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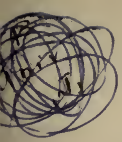

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HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams)

J. M. VINCENT
J. H. HOLLANDER W. W. WILLOUGHBY
Editors

VOLUME XXIII

COLONIES, REVOLUTION, RECONSTRUCTION

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TABLE OF CONTENTS

PAGE

I-II.—The Early Period of Reconstruction in South Carolina. By J. P. Hollis.......................... 1

III-IV.—State Government in Maryland, 1777-1781. By B. W. Bond, Jr. 131

V-VI.—English Colonial Administration under Lord Clarendon, 1660-1667. By P. L. Kaye 249

VII-VIII.—Justice in Colonial Virginia. By O. P. Chitwood 399

IX-X.—The Napoleonic Exiles in America, 1815-1819. By J. S. Reeves.................................. 523

XI-XII.—Municipal Problems in Mediæval Switzerland. By J. M. Vincent 657

THE EARLY PERIOD OF RECONSTRUCTION IN SOUTH CAROLINA

Series XXIII Nos. 1-2

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(Edited by H. B. Adams, 1882-1901)

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Editors

THE EARLY PERIOD OF RECONSTRUCTION IN SOUTH CAROLINA

BY

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BALTIMORE

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CONTENTS

CHAPTER PAGE

I. INTRODUCTION 9

II. PRESIDENTIAL RECONSTRUCTION 31

III. CONGRESSIONAL INTERVENTION 52

IV. THE BEGINNINGS OF THE "CARPET-RAG RÉGIME" 83

V. THE FREEDMEN'S BUREAU 107

PREFACE

Perhaps no part of the history of South Carolina is looked upon by the people of the State as of greater significance than the era of reconstruction. The interest which attaches to the period and the oft-expressed desire that its events be adequately treated with strictly historical method, led the writer to undertake this monograph. What is here offered is an installment of a projected history, already in preparation, of the entire reconstruction movement in South Carolina.

The purpose of this monograph is to show by a simple narration of the facts:

1. The direct effect of the Civil War upon South Carolina economically and in political sentiment, and the spirit in which the white people of the State accepted the first attempts at reconstruction.

2. The chief features of the constitution of 1865, the political sentiment displayed in the convention, and the legislation immediately following.

3. The causes which led to the failure of the reconstruction government under the constitution of 1865, and the substitution therefor of a different plan of reconstruction, based on acts of Congress.

4. The political and military activity during the second provisional government, the method of electing the constitutional convention of 1868, the political spirit displayed in the convention, and the chief features of the new constitution through which the State gained restoration.

5. The operations of the Freedmen's Bureau in South Carolina, which operations, designed to promote the general welfare of the blacks, were beneficial in some respects but in other ways harmful.

The writer desires to make grateful acknowledgment for the many courtesies extended to him in the use of the library

of Columbia University, New York, the library of the South Carolina College, the library of Congress, the Charleston library, the valuable historical collections of Mr. August Kohn, Columbia, South Carolina, and the newspaper files in the office of The Columbia State. In addition, he has received many helpful suggestions from various gentlemen, among whom especially are to be mentioned Professor William A. Dunning of Columbia University, and Senator Tillman, the late Professor R. M. Davis, the late General Edward McCrady, Ex-Governor D. H. Chamberlain, and Judge A. C. Haskell, all of South Carolina. Last, and chiefly, he wishes to express his indebtedness for the counsel and assistance of his instructors, Professors Vincent and Willoughby, and Doctor J. C. Ballagh, of the Johns Hopkins University.

Johns Hopkins University, June, 1904.

THE EARLY PERIOD OF RECONSTRUCTION IN SOUTH CAROLINA

CHAPTER I.

Introduction.

The attitude and policy of South Carolina towards reconstruction can be better understood by remembering at the outset that the State sustained a peculiar relation to the Union on account of the views of the constitution there maintained. From the days of nullification onward the theory of State sovereignty constantly gained headway, and long before the breaking out of the Civil War it had acquired among the people an overshadowing influence as a political doctrine. Having once asserted the right of nullification and having steadily championed the doctrine afterwards, it was but natural for South Carolina to be the leader among the Southern States in the secession movement.

The deep-seated belief in the sovereignty of the State and the political leadership which South Carolina had long held at the South, had a two-fold effect upon reconstruction. First, a decided spirit of non-submission to outside control had been fostered. There had been an appeal to the sword with desolation in the State as the result. But this did not mean that State rights, so thoroughly taught by Mr. Calhoun, and so long maintained, had been instantly forgotten. The sovereignty of the State and the splendor of the old regime had been preserved in memory at least. Perhaps the belief in the theory of State rights had even been intensified by the disastrous consequences of the war.

Second, the difficulties of reconstruction in South Carolina were increased by the measures of retaliation that had been undertaken against her. It will be seen later that the State as the " hot-bed of rebellion "—as the " ringleader " in the opposition to the Federal government—was singled out by the United States military authorities as the object of special punishment. The effect of this upon public opinion was decidedly important.

It is, however, not the purpose of this study to dwell on the ante-bellum events in South Carolina that had a bearing on reconstruction. Such a discussion belongs more appropriately to another field of investigation. But it is proposed in this connection to review briefly the military operations in South Carolina during the war, in order to exhibit the condition of the State industrially, immediately after the conflict, and to point out additional facts that wielded an influence in shaping the later political policy. It will also illustrate, in part, the feeling entertained towards the State. These operations will be discussed only in so far as they are considered to have borne directly upon subsequent events.

The chief military event in South Carolina at the beginning of the Civil War was the capture of Fort Sumter by the Confederates, an occurrence which ushered in the conflict. After the fall of Sumter, a fleet of twenty-five Federal gunboats was sent to blockade Charleston harbor. This blockade was not raised until the close of hostilities in 1865. But it was difficult to shut up a harbor which had a waterfront of six miles and the blockade never was very effective. The attempts made to obstruct the numerous passages by the sinking of hulks were not successful. Many vessels ran the blockade and reached Charleston. The Charleston newspapers reported the arrival and departure of vessels as regularly and as openly as before the war.[1] One account states that out of 592 attempted trips

[1] Charles Cowley, Leaves from a Lawyer's Life Afloat and Ashore, p. 110.

between January 1, 1863, and April 15, 1864, 498 were successful. Thus trade and business generally were not completely interrupted, as would at first appear. But in other respects Charleston soon began to feel the weight of the heavy hand of war. Before long the blockade grew into a siege, and the shells from Federal guns began to have a very telling effect on the city. It was reported in the spring of 1864 that, in the lower part of town, fourteen parallel streets were deserted and that probably over five hundred homes had been struck.[2] Walls were torn through, windows smashed, doors splintered, and roofs destroyed. All the down-town churches of the city were in ruins.[3] But though the Federals gained one fortification after another until only Fort Sumter remained in the hands of the Confederates, the city stood out heroically against the siege for 576 days, or until February 20, 1865.[4]

Perhaps an equally significant military event of the war in South Carolina was the expedition against Port Royal, which place with the surrounding district later became the field of important movements. Besides being the finest harbor on the South Atlantic coast, Port Royal was considered a point of strategic value to be used as a base for operations against Charleston and Savannah. A fleet of naval vessels, assigned to the command of Commodore S. F. Dupont, and thirty-three transports, carrying about 15,000 troops, under General T. W. Sherman, arrived off Hilton Head Island about November 5, 1861, and proceeded to make an assault on Fort Walker, located on the island. Only a feeble resistance was offered, as the Confederates had withdrawn their troops in considerable numbers from the coast defences and concentrated them in Virginia. The attack resulted in the capture of Fort Walker, November 7, 1861.[5] The other sea islands with their fortifications were successively occupied

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[2] The New York Times, Apr. 17, 1864.
[3] The spire of historic St. Michael's Church was used as a target for the Federal artillery. Cowley, p. 116.
[4] The Charleston Courier, Apr. 18, 1865.
[5] Appleton's Annual Cyclopedia, 1861, p. 290.

by the Union forces, as was also the town of Beaufort, the chief local center. Somewhat later, the whole district lying between the Combahee and Savannah rivers, together with all the sea islands, fell into the hands of the Federals and was held by them unmolested until the close of the war.

In many respects this part of South Carolina fared worse than any other in the State. It was the richest agricultural district, being the chief section devoted to the production of fine long-stapled sea-island cotton, and containing, besides, extensive rice fields. It was also the largest slave-holding parish in the State, the slaves numbering 32,000.[6] Many of the wealthiest planters of South Carolina had their summer residences at Beaufort and on the islands, while throughout the section were to be found the homes of families representing the pride of Southern aristocracy. Upon the capture of the islands the white people retreated inland, and the forcibly abandoned farms were for the time confiscated and turned over to the negroes.[7] It was practically no better on the main land. Beaufort became a "deserted village" so far as its former white residents were concerned. Early in June, 1863, Colonel Montgomery, with five companies of a negro regiment, started from Beaufort and made an expedition about twenty miles up the Combahee river. General devastation seems to have been the chief object of the expedition. All the slaves at work on the plantations, about 800, were taken to Beaufort; and squads of colored soldiers were sent in various directions to burn buildings, and secure provisions and other property. One account states that every house, barn or other building belonging to any known secessionist was burned, and all the portable property of value carried off. In this way, several rice mills and numerous storehouses filled with rice and cotton were burned. One storehouse that was fired contained two years' crops of rice, and another, $10,000 worth of cotton. The burning of

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[6] Appleton's Annual Cyclopedia, 1861, p. 298.
[7] South Carolina correspondence to New York Tribune, Jan. 27, 1864.

twenty-five buildings, many of them containing immense quantities of rice, was credited to one company alone. The locks, by which the plantations were irrigated, were broken, causing the rice fields to be flooded and the young crop to be destroyed. Large quantities of household furniture were brought away as trophies of the expedition. The same account also gives this further information: "About the same time that the above raid was made, Colonel Barton, with a large, picked force, made an expedition on three steamers to the village of Bluffton. The village was captured with but little opposition, and burned to the ground, only one building, a church, being spared." [8]

The district that thus fell into the hands of the Federals comprised the principal area in South Carolina that came under the sway of the Union authorities. Aside from the bombardment of Charleston, already mentioned, no further military operations of importance took place in South Carolina till the beginning of 1865. The regular State government held control of almost all of the State and continued in practically undisturbed operation through the war.[9] Thus South Carolina, unlike most of the Southern States, maintained without serious molestation, her status as a Confederate commonwealth about as long as the Confederacy lasted.

The Federal policy of invasion having been by land rather than by water, South Carolina, by her geographical position, was practically free from the presence of Union soldiers until near the collapse of the Confederacy. Hence there were few problems in local government growing out of military occupation, such as there were in the States of Louisiana, Mississippi, and Tennessee. The trend of military affairs indicated clearly that the war was almost over when General Sherman completed his raid through South Carolina and passed into North Carolina, there to meet and dictate terms of capitulation to General Johnston. In the

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[8] Appleton's Annual Cyclopedia, 1864, p. 824.

[9] Ibid., p. 725.

short time that elapsed between the raid and the surrender of the Confederate armies, very little opportunity was given to inaugurate a military government, and during the interval matters continued in a chaotic condition.

It is perhaps important to point out that there was not in South Carolina, even during the last months of the war, any clearly defined movement or sentiment for peace. As the tide of the war rolled nearer the spirit of the people seems to have grown more and more determined. Upon the approach of General Sherman toward the borders of the State, those hitherto considered unfit for military duty—school boys and old men—were enlisted as soldiers and sent to swell the ranks of the little band opposing the invader. In his inaugural address of December 19, 1864, Governor Magrath urged the people not to hesitate in their purpose or falter in its execution so long as peace with independence was not secure. He pointed out that a hostile army, cruel and unrelenting, threatened to invade their soil, and exhorted the people to the last measure of resistance—to a willing death, if need be—in the struggle that was at hand.[10]

The leading newspapers, too, manifested a like spirit of non-submission. The Charleston Mercury, well known as a pronounced State-rights organ, vigorously urged resistance and cited the noble example of Marion and his men, when the State was overrun during the Revolution.[11]

The women of the State also displayed a willingness to take part in heroic measures. A lady writing from Pendleton urged that women be substituted for men in govern-

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[10] Published in the Charleston Mercury, Dec. 22, 1864.

[11] The following is part of an editorial in the Mercury of Nov. 19, 1864:

"What cause is there for despondency? Are we degenerated from our ancestors? Can we not endure to keep what they endured to win for us. Or rather shall we not imitate their noble example and rise in spirit with the difficulties as they accumulate?—bring forth a more devoted energy to meet greater disasters, and enforce upon our enemies the conviction that they can never subdue us to their domination? Submission in such a righteous cause! Submission to a people whom we have beaten in every equal fight! Submission to the base, cruel, hateful, and hated yankee! Never—never!"

ment positions of a stationary character, thereby allowing the men to go to the front. "In this crisis of our country's fate," said she, appealing to the women, "let us arise and do our part. Let us also be held worthy to toil for our country, our homes, our children, and our dead. How noble and glorious the toil which fills a man's place and gives a soldier more to the armies of our country. We have seen the whole treasury department filled by ladies, let us now see the stationary commissary departments, leaving a few men to perform those parts which require most strength and exposure."[12] An opportunity to ascertain the sentiment of the people relative to acceptable terms of peace was presented through a letter to President Davis from W. W. Boyce, a member of the Confederate Congress. Boyce urged upon Davis that it was expedient for the Confederates to join with the Northern conservative Democrats, who proposed that the war should cease, at least temporarily, and that all the States should meet in amicable council to make peace if possible. He went on to say that the only hope of a satisfactory peace lay in the ascendency of this party at some time or other, and that in order to aid in promoting this ascendency the Confederacy should declare her willingness for an armistice and a convention of all the States in their sovereign capacity. At the same time he hinted at a policy of reorganization under the Stars and Stripes, closing his letter thus: "A weak power engaged with a stronger must make up in sagacity what it lacks in physical force, otherwise the monuments of its glory become the tombs of its nationality."[13]

This letter caused a storm of protest, and brought down bitter denunciations upon the writer. At mass meetings held in different parts of his congressional district, Boyce was charged with being a reconstructionist, and resolutions condemnatory of his policy and inviting him to re-

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[12] Printed in the Mercury, Nov. 1, 1864.
[13] Printed in the Charleston Courier, Oct. 13, 1864.

sign his seat in Congress were adopted.[14] In discussing the policy advocated by Boyce, the Courier took the position that proffers of peace should first be made by the Federal authorities. "It is they who forced us to take up arms," said the editor, "and we must fight until we oblige them to acknowledge their inability to conquer and enthrall us. We can only extort that confession by maintaining our position, by thwarting and frustrating their well-laid plans, by beating back their powerful armies, by wresting our territory from their grasp, and if need be by carrying the war into their own borders."[15]

Many must have seen at this time that the Confederacy was doomed, and that the efforts being made by the governor and others to resist Sherman's invasion were utterly useless. But if there were these, few or many, the existing records indicate that they observed a discreet silence.

It is not to be inferred that the people did not desire peace. They desired it most earnestly, by armistice and negotiation with the North, provided they could be assured beforehand that the terms of peace would be to their satisfaction. But they were on no account in favor of a peace which brought them again under the dominion of the United States. The citizens of Fairfield district, in a public meeting called to take action on Boyce's letter, passed a resolution that they were utterly opposed to reconstruction under any circumstances. At the same time they expressed a desire that all honorable efforts be made by diplomacy to put

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[14] Courier, Oct. 24, 1864. The following is the preamble of the Boyce resolutions passed at the anti-peace mass meeting at Columbia:

"With Mr. Boyce's motives and intentions we have no concern. *The tendency of the letter is to instil feelings of submission and suggest the wish for reconstruction.* Its logic is more directly opposed to secession and a separate confederacy than in favor of the measure as a remedy proposed in our extreme distress. It is full of gloomy despondency and is calculated to create dissatisfaction with our government, and to reconcile us to that of our enemy and to dispirit our army in the field."—New York Herald, Oct. 29, 1864. 1864.

[15] Courier, Nov. 9, 1864.

an end to the war on terms consistent with the safety and independence of the Confederate States.[16]

Perhaps those who favored reconstruction in conformity with the constitution of the United States—and there must have been some such—would have spoken their preferences, if the State had been in the control of the Federal soldiers. But as it was, the war party being strongly in the majority, an apparent general unanimity prevailed to offer all the resistance possible. The legislature declared that all free white men between the ages of sixteen and sixty years were liable to militia service; and the governor ordered all such persons to come forth for the defense of the State. He said in his proclamation that the free proffer of service was what the State desired, and that service not proffered would be demanded.[17]

This, in general, was the aspect of affairs about the first of January, 1865, when Sherman, in his "March to the Sea," had reached and was occupying Savannah, and proposed as his next move to cross over into the Palmetto State. The unbroken spirit of the South Carolinians would seem extraordinary in view of the rumor abroad that the "original seedbed of the heresy of secession" was to be the object of special vengeance to the invading army. Evidence of this intended vengeance, especially for Charleston, is given in the following correspondence:

HEADQUARTERS OF THE ARMY.
Washington, Dec. 18, 1864.

Major-General W. T. Sherman, Savannah.

My dear General: . . . . . . Should you capture Charleston, I hope that by some accident the place may be destroyed, and if a

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[16] Mercury, Nov. 12, 1864. Late in 1864 the following resolution was introduced in the South Carolina Senate: "That the termination of the present iniquitous and bloody war is an object devoutly to be desired by the Confederate States, but only on terms of absolute separation from the United States."—New York Herald, Dec. 11, 1864.

[17] The proclamation is published in the Courier, Jan. 25, 1865.

little salt could be sown upon its site, it may prevent the growth of future crops of nullification and secession.

Yours truly,

H. W. Halleck, Major-General, Chief of Staff.[18]

HEADQUARTERS MILITARY DIVISION OF THE MISSISSIPPI.

In the Field, Savannah, December 24, 1864.

Major-General H. W. Halleck, Chief of Staff, Washington, D. C.

