A History of South Carolina Liquor Regulation

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I. INTRODUCTION

In retrospect, John Barleycorn's career in South Carolina has not been a notable success. Barleycorn was always inclined to overtax his drinking capacities; but in the early days when company was hardier, his friends would overlook an occasional dereliction. Although he felt more at ease among men of breeding, Barleycorn was not one to scorn the common sort—especially after a chase when all would congregate at a comfortable inn—but then at least the ordinary folk knew their betters and treated one with deference. How pleasant it all seemed then.

Barleycorn always thought his fortunes began to decline when another Englishman had an unhappy romantic adventure in the New World. How different things might have been if the young Anglican priest travelling through Charleston and Savannah had not been so humiliatingly rebuffed in his affection for a pretty parishioner. How different indeed, but John Wesley was stung to the quick and, returning to England to regain his composure, underwent an experience which led him to establish the Methodist movement. It was the movement's Carolina adherents who with others of like mind were finally to confound Barleycorn.

Barleycorn had never associated himself with the unseemly barrooms and mughouses which so agitated the sober citizens of the state and, therefore, did not feel responsible for whatever occurred in such places—after all, what could one expect from mariners, runaway slaves, and the like? But by some perverse turn of reasoning, those individuals calling for temperance lay all the blame at Barleycorn's feet and had the audacity to impugn his origins. They said he was no gentleman but Demon Rum in disguise—a mere rake and scoundrel. Such a maligning of character was unspeakable and Barleycorn withdrew into himself. Thereafter, he was not a welcome guest at the board; and his remaining friends were ashamed to be seen with him. Those few faithful, now the objects of scorn, began to lose their pride and self-respect and often made such disgusting spectacles of

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157
themselves that the temperance men were only strengthened in their convictions.

Now it was a question of temperance or depravity—of all or nothing—and it was a choice good men were forced to make. Barleycorn, misunderstood and disgraced, had no heart to advocate the other alternative—the middle ground which he in his better moments had aspired to.

While Barleycorn grieved, the people of the state gave themselves to open bars, then to state stores, then to temperance and prohibition. He could have told them that neither extreme was either necessary or desirable—but they would not have listened.

II. PROVINCIAL TIMES THROUGH THE 1830’s

A. Statutory Regulations of the Liquor Trade.

The Act of 1686\(^1\) which required a license for the retail of liquor appears to be the first regulation of the liquor trade. Although its actual effect was to regulate, it is more likely that it was simply meant to generate a fee for the governor. The Act of 1690\(^2\) established the same license requirement and the Act of 1691\(^3\) prohibited the doing of work on Sunday, presumably including the occupation of tavern keeper. Persons found guilty of the “odious and loathsome sin of drunkenness . . . being the roote and foundation of many other enormous sins” were to forfeit five shillings.

The first comprehensive liquor regulation in the Province, however, was “AN ACT FOR REGULATING PUBLIQUE HOUSES” which was approved by the Lords Proprietors with the advice and consent of the General Assembly in January 1695.\(^4\) The preamble took note of the “unlimited number of Taverns, Tapp Houses, and Punch Houses, and the want of sobriety, honesty and discretion in the owners or masters of such houses, [which] have and will encourage all such vices as usually are the productions of drunkenness.” The act prohibited the sale of any strong drink under the quantity of one gallon at a draught unless the seller obtained a license from then Governor Blake. Planters, however, could sell liquor on their own plantations.

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1. II S.C. STATS. AT LARGE 18 (No. 32, 1686).
2. II S.C. STATS. AT LARGE 39 (No. 48, 1690).
3. II S.C. STATS. AT LARGE 68 (No. 74, 1691).
4. II S.C. STATS. AT LARGE 85 (No. 114, 1694).
Essentially the same act was passed again in 1696 which also put in force the statutory and common law of England dealing with the abuses and disorders of taverns, as well as requiring any retailer of strong liquors to obtain a license, planters excepted. In 1703 the basic statute was further amended to prohibit persons from carrying liquor by boat and canoe from plantation to plantation for the purpose of selling it—a practice which was impoverishing "the otherwise sober planters." The reviving statute of 1709 further stated that thereafter the flat sum of 120 pounds should be paid by the public receiver directly to the governor rather than having the license fees paid to the chief executive as had been the earlier practice. The act recited that "by a moderate calculation [the total license fees] hath been found to amount to the sum of one hundred and twenty pounds per annum."

In 1711 the power to grant licenses under the basic statute was placed in the public receiver rather than the governor "by which means so many and such disorderly persons have been licensed to keep publick houses, as have given great scandal to the sober and peaceable inhabitants. . . ." Before the receiver could grant a license, however, he must have the "advice, approbation and consent of Colonel William Rhett, Colonel Hugh Grange, and Mr. Ralph Izard, or any two of them" who were to judge the fitness of each applicant.

