because all self-evident facts having any bearing on the contracts, are taken for granted in all lawful contracts.

2. If the debtor and his family must live, it is self evident that they must derive their subsistence, either by selling their labor for wages, (independently of any property in their hands;) or by bestowing their care and labor upon the property in their hands, and taking their subsistence out of it, and its proceeds.

Now it is evident that the contract does not contemplate that the debtor is to sell his labor for wages to the neglect or disuse of the property loaned to him; for the only reasonable motive that can be supposed for the loan, is, that the debtor may use the capital loaned, that is, that he may bestow his labor upon it. And if he bestow his labor upon it, it follows that he must meanwhile take his subsistence out of it—because, while bestowing his labor upon it, he cannot be selling his labor for wages, and of consequence cannot derive his subsistence in any other way than from the property in his hands. Amid as the creditor's lien extends to *all* the property in his hands, it follows that the debtor must take his subsistence out of that to which the lien attaches—simply because there is no other property in his hands for him to take it out of. In all this there is a strong analogy to the case of a lien on land—for there the debtor takes the produce of the land for his subsistence, which is hardly distinguishable in fact, and is not distinguishable in principle, from taking the land itself—inasmuch as the crops exhaust the fertility, and consume the value of the land.

3. The contract evidently supposes that the debtor, while laboring, is to have enough of the fruit of his labor for his subsistence, (because a man cannot labor without a subsistence;) that his labor is to he bestowed upon the capital on which the creditor has a lien; and, of course, that the value of his labor is to become incorporated indistinguishably with that of the capital. It follows that it must have been understood, both by debtor amid creditor as a self-evident matter,

that the debtor, while laboring, should appropriate enough of the property in his hands for his subsistence, because without his subsistence, he could not bestow his labor upon the capital.

4. The nature of the contract proves that the creditor is interested in the labor of the debtor, became, at a given time, he (the creditor) is to receive the capital loaned, *with increase.* This, of course, the debtor could not afford, nor the creditor expect, unless the debtor were to bestow his labor upon the capital. And if he bestow his labor upon the capital, he must, of necessity, have his subsistence meanwhile. And if his contract is a lien upon everything in his hands, it must of necessity have been understood that he should appropriate his subsistence out of the property that is subject to the lien.

In short, the contract proceeds throughout upon the supposition that the subsistence of the laborer, while laboring on capital, roust be provided for out of the capitol on which he labors. Arid this supposition is not normally reasonable, but it is a necessary one—for it is obvious that his subsistence must he thus provided for, whether he bold the relation of debtor to the capitalist, or that of a laborer for wages. In either case, his subsistence, while laboring, must be a tax upon the capital on which he labors.

In all this there is nothing that authorizes waste or prodigality on the part of the debtor; or that authorizes anything except what is consistent with such economy and frugality as good faith towards the creditor requires. But this point has been sufficiently explained in the preceding chapter.

Halting at this point, and looking lack upon the ground we have gone over, does riot that ground present a more rational view of the nature of debt, than any time has ever been practised upon by courts of law? Is it not the only view that can make the contract of debt consistent, either with morality, or with the idea that creditors acquire any tangible, legal rights, to actual things, by virtue of that contract?

This view of the contract of debt places the debtor and creditor, to a certain extent, in the relation of partners. The creditor furnishes capital, the debtor labor. The separate values of this capital and labor become indistinguishably mixed—that is, the labor bestowed upon the capital adds to its value, by converting it into new forms—as for instance, by converting leather into shoes. The debtor, while thus bestowing his labor upon the capital, receives his subsistence out of the mass; in other word's, his subsistence, while laboring, is the first charge (as in all cases it necessarily must be) upon the combined capital and labor. The creditor holds the next lien upon this combined capital amid labor, for the amount of his investment, and his stipulated profits. The debtor is entitled to the residue, if any there be, as the reward of his labor. During the partnership, the creditor holds tine debtor to the observance of economy and good faith. Under these circumstances, both parties take the natural risks of the business. The creditor risks his capitol, the debtor his labor.[8]

All this is obviously a joint operation, a *bona fide* partnership. The creditor, as well as the debtor, is to derive a profit from it. The prospect of profit is the creditor's only motive for entering into the contract. The debtor, therefore, heroines a bailee, not merely for the benefit of himself, but also for the benefit of the creditor. What is there in morality, or in the legal rights of the parties to the capital and labor thus combined, that requires the debtor to take the risk, both of

[8] That is, he risks his labor, alt over and above his necessary subsistence while laboring; which is no more than the capitalist would be obliged to risk if he hired his labor; and which, therefore, is not entitled to be considered as a risk created by the loan.

his own labor and of the creditor's capital, beyond the due exercise of his skill, industry, care, and good faith in the preservation and management of the latter?

The creditor adopts this mode of employing his capital, as being the most advantageous to himself. He has more capital than his own labor can advantageously employ. He must, therefore, in order to make his capital. productive, either loan it to others, or employ the labor of others upon it by hiring them, and paying them wages. He considers that, by loaning it, and offering the debtor an inducement to the exercise of his best skill, by a contract that gives to the debtor all the proceeds of the joint labor and capital, except a stipulated amount, (called interest,) he will better stimulate the laborers industry, skill, and care, and thus reap a better profit to himself than he will if he hire the man as a laborer for wages. And this the reason why he loans his capital, instead of hiring the labor necessary to employ it. But there is nothing in all this, that morally or legally entitles his capital—while it is in the hands to which he has thus, with a view of his own profit, chosen temporarily to entrust it—to, in insurance against the necessary risks to which capital is always liable. Nor is there anything in all this, that morally or legally entitles him to make this bailee, and partner, his slave for life, in case of any misfortune to the partnership business, by which both his capital and the debtor's labor should be lost. Nor is there in all this, anything that gives him any tangible, legal, proprietary rights, to property that his partner and bailee may earn alter the partnership, or bailment, shall have terminated.

Lysander Spooner
Poverty: Its Illegal Causes and Legal Cure
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