Dear General: . . . . . . I will bear in mind your hint as to Charleston, and do not think "salt" will be necessary. When I move, the Fifteenth Corps will be on the right of the right wing, and their position will naturally bring them into Charleston first; and if you have watched the history of that corps, you will have remarked that they do their work pretty well.

I remain, as ever, your friend,

W. T. Sherman, Major-General.[19]

As to the feeling of extreme bitterness toward South Carolina General Sherman's own statement is authority. He says: "Somehow our men had got the idea that South Carolina was the cause of all our troubles; her people were the first to fire on Fort Sumter, had been in a great hurry to precipitate the country into civil war; and therefore on them should fall the scourge of war in its worst form. Taunting messages had also come to us when in Georgia to the effect that when we should reach South Carolina we should find a people less passive, who would fight us to the bitter end, daring us to come over, etc.; so that I saw and felt that we would not be able longer to restrain our men, as we had done in Georgia."[20] The army correspondent of the New York Herald wrote that the feeling of bitterness was universal in the army, and testimony to the same effect may be had from other sources.[21]

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[18] Memoirs of Gen. W. T. Sherman, Vol. II, p. 222.

[19] Ibid., p. 226.

[20] Ibid., p. 269.

[21] New York Herald, March 20, 1865. The following is an editorial in the New York Times of Dec. 28, 1864: "Sherman's soldiers are intensely anxious to be led into South Carolina. They are eager beyond measure to take a promenade through the Rattle-Snake State. We do not wonder at it. . . . . South Carolina is the guiltiest of all the rebel states. It was South Carolina that gave

As a memorable event in South Carolina the Sherman raid is perhaps without a parallel. By the object lesson which accompanied his definition of war, General Sherman established his capital truth with decided emphasis. The actual strength of the army during the campaign of the Carolinas was sixty thousand and seventy-nine men. The animals employed in the army numbered at least forty thousand,[22] and both man and beast are said to have fared sumptuously.[23] Soldiers and stock alike were fed almost exclusively from the granaries and cornfields through which they passed, and upon such beef cattle, poultry, etc., as could be gathered along the line of march.[24] Of course, this army had to be subsisted, and by all the rights of war the commanding general was justifiable in allowing his army to live off the country. But the size of the army and the manner of procuring the means of subsistence, together with the heavy demands previously made by the Confederacy, meant practically complete exhaustion for the State. The army correspondent of the New York Times estimated the following as the amount of food-stuffs, live stock, etc., taken from the State by Sherman's army: 15,000 head of beef cattle, 500,000 pounds of bacon and pork, 3,000,000 pounds of flour and meal, 1,000,000 bushels of corn, 5000 horses and mules, and a countless variety of articles of food of general utility.[25]

But it is not by the drain that was made on the resources of the State that the raid is chiefly remembered. As will be seen further on, much ruin was wrought to real property, from the effects of which the State has scarcely yet recovered. And, besides, the accounts would seem to indicate that a large portion of this waste was needless. The army seemed

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birth to the master traitor Calhoun, idolized him living and canonized him when dead; it was South Carolina that incited and forced other States to disunion; it was South Carolina that passed the first ordinance of secession; it was South Carolina that began the war."

[23] New York World, Apr. 14, 1865.

[22] Army correspondence of the New York Times, Apr. 8, 1865.

[24] New York Times, Apr. 8, 1865.

[25] New York Times, Apr. 8, 1865.

instinct with the spirit of wholesale destruction, and from appearances they were allowed by those in command to have their way. General Sherman practically admits this when he says: "I would not restrain the army, lest its vigor and energy should be impaired."[26] According to one writer, the "standing order" was to pillage and burn to the ground every abandoned dwelling; but if occupied, then to pillage but not to burn.[27] It is said that Sherman's track across the State could for a long time be traced by the blackened chimneys, all that remained standing of once magnificent homes.[28] "Wide spreading columns of smoke rose wherever the army went."[29]

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[26] Sherman's Memoirs, II, p. 254.

[27] J. A. Leland, A Voice from South Carolina, p. 7.

[28] W. G. Simms, Sack and Destruction of the City of Columbia, p. 22. The New York News' special correspondent has this report in the issue of that newspaper for September 27, 1865: "South Carolina has indeed felt the oppressor's heel. Sherman passed through the State and made a track forty miles wide as plain as fire, plunder, and utter devastation could make it. In many places the only marks of former life are the chimneys left standing to tell where once gathered happy families."

[29] The following correspondence, quoted from Appleton's Cyclopedia, 1865, p. 43, is cited:

GRAHAMS, S. C., February 7, 1865.

General: I have the honor to propose that if the troops of your army be required to discontinue burning the houses of our citizens, I will discontinue burning cotton. . . . I trust you will not deem it improper for me to ask that you will require the troops under your command to discontinue the wanton destruction of property, not necessary for their sustenance.

Respectfully, General, your obedient servant,
J. Wheeler, Major-General, C. S. A.

HEADQUARTERS MILITARY DIVISION OF THE MISSISSIPPI.
In the Field, Feb. 8, 1865.

General: Yours addressed to Gen. Howard is received by me. I hope you will burn all cotton and save us the trouble. We don't want it and it has proven a curse to our country. All you don't burn I will. As to private houses occupied by peaceful citizens, my orders are not to molest or disturb them, and I think my orders are obeyed. Vacant houses being of no use to anybody, I care little about, as the owners have thought them of no use to themselves. I don't want them destroyed, but I do not take much care to preserve them.

I am, with respect, yours truly,
W. T. Sherman, Major-General, Commanding.

The general direction of Sherman's course through South Carolina was due north from Savannah, thence in a north-easterly direction toward Fayetteville, N. C.[30] The first districts in the State reached by the army were Beaufort and Barnwell, or what is now Hampton. The country mansions of the districts, such as had escaped previous raids, were burned and the people left desolate.[31] The towns of Buford's Bridge, Barnwell,[32] Grahamville, Robertsville,[33] Bamberg, and Midway next fell in the track of the army, where the same policy of plunder and burning is reported to have been carried out. This brought the army up to the South Carolina Railroad, which extended from Augusta, *via* Branchville, to Charleston. This road was very important as a means for forwarding supplies from Augusta and northern Georgia to Richmond. The troops were immediately set to work to destroy the road and did so thoroughly for a distance of about fifty miles—from Branchville to near Aiken.[34]

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[30] Appleton, 1865, p. 42.

[31] Simms, p. 8. In the same connection he has this to say: "The inhabitants, black, no less than white, were left to starve, compelled to feed, only upon the garbage to be found in the abandoned camps of the soldiers. The corn scraped up from the spots where horses fed has been the only means of life to the thousands but lately in affluence."

[32] General O. O. Howard, in a series of newspaper articles, published after the raid, relates the following conversation:

General Howard: "By the way, General, I heard a good joke about you yesterday."

Gen. Kilpatrick: "What was it?"

Gen. Howard: "It was this: Gen. Sherman said that you, Kilpatrick, were changing the names of places about here, so that soon a new geography would have to be made. He said he sent you up to Barnwell the other day, and that you had changed the name of the place to *Burnwell*."—New York Times, May 13, 1865.

[33] "A mile and a half further on we found the smouldering ashes of Robertsville. . . . . Not a building was saved from the flames." Doyle's dispatch to the New York Herald, March 18, 1863.

[34] Says General Sherman: "As soon as we struck the railroad, details of men were set to tear up the rails, to burn the ties, and twist the bars. This was a most important railroad and I proposed to destroy it completely for fifty miles, partly to prevent a possibility of its restoration, and partly to utilize the time necessary for General Slocum to get up."—Memoirs, II, p. 259.

The movement on Orangeburg, about twenty miles north of Branchville, was next commenced. At the same time the left wing of the army swept the country to the west, extending as far as Lexington. Arrived at Orangeburg, one corps gave its attention to the matter of destroying the railroad toward the north, which work was done effectually for a distance of twelve miles.[35] Leaving the court-house towns of Lexington and Orangeburg in ashes, meanwhile having destroyed a bridge across the Congaree River near Kingville, General Sherman took up the line of march toward the capital of the State. The army arrived on the western bank of the Congaree, opposite Columbia, February 16, one column having been advanced toward the northwest to break up the railroads and bridges about Alston. Upon the approach of the Federals, the small detachment of Confederate cavalry withdrew, leaving the city unreservedly to the enemy. On the next day the mayor made a formal surrender, requesting at the same time protection of private property.

Sherman's orders relative to the occupation of the city are as follows: "General Howard will cross the Saluda and Broad Rivers as near their mouths as possible, occupy Columbia, destroy the public buildings, railroad property, manufacturing and machine shops; but will spare libraries, asylums and private dwellings. He will then move to Winnsboro, destroying *en route,* utterly, that section of the railroad. He will also cause all bridges, trestles, and water tanks back to the Wateree to be burned, switches broken, and such other destruction as he can find time to accomplish, consistent with proper celerity." [36]

It is not proposed here to take up again the question of to whom belongs the responsibility of burning Columbia. South Carolinians, upon what seemed to them reasonable proof,[37] placed the blame entirely upon General Sherman and

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[35] Appleton, 1865, p. 44.
[36] Memoirs, II, p. 277.
[37] See Gibbes, Who Burned Columbia?

his army. This belief had the effect of greatly augmenting the bitterness of the people toward the North.

The losses sustained in the sack and burning of Columbia were very great, traces of which are still partially discernible. The fire swept over eighty-four squares of the city, consuming in all 1386 separate buildings. Among these were four churches, numerous warehouses filled with cotton, all the passenger and freight depots and railroad work-shops, the city hall and postoffice, five banks, many government stores, the principal hotel, a Jewish synagogue, and a Catholic convent, and all the business and manufacturing houses on Main street.[38] The loss was greatly augmented for the reason that Columbia was looked upon as one of the most secure places of refuge. It was thought that, as the city contained so many of the manufactures of the Confederate government, the treasury, the commissary stores, the powder magazines, etc., the place would be defended with the utmost energy. Moreover, the city was an important railroad center. Hence the banks of Charleston, together with many in other parts of the State, had removed thither their assets. In addition to their ordinary assets, several had brought for safe-keeping other treasure of great value, such as silver plate, jewels, bonds, pictures, and works of art. Hundreds of farmers also had fled before the advancing army and taken refuge in Columbia, bringing with them whatever of valuables they could carry.[39] These facts will explain how the loss from plunder and fire fell unusually heavily upon the whole State. Doubtless many things would have been saved, had there been means of removing them. But transportation facilities had been cut off, and there was no way of escaping with the treasure.

The army "having utterly ruined Columbia"—these

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[38] Simms, p. 57, et seq.; New York Herald, June 28, 1865. The Herald's field correspondent gave this account: "I will simply observe that the night of Friday, Feb. 17, would have cracked Alaric's brain if he had witnessed it."—Herald, March 18, 1865.

[39] Notes of a conversation with the late James G. Gibbes.

words are General Sherman's [40]—began the march northward towards Winnsboro, which place was reached on February 21. The left wing of the army had swung around to the northwest, destroying the villages of Alston and Pomaria.[41] General Sherman's order, quoted above, was fully carried out, and the railroad from Columbia to Winnsboro, a distance of thirty miles, was destroyed as was also forty miles of the road leading toward Florence.[42] The town of Winnsboro met a fate similar to that of others in the track of the army. The public square was destroyed, as well as the Episcopal church and other property.[43]

From Winnsboro, the course of the army was towards the northeast, through part of Chester, and through Kershaw, Lancaster, and Chesterfield districts. The principal towns and villages in this scope of country were Blackstock, Society Hill, Camden and Cheraw, and to these the torch was applied more or less ruthlessly. At Camden, two railroad depots, an engine house, two thousand sacks of flour and corn meal, twenty hogsheads of rice, two thousand bales of cotton and a large flouring mill were together burnt or carried off.[44] The business portion of Cheraw, the chief town in Chesterfield district, was burned, except one house. Nor was it upon the towns alone that the iron hand of war fell. The rural districts were likewise devastated.[45] General F. P. Blair, U. S. A., writing on this point, said: "Every house that one passes is pillaged, and I think, as we are about to enter North Carolina, the people should be treated more considerately." [46]

The army passed out of South Carolina about March 8,

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[40] Memoirs, II, p. 288. [41] Gibbes, p. 59. [42] Memoirs, II, p. 274.

[43] Report of Committee on Destruction of Churches, Diocese of S. C., p. 14.

[44] Official Records of the Union and Confederate Armies, Series I, Serial No. 98, p. 353.

[45] This is the testimony of a Federal soldier relative to the devastation of the country: "Wherever a view could be had from the high ground, black columns of smoke were seen rising here and there in a circuit of thirty miles." New York Herald, March 15, 1865.

[46] Official Records, Series I, Serial No. 99, p. 717.

and when it had passed there is very good authority for saying that the country was scarcely recognizable. General O. O. Howard later gave the following testimony relative to this subject: "I went over the country afterwards, and it was pretty completely cleared out; I saw the chimneys and scarcely anything left in the country through there."[47] Outside of the army's track, much loss was incurred by people who, in anticipation of the soldiers, buried things of value and had to leave them in the ground until they were ruined. Various devices were resorted to, to provide against the expected pillage.[48]

It is perhaps safe to say that no Southern State paid so dearly in proportion to its means for its resistance to the National government as did South Carolina. Summing up her accumulated misfortunes, it may be said that out of 146,000 white males of all ages in the State at the census of 1860, she lost 40,000 by death or disablement. This is a rate of one for every three and six-tenths. The loss in slave property was far greater proportionally than in any other Southern State, for she had proportionally far more of it. There were in the State at the beginning of the war 402,406 slaves, while the entire white population numbered only 291,386.[49] The value of the slave property is said to have been $200,000,000. A writer in the Charleston News makes the statement that the assets of the banks of the State were $5,000,000, all of which were lost. Of the $5,000,000 of bills in circulation, the market value is reported to have been not more than twenty per cent of their face value. All of the large and valuable estates in Beaufort district and on

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[47] Gibbes, p. 105.

[48] One lady tells the following story: "Besides my war pockets which reached to the hem of my dress, I carried, hung upon a heavy cord about my waist, one piece of flannel, two pounds of tea, five pounds of coffee, twelve yards of dress goods, twelve yards of muslin, two pounds of sugar, a silver cup, a dozen silver forks, the same of spoons, spools of cotton, silk, needles, pins, etc. In my skirts were sewed my watch, money and private papers."
Women of the War, No. 16.

[49] New York Times, Sept. 13, 1865.

the adjacent islands had been abandoned, and many of them sold by the Federal government for taxes. A very heavy loss came with the burning and seizure of the vast quantities of cotton, the value of which at the time was estimated at $20,000,000. Of the horses, hogs, cattle, farming implements, furniture, and silverware, all but an inconsiderable amount is reported to have been destroyed, consumed, or taken; while the funds of colleges, churches, and charitable institutions were largely sunk. The same writer concludes his doleful account with the statement that, of the $400,000,000 of property in South Carolina in 1861, but little more than $50,000,000 remained in 1865.[50]

It is reasonable to suppose that the bitterness of the people, already great, was considerably increased after the great injuries they had sustained. The ragged Confederate soldier, returning to his home, found very little of consolation in the spectacle of a burnt dwelling and his wife and children deprived of shelter and on the brink of starvation. He was confronted with the very practical question of at once earning a livelihood, while the means of earning it had been in his absence destroyed. These things naturally augmented the difficulties of reconciliation, and when the time came, complicated the work of reconstruction. For the seeds of hate were thus sown, although they bore no immediate fruit.

During the month or so that intervened between the time when Sherman passed out of the State and the surrender of the Confederate armies, there seems to have been little activity, military, political or economic in South Carolina. Governor Magrath had fled from Columbia upon the approach of Sherman, and the government of the State was left without a head. The legislature tried to meet at Greenville, but failed to get a quorum. Only about thirty members made their appearance, and these met and adjourned without taking any definite action in reference to another meeting.[51]

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[50] These estimates of losses are reprinted from the Charleston News in the New York Herald of Aug. 30, 1865.

[51] Courier, May 10, 1865.

Governor Magrath returned to Columbia on May 2, and issued a proclamation announcing the surrender in North Carolina of the army under the command of General Johnston. He reminded the people that in the termination of the Confederate government circumstances had rendered the condition of South Carolina one of peculiar embarrassment. The consequences of the war, he said, involved a considerable portion of the population in a want approaching starvation. To the end that suffering might be checked, he directed that all subsistence stores and property of the Confederate States within the limits of the State should be held for the purpose of furnishing support to the thousands who were destitute, and in want of food, and whose suffering could only be alleviated by this disposition of the supplies.[52]

On May 8, the governor, in order that civil government might be restored without delay, directed that all officers of the State, " with all convenient promptitude," should return to Columbia, reopen their offices, and resume their proper duties.[53] It is evident that Governor Magrath did not comprehend the real status of the State. General Gilmore, commanding the Department of the South, issued an order that the proclamation of A. G. Magrath, " styling himself governor of South Carolina " and directing that subsistence stores should be issued for the relief of the people of the State, was declared null and void. The order further enjoined the people to give no heed whatever to any orders, proclamations, commissions, or commands emanating from any person claiming the right to exercise the functions and authority of governor in the State of South Carolina.[54]

Upon the promulgation of this order, Governor Magrath sent a reply to General Gilmore, giving as his reason for the action taken in regard to the subsistence stores, the destitute condition of the people in the upper districts of the State. At the same time and in view of the fact that " sundry and divers acts of treason " had been charged against him and

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[52] Courier, May 10, 1865. [53] Ibid., May 18, 1865.
[54] Printed in the Courier, May 25, 1865.

his authority as governor denied, Magrath issued an address to the people stating that his functions as executive had ceased, and that the State was in the hands of the military authorities of the United States. He also announced that the proclamation relative to subsistence stores had been recalled. He reminded the people that the war was over and that it was their duty to reconcile themselves to that submission which the government of the United States could impose and they could not resist. "Whatever may be your condition," he continued, "unavailing resistance on your part will but make it worse. With an earnestness of the sincerity of which I need not give you assurance, I urge upon you the resumption of your peaceful pursuits, and the adaptation of yourselves to those changes which may be made in your condition. Do not be misled by excitement; give no heed to passion; deal resolutely with facts; look the truth clearly in the face; spill no more blood; accept with the dignity which even misfortune can command, the condition which you cannot avert."[55]

On May 25, General Gilmore sent a detachment of soldiers to Columbia and arrested Governor Magrath on the charge of high treason. He was imprisoned at Fort Pulaski, Savannah, until December, when he was released on parole.[56]

The imprisonment of the governor, the existence of martial law, and the consequent disruption of the State government, left South Carolina in a sad condition. Her people were for the time deeply humiliated. They had already known what it meant to be the object of special vengeance, and forebodings of the future appeared to be equally gloomy. It was feared that South Carolina, jeered at as the "nest wherein was hatched the snake of secession," would lose her status as a State entirely and become part of the national public domain. Vast tracts of her territory along the coast and the sea islands had even then been confiscated and rumors of entire confiscation were everywhere prevalent.