As if to comment on the transitoriness of life, the preamble to the Act of 1741 spoke of Messrs. Rhett, Grange, and Izard, on whose approbation depended the granting of a license, as "now being dead." The preamble observed that the measures hitherto taken to hinder and prevent unfit and unqualified persons from obtaining licenses have proved ineffectual, and the abundance of taverns, punch houses and blind tippling houses are become hurtful and prejudicial to the common good and welfare of this Province, more especially the little tippling houses, in blind lanes and alleys, which are for the most part haunts and harbours of lewd, idle and disorderly people, runaway sailors, servants and slaves. . . .

5. II S.C. Stats. at Large 113 (No. 130, 1695).
6. II S.C. Stats. at Large 198, 199 (No. 203, 1703).
7. II S.C. Stats. at Large 335 (No. 288, 1709).
8. II S.C. Stats. at Large 362, 364 (No. 303, 1711).
The act gave justices of the peace the power to grant licenses but, in an apparent effort to promote the growth of the Province, provided that no person should be licensed

who hath or have been bred to and have heretofore used the trade of a carpenter, joiner, bricklayer, plaisterer, shipwright, wheelwright, smith, shoemaker, tailor, tanner, cabinet maker, or cooper, and shall be at the time of his or their application . . . be able and capable . . . of getting a livelihood . . . by following . . . and exercising the trade or trader aforesaid.

A harbinger of the troubled events to come was an act which had been passed the year before, prohibiting any tavern keeper or retailer of strong liquors from selling liquor to a slave without the consent of the master. A century later a case based on a similar Charleston ordinance would hold that an action in tort could be maintained against a person for knowingly selling whiskey to the plaintiff's slave and thus causing him to become drunk, lose his way home, and die from exposure to the weather.

Other liquor statutes dealing with slaves were to be passed as well, the Act of 1831 prohibiting any slave or free person of color from distilling liquor and from being employed in vending it and the Act of 1834 providing that no license should be granted to sell liquor unless the applicant swore that he had not sold or would not sell it to a slave.

The other statutes following the Act of 1741 during the eighteenth and early nineteenth centuries displayed the same general pattern with minor variations. One interesting commentary on the times is the Act of 1751 which provided that no tavern keeper should harbor any mariner more than one hour or furnish any strong drink or victuals above the value of ten shillings, the preamble stating that the previous laws for restraining mariners and seamen from running into debt had proved ineffectual. The Act of 1809 added a new wrinkle by providing

12. VII S.C. Stats. at Large 467 (No. 2528, 1831).
13. VII S.C. Stats. at Large 468, 469 (No. 2639, 1831).
14. IV S.C. Stats. at Large 565, 566 (No. 1187, 1783).
15. III S.C. Stats. at Large 735 (No. 789, 1751).
that liquor could not be sold within one mile of a place assigned for divine worship. The Act of 1827\(^7\) outlawed suits on debts for liquor sold in quantities less than one quart, and the Act of 1835\(^8\) set a penalty for the sale of the beverage clandestinely or behind a screen, booth, or other place of concealment.

**B. Drinking Habits and the Temperance Movement**

Wallace refers to the quantities of liquor imported in the mid-eighteenth century as "huge"\(^9\) and reports that intemperance was a general vice well into the nineteenth century. Drinking, gambling, and dueling were the "gentleman's vices" and it was the custom for the host to lock the doors and refuse any guest to leave the table until he was drunk. To escape from such a revel during the siege of Charleston, Francis Marion himself jumped from the window of a house, broke his leg, and was forced to be carried out of the city.\(^{20}\)

In 1805 a group from both houses of the legislature went hilariously by night with drum and fiddle "to set the town to rights." This consisted in part in smashing the doors of those who did not rise to join them.\(^{21}\)

As for the up-country, hard drinking was also the rule. The chief source of income for most of the farms was from the sale of apples and peaches for cider and brandy, but when cotton was introduced intemperance declined.

Ministers of every denomination except the Methodists drank to excess.\(^{22}\)

It was during the early eighteen twenties and thirties that the state temperance movement began, with essays on *mania potu* being published and various tracts on the evils of alcoholic drinks appearing. The South Carolina Temperance Society was founded in Columbia in 1829. In a first report the Society issued its manifesto.