[55] Courier, May 29, 1865.
[56] Charleston Year Book, 1895, p. 372.

The negroes, too, had come to identify freedom with idleness, and idleness had brought its ever-present companion, mischief. Lawlessness and crime were alarmingly on the increase.[57]

Hence a desire for the re-establishment of some form of civil authority was early evinced. The Federal law was admitted to be the only source of protection, and steps were soon taken to call a general convention to take action in the premises. It early became known that the President intended to appoint a provisional governor for South Carolina, as soon as the people expressed a willingness to renew their loyalty to the Union. Accordingly resolutions were adopted at various public meetings in the State, to the effect that it was the duty of all citizens to refrain from every act of hostility and to promote the return of friendly feeling toward the United States. The citizens of Charleston did not even wait for the holding of a convention, but on their own authority memorialized President Johnson to appoint at once a representative citizen provisional governor. The memorial set forth that the determination was universal to be in spirit and in truth loyal, and to do all that became citizens of the United States to promote the prosperity of their country.[58] The city sent a committee to Washington to present a memorial to the President. Judge Frost, Colonel Yates, and Messrs. Isaac Holmes, Geo. W. Williams, Frederick Williams, J. A. Sternmeyer, and William Whaley, were among the members of the delegation.[59]

About this time a report reached the State that there would probably be considerable delay in the South Carolina appointment, inasmuch as the delegation at Washington did not represent the Unionist sentiment. A. G. Mackey, collector of the port of Charleston, was in Washington and seems to have done what he could to delay the appointment of a provisional governor. He denounced the delegates as

[57] Courier, June 29, 1865.
[58] The memorial is printed in the New York Times, June 10, 1865.
[59] New York Times, June 25, 1865.

original secessionists and violent rebels, and tried to destroy any claim they made to confidence or honesty of purpose.[60] Another matter that disturbed the people was the attitude of some of the Northern newspapers toward the State. It was reported that South Carolina, on account of her rebellious instincts, might be kept under martial law indefinitely.[61] However, fortunately or unfortunately for the State, these rumors relative to making an exception of South Carolina proved to be without foundation.

Upon what terms the Charleston delegates asked to be restored is not known; but it is likely that they did not lose much time in quibbling. The State had seen enough of war, devastation and anarchy. It was time for peace and order to prevail. The men suggested to the President as material from which to select a provisional governor were ex-Governor Aiken, W. W. Boyce, Samuel McAlilley, ex-Governor Manning, and B. F. Perry.

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[60] Courier, June 29, 1865.

[61] Said the New York Herald of June 23, 1865: "This State having been the first and most rampant in the rebellion, will probably be the last to receive the benefits of reconstruction. All the other Southern States will in a short time be under civil rule again, while South Carolina will be suffered to undergo a year or so of probation, before she can be relieved of military dominion. That is the proper government for her at the present time; for it is a question whether a sufficient number of loyal and trustworthy white natives can be found in the State to fill the civil offices. Therefore the Palmetto State will probably have to be content for the present with military rule."

CHAPTER II.

Presidential Reconstruction.

By June 21, 1865, President Johnson had appointed provisional governors in all the seceding States except South Carolina and Florida. Convinced of the readiness of the people of the State to accept his plan, on June 30 the President issued a proclamation appointing Benjamin F. Perry provisional governor, who was looked upon by many in the State as the ideal man for the office.[1] Judge Perry was born in Pendleton District in 1805. He was descended from Revolutionary stock, being of common ancestry with Commodore Perry. He studied law at Greenville and soon won a reputation as an attorney of decided ability. Early in life he became conspicuous in politics. As leader of the Union party in the State he was an unwavering antagonist of nullification, and a political opponent of Calhoun.[2] His fearless and able opposition to the doctrines of the State-rights school made him, for many years, the most unpopular man, politically, in South Carolina. When the State seemed about to secede in 1850, he expressed the opinion that disunion would be destructive of the very institutions in the South for the preservation of which the Union was to be dissolved. In opposition to all the other South Carolina delegates, he refused to withdraw from the famous Charleston convention of 1860, declaring that on the unity of the Democratic party depended the life of the Union. He predicted the war and the defeat of the South and urged that it was folly to secede with a Democratic majority in Congress, in the Supreme Court, and in the country. But when South Carolina left the Union

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[1] Courier, July 8, 1865.

[2] Ibid.

he yielded to the majority and went with his State.[3] Being too old for active service in the field, he devoted his energies to the service of the Confederacy at home. During the conflict he served as member of the legislature, Confederate commissioner, district attorney and district judge.

The prophetic wisdom and patriotism of Judge Perry's course had been so amply justified by the light of later events that the people were now glad to have him as their State executive.[4] But despite his consistent record as a Union man before the war, his appointment did not meet with the same favor at the North. In a speech delivered in Greenville before a public meeting, assembled for the purpose of asking a restoration of civil government, Judge Perry had made a rather invidious comparison between Presidents Lincoln and Johnson. Contrary to the general opinion that the South had sustained a great loss in the death of Lincoln, he declared that Johnson was a much abler and firmer man than the late President and in every way more acceptable to the South. At the same time he had alluded in a rather uncomplimentary manner to the devastation of the State at the hands of the Federal soldiers. This address was published in the Northern newspapers and President Johnson was roundly criticised for appointing as provisional governor a man of such views.[5]

The President's South Carolina proclamation was an exact copy of the one issued on May 29, inaugurating the presidential policy of reconstruction in North Carolina. It declared that, since the constitution guaranteed to every State a republican form of government, and since the people of

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[3] "You are all going to the devil and I will go with you," he said, in announcing his purpose for the future. Sketches by Gov. Perry, p. 6.

[4] Courier, July 8, 1865.

[5] The following is an editorial in the New York Tribune of July 20, 1865: "If there be in South Carolina no better timber than this wherefrom to fashion a provisional governor, we think the manufacture might have wisely been postponed. . . . From the beginning to the end of this harangue there is no recognition of that large body of the people of South Corolina who are not humiliated."

South Carolina through a rebellion waged by a portion of the people of the United States, had been deprived of all civil government, it was the President's duty, as commander-in-chief of the army and navy, to re-establish that form of government in the State to which the people were entitled. To further this end, the provisional governor was directed to prescribe without delay "such rules and regulations as may be necessary and proper for convening a convention composed of delegates to be chosen by that portion of the people of said State who are loyal to the people of the United States, and no others, for the purpose of altering or amending the constitution thereof and with the authority to exercise within the limits of said State all the powers necessary and proper to enable such loyal people of the State of South Carolina to restore said State to its constitutional relations to the Federal government, and to present such a republican form of State government as will entitle the State to the guaranty of the United States, and its people to protection by the United States against invasion, insurrection and domestic violence." Those who should not have previously taken the oath prescribed in the amnesty proclamation of May 29, were to be excluded from exercising the privilege of electors and from becoming members of the convention. The convention, when assembled, was to determine the qualifications for suffrage. The military commander of the department and his subordinates were directed to assist the provisional governor in carrying the proclamation into effect. The secretary of state, the secretary of the treasury, the postmaster-general, the district judge, the secretary of the navy, and the secretary of the interior, were directed to put in force, in the geographical limits of the State, all laws relating to their respective departments.[6] This proclamation was followed on July 21 by a similar one from Provisional Governor Perry.

[6] Richardson, Messages and Papers of the Presidents, Vol. VI p. 312.

On the ground that it was impossible to fill the various offices with Union men, Perry reinstated those who were in office when the civil government of the State was suspended in May, the officers being required to take the amnesty oath. Loyal citizens who were legal voters prior to secession and who had taken the amnesty oath and who were not in the excepted classes of the President's proclamation, were declared entitled to vote. Citizens included in the excepted classes were to take the oath and to apply for pardon before they could vote or become members of the convention. The delegates thus elected were required to assemble in convention in Columbia on September 13 for the purpose of amending the old constitution or of making a new one, which would conform to the recent great changes that had taken place in the State and which would be more in accordance with republican principles. In the meantime, all laws of force in the State prior to secession were declared to be in force under the provisional government, except such as conflicted with this proclamation. The judges and chancellors were required to exercise all the powers and perform all the duties appertaining to their respective offices. The military authorities and lawful citizens of the State were called upon to unite in preserving peace and good order.[7]

At home, Perry's proclamation gave very great satisfaction. With their own chosen officers restored and with freedom to regulate the status of the negroes, there was reason for the people to hope for better days in South Carolina. But the proclamation did not meet with the same favor at the North. Soon after its promulgation, President Johnson telegraphed Perry that it was reported "in high circles" that the provisional governors were ignoring the old Union men and giving a preference in all their appointments to rebel soldiers. This report, said the President, was damaging the administration and giving just cause of complaint. It must be inferred from the singling out of Pro-

[7] Appleton, 1865, p. 758.

visional Governor Perry in this way that his action was in part the ground of complaint. Perry replied that the report was untrue in his State; that there were no truly Union men in South Carolina to be ignored; and that the Union sentiment had waxed strong only among some who sought office. He went on to say that he preferred to appoint honest, competent soldiers who had been maimed in the war rather than those who would identify themselves with any party for office, regardless of principle or country.[8]

A matter that called for much of Provisional Governor Perry's attention was the issuing of pardons. He exercised this power very freely and was deluged with applications. No one who applied seems to have failed to receive the governor's recommendation. He gave as his reason for this liberal exercise of the power, that no one was to blame for taking sides with his State after she had seceded. There was no neutral ground, he said. If a man went against his State he was guilty of treason, and the Federal government was powerless to protect him. There were eight hundred and forty-five persons in the State, numbered among the excepted classes of the amnesty proclamation, who received executive clemency. Six hundred and fifty of these belonged to the class excepted for being worth over $20,000. The rest were Confederate tax-collectors and postmasters, Confederate agents and blockade runners.[9]

The constitutional convention met according to appointment on September 13, with the assurance from the North that its deliberations would be watched with close scrutiny. The people of South Carolina had been longer and more virulently alienated from the National government than those of any other State, it was said, and the spirit which she showed in the proceedings of the convention would determine conclusively what would be her future fate.[10] As to

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[8] Journal of the Constitutional Convention of 1865, p. 17.

[9] Senate Document, 1st session, 40th Congress, No. 32, p. 44.

[10] Said the editor of the New York Times: "If it proves to be the old spirit, with only such modifications in its working as getting

personnel, the convention was said to have been regarded as the ablest body ever assembled in the State.[11] Several of the delegates were men of national reputation. Among these were James L. Orr, speaker of the national House of Representatives prior to the war and ex-Confederate senator; F. W. Pickens, late Federal congressman and first secession governor; and Samuel McGowan and John Bratton, late brigadier-generals in the Confederate army. Twelve of the delegates had been members of the secession convention of 1860. In this number were D. L. Wardlow, president of the convention, and John A. Inglis, who introduced the secession resolution.[12] Most of the delegates had been active during the war on the side of the Confederacy, and it is not a matter of surprise that the proceedings of the convention were looked upon with suspicion at the North.

Soon after its assembling, the convention heard a message from Provisional Governor Perry, in which he urged an unqualified acceptance of the issues of the war and legislation in conformity therewith. "Instead of dwelling on the past and grieving over its errors and misfortunes, let us," said he, "with manly fortitude, look to the future and accommodate ourselves to the conditions which surround us, and which cannot be changed or avoided." He acknowledged the death of slavery and urged obedience to the solemn oath, which the members had taken, to abide by and faithfully to support all laws and proclamations regarding the emancipation of the slaves. The purpose for which they had met in convention, viz., to enact legislation whereby South Carolina might regain her civil rights and be restored to the Union, would be impossible so long as slavery was not

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back into the Union imposes, we may safely set it down that she will remain poverty stricken and miserable. If on the other hand it exhibits a radical change in keeping with the new epoch, it is equally certain that she will soon recover from her calamities and attain both a material and moral power such as she has never yet experienced." New York Times, Sept. 13, 1865.

[11] New York Herald, Sept. 15, 1865.

[12] Correspondence of the New York World, Sept. 29, 1865; Journal of the Secession Convention, p. 46.

abolished. In regulating the relative duties of employer and employe, he advised a wise, just and humane treatment of the freedman. If a liberal policy was pursued, the blacks would soon become as strongly attached to the whites in their new condition as they were while in slavery. Changes looking to the popularizing of the fundamental law were strongly urged. It had been the reproach of South Carolina that her constitution was less republican in form than that of any other State in the Union. To this fact many traced the origin of that discontent with the Federal government which, after having been fostered for many years, eventually led to secession. The parish system should be destroyed, representation should be in proportion to taxation and population, and the elections of governor and presidential electors should be by the people. The franchise should not be extended to the freedmen in their ignorant and degraded condition. "This is a white man's government and the white man's only." The Supreme Court of the United States had decided that the negroes were not citizens. No notice should be taken of the contention of the radical Republican party in the North that there should be no distinction between voters on account of color, as each State had the unquestionable right of deciding for herself who should vote.[13]

The first measure considered by the convention was an ordinance to repeal the ordinance of secession passed December 20, 1860. The presidential plan, which provided, as one of the requisites for readmission, that the State should

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[13] Journal of the Convention, p. 11. The message was assailed unsparingly by some of the Northern newspapers. The New York Tribune, Sept. 20, said: "Governor Perry goes out of his way to exhume the Dred Scott decision for the sake of a fling at the Republican party.—'They forget,' he says of that party, 'that this is a white man's government and intended for the white man only.' We may be excused for forgetting what we never knew. It is hardly worth while, it is hardly good policy, to couch a petition in words that are an insult to the party which is to grant the petition or reject it at its discretion. The difficulty with Governor Perry is that he wants to put the clock back four years. We assure him that South Carolina must present herself at the door of the House next December with quite other words than his upon her repentant lips if she looks to see those doors fly open to her delegation."

declare secession "null and void," does not seem to have elicited any attention. The convention, as it appears from the journal, did not hesitate to adopt its own plan. The special committee, to whom the matter was referred, recommended that the ordinance withdrawing the State from the Union, "be, and the same is hereby, *repealed*." This was the only plan submitted and the committee's report was adopted by a majority of 105 to 3.[14] Judging from this almost unanimous action of the convention, it is safe to say that there was still the old belief in the principle that a State has the right to secede, whether allowed to exercise it or not. The attitude of the convention on this question brought out the contention at the North that the State was "playing at the game of rebellion again."[15]

The abolition of slavery was the most important measure that came before the convention. A spirited discussion arose when the special committee to which the question was referred made its report. The members, with few exceptions, were in favor of abolition, but it was on the particular phraseology to be embodied in the ordinance that differences of opinion were entertained. One of the prominent objects of the debate was to make it appear by the wording that the abolition of slavery was brought about by the action of the United States authorities and not by the voluntary action of the convention. The ordinance as originally submitted de-

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[14] Journal of the Convention, p. 27.

[15] The following is an editorial in the New York Tribune, Oct. 17, 1865: "The repeal of the ordinance will not do. We do not demand repeal but renunciation. This is not a distinction without a difference but a distinction involving fundamental principles. . . . . Repeal implies an original right to enact; repeal repudiates no future power to reestablish; repeal may be the result of new light of political expediency, or as Lee's surrender was, of overpowering necessity. But a renunciation of the right of secession—a declaration that the ordinance is null and void, and all the acts done in pursuance of it are null and void because of its original illegality—this strikes at the root of rebellion; it is a distinct official and solemn repudiation of that fatal philosophy fathered by Calhoun, which South Carolina universally taught. . . . . . It seems to us that the convention is playing at this ghoulish game again. Rebellion, its birth-place in Charleston, having failed to save their cause, they have carried to Columbia and seek to preserve it there."

clared that the institution of slavery, having been actually destroyed in the State by the military forces of the United States, should no longer exist in South Carolina and its re-establishment should be forever forbidden. An amendment, designed to incorporate the simple statement that slavery had ceased to exist without attributing its abolition to any party, was offered, but failed of adoption. In addition to the question of phraseology, Mr. Blair, of Kershaw District, proposed a substitute to the amendment which had for its main object the securing of compensation to their owners for the slaves liberated. The friends of the substitute claimed that slavery had been interrupted by the war but not abolished. The whole people, once affluent, were now reduced to poverty, and as a last poor remnant of their possessions, they desired that the institution should not be yielded up without some remuneration being stipulated. South Carolina had taken the position that she had the right to go out of the Union, while the United States government argued that she did not have it. Secession, and not slavery, it was claimed, was the issue of the war, and under the constitution of the United States the convention could not abolish slavery without allowing a recompense.

In answer to this argument, Mr. Dawkins, the chairman of the special committee, proceeded to explain the basis on which they had reported the ordinance. It appeared to him that but one alternative was left for the convention to accept. Slavery had been abolished by the United States authorities, and the committee had been particular in their report to adopt such phraseology as would be least distasteful to the people of South Carolina. Nothing was expressed in the ordinance with reference to compensation and it was deemed advisable that such a provision should not be made. It might be unpleasant to surrender the institution, but it would be more unpleasant to be long subjected to military government where each military commander made laws for himself. The only mode by which they could be relieved was to adopt an ordinance that slavery did not exist in the State

and that hereafter it should not exist. The case did not admit of argument. It was their only resource and the sooner they gave their acceptance the better it would be for them thereafter.[16]

James L. Orr also spoke against the substitute in somewhat the same strain. He maintained that slavery was the cornerstone on which the Confederacy rested. The people of the North were opposed to the institution. War ensued and the whole question was submitted to the arbitrament of the sword. Nothing was left to do but accept the terms granted, and they should not hesitate in doing so. He thought compensation would be awarded them for their slaves but did not know to what extent it would be allowed. It was their duty to frame their acts in a manner acceptable to the administration. President Johnson had interposed the shield of the constitution between the South and the radicals at the North, and they should do their part to aid him in his efforts to secure civil rights to the State.[17] After this debate the substitute was voted down. The ordinance was then acted upon and voted by the convention to be inserted as a clause of the constitution. It was carried by a majority of 98 yeas against 8 nays.[18]

How to deal with the negroes as laborers, after such a great change in their condition, was a question which the convention felt called upon to consider. It was thought that some legislation was absolutely necessary for the control of the vast throng of ignorant blacks, so suddenly released from servitude. With this end in view a resolution was adopted providing for the appointment of a committee of two to prepare and submit to the legislature a code for the regulation of labor and the protection and government of the colored population of the State. It was this committee which recommended the famous "Black Code."[19]

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[16] This debate is reported in the Courier, Sept. 22, 1865.
[17] Ibid.
[18] Journal of the Convention, p. 64.
[19] Ibid, p. 103.

The question of the competency of the colored race as witnesses was in a measure considered by the convention. An ordinance was introduced that colored persons should be permitted to testify in the courts of the State in all cases where their rights of person or property were involved. A lively debate followed. All were agreed on the cardinal point that some legislation was necessary in order to provide for the admissibility of the testimony of the freedmen, but there were differences of opinion as to the mode in which this should be effected. The question was finally settled by being referred to the committee appointed to frame the code for the government of the colored population.

The convention, as recommended in the governor's message, destroyed the parish system of representation in the State senate and provided for the election of the governor by the people. A resolution was passed endorsing the administration of President Johnson and pledging coöperation with him "in the wise measures he has inaugurated for securing peace and prosperity to the whole Union."[20] An ordinance was adopted which declared in full force all acts and resolutions passed by the General Assembly since 1860, except such as related to slavery. Another provided for an election to be held October 18, for governor and members of the legislature. Another, in order to hasten the process of restoration, divided the State into four congressional districts.[21] The convention also expressed its opinion in the cases of Jefferson Davis and other Confederate prisoners. A committee was appointed to draft a memorial to the President requesting executive clemency for Jefferson Davis and A. H. Stevens, and for Governor Magrath and George A. Trenholm, held as prisoners of State.[22]

The only references to the political privileges of the negroes were in connection with the discussion relative to the destruction of the parish system. An earnest effort was made to apportion the 124 members of the lower house

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[20] Journal of the Convention, p. 130.
[21] Ibid., p. 174, et seq.
[22] Journal of the Convention, p. 30.

among the election districts according to the number of "inhabitants" instead of "white inhabitants." In defending this position, a friend of the amendment said: "You have just destroyed, by overthrowing the parish system, what was deemed an unjust representation in the senate of this State, and I trust you are not about to establish a still more odious discrimination in the assembly. With what kind of consistency can you approach Congress with four representatives, two of whom are allowed you because of the negro population, and at the same time refuse to allow the very persons who give you these additional members to be represented in the general assembly of your State."[23] Upon this speech a debate followed in which negro suffrage was discussed at length. It was finally decided that the colored race was not prepared to receive political rights and the amendment was laid on the table by a large majority.

In view of the approaching election, the members of the convention signed a paper requesting Judge Orr to become a candidate for governor.[24] But his nomination, on account of the way it was made, did not meet with the approval of the people.[25] The convention remained in session fifteen days and framed an instrument which met with the approval of the President and with general commendation in the State. The constitution was not submitted to the people for ratification, but this fact was not due to any improper motive. From the beginning of the State's history, it has been held unnecessary in South Carolina to submit a constitution to popular vote. The theory is that a convention, when assembled, *is* the sovereign people, and not merely the agent of the people. Its acts are absolute and remain in force until repealed by another convention.[26]

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[23] Courier, Sept. 25, 1865.

[24] Courier, Sept. 28, 1865.

[25] Ibid., Oct. 3, 1865.

[26] The constitution of 1777 was framed by the General Provincial Congress and put into force without ratification. So also was that of 1790. Nor was the popular approval asked on the ordinances of nullification and secession, both of which, passed by conventions, were repealed by conventions. Even the constitution of 1895, framed

The short interval of time between the adjournment of the convention and the election of governor and members of the general assembly gave little opportunity for a canvass of the State. However, there seem to have been no issues before the people except a desire to have representatives elected to Congress who would be acceptable to the President and the conservative party at the North. Considerable interest was felt in the gubernatorial race, due to the fact that many were displeased at the action of the convention in nominating Judge Orr without having authority to do so. This faction started a movement to elect General Hampton, the well known and very popular Confederate cavalry leader.[27] He was nominated in the Columbia newspapers and, although he declared that he would not be a candidate, was voted for all over the State. It was the general opinion after the election that Hampton had been chosen over Orr, but the official count showed that of the 18,885 votes cast Orr had received a small majority.

Shortly after the adjournment of the convention Governor Perry wrote to Secretary Seward, enclosing a copy of the new constitution, and inquiring when his functions as provisional governor ceased. In reply Seward congratulated him on the favorable aspect of events in South Carolina and stated that he was to continue in the exercise of his duties until relieved by express orders.

The legislature met in extra session October 28, and elected Governor Perry and ex-Governor Manning to the United States Senate. An early day was also fixed for the

at a time when there was no need for haste and no doubt of adoption, was not submitted to the people for ratification. The single departure from this policy was the ratification of the constitution of 1868, which was framed and inaugurated largely by Northern men, who held ratification to be necessary. Constitution of 1777, p. 23; Journal of the Convention of the People of South Carolina, p. 46, et seq. See also Woodrow Wilson's The State, p. 477.

[27] Courier, Oct, 1865. The popularity of Gen. Hampton was not well received by some of the Northern newspapers. Said the editor of the New York Tribune, Nov. 15, 1865: "The rebels almost forced Wade Hampton into the gubernatorial chair, merely because such action would be a defiance to the President."

election of congressmen. During the session a telegram was received by Perry from the President urging the adoption of the Federal constitutional amendment abolishing slavery, and adding that he hoped South Carolina would not "lose all she had done and so well done."[28] Governor Perry wrote him that there was no objection to the amendment except the second section, which might be construed as giving Congress the power to legislate for the freedmen. Secretary Seward replied that the second section did not enlarge, but restrained, the power under the first section. The correspondence was laid before the general assembly and on November 13 the amendment was ratified by a large majority.[29] As the meeting of Congress was so near at hand, and as the commissions of the members had to be signed by the constitutional governor, it was decided to have the governor-elect inaugurated as soon as possible. Accordingly, on November 28, the ceremony took place. After this, all communications from the provisional governor were made through Governor Orr.

President Johnson's proclamation appointing a provisional governor for South Carolina enjoined the military commander of the department from hindering the loyal people of the State from the organization of a government. When Governor Perry entered upon his duties, General Q. A. Gilmore was in command of the South Carolina department and had troops stationed in the various towns of the State. In compliance with the President's directions Gilmore issued an order that all officers under his authority should assist the governor in carrying out the objects of his reconstruction proclamation. Nothing happened to disturb the har-

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[28] House Journal, extra session, 1865, p. 68.

[29] House Journal, extra session, 1865, p. 92. On the ratification of the amendment the New York Tribune made this pertinent observation: "As for the constitutional amendment, it comes by compulsion. South Carolina will vote for it now that she may kick open the door of Congress and stand before the Speaker's chair with six votes in her hand—six votes to our shame be it spoken, that represent a power as great as Connecticut, with 8000 white men less." Tribune, Nov. 15, 1865.

mony between the military authorities and the provisional governor until, in order to facilitate the election of convention delegates, Perry ordered magistrates to administer the oath of allegiance. This assumption of power was displeasing to the sub-commanders, who overruled the order in express terms. Perry wrote to the President and the secretary of state, complaining of the action of the military authorities and stating that, if magistrates were not empowered to administer the oath, in many parts of the State the people would be deprived of voting, as the number of provost-marshals on duty in South Carolina was not sufficient to cover the State. They both telegraphed their approval of the provisional governor's course, and ordered the military authorities not to interfere further in the matter.[30]

Other complaints were lodged against the provost-marshals. In an interview with General Gilmore, Perry represented that the provost courts were taking jurisdiction in all manner of cases and that their decisions were flagrantly in conflict with law, justice and honesty. Their assumption of authority after the restoration of civil government, he said, was arbitrary and illegal. A consultation was held with General Meade, commanding the Department of the South, and the matter was settled by an agreement that in all cases relative to freedmen and persons of color the provost courts should have exclusive jurisdiction. It was further agreed that the civil courts should be opened under the provisional government and that the civil and municipal officers should be allowed to resume their official duties without interference from the military authorities.[31]

According to a number of accounts, the conduct of the colored troops was by no means calculated to increase respect for the Federal military service. Numerous reports of their atrocious acts are given. At Anderson it was said that they protected and carried off a negro who had murdered a white man. At Pocotaligo they were declared to

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[30] Perry's Reminiscences, second series, p. 270.
[31] Appleton, 1865, p. 758.

have gone to the house of a white man and, after tying him, violated the women. Perhaps the most notorious occurrence of this kind was at Newberry, where Calvin Crozier, a young ex-Confederate, was executed summarily by order of the commander of the military post for resisting the intrusion of a negro soldier upon some ladies.[32] Besides these criminal acts, the colored troops were charged with demoralizing the negroes and poisoning their minds with prejudice against the whites and with false hopes of land grants.[33] Such conduct caused great uneasiness among the whites, who had been disarmed by military order,[34] and Perry became very diligent in his efforts to have the colored troops removed. He wrote Secretary Seward, detailing their misconduct, and predicting that if they were not taken away a race conflict would arise.[35] Seward at first replied that the colored as well as the white soldiers were soldiers of the United States, and that in the assignment no discrimination founded upon color could be made by the government.[36] But after continued appeals the President acquiesced, and Perry was able to announce to the convention that the negro troops had been finally withdrawn from the interior of the State and placed in garrisons on the coast where they could do no further mischief.[37]

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[32] The particulars of this affair were these: Crozier was travelling on the train with some ladies. Some colored troops entered the train at Newberry and one of them, Mills, began to embrace the white ladies. A struggle ensued and Mills was stabbed, but not mortally. Crozier was arrested, although it is said there was no evidence against him, and ordered shot by Col. Trowbridge in thirty minutes. Related in the New York Tribune, May 7, 1866.

[33] The following is an extract from a letter by the special correspondent of the New York World, July 6, 1865: "To cap the climax, bodies of half-trained negro troops are now being despatched to the various court house towns of the state to spread discontent and trouble among the freedmen everywhere. There are already alarming signs of the effect of this infamous policy. . . . To station regiments of these freedmen, who have little of the true soldier about them save the arms and the uniform, in the midst of unarmed communities, is to jeopardize most shamefully and needlessly the lives of thousands."

[34] Ibid.

[35] S. Doc., 1st sess. 39th Cong., No. 26, p. 119.

[36] Ibid., p. 116.

[37] Journal of the Convention, p. 19.

During the latter part of his administration Governor Perry ordered the formation of militia companies to aid in keeping the peace. These companies were to act in concert with the Federal troops as a general police force, receiving their orders from the Federal sub-commanders at the different posts. In almost every district companies were formed and had great influence in quieting the negroes and relieving the apprehensions of the people.[38]

Mention has already been made in another connection of an agreement between Governor Perry and the military authorities that in all cases where colored persons were concerned the military tribunals were to have exclusive jurisdiction. This arrangement was to stand until the legislature should have met and passed a law allowing the negroes to give testimony in the courts. As civil rights were to be extended to the colored man along with his freedom steps were immediately taken, after the governmental machinery was put in operation, to define the status of the negroes in their new condition. The sentiment displayed toward the emancipated slaves does not seem, from the published accounts, to have been prompted by any spirit of revenge on the part of the whites. Indeed, it may be said that to some extent the white population felt a responsibility for the protection of the freedmen in their ignorance and destitution. This is shown in Governor Perry's first message to the legislature. He said: "The negro has lost the protection of his master and he must now be protected by the law. This is expected of you by the President and Federal Congress and will remove all pretense for military rule in the State as well as facilitate your speedy restoration to the Union and self-government. The negro is innocent of all that he has gained and all that you have lost and he is entitled to your sympathy and kindness, your guidance and protection."

The commission, authorized by the convention and appointed by the provisional governor to prepare and submit

[38] Perry's Reminiscences, second series, p. 285.

to the legislature a code for the regulation of labor and the protection and government of the colored people, made its report on October 25. The members of the commission were Judge Wardlaw and Armistead Burt, of Abbeville, two of the ablest lawyers in the State. They submitted four bills, viz.:

(1) A bill preliminary to the legislation induced by the emancipation of slaves.

(2) A bill to establish and regulate the domestic relations of persons of color, and to amend the law in relation to paupers, vagrancy, and bastardy.

(3) A bill to establish district courts.

(4) A bill to amend the criminal law.

The first bill, as its title shows, was preliminary to the second. It defined persons of color to be all free negroes, mulattoes, mestizoes, freedmen, and freedwomen and their descendants through either sex. Persons of color, although not entitled to social and political equality with white persons, were to have the right to acquire, own and dispose of property; to make contracts; to enjoy the fruits of their labor; to sue and be sued; and to receive protection under the law in their persons and property. All rights and remedies respecting person or property, which applied to white persons, were to be extended to persons of color, subject to the modifications of the next act.

The part of the second bill regulating the domestic relations of persons of color, recognized the right of negroes to marry, except that females under eighteen years and males under twenty-one years of age were declared incompetent to marry. Cohabitation or acknowledgment by the respective parties was declared to be evidence of the relation of husband and wife. The marriage of apprentices or persons bound to service by contract was declared to be unlawful until the end of the apprenticeship or term of service. The husband was forbidden under any pretext whatever to abandon his wife; and in case he should do so, or fail to maintain her and his children, he was to be bound to service

by the district judge from year to year, and the profits of his labor were to be applied to the maintenance of his wife and children.

To regulate the relations of master and apprentice, the bill provided that orphan colored children over two years of age, colored children of paupers, vagrants and convicts, and all colored children that were in danger of moral contamination, might be bound by the district judge or a magistrate, until, if males, they attained the age of twenty-one years, and, if females, eighteen years. During the term of indenture, the person to whom he was bound was to teach the apprentice the business of husbandry or some useful trade, furnish him food and suitable clothing, and treat him with honesty and discretion. If the master habitually violated or neglected these duties, or exposed the apprentice to the danger of moral contamination, upon complaint the relation might be dissolved. The master was given authority to inflict moderate chastisement upon his apprentice, and to recapture him if he departed from his service. At the expiration of his term of service, the apprentice was to have the right to recover from his master a sum not exceeding sixty dollars.

The provisions of the bill relating to contracts for service were that the hours of labor should be from sunrise to sunset, and that servants should not be absent from the premises without the written permit of the master. If the servant departed from the service of his master without good cause, the wages due him were to be forfeited. When cause for the discharge of a servant arose, the master, instead of discharging him, might complain to the district judge, who was given the power to inflict corporal punishment if satisfied of the misconduct complained of. Wages due the servant were to be preferred to all other debts, and if not paid when due the contract might be rescinded. Persons of color who wished to pursue the trade of an artisan, mechanic, or shopkeeper, or any other business besides that of husbandry, had to procure a license by the payment of ten dollars if a male,

and three dollars if a female. These fees for licenses, together with contract fees, were to go to help establish a district court fund for the maintenance of the colored paupers of each district; and if the fund was not sufficient, a yearly tax of one dollar was to be imposed upon each male person of color between the ages of twenty-one and forty-five years, and on each unmarried female between the ages of eighteen and forty-five.

In regard to vagrancy, the bill provided that all persons who had not some fixed and known place of abode and some reputable employment, all prostitutes, peddlers without a license, gamblers, idlers, keepers of disreputable houses, thieves, persons who did not provide proper maintenance for their families, persons engaged without license in any farce or sleight-of-hand performances, fortune-tellers, imposters and drunkards, should be deemed vagrants. The magistrate was given power to try these cases. He was to have the assistance of five free-holders or the aid of another magistrate. Upon conviction, the defendant was to be hired to any owner of a farm for the term of hard labor to which he was sentenced. The person receiving such vagrant was to have all the rights for enforcing good conduct and diligence as had been provided in the case of master and servant.

The third bill was recommended as a fulfilment of the constitutional provision, which directed that for each district in the State there should be established a district court, "which court shall have jurisdiction of all civil causes, wherein one or both of the parties are persons of color, and of all criminal cases wherein the accused is a person of color."[39]

By the terms of this bill persons of color were declared to be competent witnesses where their rights of persons or property were involved.[40]

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[39] Constitution of 1865, article 3, section 1.
[40] Courier, Dec. 24, 1865.

As the existing laws of the State relating to the negroes were all based on slavery, the bill to amend the criminal law simply altered the provisions of the old slave code so as to make them fit the peculiar circumstances of the freedmen.[41]

These bills were taken up by the legislature and enacted into laws on the 19th and 21st of December,[42] and constituted South Carolina's share in the "Black Code" legislation of the United States. It would be difficult to determine just what was the feeling of the whites in South Carolina towards the freedmen. The belief of the writer is that while there was a sharp division of sentiment, the prevailing attitude was not necessarily bitter.[43] Moreover, the apparent severity of the vagrancy laws can be partially explained by the fact that the general welfare of the State was thought to be endangered by the suddenly acquired freedom of a class of very ignorant people who composed more than half of the population.

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[41] All four of these bills are found in S. Doc. No. 26, 1st sess. 39th Cong., p. 175.