If we are convinced—and we have never met any intelligent man who was not perfectly convinced—that the retail trade in spirits is a prolific source of evils, irremediable while

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17. VI S.C. Stats. at Large 318 (No. 2416, 1827).
18. VI S.C. Stats. at Large 528 (No. 2653, 1835).
20. 3 WALLACE, THE HISTORY OF SOUTH CAROLINA 84 (1934).
22. 3 WALLACE, THE HISTORY OF SOUTH CAROLINA 85 (1934).
the trade exists, let us make an effort to deliver our country from this scourge.\textsuperscript{23}

Various other temperance organizations grew up in the pre-war years including the State Temperance Society under the leadership of Judge John Belton O'Neil.

The sober leaders of the temperance movements were not without their detractors. One critic of the movement in Charleston said that its only motive was to prevent the laborer from having his cheap drink while the temperance supporters drank their Madeira.

For this purpose the strong arm of the legislative power is to be appealed to, to deprive me of one of the dearest privileges which I possess, that of choosing what I should eat, and what I shall drink. But let them go on; the people have now opened their eyes, and have proved that neither the demagogues nor the hypocrites can enslave them.\textsuperscript{24}

In 1836 Governor McDuffie recommended legislation abolishing the liquor shops in Columbia as nuisances which were corrupting the college students, but by 1857 there were sixty-four grog shops and only sixty-two temperance men in the city.\textsuperscript{25}

III. THE PRE-WAR YEARS THROUGH RECONSTRUCTION

The growing prohibitionist sentiment found perhaps its first expression in the Act of 1849\textsuperscript{26} which forbade any retailer of spirits to sell less than one quart of liquor at a time or to allow it to be drunk on the premises. Bona fide tavern keepers who could provide at least two comfortable rooms with “good feather beds” and “stabling and provender for at least four horses”, if properly licensed and attested by reputable freeholders, were excluded from the act’s operation. This so-called Tupper law, forgotten during the early part of Reconstruction, was republished in 1872\textsuperscript{27} and caused great consternation among the saloon keepers.

\textsuperscript{23} Permanent Temperance Documents of South Carolina 65, quoted in Eubanks, Ben Tillman’s Baby 41 (1950).
\textsuperscript{24} 3 Wallace, The History of South Carolina 86 (1934).
\textsuperscript{25} Ibid.
\textsuperscript{26} XI S.C. Stats. at Large 545, 557 (No. 3070, 1849).
\textsuperscript{27} XV S.C. Stats. at Large 195, 197 (No. 155, 1872).
Throughout the 1850's certain towns and counties went dry, apparently by local public sentiment rather than by law; but the War Between The States interrupted further temperance agitation. During Reconstruction the "black and tan" legislature set up a free bar in the State House at a reputed cost of one hundred thousand dollars.

When the Tupper law was republished in 1872, protest was so strong that the Act of 1874 was adopted which legalized ordinary saloons in towns and counties if licensed. It was amended in 1875 to provide that the license money should go to county paupers—perhaps an attempt to sweeten what must have been a bitter pill for the prohibitionists to swallow.

The voices of temperance were not to be stilled, however, and in 1880 a law was passed forbidding the sale of liquor outside of incorporated towns. A major victory for temperance was won in the local option law of 1882 which gave to counties and towns the power to prevent entirely the sale of liquor within their boundaries. By 1891 over sixty towns and several counties were dry under local law.

Under the local option law, if the county or town chose to have liquor, the license fee was set by the county or town. Many towns fixed fees as high as 500 or 1,000 dollars, driving out the smaller dealers to the benefit of the stronger, more affluent ones without really improving the situation, since the amount of liquor consumed did not materially change.

By 1885, the year State Women's Christian Temperance Union was founded, twenty-three counties had granted licenses to sell liquor in one or more towns under the local option law, eleven had granted no licenses, nine had only one licensed town, and six had more than two. The local laws against unlicensed sales were effectively enforced as witnessed by a quotation in the Temperance Recorder of December 21, 1885: "Twelve years ago grogshops were in almost every town, village and crossroads in the state." Bootlegging was flourishing, however, and the legal dealers urged action to curb this form of competition.

28. XV S.C. Stats. at Large 797 (No. 646, 1874).
29. XV S.C. Stats. at Large 830 (No. 657, 1875).
30. XVII S.C. Stats. at Large 459 (No. 374, 1880).
31. XVII S.C. Stats. at Large 893 (No. 632, 1882).
32. Eubanks, Ben Tillman's Baby 46 (1950).
33. Id. at 55 (1950).
34. Quoted in Eubanks, Ben Tillman's Baby 55 (1950).
Furthermore, local measures were easily evaded since it was simple to cross from a dry to a wet county to purchase liquor; and some counties that had gone dry turned back to the old licensing system since they were losing revenue to their neighbors without any appreciable diminution in the quantities of liquor consumed within their borders.