[42] Statutes at Large of South Carolina, Vol. VI, p. 271, et seq.

[43] See Perry's message, p. 47, above; and Hampton's speech, p. 57, note, below.

CHAPTER III.

Congressional Intervention.

The policy of restoration marked out by Lincoln and adopted by Johnson was based on the assumption that the war was fought to preserve the Union.[1] With the accomplishment of this object, involving as it did the emancipation of the slaves, which had already been effected as a war measure, all controversy was supposed to be at an end. The war had been looked upon simply as a struggle to crush the rebellion of a portion of the inhabitants of the United States and not as a conquest. The Crittenden resolution, passed by Congress in 1861, had declared that the object of the war was "to defend and maintain the supremacy of the constitution and to preserve the Union with all the dignity, equality and rights of the several States unimpaired."[2] The presidential view was that during the conflict the relations of the States with the Union had been interrupted and that their people had been deprived of civil government, but that, after the rebellion had been put down, the Union became again "the Union as it was." Such, in brief, was the situation considered from the conservative standpoint. The States of the South, at the end of the war, acknowledged themselves commonwealths of the Union and manifested a willingness to accept the legitimate results of

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[1] In a letter to Horace Greeley, written August 22, 1862, Mr. Lincoln said: "I would save the Union. I would save it the shortest way under the constitution. The sooner the national authority can be restored, the nearer the Union will be the 'Union as it was.' If there be those who would not save the Union unless they could at the same time *destroy slavery,* I do not agree with them. My paramount object in this struggle is to save the Union and is not either to save or destroy slavery." Morse's Life of Lincoln, American Statesmen, Vol. II, p. 107.

[2] Congressional Globe, 1st sess. 37th Cong., pp. 209, 222.

their surrender. Johnson, therefore, in obedience to the constitutional mandate that every State should be guaranteed a republican form of government, sought without delay to restore the insurrectionary States to their former relations with the general government. Accordingly, when Congress met in December, 1865, regular State governments were fully organized at the South and the one thing necessary to complete restoration was the presence of the South in Congress by her chosen representatives.

Just before the meeting of Congress the President sent General Grant on a tour of inspection through the Southern States. The purpose of the tour was to learn the feelings of the people toward the Federal government and to ascertain whether there were sufficient signs of "returning loyalty" at the South to entitle the States to representation in Congress. General Grant traveled through South Carolina and spent two days at Charleston. In his report to the President, he said: "I am satisfied that the mass of the thinking men at the South accept the present situation of affairs in good faith. . . . My observations lead me to the conclusion that the citizens of the Southern States are anxious to return to self-government within the Union as soon as possible; . . . . that they are in earnest in wishing to do what they think is required by the government, not humiliating to them as citizens, and that if such a course were pointed out they would pursue it in good faith."[3] On the basis of this report and from such other information as he had received, the conclusions of the President were that the aspect of affairs at the South was more favorable than could well have been expected. Hence he recommended the admission of the Southern representatives to Congress, saying that there was "a laudable desire on the part of the Southern people to renew their allegiance to the government and to repair the devastations of war by a prompt and cheerful return to peaceful pursuits."[4]

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[3] S. Doc., 1st sess. 39th Cong., No. 2, p. 106. [4] Ibid., p. 2.

But it was evident at the outset that Congress did not agree with the President and General Grant that the time had come to admit the Southern States to representation. It was contended that a simple ratification of the thirteenth amendment was not a sufficient proof of attachment to the Union. To vindicate their right to representation, the erstwhile rebellious States should have enfranchised their colored citizens and have provided liberally for the education of their children. They should have repudiated *in toto* the rebel debts, and have elected loyal men to represent them in Congress.[5] Hence, before allowing the Southern delegates to take their seats, both houses adopted a resolution appointing a joint committee to investigate conditions in the late insurrectionary States and to "report whether they, or any of them, are entitled to be represented in either house of Congress."

The plan which the committee adopted "to enquire into the condition of the States of the so-called Confederate States of America" was hardly calculated to reveal the true situation in the South. This is said on the ground that both sides should have had a hearing in a question where statements were so conflicting. The testimony relative to South Carolina was taken by Senator Howard, of Michigan, and none of the witnesses examined were citizens of the State. All were officers in the Freedmen's Bureau. Moreover, the examinations were held in Washington instead of in the State, where an object lesson could have been presented. General Rufus Saxton, assistant commissioner of the Freedmen's Bureau in South Carolina, was the leading witness. He expressed the opinion that in case the United States became engaged in a foreign war, South Carolinians would unanimously join the hostile government. Nine-tenths of the people of the State, he said, thoroughly hated the Federal government and the rest he termed "so-called" loyal men. In answer to a question as to the feeling of the people

[5] Congressional Globe, 1st sess. 39th Cong., p. 2.

toward Northern men he replied that the United States uniform would more likely expose a person to insult than to respect, while a man in full rebel gray could go from one end of the State to the other without receiving the slightest disrespect. He believed there were large numbers in South Carolina who would consider it no greater crime to kill an agent of the Freedmen's Bureau than to kill a negro. The late master, he said, had no knowledge of the freedman—knew less of the negro's character than any other person. Hence there was no hope for the colored man except through the care of the United States government. A. P. Ketchum, adjutant for General O. O. Howard, was the next witness. He testified that no instance had come under his observation of the renunciation by a South Carolinian of the doctrine of the rightfulness of secession. The secessionists, he said, would have nothing to do with Northern men socially, not because they were Northern, but because they (the secessionists) acknowledged in their hearts the superiority of the North and the Northern mind.

The other witnesses were J. W. Alvord, of New Jersey and Brigadier-General C. H. Howard, whose opinions agreed substantially with the views already given. The general nature of the inquiries related to the feeling in South Carolina toward the government of the United States, the probability that South Carolina would side with the enemy in case the United States became engaged in a foreign war, the attitude of Southern whites toward Northern settlers, and the extent to which the blacks were or would be recognized in the courts, in the schools, and socially.

All of the witnesses testified in a manner decidedly damaging to the Southern side of the case. It was claimed that the secessionists would readily join any movement for the destruction of the Federal government; that, although there was an expressed willingness to submit to the necessities of the situation, the sentiment toward the Union was unanimously hostile; that the Southern whites would not scruple to take the life of a negro on the slightest provocation;

and that there were among the people very few symptoms of "returning loyalty."[6] It will hardly be denied that, under the circumstances, the expectations of the investigating committee were exacting. The people of the State had accepted the constitution of the United States as their own. They had abolished slavery within their own limits and had ratified the thirteenth amendment. They had secured to the freedman the right to life, liberty, and property, and extended to him the privilege of giving testimony in the courts. There was everywhere abundant evidence of peace and obedience to the laws of the Union. By their industry and economy the people were trying to redeem their broken fortunes and restore the State to prosperity and happiness.[7] Carolinians thought this was enough to ask of them for the time being. Brave men who held convictions and who had staked their all in defence of those convictions could hardly have been expected to "lay down their spirit" immediately upon being compelled to lay down their arms. Submission on the field of battle is one thing; a sudden change of long-cherished principles quite another.

Moreover, it should not have been surprising to the witnesses to find that there was no wide-spread repentance among the former secessionists. South Carolinians could not see any great crime in having made an effort to live separate from the North. It was their right, as they thought, and they were not sorry for their attempted exercise of it. At the feet of Calhoun they had been taught that the States were sovereign, and even after their State had been left unto them desolate they could not forget the lesson.

Nor was it reasonable to suppose that, so soon after the smoke of battle, an officer in the Union blue would be received by the people with any great degree of respect. Their country was devastated, their homes were burned, their cities and villages laid waste, and their property was

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[6] All the testimony relative to South Carolina is contained in the Report of the Joint Committee of Reconstruction, parts II and III.
[7] Mercury, June 14, 1867.

taken from them: all of which woes they laid to the charge of the Federal armies. The sight of the Federal uniform served but to remind them of their present humiliation as compared with their once proud position. Naturally, too, the "rebel gray" was an object of esteem among them. It represented a cause very dear to their hearts. Military heroes in all ages have been the recipients of admiration at the hands of their followers, and the fact that this was true at the South should not have been considered strong evidence of disloyalty. Wade Hampton came very near being elected governor over the "so-called loyal" candidate, not because he was a disunionist, but because he was the State's greatest leader in the Confederacy and because he was deservedly popular as a man.

As to the freedmen, it is sufficient to say that there was no considerable feeling of unkindness in South Carolina toward them.[8] The people thought that their sudden emancipation would endanger society unless stringent laws were enacted to restrain them. The testimony of one of the witnesses that the late master knew less of the negro's character than any other person is indeed remarkable when it is considered that master and slave had lived together all their lives.

The joint committee submitted its report in June, 1866. They recommended for adoption, as the result of their deliberations, two bills and a resolution proposing amendments to the constitution.

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[8] The following is part of an address delivered by Gen. Hampton at a mass meeting of freedmen in Columbia: "Last fall in an address to many of my old soldiers in Pickens District I touched upon the duty of the whites toward the colored people, and I shall read to you what I said on that occasion. . . . . 'As a slave he was faithful to us; as a freeman let us treat him as a friend. Deal with him frankly, justly, kindly, and my word for it he will reciprocate your kindness, clinging to his old home, his own country and his former master.'

"Why should we not be friends? Are you not Southern men, as we are? Is this not your home as well as ours? Does not the glorious Southern sun above us shine alike for both of us? Did not this soil give birth to all of us? And will we not all alike, when our troubles and trials are over, sleep in that same soil on which we first drew breath?" Courier, March 23, 1867.

In arriving at a conclusion as to whether the Confederate States were entitled to representation in Congress, the committee first reviewed the President's plan of reconstruction and defined the position which the insurrectionary States sustained to the Union. They recognized that it was the President's duty, as commander-in-chief of the army, to restore order, preserve property, and protect the people against violence in the rebellious states, where the people had been deprived of all civil government. But in so doing, the President was exercising only a military supervision, and his authority ceased so soon as Congress assembled. The provisional governors whom he had appointed possessed only military authority and had no power to organize civil governments.

The claim for the immediate admission of senators and representatives from the so-called Confederate States seemed to the committee not to be founded either in reason or in law. Whether legally and constitutionally or not, they did, in fact, withdraw from the Union, and made themselves subject to another government. Having been compelled by utter exhaustion to lay down their arms, the conquered rebels were at the mercy of their conquerors.

Granting the "profitless abstraction" that the late Confederate States were still States of the Union, the committee contended that it did not thereby follow that those States might not place themselves in a condition to abrogate the powers and privileges incident to a State of the Union. In their opinion it was a mockery to contend that a people who had defied the authority of the Union and refused to execute its laws should still retain the entire right to resume all their privileges within the Union, to participate in its government and in the control of its affairs.

In answer to the argument that taxation and representation should go hand in hand, the committee replied that if the so-called Confederate States had no right to throw off the authority of the United States they were bound at all times to share in the burdens of the government. The people

of the insurrectionary States had no right to complain, if, before regaining their representation, they were compelled to help bear the burden of taxation incurred by their treason.

Doubts being entertained as to whether the Federal government had the power to prescribe the qualifications of voters in a State, the committee recommended that political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted without the distinction of color or race. This plan, it was claimed, would still leave the whole franchise question, where it had always been, with the States themselves.

The power of calling conventions and convening legislatures, which the provisional governors had exercised, did not belong to them. They were simply "bridging over the chasm between rebellion and restoration," and the conventions which they had called had no authority to change the fundamental laws. The President had transcended his authority in allowing the different State conventions to frame constitutions, although they were not disposed to criticize him for this assumption of power. The conventions had by no means met the requirements. In order to hasten the States' return to immediate participation in the government, they had simply amended constitutions which were already defunct. Glaring irregularities were manifest, in view of which and the failure to submit the constitutions to the people for ratification, the committee was forced to the conclusion that the so-called Confederate States had not placed themselves in a condition to claim representation in Congress.

It was competent for Congress to ignore the laws and admit the so-called Confederate States at once, but the committee did not deem it advisable to do so till a more submissive attitude was shown. The rebels should exhibit something more than an unwilling submission to an unavoidable necessity. "They should evince entire repudiation of all hostility" and give adequate security for future peace and safety.

In the light of the foregoing facts the committee rendered the opinion that the States lately in rebellion were disorganized communities without civil governments; that the representatives from these disorganized communities could not be recognized by Congress as duly elected; and that such communities should not be allowed to participate in the general government until Congress had provided in them such guarantees as would secure the civil rights of the negroes, the repudiation of the rebel debt, the assumption of the Federal debt, the enfranchisement of the negroes, and the disfranchisement of prominent Confederates.[9]

The three Democratic members of the committee submitted a minority report. Contrary to the stand taken by the majority, they contended that by the law and by the facts, the insurrection had not dissolved the Union. The connection between the States in rebellion and the general government having been undisturbed, the States were bound by all the obligations and entitled to all the privileges of the constitution. The citizens of a State might rebel and military power might be used—as had been the case—to put them down; but the illegal conduct of a portion of her citizens did not deprive a State of her right to be, and dissolve her bonds with the Union. "A State once in the Union, must abide in it forever."

The minority further charged the majority with inconsistency in its recommendation of a constitutional amendment. The claim was made that the Confederate States were entitled to no representation in Congress and were not in

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[9] The members of the Committee were:

Majority of the Committee.

W. P. Fessenden, Maine.	Thaddeus Stevens, Pennsylvania.
James W. Grimes, Iowa.	Justin S. Morrill, Vermont.
Ira Harris, New York.	John A. Bingham, Ohio.
Jacob M. Howard, Michigan.	Roscoe Conkling, New York.
George H. Williams, Oregon.	Geo. S. Boutwell, Massachusetts.

Minority.

Reverdy Johnson, Maryland. A. J. Rogers, New Jersey.
Henry Grider, Kentucky.

the Union; and yet there was a proposition to consult these States on the question of adopting an amendment to the Federal constitution. The States were in the Union for some purposes and out of it for others.

The minority further argued that after the insurrectionists had been put down the original condition of things was at once restored and the States were as completely members of the Union as they ever had been. Hence their right of representation in Congress was unquestionable. Over and above the fact that the States had not lost their character as members of the Union, they asserted that there was no internal irregularity to prohibit their representation. "We know that they have governments completely organized, with legislative, executive and judicial functions. We know that they are in successful operation. No one in their limits questions their legality, or is denied their protection. How they were formed, under what auspices they were formed, are inquiries with which Congress has no concern."

The requirements made by the President for readmission and representation, said the minority, were amply sufficient, and were complied with satisfactorily. The terms which the committee proposed to offer to the South were, by the provisions of the amendment, very unjust. The South was given the alternative of having its representation in Congress reduced or of granting the franchise to the negroes—a class in a condition of almost utter ignorance.

The Southern States could hardly be expected to ratify the amendment, and the effect would be to delay indefinitely their representation. If the committee's recommendation were accepted, the time-honored and constitutionally guaranteed right of each State to regulate its own franchise would be taken away.

The majority report of the investigating committee was accepted by Congress as the basis for congressional reconstruction. The resolution proposing what finally became the fourteenth amendment to the constitution was adopted and the amendment was submitted to the States for ratification.

Doubtless the two bills recommended would have been passed also, had not Congress adjourned before they were reached. The first bill provided that the late insurrectionary States should ratify the proposed amendment as a condition precedent to being allowed representation in Congress. The second declared certain prominent Confederates ineligible to Federal office.

The Southern States, with the exception of Tennessee, by an almost unanimous vote, refused to ratify the constitutional amendment. In consequence of this, when Congress met again in 1866, it was manifest that the radicals were ready to go the full length of openly denying to the States the right which they had always exercised of prescribing each for itself the qualifications for suffrage. The original plan of the committee had been to make it appear that this power was still left to the States, but when the work of reorganization was again resumed, all pretence to respect for this ancient principle was lost sight of. The final plan of reconstruction was embodied in an act passed March 2, 1867. It declared that no legal governments existed in the ten Confederate States, and to the end that peace and good order might prevail in those States until loyal and republican State governments might be established, the States were divided into five military districts and made subject to the military authority of the United States. North and South Carolina comprised the second district. It was made the duty of each army officer, assigned to the command of a district, to protect all persons in their rights and to suppress insurrection and disorder. The military commander might allow local civil tribunals to try offenders, but whenever he thought it necessary to organize military tribunals for that purpose all interference under color of State authority was declared null. It was provided that the rebel States should be entitled to representation when they had ratified constitutions framed by conventions whose delegates had been elected by the male citizens of the States, of whatever race, color, or previous condition; when such constitutions provided that all should

enjoy the elective franchise who had been electors for delegates to the conventions; when such constitutions were ratified by popular vote and submitted to and approved by Congress; and when the States had adopted the proposed amendment to the Federal constitution.[10]

It will be observed that, by the terms of this act, the States were left to take the initiative in regard to their restoration, only the requirements of their readmission being specified. But it became apparent to the politicians that the Southern States might prefer to remain out of the Union indefinitely and be governed by the military under the control of the President. This was exactly what the radicals wished to avoid (as restoration with negro suffrage might thereby be delayed till after the presidential election of 1868, and the radical party might fail of success).[11] Congress, therefore, having fortified itself against the President by providing that the new Congress convene immediately upon the adjournment of the old, proceeded to pass a supplementary reconstruction act on March 23. This act was designed simply to put the first act into immediate execution and to deprive the States of any voice in restoration. By its provisions, the military commander of each district, defined in the first act, was directed to cause a registration to be made of the male citizens of his district of twenty-one years of age and upwards. This registration was to include all electors mentioned in the first act except those who were unable to take a prescribed oath. This "test oath," as it was called, disfranchised not only the leaders of the Confederacy and other prominent citizens, but large numbers of the whites generally, as there were few who had not given "aid and comfort to the rebellion."

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[10] U. S. Statutes at Large, Vol. XIV, p. 428.

[11] The Mercury of Aug. 10, 1867, said editorially: "They admit that they will be defeated unless the Southern States be admitted to congress with Radical delegations which will support through thick and thin the measures of the Radical party. If the Southern States are not readmitted, or if they are not readmitted with Radical representatives, the sun of the Radical revolutionists has set forever."

After the registration, the commanding general was to appoint an election for delegates to a constitutional convention. If the constitution which this convention should frame was ratified by a majority of the votes of the qualified electors, and if it met the approval of the President and Congress, the State in question was then to be declared entitled to representation.[12]

These reconstruction acts meant complete negro enfranchisement for the South, and—since they had to be weighed in the "test oath" balance—the disfranchisement of the whites almost as complete.

That these acts of Congress were not "outside of the constitution" is a question open to argument. The claim set up by the extremists among the radicals was that the Southern States at the close of the war were conquered provinces to be treated as foreign territory and subject in all respects to the will of the North. But this theory was a contradiction to the theory which they steadily asserted, that the Confederacy was not a legitimate government. It also admitted that a nation could make war upon itself and denied the doctrine of the Supreme Court, as later announced, that "this is an indestructible Union of indestructible States."[13]

The more moderate radicals took the position that the States had not ceased to be members of the Union, but that by their acts of secession and by their armed resistance to the Federal government, they had rendered themselves incapable of exercising political privileges under the constitution. This being the case, it was the right and duty of Congress, under the clause of the constitution guaranteeing a republican form of government to the States, to reorganize the State governments.

It is the construction which Congress put upon the phrase, "republican form of government," which may be called into

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[12] Statutes at Large, Vol. XV, p. 2.
[13] Texas *vs.* White, 22 Wall., 157.

question. The powers which were claimed under it would seem to be at variance with the sense in which the phrase was understood by the framers of the constitution. According to the Federalist, this power extends no further than "to a guarantee of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed."[14] It also says that as long as "the existing republican forms are continued by the States they are guaranteed by the Federal constitution." Certainly the Johnson government in South Carolina, although not precisely the government that existed when the constitution was adopted, was established on the same principles as the original State government. And by all former views of the question, it was republican. It had been established by Union men and by those insurrectionists who had received the executive pardon. Previous to the reconstruction era, each State had determined for itself and *by itself* what was to be its individual form of government. Whatever this happened to be, Congress had recognized it as republican. In Luther *vs.* Borden[15] the Supreme Court had interposed to decide which one of two rival State governments should be recognized, but conditions in the Southern States were different from what they were in Rhode Island. There were no rival governments at the South.

If the Johnson governments were established after the historic fashion, Congress, following the precedent in the Rhode Island case, should have recognized them. In that case the government was respected "which has been recognized as the existing government of the State through all time past." However difficult it may be to define a republican government, the truth seems clear that if the Johnson governments, established by representatives chosen according to the time-honored custom, were not republican, then the governments which Congress now proposed to establish in the States at the point of the Federal bayonet, would not

[14] The Federalist, No. 43. [15] Luther *vs.* Borden, 7 How., 1.

be republican. Nowhere did the constitution provide that Congress should have the right to say who were to be the voters in each State. This power was reserved to the people of the States. At the time of the adoption of the constitution and afterwards, each State had had different qualifications for suffrage. In some, citizens alone were entitled to vote, in others, aliens upon a short residence. In others, again, a property qualification was required. The kind of political constituency in each was a matter with which Congress was thought to have nothing to do.

The radicals showed further inconsistency in submitting the fourteenth amendment to the Southern States for ratification, while maintaining at the same time that the governments in these States were provisional only. It would seem self-evident that to allow the States a voice in amending the constitution is to admit that their governments are valid. Assuredly none but duly recognized republican governments are competent to act in so vital a matter. Sovereignty in one respect implies sovereignty in all respects. Congress virtually took the position that the Southern States under the Johnson governments were competent to vote on the amendment, but competent to vote only one way.

By appointment of the President, General Daniel E. Sickles, of New York, assumed command of the Second Military District, March 21, 1867, with headquarters at Charleston. General Sickles had been in command of the Federal troops in South Carolina during the previous year and was not a stranger to the people. His appointment seems to have been generally satisfactory so far as there could be any satisfaction under martial law. It was especially gratifying to the people that he indicated in his policy a disposition to make the burdens of military government as light as possible.[16]

The duties of the military commanders were, in general, to preserve order and conduct registrations of voters who

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[16] New York Times, April 1, 1867; Mercury, March 22, 1867.

should participate in the restoration of civil government. Accordingly, General Sickles, upon assuming command, issued an order outlining the reconstruction acts and declaring his attitude toward the existing State government. Under the acts, great power was vested in the discretion of the military commanders. They had no option as to the enforcement of the acts, but the manner of enforcement was left for them to determine. Fortunately, however, Sickles did not disturb the civil polity of the State or disarrange its internal affairs. By the terms of his order the civil authorities were continued in office and the people were admonished to respect and obey them. He invited the coöperation of all citizens in the preservation of peace and order, and urged acquiescence in the new authority to the end that military intervention might be made unnecessary.[17]

Among the first acts of Sickles' military administration was a division of the State into ten districts over which he placed sub-commanders. These post-commanders were to "exercise a supervision over all magistrates, sheriffs, deputy-sheriffs, constables and police within their commands," and to hold them accountable for any violation of military orders and the arrest of guilty parties.[18]

Early in his administration, Sickles issued his locally famous "Order Number 10." This was in response to a general appeal that some provision should be made to stay the execution of judgments for debts. Owing to the destitute condition of the State after the war and the almost total failure of the crops in 1866, efforts in this direction had been made on more than one occasion by the General Assembly, but they had been ineffectual. The order prohibited imprisonment for debt, directed sheriffs to suspend for twelve months the sale of all property upon execution on debts contracted prior to December, 1860, protected advances made for the purpose of carrying on agricultural pur-

[17] Courier, April 4, 1867.
[18] New York Herald, Apr. 24, 1867.

suits and made non-enforceable judgments for debts contracted between December 19, 1860, and May 15, 1865. By the same order the carrying of deadly weapons, except by officers and soldiers in the military service of the United States, was prohibited, and the punishment of crimes by whipping, maiming, stocks, pillory or any other corporal punishment was forbidden.[19]

Another matter that demanded Sickles' attention in regard to relief was the frequent violation of the internal revenue laws. It was represented that the scanty supply of food was diminished by large quantities of corn being consumed in distilleries operated contrary to law. The whiskey tax, it was said, went uncollected. Officers of the revenue service were frequently threatened with violence while attempting to discharge their duties. In some instances, juries failed to convict persons unquestionably guilty. It was further shown that this unlawful traffic made food dearer, and tended to increase poverty, disorder, and crime. Sickles therefore ordered that the manufacture of whiskey be prohibited in his district, and that parties found violating the order should be brought to trial before a military tribunal instead of a civil court.[20]

General Sickles' policy of continuing all civil functionaries in office seems not to have been departed from in many instances. He was able to report on July 17 that not more than twelve removals had been made in both the Carolinas, and these, he said, were for positive misconduct in office. However, when a vacancy occurred or the term of an officer expired he suspended elections and made the appointments himself. Thus he appointed a clerk of the court and an ordinary for Barnwell District, municipal officers for the towns of Marion and Darlington, and five magistrates in the district of Berkley. But, while his removals were few, Sickles maintained toward the civil authorities an attitude

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[19] Mercury, Apr. 15, 1867.

[20] Senate Documents, 1st sess. 40th Cong., No. 14, p. 69.

so threatening as to give considerable annoyance.[21] He claimed that he would be unable to carry out the requirements of the reconstruction acts unless he had the prompt and certain coöperation of all civil functionaries. To secure this coöperation, he let it be known that all officials, from the governor down, held their places subject to his will and that they would be dismissed from office whenever, in his judgment, dismissals were necessary for the successful execution of the reconstruction measures. Sub-commanders were instructed to keep a strict watch over all civil officers and report any misconduct to the commanding general. Sheriffs, police and other like officers were required to execute the orders of the provost marshals and any disobedience or resistance subjected the offender to trial by military tribunal, and, upon conviction, to removal from office and punishment by fine and imprisonment. This liability of the civil authorities to interference caused much uncertainty and produced considerable disorder. Sickles won the name of military dictator.[22]

The protection of the rights of the freedmen occasionally demanded the attention of the military commander. He established a provost court at Aiken to have jurisdiction over any case to which a person of color was a party, except murder, arson and rape. This court was established on the ground that justice to the freedmen could not be obtained in the civil courts. Again he caused a steamboat captain to be tried by a military court and fined heavily for not allowing a negro woman to ride as a first-class passenger with white women. He also issued orders providing that negroes should sit on juries and ride with whites on trains. Aside from these protective measures, which some thought unjust, Sickles' dealings with the colored race were commendable. In an address to a meeting of freedmen at Charleston, he said: "It will not be necessary, nor can it be otherwise than

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[21] New York Herald, Aug. 1, 1867.
[22] New York World, Oct. 15, 1867.

injurious, for you to neglect your regular employments and associations to attend to political affairs." [23]

Perhaps the most conspicuous illustration of Sickles' dictatorial policy was his annulling a decree of the court of chancery relative to the distribution of some Confederate funds.[24] In the early part of 1865, a sum of money amounting to $8,797 in gold had been contributed by individuals for the purpose of remounting Hampton's Cavalry. This money had never been applied to the purpose for which it had been contributed and was left at the close of the war in the custody of the Bank of South Carolina. When suit for recovery was brought by the various claimants, the court decreed that the money should be refunded to the various contributors. By an order issued August 7, Sickles reversed the decree on the ground that the money was the property of the United States, under an act passed by Congress in 1861, providing that all property designed for use in insurrection was to be deemed "lawful subject of prize and capture wherever found." A receiver was appointed and the different claimants were called upon to surrender what had been returned to them.[25] This action on the part of Sickles was considered arbitrary, since two years before the war had been declared at an end and since neither the Confederate government nor the State of South Carolina had been known in the transaction.

The charge was frequently made in South Carolina that Sickles wished to rule as an absolute military chief.[26] The following incident would seem to indicate that the charge was not altogether without foundation. The United States Circuit Court at Raleigh, N. C., presided over by Chief Justice Chase, rendered judgments against the property of certain debtors at Wilmington. Sickles interfered to prohibit the execution of the process and the district attorney reported the fact to General Grant and the attorney-general.

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[23] Appleton, 1867, p. 691.

[24] The order is published in the Charleston Courier of Oct. 2, 1867.

[25] Courier, Aug. 9, 1867.

[26] New York Times, June 7, 1867.

Grant telegraphed Sickles to modify his "Order No. 10," under which the processes of the United States courts were obstructed. Sickles wrote in explanation that "Order No. 10" protected the people from summary executions for debt and that it gave great satisfaction to the people of North and South Carolina. Grant thereupon telegraphed Sickles that he (Grant) withdrew his order to him to modify "Order No. 10," thus leaving the latter in force. At this stage the United States marshal again attempted to execute the process, but was resisted by Sickles, who insisted that his order was supreme in the Second Military District. When the matter was reported to the President, he directed the district attorney to procure an indictment against Sickles for obstructing a United States court. Sickles telegraphed Grant, denouncing the action of the President, and intimating that as commander of a military district created by act of Congress he was not amenable to a district attorney. The controversy became so sharp that the President removed Sickles and appointed General E. R. S. Canby in his place.[27]

The people of the Second Military District considered themselves fortunate in having General Canby for their commander. He was a Southerner by birth—a native of Kentucky—although he received his appointment to West Point from Indiana. His most noticeable participation in the active struggle of the war was his defence of New Mexico in the campaign of 1862, against the Confederate forces under General H. H. Sibley. After the war, as commander of the district of Louisiana, he displayed a high order of administrative ability, the wisdom and justice of his rule having been recognized by all concerned. His record had been such as to justify the belief that his administration would be creditable to himself and useful to the State. Commenting on Canby's appointment, the Courier said: "He is not, it is understood, a politician or wedded to the interests of any party organization. He has no other option than to enforce

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[27] See the New York Tribune, Aug. 28, 1867.

the reconstruction acts. It is believed that he will administer these in a spirit of justice and liberality, without prejudice or passion, and with a desire only for the general welfare and for a harmonious restoration."[28]

Soon after assuming command Canby issued an order continuing in force in the district all orders which had previously been issued by Sickles.[29] His administration seems to have been generally harmonious except that the qualifications which he prescribed for jurors raised quite a disturbance in the courts. His order relative to the subject declared: "All citizens assessed for taxes and all citizens who have paid taxes for the current year and who are qualified and have been or may be duly registered as voters are qualified to serve as jurors. Any requirement of property qualification for jurors in addition to the qualification herein prescribed is hereby abrogated."[30] Judge Aldrich, presiding over the circuit court at Edgefield, declined to obey the order on the ground that it conflicted with his oath of office, which required him, to the best of his ability, "to discharge the duties of his office and preserve, protect and defend the constitution of the State and that of the United States." This oath required him further, he said, in drawing juries, to carry into faithful execution the act of the General Assembly commonly known as the jury law, passed in 1831. According to this law in South Carolina, those alone were qualified to serve as jurors who were qualified to vote for members of the legislature and who had paid the previous year a tax of any amount whatever on property held in their own right. For refusal to obey the order, Judge Aldrich was suspended from office and the State treasurer was ordered not to pay his salary.[31]

There was much dissatisfaction on account of Canby's ruling in this matter. The Courier said he had substituted his order for the laws of the State. The objections to the order

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[28] Courier, Aug. 30, 1867.
[29] New York Herald, Sept. 6, 1867.
[30] Courier, Oct. 3, 1867.
[31] Appleton, 1867, p. 698.

were that the reconstruction acts, although they did make changes upon the subject of suffrage and office, made none in reference to the qualifications for jurors. That the order excluded from the jury a large mass of the intelligence of the white people simply on the ground of their past political opinions. That while it shut out from the jury box a large number of the white race, it opened the door wide to the whole of the African race, just emerged from a condition of slavery, many of whom were ignorant and unable to read and write. That in some districts it placed the colored race in complete control of the jury box.[32] In Beaufort, for instance, by the severity with which the reconstruction clause of exclusion was construed, the registered colored voters were over two thousand five hundred, while the whites numbered but sixty-five.

Much pressure was brought to bear upon Canby with a view of inducing him to modify the provisions of the order. Governor Orr wrote the President, protesting against the execution of the order and urging that it be revoked. Canby seems to have decided later that his action was without due deliberation, and modified the order materially. His conduct in this particular was in marked contrast to the stubbornness of General Sickles and apparently operated to his credit in the estimation of the people.

Aside from registration, the foregoing is a brief account of military government in South Carolina under the reconstruction acts. It is perhaps proper to say that under the circumstances the administrations of Generals Sickles and Canby were as fair to all concerned as the times permitted.

In addition to the duty of preserving order, the reconstruction acts provided that each commanding general should cause to be made a registration of the citizens of the United States resident in his district and not disfranchised for participation in the rebellion. Accordingly, on May 8, General Sickles issued an order announcing that the registration

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[32] Courier, Oct. 3, 1867.

would begin on the first Monday in July, and giving instructions with regard to the manner in which the registration would be accomplished. His plan provided that one or more boards of registration, consisting of discreet and qualified persons, should be organized in each district or city to conduct the registration and make a return to him of the lists of voters. The districts of the State were to be divided into convenient registration precincts and the boards were to visit the different places in these precincts where eligible citizens might go to be registered. The boards of registration were to remain in session at each place of meeting two days from sunrise to sunset. All applicants for the office of registrar were to be recommended by a competent Federal officer. Before entering upon their duties they were required to take an oath that they had never voluntarily borne arms against the government of the United States; that they had never given aid, countenance, counsel, or encouragement to the persons engaged in armed hostility thereto, and that they had never sought, accepted, or attempted to exercise the functions of any office under any pretended authority hostile to the United States. Of course, this oath excluded practically all the intelligent native whites.[33]

But the work of registration did not begin at the appointed time, owing to the fact that Attorney-General Stanberry's interpretation of the reconstruction acts was at variance with that of General Sickles. The former contended that the provisions of the acts did not exclude from registration certain classes of persons involved in the rebellion. Not until after the passage, July 19, of a second supplementary act were the registration regulations definitely prescribed. This act defined the proper construction of the previous acts and removed all doubts as to who were entitled to register.[34] On August 1, Sickles issued an order by which police powers were given to the boards and provision was made for the punishment of persons causing disorder at the places of

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[33] S. Doc., 1st sess. 39th Cong., No. 14, p. 66.
[34] United States Statutes at Large, Vol. XV, p. 14.

registration. For the purpose of securing to the freedmen their right of registering, the order declared that if any person should suffer injury while seeking to exercise the right of registration, in addition to any penalty prescribed by law for the offence, damages should be awarded to the injured party against the perpetrator, and in case of default of payment damages should be assessed against and paid by the town or district. If such offenses were perpetrated by white persons disguised as blacks in order to escape detection, that fact was to be considered as aggravating the offense. Depriving a citizen of employment on account of his having registered was declared to be an offence punishable by the post court, and entitling the injured party to damages against the offender. Every citizen presenting himself for registry was to take and subscribe an oath that he had not been disfranchised for participation in any rebellion or civil war against the United States; that he had never been a member of any State legislature or held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that he had never taken oath as a member of Congress or as an officer of the United States or as a member of any State legislature or as an executive or judicial officer of any State, to support the constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid and comfort to the enemies thereof. Attention was called to the fact that the act of July 19 declared that no citizen should be entitled to be registered by reason of any executive pardon or amnesty for any act or thing which, without such pardon, would disqualify him for registration. Civil functionaries were notified that they would be removed from office if they used their official influence in any manner to hinder, delay, prevent or obstruct the due and perfect administration of the reconstruction acts.[85]

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[85] The order is published in the Courier of Aug. 5, 1867.

All preliminaries relative to the appointment of registrars and the assignment of precincts were completed by August 5. One hundred and nine precincts were established in the State, and a board, consisting of one colored and two white registrars, was appointed to each. The work of registration then went steadily forward.[36] The boards were required to make a second visit to the precincts in order to revise the lists secured on the first round, and to give an opportunity for registering to any who failed to exercise the privilege at the time of the first visit.