IV. THE DISPENSARY LAW

It was during this period that the continuing agitation for state-wide prohibition began.35

"Pitchfork Ben" Tillman came to power in the midst of this sentiment for state-wide prohibition although he had not campaigned on the issue. Many of his ardent rural supporters, however, were among those calling for total prohibition. In his message to the General Assembly of 1891, Governor Tillman observed that the towns were receiving practically all of the revenue from the sale of liquor under the existing law and that "no sensible person will deny that one-half or three-fourths of the crimes committed in this state are traceable directly to the drinking of whiskey."36 Tillman noted that the cities were reaping the benefits of the liquor traffic but that the state as a whole was bearing the brunt of the attendant crimes as well as the costs of law enforcement. He therefore recommended that the license fees go into the state and county treasuries rather than into municipalities.

Tillman's recommendation was not followed, and the House of Representatives passed a state-wide prohibition measure which was defeated in the Senate.

The following year the prohibitionists persuaded the state Democratic Executive Committee to provide ballot boxes for a preferential poll on state-wide prohibition to be held in connection with the general election of 1892. Some 39,000 persons voted for prohibition and some 29,000 against; however, approximately 20,000 persons who voted in the general election did not cast a ballot on the prohibition issue. Of the thirty-five counties in the state, all except Beaufort, Charleston, Chesterfield, Georgetown, Hampton, Marion, Richland, and Williamsburg gave majorities for prohibition.

35. EUBANKS, BEN TILLMAN'S BABY 55 (1950).
36. Quoted in EUBANKS, BEN TILLMAN'S BABY 56 (1950).
Tillman had taken no part in the prohibition controversy during the election and declared that he would approve whatever measure the General Assembly chose to adopt. In December of 1892, the House again passed a state-wide prohibition measure with an elaborate system of checks on the medicinal use of alcohol. The Senate Judiciary Committee, however, reported the bill out unfavorably—an action which was tantamount to its death. The anti-Tillman newspaper, The State, founded by N. G. Gonzales for the purpose of opposing the Governor, interpreted the Judiciary Committee's report as the result of the failure of some of the Tillmanites to support the bill fully.

Popular demand for some form of liquor regulation was unabated, however; and the Senate, after an all-night session, passed what was to become the Dispensary Law at 6:48 a.m. on December 22, by a vote of seventeen to eight. Senator Smythe of Charleston had fought the measure strenuously, but the best he could do was to obtain a provision that Charleston should have ten dispensaries under the new bill.

The House was given to understand that the bill had the Governor's approval and that it was a case of all or nothing. A joint session of the House and Senate ratified the bill at 5:38 a.m. on December 24. It was approved by the Governor and became law on the last day of the session.

The Dispensary Law satisfied neither the prohibitionists nor the conservative factions. Representative Nettles said he favored the bill because it was a step at least toward prohibition since it took away the vast amount of influential capital invested in the liquor business. The conservatives saw the bill as a scheme to fill an empty treasury, foolishly supported by the gullible prohibitionists.

The Dispensary system gave an absolute monopoly of the wholesale and retail liquor business to the State of South Carolina, supervised by a control board consisting of the Governor, Comptroller General, and Attorney General. The Commissioner, who was charged with actual administration, was to purchase all liquors for legal sale in the state, giving preference to domestic brewers, and to supply the liquor to the various county dispensaries at no more than fifty per cent profit. The county control board regulated and provided for retail sales through local dispensary outlets. Liquor and beer could only be sold

37. XXI S.C. Stats. at Large 62 (No. 28, 1892).
in sealed packages of not less than one-half pint nor more than five gallons and could not be drunk on the dispensary premises. Purchasers were required to present a written request disclosing personal information and for whose use the liquor was bought. The central wholesale dispensary turned its profits over to the state treasury, and the local dispensaries' profits were divided equally between the municipality and county. The Governor was authorized to establish a special constabulary for dispensary-related law enforcement in the number he deemed necessary. It was estimated that the system would yield at least 500,000 dollars annually; and Governor Tillman promised that it would be strictly enforced, even in Charleston where opposition was most strident.

The law was to take effect July 1, 1893, and opposition was immediate and strenuous. Certain saloon keepers in Chester petitioned the Supreme Court of South Carolina for a writ of mandamus to compel the town council to grant a full year's liquor license although the act would take effect six months hence. The writ was denied.38

Furthermore, the federal revenue collector notified Governor Tillman that the state could not blend and compound liquors without a wholesaler's license and could not retail it without a license for each county dispensary.

The last day of legal sales before the Dispensary Law took effect was marked by great drunkenness and debauchery, with fires and killings in some towns.