There seems to have been much hesitation on the part of the whites as to whether they should participate in the restoration of the State on the basis of the reconstruction acts. Many, in a condition of despair, manifested very little concern about registering. A letter signed by about sixty prominent men in the State was addressed to General Hampton, asking his advice as to their duty "in the important matters soon to be submitted to the people of this State."[37]

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[36] The unlettered blacks are said to have furnished a considerable fund of amusement in this new departure of registration. The following is an account found in the special correspondence of the New York Herald, Sept. 24, 1867: "Many of our new found brethren, in fact nearly all of them, had no idea what registering meant, and as a natural consequence the most ludicrous scenes transpired. Quite a number brought along bags and baskets 'to put it in,' and in nearly every instance there was a great rush for fear we would not have registration 'enough to go round.' Some thought it was something to eat; others thought it was something to wear; and quite a number thought it was the distribution of confiscated lands under a new name. . . . . All were sworn and several on being asked what was done when they were registered, said that, 'De gemblin wid de big whisker make me swar to deport de laws of United Souf Calina.'"

[37] Part of the letter reads as follows: "We have no intention to oppose the execution of any law even were it in our power; but under the reconstruction acts, certain latitude of action is left us which entails upon us entire responsibility for all consequences which may flow therefrom. We believe this responsibility to be very grave and these consequences vital to every class of our community, inseparably connected as are the interests of all. Recent events show that there is no longer a possibility of that entire harmony of action among our people for which you and we have heretofore hoped and striven. The views of the whole community are unsettled by the new aspect of affairs, and the people look to those who command their confidence for a course of action upon which all may agree who truly desire the prosperity of the State." Appleton, 1867, p. 696.

Hampton replied at some length, giving it as his opinion that every man who could should register and vote against the proposed convention. He maintained that it would be better for the State to remain under military control than to give its sanction to measures "which we believe to be illegal, unconstitutional and ruinous." He counselled friendliness and fair dealing toward the blacks, denying that they were in any way responsible for the condition of affairs in the State. If amicable relations were sustained, he said, the negroes would soon learn to trust the whites. He declared himself in favor of an impartial suffrage, and advocated a constitution conferring the elective franchise upon the negro on precisely the same terms as it was exercised by the white man. He thought a slight educational and property qualification would secure a proper adjustment of the question. In presenting his views on the suffrage, Hampton announced that he did not wish to be understood as recognizing the right of Congress to prescribe the rules of citizenship in the States. "The Supreme Court," he said, "has decided that the negro cannot be a citizen of the United States, and Congress cannot reverse that decision by an act. The States, however, are competent to confer citizenship on the negro and I think it is the part of wisdom that such action should be taken by the Southern States." [38] General Hampton's opinion seems to have been shared by other prominent men in the State. Ex-Governor Perry was especially active in urging the people to register and vote "No convention." [39]

[38] General Hampton's letter is printed in the Courier of Aug. 29.

[39] New York Times, May 22, 1867. On this subject the Courier of Aug. 6, said: "No South Carolinian, whether by birth or adoption, who is entitled to vote should voluntarily deprive himself of the right to cast it if occasion should require. He should not debar himself of this means of defence. How he shall use it or whether he shall use it is one thing. He should not, however, cast away his right to its exercise. To register can do no harm. Not to register may result in great injury. The former gives you the ballot and enables you to wield it. The latter course renders you at once powerless and deprives you of its exercise, however circumstances may demand its aid. We should not yield to indifference or surrender to despair. Each one who can should at least be prepared to do his duty by his ballot." See also an editorial, entitled "Our Necessary Course," in the Mercury, March 28, 1867.

The active work of registration proceeded without any serious interruption or tumult. By September 30 it was completed with the following result in the several districts:[40]

Districts.	Whites.	Blacks.
Abbeville	1,722	3,352
Anderson	1,801	1,398
Barnwell	1,902	3,695
Beaufort	927	6,278
Berkeley	982	8,264
Charleston	3,452	5,111
Chester	1,222	2,198
Chesterfield	1,071	317
Clarendon	754	1,552
Colleton	1,370	3,870
Darlington	1,572	2,910
Edgefield	2,507	4,367
Fairfield	942	2,434
Georgetown	432	2,725
Greenville	2,077	1,485
Horry	1,065	466
Kershaw	859	1,765
Lancaster	983	881
Laurens	1,628	2,372
Lexington	1,480	975
Marion	1,837	1,737
Marlborough	961	1,207
Newberry	1,131	2,251
Orangeburg	1,645	3,371
Pickens	2,075	851
Richland	1,236	2,812
Spartanburg	2,690	1,462
Sumter	1,190	3,285
Williamsburg	800	1,725
Union	1,426	1,893
York	2,606	2,072
Total	46,346	78,982

The foregoing table speaks for itself. It will be seen that of the thirty-one districts in the State twenty-one had negro majorities. In a few of the Piedmont districts, such as Newberry and Union, these negro majorities were doubtless due

[40] This table is taken from Appleton, 1867, p. 699.

to lack of interest on the part of the whites, as the whites have always outnumbered the blacks in the northern portion of the State. But leaving out about four districts it is safe to say that the registration included generally the male population of the State over twenty-one years of age who were able to register. It is needless to say that there was much despondency among the whites. The question which had previously been one of theory now assumed the shape of an ominous reality. The whites thought that the political supremacy of the black race would render the State unsuitable as a dwelling place for them, and many left her borders.

After the completion of the registration General Canby began preparations for an election to decide upon the holding of a constitutional convention. He issued an order announcing that on November 19 and 20 an election would be held at which all registered voters might vote "For a Convention" or "Against a Convention," and for delegates to the convention—"in case a majority of the votes given on that question shall be for a convention, and in case a majority of the registered voters shall have voted on the question of holding such convention." Boards of registration were instructed to revise the registration list, and on being satisfied that any person not entitled thereto had been registered, they were to strike the name of such person from the list. Judges of election were to be appointed by these boards. Sheriffs and other peace officers were required to be present at the polls during the two days of the election, and were made responsible for any interference with judges of election or other interruption of good order. Violence, or discharge from employment to prevent any person from voting, was to be reported by the judges of election to the post commanders, who should cause the trial of the offender by military tribunal. Barrooms, saloons and places where liquor was sold were to be closed on election days. The carrying of deadly weapons at or in the vicinity of the polling places was prohibited. Post commanders were to keep their troops well in hand on the days of election and be

prepared to act promptly if there was any disturbance of the peace. The number of delegates to the convention was fixed at 124, to be apportioned to the districts of the State in the ratio of their registered voters.[41]

Before the day set for the election the Conservative Democratic party of the State, represented by such men as General Hampton, Governor Perry, and Judge Aldrich, met in Columbia to decide upon a course of action. The supplemental reconstruction act provided that if the votes cast at the election should be a majority of all the registered voters, a majority of that majority would suffice to warrant the calling of the convention. Assuming that a majority of the votes cast would be for the convention—the registered negroes outnumbered the registered whites almost two to one—it was seen that votes cast *against* the convention would tell *in favor* of it as helping to make up a majority of all the registered voters. Without this majority actually voting, whether *for* or *against,* the convention could not be held. The proper policy, then, for all registered voters who were opposed to the convention was not to vote at all at the election. The Conservative Democrats, desiring to defeat the convention, decided to advise this course, and it was adopted almost uniformly by the white people throughout the State. This was the policy of "masterly inactivity." As usual it called forth some vigorous comment from the Northern press.[42] No action was taken in the matter of nominating delegates to the convention. Before adjourning an address was issued to the people, in which the whole policy of the general government was con-

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[41] Printed in the Courier of Aug. 18, 1867.

[42] The New York Herald, in an editorial of Dec. 17, 1866, had this to say: "It is apparent that their ruling classes have settied down into a dogged resolution to do nothing to help themselves into a readmission into Congress. They have fallen into the serious mistake that if they do nothing, Congress can do nothing with them. But let South Carolina understand that by this policy of 'masterly inactivity' she may be merged by Congress as part of a vast unorganized territory into the new territory of North Carolina, and she will be apt to realize the dangers of doing nothing to regain her character and to retain her boundaries as a State."

demned in unmeasured terms. The closing paragraph of the address read: "Free negro labor, under the sudden emancipation policy of the government, is a disaster from which, under the most favorable circumstances, it will require years to recover. Add to this the policy which the reconstruction acts propose to enforce and you place the South politically and socially under the heel of the negro; these influences combined will drag to hopeless ruin the most prosperous community in the world. What do these reconstruction acts propose? Not negro *equality* merely, but negro supremacy. In the name, then, of humanity to both races; in the name of citizenship under the constitution; in the name of a common history in the past; in the name of our Anglo-Saxon race and blood; in the name of the civilization of the nineteenth century; in the name of magnanimity and the noble instincts of manhood; in the name of God and nature, we protest against these acts as destructive to the peace of society, the prosperity of the country and the greatness and grandeur of our common future. The people of the South are powerless to avert the impending ruin. We have been overborne, and the responsibility to posterity and to the world has passed into other hands."[43]

Previous to the meeting of the Conservative Democrats, a convention of the Union Republicans had been held at Columbia. They claimed that their convention was the first ever held by the *people* of South Carolina. A considerable majority of the delegates were negroes, while most of the white delegates were officers in the Freedmen's Bureau, attachés of the Federal government and Northern adventurers who had drifted into the State. They adopted a platform expressing their entire and cordial sanction of the recent action of Congress, and setting forth some of their leading principles on political matters. They favored a uniform system of free schools open to all. They con-

[43] Published in the Courier of Nov. 9, 1867.

demned the policy of President Johnson as unjust, oppressive, and intolerable, and pledged themselves not to support any candidate for office who would not openly endorse the principles adopted by the Union Republican party.[44]

The election to decide on the question of calling a convention was held on the 19th and 20th of November, with the following results:[45]

Registered voters in the State		125,328
Votes cast		71,087
For a convention	whites .... 130 blacks 68,876	69,006
Against the convention—all whites		2,081

The above figures indicate how almost completely the whites ignored the election. Nearly all the votes cast were cast by the negroes and in favor of a convention. The one hundred and thirty whites who voted for the convention practically represented the whole white Republican vote in the State at the time.

[44] The proceedings of the Republican convention are published in the Courier of July 28, and 29, 1868.

[45] Appleton, 1867, p. 700. For the vote by districts, see the New York Tribune, Dec. 9, 1867.

CHAPTER IV.

THE BEGINNINGS OF THE "CARPET-BAG REGIME."

The question of holding a convention having been decided by the election, the delegates from the several election districts of the State assembled by order of General Canby[1] at the club-house in Charleston, January 14, 1868, to frame a new constitution. The assembly was composed of fifty-one white and seventy-three negro members; and in its personnel, perhaps there have been amongst civilized peoples, few law-making bodies to be compared with it. It was alluded to by the newspapers by such names as the "Great Unlawful," the "Congo," and the "Ring-Streaked and Striped Negro" convention.[2] An analysis of the elements of the convention will result in this general classification: (1) native whites without distinction or reputation; (2) ex-Federal officers; (3) adventurers in search of promotion or plunder; (4) negro lawyers and missionaries; (5) former slaves. Only twenty-three of the white delegates were *bona fide* citizens of the State. Among these were F. J. Moses, Jr., who as aid to Governor Pickens had helped to haul down the Union colors at Fort Sumter, and who afterwards became a very corrupt "scalawag" governor; Camp, a "moonshiner" from Spartanburg, who shortly before his election to the convention had been "broken up" for illicit whiskey distilling; T. J. Robertson, who had grown rich as a war speculator and who afterwards became United States senator; C. C. Bowen, who had been accused of bribing a man to assassinate a Confederate officer, and tried for murder;[3] J. M. Rutland, who after the Brooks-Sumner episode in the United States Senate, made up a purse to buy a cane for Brooks, but afterwards became a strong unionist. Seven

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[1] New York Tribune, Jan. 3, 1868. [2] Mercury, Feb. 1, 1868.
[3] The Charleston Republican, Feb. 10, 1871.

of the white delegates had been Confederate soldiers. The "carpet-bag" element was especially prominent in the convention. The most conspicuous members of this class were Niles G. Parker and D. H. Chamberlain, of Massachusetts, who afterwards held the offices of state treasurer and governor, respectively. Other "carpet baggers" were C. P. Leslie, New York, formerly in the internal revenue bureau; G. Pillsbury, vice-president of the Union Leagues in the State; and J. K. Jillson, whose best claim to notoriety came through the fact that he had married a negro woman. There were some able non-resident colored lawyers in the body, among whom may be mentioned J. J. Wright, L. S. Langley and W. J. Whipper. Whipper was a man of decided ability and was afterwards elected judge, but was not permitted to serve.[4]

Of the one hundred and twenty-four delegates, forty-four were foreigners so far as the State was concerned. Massachusetts contributed nine delegates; North Carolina, four; Pennsylvania, two; several other States, one each. There were also members of the convention who were from Denmark, Ireland, Dutch Guiana, and other foreign countries.[5] One account gives the number of preacher delegates as seven. The most prominent of these were R. H. Cain,

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[4] Sketches of the delegates to the convention are given in the New York Times, Jan. 23, 1868, and in the New York World, April 10, 1868.

[5] The New York World of April 10, 1868, gives the following table showing the residence of the delegates:

Whites.		Negroes.	
South Carolina	23	South Carolina	57
North Carolina	3	Pennsylvania	2
Georgia	1	Michigan	1
Massachusetts	7	Georgia	1
Connecticut	1	Tennessee	1
Rhode Island	1	Ohio	1
New York	1	North Carolina	1
Other Northern States	5	Virginia	1
England	2	Massachusetts	2
Ireland	1	Dutch Guiana	1
Prussia	1	Unknown	5
Denmark	1		
Unknown	4		73
	51		

colored, afterwards a member of Congress; and B. F. Whittemore, white, of Massachusetts, later elected to Congress, but turned out for selling West Point cadetships. Fifty-seven of the seventy-three colored delegates had, three years before, constituted part of the slave property of South Carolina, and it is needless to say that illiteracy was one of their chief characteristics. The most famous native negro in the convention was Beverly Nash, of Richland District. He had been a hotel porter in Columbia, but after the war turned his attention to oratory and soon attained political prominence.[6]

The convention was called to order by Timothy Hurley, of Berkeley District, who moved that T. J. Robertson be requested to act as temporary chairman. The motion was carried and Mr. Robertson, on taking the chair, made a short address, in the course of which he said: "It becomes us to frame a just and liberal constitution that will guarantee equal rights to all, regardless of race, color or previous condition. I trust there will be no class legislation here. I hope we will act in such a manner as will reflect credit upon ourselves and secure the confidence of the people of the State whom we represent."[7]

The chair ruled that the possession of General Canby's military order was sufficient evidence of membership in the convention, and that ninety-two members having responded to the roll-call, it was unnecessary to go into any further investigation as to credentials.

A. G. Mackey, collector of the port at Charleston, was chosen president of the convention, and C. J. Stolbrand, secretary. These two officers were white; the assistant secretary, engrossing clerk, sergeant-at-arms, doorkeeper, and messengers were colored.

The same writer called attention to the significant fact that in a body purporting to be a South Carolina convention, but one man in five, or twenty-three out of one hundred and twenty-four was a legitimate voter of the State.

[6] Nash afterwards became State Senator, and was known as a $5000.00 man, that is, he was said to have asked that amount for his vote on certain bills.

[7] Journal of the Convention, p. 6.

Contrary to what might have been expected, the temper of the convention, among the negro members especially, was at first very moderate. President Mackey said, upon taking the chair, that he entertained no vindictive feelings toward those of his fellow citizens who, through the influence of their political leaders, had been lead to entertain erroneous sentiments. He was opposed to all confiscations of property, and to any general disfranchisement of the masses of the people. If it would not endanger the safety of the nation he favored a general amnesty.[8] To illustrate further the moderation with which the convention started off, when the question of electing a chaplain came up several members expressed themselves as strongly opposed to "digging unnecessarily into the State treasury." This item of expense was avoided altogether and the duty of chaplain was performed by the several white and colored ministers in the body. This economy in the use of the people's money was in marked contrast to the subsequent record of these same founders of the Republican party in South Carolina.

Quite a lively discussion arose early in the session over a resolution proposing to invite Governor Orr to address the convention. Some opposed the resolution outright, others favored it only after the word "Provisional" had been inserted before the word Governor.[9] But despite the oppo-

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[8] Journal of the Convention, p. 16.

[9] Said Beverly Nash: "I want to say, Mr. President, that I am opposed to the resolution inviting Governor Orr to address this convention. I am opposed to men of his stripe exercising the privilege of free speech inside of the hall. We didn't come here to see Governor Orr make a flight like a squirrel from one tree to another. I remember he said to me last spring, 'better wait and find out whether there is going to be a failure or not; don't jine the Republican party yet; don't jine the Democratic party.' He wanted me to sit on the fence with him, and when he got ready to make one of his flights I suppose he wanted me to follow him. No, gentlemen, I don't propose that Governor Orr come here to teach us ground and lofty tumbling. I come from a part of the country where the people are Republican; from a district where the people would rather hear Governor Perry any time, because we know he is going to cuss us and abuse us every way he can; but Governor Orr! why, he tumbles so fast it makes a man's head 'dizzie' to look at him." Journal of the Convention, p. 33.

sition, Governor Orr was invited and improved the occasion to offer the convention some very timely advice. He did not hesitate to say that the convention was representative of only the colored population of South Carolina; but the intelligence, wealth and refinement of the State had no voice in its deliberations. He therefore all the more earnestly recommended wise and moderate action on the part of the delegates, and suggested some of the features which he considered most essential in the new constitution.

He urged the removal of all political disabilities from the white citizens in these words: "Those of you who are to the manor born know the fact that very few white men in South Carolina abstained from some participation in the late war. You know further that the intelligence, wealth, and virtue of South Carolina entered eagerly into that war, and that when it is attempted to disfranchise or denounce these persons as unworthy of public trust, it is to exclude the real intelligence and experience of the State from her councils."