The act had not been in operation ten days when Circuit Judge Hudson, an anti-Tillmanite, declared it unconstitutional; and Tillman announced that an appeal would be taken to the Supreme Court of South Carolina. Within three months, three circuit judges had declared the law void because no penalty had been provided for illegal sale. Within four months, fifty cases of violation had been filed, but very few ever reached a petit jury. A federal judge then declared part of the law to violate the commerce clause.39 A controversy also arose with respect to a provision of the Dispensary Law which forbade railroads to haul liquor into the state except under certificate from the state authorities. It was held that insofar as the law made it a misdemeanor for an employee to deliver liquor without knowledge

of a package’s contents, it was unconstitutional as discriminat-
ing against railroad employees and as exceeding the state’s police
power. Charleston was particularly opposed to the act, and
Tillman declared he would make it the “driest place on earth.”

There was an apparent decrease in public drunkenness under
the new system since the dispensaries would not sell to known
drunkards, but hostility continued to grow; and the officers
attempting to enforce the law were subjected to great vilifica-
tion, especially in Charleston. A circular was issued to state trial
judges which instructed them under penalty of removal to
secure obedience to the law. The provision of the act which al-
lowed private residences to be searched was a particularly in-
flammable issue although officers seldom searched private
dwellings and then only with properly executed warrants.

A serious uprising—inspired by rumors that constables were
searching private residences for contraband liquor—was nar-
rowly averted in Darlington. Governor Tillman sent in other
officers to enforce the law. As they were preparing to leave
Darlington on March 30, 1894, one constable was accused of
having beaten a citizen; and the argument exploded into a gen-
eral brawl in which the accuser, another citizen, and a constable
were killed. The State newspaper declared that “the lifeblood
of gallant men, shed in defense of the liberties of South Caro-
olina, stains, yet glorifies, the bosom of their mother state that
bore them.” When news of the uprising reached Charleston,
there were bonfires and a parade led by a whiskey barrel gar-
landed with flowers.

The Governor declared Darlington and Florence counties in
a state of rebellion and seized control of the telegraph lines
within the state. He also ordered the Columbia militia to Dar-
lington to quell the impending uprising, but company after com-
pany refused to serve under the Governor’s orders as fantastic
rumors of the unrest spread. At one point, Bishop Ellison Capers
urged a Columbia company not to serve, and it was disbanded.
Furious, Tillman dismissed the local “band box soldiers” and
called on the companies of “woolhat boys” who were converging
on the capital to volunteer to serve the Governor as news of the
turmoil reached the rest of the state. Tillman later said that he
could have had 10,000 farmers at his command.

41. 3 WALLACE, THE HISTORY OF SOUTH CAROLINA 361 (1934).
Although civil war was certainly imminent, the immediate unrest abated—whether from the spectacle of the Governor's loyal troops or whether from an inborn abhorrence of such lawlessness which finally came to the fore. Tillman later observed:

[T]he sturdy farmers, mechanics, clerks, merchants—men of every calling—dropped everything and hastened to the capital to sustain the government they had chosen and to uphold the law their representatives had enacted. . . . To show the temper of the people and their abhorrence of mob violence and resistance to law, in less than thirty days after the riot over one hundred new companies were organized.42

Less than three weeks after martial law was removed in Darlington, the Supreme Court of South Carolina declared the Dispensary Law unconstitutional in McCullough v. Brown.43 The court held that the citizen cannot be deprived of the right to hold and transmit property, and that the state, which recognized the legitimacy of the liquor business by engaging in it itself, could not restrain its citizens from doing likewise. Admitting that the liquor traffic could be entirely prohibited, the court said the state itself could not engage in the liquor business as an exercise of its police power. The opinion, which was written by Chief Justice McIver, did not command a unanimous court.

After the decision was handed down, the dispensaries throughout the state were closed immediately; and liquor once again flowed freely. Shortly afterward, however, the South Carolina court in Barringer v. City Council of Florence44 held that since the dispensary law although unconstitutional had repealed the prior law, except the provision establishing a punishment for unlicensed sales, there was now no authority for licensed liquor sales. Therefore, absolute prohibition was in effect.

The McCullough case had been brought under the 1892 version of the dispensary statute. In the meantime, essentially the same act was adopted with certain changes in 1893.45 Governor Tillman ordered the dispensaries to reopen under its provisions, after having prevented another case under the 1892 law from reaching the court before Justice McGallan retired, as he had

42. EUBANKS, BEN TILLMAN'S BABY 103 (1950).
43. 41 S.C. 220, 19 S.E. 458 (1894).
44. 41 S.C. 501, 19 S.E. 745 (1894).
45. XXI S.C. STATS. AT LARGE 430 (No. 313, 1893).
earlier announced. It was only natural for the pro-Tillman General Assembly to choose a Tillman sympathizer, Eugene B. Gary, for elevation to the Supreme Court, although the Governor's enemies accused him of having secured Gary's appointment—a suspicion later belied by Justice Gary's distinguished career on the high state court.

With the dispensaries open again, the saloon keepers had no choice but to close. A case was then brought under the law of 1893 and resulted in a decision that it was identical in principle to the 1892 statute which had been declared void in McCullough. When the decision was appealed, the court, absent Justice McGallan, reversed it and completely overruled the McCullough case in State ex rel. George v. Aiken. Justice Gary wrote the majority opinion with Justice McIver now dissenting. The Aiken court said that if a prior decision was wrong it should not be followed and proceeded to hold the Dispensary Law a valid police regulation—directly contrary to the McCullough decision.

With the Aiken case decided favorably, Tillman had won the state legal battle as completely as he had crushed the whiskey rebellion at Darlington. When the General Assembly met in 1894, the Dispensary Law was strengthened by the enactment of the Metropolitan Police Act, which allowed the Governor, secretary of state, and comptroller general to appoint a commission to take absolute charge of the police force of any municipality that failed to enforce the liquor laws. The commission could appoint special policemen and replace the local force—a threat which no doubt encouraged greater vigor by the local authorities in pursuing violators.

Shortly afterward, Tillman was elected to the United States Senate; but his interest in the Dispensary Law continued as before and he was able to influence the Constitutional Convention of 1895. In Article 8, section 11, the delegates adopted a section of great importance specifying the complete power of the General Assembly over the question of the manufacture, license, sale, or prohibition of alcoholic liquors in the state under the police power with two important exceptions: no license could be granted to sell liquor in less quantities than one-half pint, or between sundown and sunrise, or to be drunk on the premises;

46. 42 S.C. 222, 20 S.E. 221 (1894).
47. XXI S.C. Stats. at Large 787 (No. 533, 1894).
48. S.C. Const. art. 8, § 11.
and the power to issue licenses could not be delegated to a municipal corporation. "These provisions, undoubtedly the handiwork of Tillman, remaining to this day, make impossible . . . the bringing back of the saloon to South Carolina without a change in the Constitution—a thing, which, with the aversion of the people of the state to saloons, is practically impossible."  

Thereafter, the federal case of Donald v. Scott 50 posed a minor threat to the Dispensary Law by holding that the state could not interfere with the purely private importation of liquor. Then-Governor Evans vowed that the state would not abide by the decision, but it was affirmed on appeal to the United States Supreme Court. 51

The influence of the Dispensary Law continued to increase slowly although law enforcement was hampered by public hostility. From December 1894 to April 1895, some 204 arrests for illegal selling were made in Charleston. In each case, liquor was seized on the premises; but the grand jury continued to refuse to return indictments and only one of the cases ever came to a jury trial. One grand jury member—the "king of the blind tigers"—himself had been arrested under the Dispensary Law. 52

Finally, conditions became so bad that Governor Evans invoked the Metropolitan Police Act to take over the Charleston police on January 29, 1896. Some 552 raids were made during the year. Hampered as they were by adverse opinion, the officers resorted to the device of suing for an injunction against law violators before a friendly judge. If the defendant then persisted in violating the law, he was fined or imprisoned for contempt; and the case never came before a jury at all. 53 After the law had been in effect for one year, twenty-three ministers of every protestant denomination in the city issued a statement strongly endorsing the administration of Chief Marshal J. Elmore Martin, appointed under the authority of the police act; but partisanship was so great that the News and Courier refused to publish it. 54

Another legal blow to the Dispensary system was the decision handed down by Judge Simonton in Charleston in Vance v.

49. Eubanks, Ben Tillman's Baby 114 (1950).
53. Id. at 118.
54. Wallace, South Carolina, A Short History 634 (1951).
Vandercook\textsuperscript{55} that the state could not prohibit the sale of liquor brought in from other states in the original package. "Original package" saloons sprang up almost immediately over the entire state, and the dispensaries were forced to cut prices to compete with them.

Late in 1897, Governor Ellerbe issued a proclamation abolishing Charleston's and several other counties' special police forces; and 1898 opened with a gloomy prospect for the dispensaries. The system's last hope was the pending appeal to the United States Supreme Court of the Vandercook case. The Court, in a move which surprised all, reversed Vandercook, holding that the Wilson Act of 1890 had removed the liquor business from the protection of the commerce clause.\textsuperscript{56} The Court's previous opinion in Donald v. Scott, which it had been thought would be a clear precedent, was distinguished. The original package doctrine likewise fell.

Vandercook marked the state's complete victory in the courts; but once the legal battles were won, what has been called the "canker within"\textsuperscript{57} set to work to destroy the dispensary system. Graft, corruption, and malfeasance in office had been extremely widespread, but the worst feature of the dispensary system was its political ramifications. The various "dispensary rings", controlling many jobs to be filled, were in a position to exert great political influence on each county; and the state was the worse for it. It has been said that "Tammany at its worst was hardly blacker than the Dispensary machine, once it reached its stride in South Carolina politics."\textsuperscript{58}

When the General Assembly met in 1907, the people of the state had had enough; and the Carey-Cothren Act\textsuperscript{59} was passed which abolished the state-wide dispensary and let each county decide whether the local dispensary would be continued.

The commission which was appointed to wind up the business of the dispensary system called it "the most corrupt institution which ever existed in this state as a part of the state government while our own people were controlling public affairs,"\textsuperscript{60} and

\footnotesize
\textsuperscript{55} 80 F. 791 (D.S.C. 1897).
\textsuperscript{56} 170 U.S. 438 (1898).
\textsuperscript{57} EUBANKS, BEN TILLMAN'S BABY 125-148 (1950).
\textsuperscript{58} Id. at 145.
\textsuperscript{59} XXV S.C. STATS. AT LARGE 463 (No. 226, 1907).
\textsuperscript{60} STATE DISPENSARY COMMISSION REPORT (1910), quoted in EUBANKS, BEN TILLMAN'S BABY 173 (1950).
Wallace calls it "the most profound, insidious, and widespread agency of corruption" in the history of South Carolina.\textsuperscript{61}

The county dispensaries repeated on a smaller but less extensive scale the corruption of the state-wide system, and conditions became so bad that in 1913 the legislature called for a popular referendum on state-wide prohibition. The people’s choice was for prohibition with Charleston ironically now voting ten to one to retain the dispensary system rather than to establish prohibition.\textsuperscript{62} Prohibition went into effect under the gallon-a-month law of personal consumption of liquors imported from another state on January 1, 1916\textsuperscript{63} later modified to one quart per month.\textsuperscript{64} South Carolina was the fourth state to ratify the eighteenth amendment in 1918.\textsuperscript{65} Perhaps the Act of 1908 requiring the public schools to teach the nature and effect of alcoholic drinks and narcotics on the human body\textsuperscript{66} had been the straw that broke John Barleycorn’s back.

V. PROHIBITION

It was held that the eighteenth amendment did not repeal the state’s prohibition laws,\textsuperscript{67} and the local regulatory statutes remained on the books. Both systems of statutes, however, were not enough to inspire great respect for the law, which was difficult to enforce, and bootlegging flourished. This state of affairs was partly due to the refusal of federal, state, and local governments to hire enough revenue agents; "but the bootleggers were also encouraged to violate the law by the failure of most citizens to cooperate with the enforcement officers."\textsuperscript{68} The consumption of liquor did appear to decline however, except in the larger cities. "In many cases violators were well known to members of the communities in which they lived and carried on their illegal business. Despite its shortcomings, the prohibition amendment seems to have reduced the consumption of alcohol in South Carolina. . . ."\textsuperscript{69}

\textsuperscript{61} WALLACE, SOUTH CAROLINA, A SHORT HISTORY 628 (1951).
\textsuperscript{62} EUBANKS, BEN TILLMAN’S BABY 178 (1950).
\textsuperscript{63} XXIX S.C. STATS. AT LARGE 140 (No. 102, 1915).
\textsuperscript{64} XXX S.C. STATS. AT LARGE 69 (No. 38, 1915).
\textsuperscript{65} EUBANKS, BEN TILLMAN’S BABY 178 (1950).
\textsuperscript{66} XXV S.C. STATS. AT LARGE 1053, 1054 (No. 477, 1908).
\textsuperscript{67} State v. Moseley, 122 S.C. 62, 114 S.E. 866 (1922).
\textsuperscript{68} LANDER, A HISTORY OF SOUTH CAROLINA 1865-1960, at 68 (1960).
\textsuperscript{69} Ibid.
The various judicial decisions under prohibition provide fascinating glimpses of the state lawbreakers and their pursuers but no striking new legal principle were advanced.

In 1933 when national prohibition was repealed, the state recognized the sale of beer and wine of not more than 3.02 per cent alcohol70 but left stronger liquors forbidden under the law of 1915. A referendum in the Democratic Primary of August 1934 went against prohibition by about 25,000 out of 225,000 votes, and the Act of 193571 authorized the daytime sale of liquors in unbroken packages but not to be drunk on the premises. In the 1940 referendum, a majority of 50,000 out of 265,000 votes favored the re-enactment of prohibition; but the “wets” contended that the wording of the referendum confused many voters. In any case, the General Assembly, “doubting the earnestness of the movement and reluctant to increase either the existing deficit or taxes by surrendering liquor revenues”72 declined to act.

VI. THE PRESENT LICENSING SYSTEM

In 1935, the state began the last and present phase of its regulation of liquor by requiring a license for sales, the power to enforce the law being placed in the Tax Commission.73 In 1945, the Commission was reorganized and was given enlarged powers and duties under the Alcoholic Beverage Control Act of 1945.74

In the 1946 primary, liquor was again a political issue with one candidate campaigning for open bars. The “drys” almost succeeded in passing a measure for local option in 1955; but the “wets” blocked it, as one observer has said, “mainly through political trickery.”75

Prohibition and the liquor question are still recurrent issues, as witnessed by the constitutional amendments offered at the November, 1966 general election. The people refused to give the General Assembly power to specify the hours during which liquor could be sold, or the power to allow sales by the drink

70. XXXVIII S.C. Stats. at Large 287 (No. 228, 1933).
71. XXXIX S.C. Stats. at Large 325 (No. 232, 1935).
72. WALLACE, SOUTH CAROLINA, A SHORT HISTORY 686 (1951).
73. XXXIX S.C. Stats. at Large 325 (No. 232, 1935).
74. XLIV S.C. Stats. at Large 337 (No. 211, 1945).
to be drunk on or off the premises in a county which was agreeable to this change in the law.\textsuperscript{76}

In view of the long and finally futile court battles against the state's several liquor policies, one would have thought that the more interesting and provocative legal questions had all been raised—especially after a thirty-year period of rather tame cases in the state courts—but the fact is otherwise. In \textit{Pirate's Cove, Inc. v. South Carolina Tax Comm'n},\textsuperscript{77} the state appealed the order of Richland County Court Judge Mason which had held invalid the enforcement of the illegal possession and sale statutes\textsuperscript{78} against an allegedly private club. It was held in \textit{State v. McMaster}\textsuperscript{79} that a social club does not conduct a "sale" so as to require a retail license by merely dispensing liquors among its members; but when a so-called club is a mere device to evade the law, there is a sale, as was held in \textit{State v. City Club}.\textsuperscript{80} The present section 4-91 is broad enough to include true social clubs, but the Act of 1907\textsuperscript{81} making it specifically unlawful for any club to sell intoxicating liquors was repealed in 1956. The Pirate's Cove, in part, argued on appeal that the General Assembly thus intended to exclude private clubs from the liquor laws; but it would be surprising if the court should recognize such an exception for what in practice looks suspiciously like a saloon.

\section*{VII. CONCLUSION}

The western end of Columbia's Richland Street—named for one of the pleasant Taylor plantations on which the capital city was built—is today a symbolic arena of the liquor question in the state. At the point where Richland crosses Assembly there is presently located the Pirate's Cove Club. Slightly further west is the headquarters of the State Women’s Temperance Union

\textsuperscript{76} THORNTON, \textit{Supplemental Report of the Secretary of State to the General Assembly of South Carolina} (1967).

\textsuperscript{77} As this article goes to press, the South Carolina Supreme Court's disposition of this case has been filed. See \textit{Pirate's Cove, Inc. v. Strom}, No. 186 26 (Mar. 29, 1967). The court overruled Judge Mason's decision and construed Code section 4-91 to require a license to sell liquors legally acquired. Thus, without a license to sell liquor by the drink—and there is no provision in the South Carolina Code or Constitution for such a license—such a sale is held to be in direct violation of section 4-91.

\textsuperscript{78} S.C. Code Ann. §§ 4-91, 4-95, 4-96 (1962).

\textsuperscript{79} 35 S.C. 1, 14 S.E. 290 (1892).

\textsuperscript{80} 83 S.C. 509, 65 S.E. 30 (1909).

\textsuperscript{81} XXV S.C. Stats. at Large 463, 474 (No. 226, 1907).
which, it may be presumed, finds an ally in the Baptist Building between it and the Cove. Situated directly across the street from the Union stands the chief executive’s mansion, representing the state’s interest in the liquor controversy. At the present moment the State of South Carolina and the Union are almost as close in persuasion as in physical proximity, but this state of affairs will change if past events are a reliable index to the future. It is not likely that open bars will ever be seen again in the state, but the argument that purely private groups should be allowed to drink together is bound someday to prevail in the General Assembly.