In regard to the election franchise, he advised an educational or property qualification, applicable to blacks and whites alike.[10]

A matter that early engaged the serious attention of the convention was the perfecting of ways and means for the payment of the per diem and mileage of the delegates. The reconstruction acts provided that the expenses of registration were to be met by the Federal government, but the State itself was left to defray the cost of its constitutional convention. For this purpose the acts declared that the convention should levy and collect a tax, and not use the money of the State treasury.

The finance committee reported a recommendation that the convention pledge the faith and credit of the State for the redemption of the $500,000 of bills receivable authorized by a previous act of the legislature, and that the members

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[10] Journal of the Convention, p. 45.

accept these bills in payment for their services.[11] For the benefit of those who were not willing to be paid in State bills, and insisted on the immediate levy of a tax to be paid in greenbacks, it was pointed out that the collection of such a tax in a time sufficiently short to meet the needs of the convention was not possible. To overcome the difficulty under which the convention labored of not being able to use the money in the State treasury, the committee recommended the passage of an ordinance requesting the commanding general to issue orders from time to time upon the treasury for the payment of such sums as might be necessary to defray the current expenses of the convention. The ordinance further provided that the revenue from a tax, to be levied and collected at a convenient time under military order, should be deposited in the State treasury to replace the advances made to the convention. This tax was to be laid on all real estate; on articles manufactured for sale during the year 1868; on buggies, wagons, carriages, omnibuses, gold and silver plate, watches, jewelry and pianos; and on every person keeping a dog or dogs. At the different rates which were fixed upon these items, it was thought the tax would amount to $75,000, the sum estimated as necessary to defray the expenses of the convention. The per diem of the members was fixed by the ordinance at nine dollars for each, and the mileage at twenty cents per mile to and from Charleston.[12]

The convention was occupied a week in discussing the report of the finance committee. The recommendation that members be paid in the bills receivable of the State proved to be a severe strain upon the patriotism of not a few of the delegates, although they all asserted that they did not come to the convention to make a fortune. The chairman of the committee argued that the members should show a willingness to take the State bills, thereby enhancing their value and establishing the credit of the State. This appeal, how-

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[11] Journal of the Convention, p. 155.

[12] Ibid., p. 154.

ever, does not seem to have been very effective. There were those in the convention who would be paid in nothing but Unitd States currency, and if such currency could not be obtained in time by taxation, then they demanded that bonds be issued and sold for greenbacks. But the argument was advanced that if the bonds of the State were put upon the market they would not bring ten cents on the dollar. When it was found that the clamor for greenbacks was useless, the members proceeded, as a last resort, to vote an increase from nine to eleven dollars per day in their salaries. The valuable time consumed and the spirit manifested in this debate would indicate that the delegates of the convention were more concerned with what they were to receive for their services than they were in framing an instrument of government for the State.[13]

As none of the influential newspapers of the State were in sympathy with the convention and its objects, the need of an organ to uphold the Republican cause was strongly felt by the leaders of the new party.

An effort was made to supply this need by electing a man to do the convention printing who had agreed, in the event of his election, to establish a Republican newspaper. The fact that the convention was without an organ and that the conservative papers manifested a spirit, if not hostile at least indifferent, seems to have caused some opposition to granting the privileges of the floor to the press representatives. The Courier and the News seldom alluded to it editorially, and published simply the daily proceedings as furnished by the convention's reporter. But from the very beginning of its sessions, the convention had been the object of many scathing attacks by the reporters and editors of the Mercury, and the proceedings indicate that there was considerable wincing under the severe lampoons of the individual members.[14] One delegate said he would not have

[13] Journal of the Convention, p. 204.

[14] The following are specimens of characterizations of different members of the convention by the Mercury in its issue of Feb. 5,

been slandered as he had been by the Mercury since coming to the convention for five hundred dollars per day. The comments became so distasteful, that the reporter of the Mercury was openly assaulted by E. W. M. Mackey, a son of the president, who had gone up to Orangeburg and had himself elected a delegate. After this digression, a debate of some length occupied the attention of the convention. Finally, a resolution was offered by D. H. Chamberlain denouncing the Mercury as a scurrilous and libelous sheet, and excluding its editors and reporter from the convention hall.[15] Although many declared that they were in favor of free speech and a free press, the resolution was adopted by an almost unanimous vote.

Many other subjects occupied the time of the convention before the real work of framing a constitution was taken up. Thus a debate arose over the adoption of a resolution which denounced the former ruling class and declared that the safety of the government demanded the speedy removal of the officers of the State government.[16] Another resolution

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and subsequently: "Joseph Crews—Is a white man well known to many merchants in Charleston who have had occasion to regret his acquaintance.

"S. A. Swails—Is a very light mulatto with scarcely any of the features characteristic of the negro race. He sports a thick black mustache and when sober would make a good looking bandit.

"C. P. Leslie—White, hails from Brooklyn, N. Y. Obtained money under false pretences. His wife in New York wrote that he had run off and left her in a destitute condition. . . . He expresses a great contempt for the negroes on all occasions and speaks sneeringly of his co-delegates in debate. One sable delegate threatened to knock him down if he called him Daddy again, but Leslie merely laughed at him, repeating the epithet immediately."

[15] Journal of the Convention, p. 187.

[16] Ibid., p. 71. Later in the session, T. J. Robertson introduced a resolution to petition General Canby to abolish the district courts and dismiss the judges. His remarks in behalf of the resolution would seem to indicate that he was bidding for the patronage of the negroes. He said: "I know that most of the judges of the district courts elected by the legislature of 1865, are unfriendly to the colored people and opposed *in toto* to the reconstruction acts of Congress. Their prejudices are so bitter that it is impossible for the colored man to obtain justice. These courts are now in session in the different country districts every week, and colored persons are being tried, convicted and sent to the penitentiary on the most

was introduced which recommended that the convention take necessary action to expunge from the vocabulary of South Carolina such epithets as "negro," "nigger," and "yankee."

An ordinance to annul contracts and liabilities where the consideration was based on the purchase of slaves, engaged the attention of the body for some time. Whether favoring or opposing the ordinance, all could agree in denouncing the right of property in slaves. A great deal of eloquence was expended by the different delegates on the punishment due to former slave owners. One delegate said: "A few years ago the popular verdict of this country was passed upon the slave seller and the slave buyer, and both were found guilty of the enormous crime of slavery. The buyer of the slave received his sentence, which was the loss of the slave, and we are now to pass sentence upon the seller. We propose that he shall be punished by the loss of his money." [17] Those who stood for the resolution said, "let the creditor take the consequences of his rebellion:" those who opposed it said, "let the debtor fear the penalty." Since each side put forth in part the same argument, viz., the impossibility of property in man, the question turned only on the passage of a law violating the obligation of contracts. This obstacle did not long stand out against the great moral rebuke which the convention felt was needed to be administered to the former slave owners, and the ordinance was adopted by a large majority.[18]

A subject receiving special attention was a resolution petitioning Congress to lend the State one million dollars to purchase lands for the colored people. This measure was known to be very popular among the negroes, who expected

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trivial offenses. It is upon these grounds in performance of what I feel to be my duty, that I have drawn a petition requesting General Canby to abolish the district courts of the State." The resolution was unanimously adopted. Journal of the Convention, p. 358.

[17] Speech of R. B. Elliott, Journal of the Convention, p. 227.

[18] The vote stood, yeas 95, nays, 19. Journal of the Convention, p. 248.

that, in addition to their freedom, the government was going to give each of them forty acres of land and a mule. Those who spoke against the resolution openly denounced the promoters of the scheme as acting from political motives and as deceiving the colored people by raising expectations that could not be realized.[19] In vain did opposition insist that Congress would not listen to such an appeal; that the effect of such a petition would be to cause the laborer to quit his employer in the expectation of soon possessing a farm of his own. The friends of the measure, relying perhaps upon the generosity of Congress as displayed in the Freedmen's Bureau, pretended to think their request would be granted for the asking. "Help the colored man," became the cry. F. J. Moses, Jr., a candidate for Congress, in the course of a lengthy speech, said: "How do you propose to reconstruct the Union. There are a thousand ways of picking up the broken fragments and reconstructing a vessel, but

[19] In an able speech on the question, C. P. Leslie said: "But that was not the real question (no money in the United States treasury) before the house. The real question, when practically stated is how far the Republican party of South Carolina will tolerate demagogism. That was the question in one of its phases. Another phase was how much political capital could he (the owner of the petition, Rev. R. H. Cain, colored), make out of a measure that everybody and the world knew would not bring a dollar for the relief of the people. If the owner of the motion had, in his argument in support of the measure, shown that there was a reasonable probability that the loan could be obtained if the petition passed the convention, I would not have said a word. But his argument was an appeal to the passions of the colored people of the State. He undertook to hold out to them the probabilities of their getting land and told them they were entitled to it, that it was just they should have it. He saw among the crowd of spectators behind the railing the artisans, the working men; he saw the laborers and farmers and he appealed to them and their passions, and not to the good sense of the house. It then became clear to my mind that the member from Charleston (Rev. R. H. Cain), from the way he handled the subject, proposed to make political capital for himself, and had he not taken that course I would not have said a word. I am sorry to see that a delegate from Charleston, who stands so well, so high in the community both for respectability and honor, whose motto is to do right 'though the heavens fall,' a man so intelligent as he is, offer a resolution or petition upon which he knew not one dollar could be obtained, and that it was offered only for political effect." Journal of the Convention, p. 389.

how do we propose to do it? Do we propose to build it up on a solid foundation, that shall resist the storms of ages; or do we expect to patch up here and there, to build up with men not devoted to the government whom the government has merely freed to put in a worse condition than before? There is but one way of making a man love his country: I love my country town, I love the house I live in, the land I live on, the sand I walk on; because in that sand, in that house, in that town, I have an interest. I have an interest in the wealth and prosperity of the State. You cannot make citizens out of these people unless you give them those things which make men citizens. I say you must bind them to the government with ties that cannot be broken. Give them land; give them houses. They deserve it from the people of South Carolina. They deserve it for protecting the families of those who were away from their homes during the late war."[20] Other speakers followed in the same strain. "Let the large estates of the whites be divided," said F. L. Cardozo, "and the poor colored people will have a better opportunity of buying lands."[21]

The debates on this question were very bitter and of a nature calculated to arouse the prejudice of the negroes against the whites. The charge was common that the whites received more aid from the Bureau than the blacks and that the negro had a right to share the white man's lands. It

[20] Journal of the Convention, p. 433.

[21] Ibid., p. 405. In the same connection R. H. Cain said: "After fifty men have gone on a plantation, worked the whole year at raising twenty thousand bushels of rice, and then go to get their one-third, by the time they get through the division, after having been charged by the landlord twenty-five or thirty cents a pound for bacon, two or three dollars for a pair of brogans that cost sixty cents, for living that cost a mere song, two dollars a bushel for corn that can be bought for one dollar; after, I say, these people have worked the whole season, and at the end make up their account, they find themselves in debt. The planters sell their cotton, for it is said that the negro has not brains enough to sell his own cotton. He can raise anything; he can dig ditches, pick cotton, but has not the sense to sell it. I deprecate that idea. I would rather see these people have little cottages and farms for themselves." Journal of Convention, p. 423.

was charged that this electioneering scheme of arraying the negroes against the whites was regularly adopted as a part of the political tactics of the Republican party in South Carolina. The blacks, peaceable when let alone, were easily influenced by the politicians, who cared naught for the welfare of the State or of the negro, except as he ministered to their aggrandizement.[22]

Two topics which demanded perhaps the largest amount of attention of any treated by the convention were, first, a resolution petitioning General Canby for a temporary stay of sales on execution for a period of three months, and, second, the passage of a "stay law" to be effective after the ratification. The leading supporters of the first measure were R. C. DeLarge, W. J. Whipper, and F. J. Moses, Jr.; T. J. Robertson, R. H. Cain, and F. L. Cardozo were the principal opponents. The debate on the resolution was characterized by much bitterness and many personal allusions. T. J. Robertson said: "I for one am willing to see the property of the country, if necessary, change hands, and if lands are sold cheap, so much the better for the working man. The men asking relief, with but few exceptions, are those who do not recognize the validity of the reconstruction acts of Congress. Some of them call this convention a menagerie, a collection of wild animals. Is this menagerie to protect their property at the expense of the legal citizens and the working men of the country, or are we to obey the laws which recognize no such measures?"[23] But the de-

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[22] In order to make such measures as these appear more ridiculous, one white delegate offered the following: "Resolved, That of one blood are made all the nations of the earth; that the poor shall be always with us; that the hungry shall always need food; the naked clothing; the landless, land; the homeless, homes; the moneyless, money; in fine, that all future legislation shall be for the interests of humanity, for justice and protection to the poor, for justice and security to the rich." Mercury, Feb. 1, 1868.

[23] Journal of the Convention, p. 106. R. H. Cain was equally as vindictive. Extracts from his speech are as follows: "The right of the poor man is equally as sacred to the convention or the commanding general as the right of the rich man. The large landholders have been for years the recipients of all the benefits from

fenders of the resolution were equally zealous. They accused the opposition with trying to defend the measure for purely personal motives and with a view to filling their own coffers. They said that the harangues in the interest of the poor man were simply for effect, and denied that any further impoverishment of the rebels would result in good to any class.

Whipper, who made the ablest speech that was delivered in behalf of the resolution, said: "I hope there is not a man in this body, whatever may be his course, who will suffer himself to be swayed by passion or prejudice. I hope whatever you do here you will do it feeling that it is for the good and for the best interest of the people you represent. I hope it will not be done as a measure of punishment to a people already punished too severely. Whatever you do, above all do I hope it will not be done for the purpose of revenge."[24]

After a four days' debate, the resolution passed the convention by a majority of five.[25]

The second measure of relief, known as the "stay law," provoked a discussion similar in its nature to that which was brought out by the resolution just mentioned. It was long under consideration and was not adopted until the last day of the session. It provided that execution on judgments already rendered should be for only one-tenth of the amount due, and that other executions for proportional amounts

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these lands. They entered heart and soul into all acts of rebellion. They have made their money; they have amplified their domains by virtue of speculations in lands. They are that very class of men who have been standing out against the government, against the constitution. These men have sacrificed money and time to defeat the assembling of this convention. Ought they not, therefore, to be compelled to pay their honest debts. They run out into the great sea of speculation, they run the hazard of the die and should take the consequences. I am for the well being of the State but I do not believe that in the passage of such an act the poor man will be benefitted. I believe it will result only to the benefit of those who have their large, broad acres, the rich and the luxuriant, who once rode in their carriages, who made the war which has brought them to destruction."

[24] Journal of the Convention, p. 129.

[25] Ibid., p. 148.

should be issued, from year to year till 1872, when the law would become inoperative.

The qualifications of electors was, of course, the vital question before the convention. The committee on franchise and elections recommended that every male citizen of the United States of the age of twenty-one years and upwards, without distinction of race, color, or former condition, who had been a resident of the State for one year should be entitled to the franchise; "Provided, that every person coming of age after the year 1875, to be entitled to the privilege of an elector, shall be able to read and write; provided, further, that no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the constitution of the United States, until such disqualification shall be remedied by the Congress of the United States; but the General Assembly shall have power to remove such disability by a two-thirds vote."[26] But this effort to incorporate an educational qualification, effective after 1875, failed by a vote of 107 to 2,[27] and a section was inserted in the franchise article, which forever prohibited the passage of any law depriving citizens of the right of suffrage.[28] The severity of the second proviso was increased by the clause being stricken out which gave the General Assembly the power to remove the political disabilities of the whites. Thus the right of manhood suffrage was extended universally to the colored race, while the restrictions under which the whites were already placed were left unchanged. The result of this action was, of course, to leave the State entirely in the control of the negroes.

Another important clause in the constitution provided that all the public schools, colleges, and universities of the State should be open to all of the children and youth of the State regardless of race or color.[29]

The insertion of a clause in the constitution providing for a homestead law was one of the chief features of the

[26] Journal of the Convention, p. 824.
[27] Ibid., p. 834.
[28] Ibid., p. 839.
[29] Ibid., p. 889.

session. The section containing the law first called for a homestead exemption of one hundred acres of land in the country, or town property to the value of two thousand dollars.[30] There seemed to be none who opposed the law in principle, the only difficulties being to decide on the amount to be exempted from execution and whether or not the law was to be retroactive in its operations. This latter difficulty, however, did not trouble any but a few of the wealthy delegates. T. J. Robertson offered an amendment that no homestead should be exempt from levy for any just debt existing "prior to the passage of this constitution." He claimed to favor the law as applied to the future but contended that to exempt property already involved would be to pass an *ex post facto* law, which they had no authority to do.[31] But the convention did not favor this amendment, and the section passed as it was first reported. The debate on this measure was unusually prolonged and was characterized by a great display of oratory.[32]

Several noteworthy ordinances, besides those already mentioned, were passed. One repealed "all acts and pretended acts" of the legislature, passed since 1860, which pledged the faith and credit of the State for the benefit of any corporate body.[33] Another provided that at an election to be held April 14, the constitution should be submitted for ratification, and that at the same time an election should be held for members of the legislature, governor, and other State officers. Others provided for the organization of the General Assembly and inauguration of the governor on May 12, for the ratification of the fourteenth amendment to the Federal constitution, and for the election by the General Assembly of two United States senators.[34] Also, a resolution was

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[30] Journal of the Convention, p. 452.

[31] Mercury of Feb. 10, 1868.

[32] The Journal, p. 476, contains the following: "Here Mr. Leslie was so overcome by his feelings as to burst into tears and sat down amidst intense silence, having evidently enlisted the warmest sympathies of the members of the convention."

[33] Journal of the Convention, p. 872.

[34] Ibid., p. 904.

adopted petitioning Congress to remove all political disabilities from the citizens of the State.

The convention adjourned on March 17, having been in session fifty-three days.

On March 13, General Canby announced that the convention had framed a constitution and proceeded to issue an order for holding an election on the days fixed by the convention ordinance. This provided that all the registered voters of the State might vote "For Constitution" or "Against Constitution," and also "on the same ballot for the State officers and members of the House of Representatives specified in the aforesaid ordinance." The boards of registration were instructed to revise, for a period of five days, the registration lists, and upon being satisfied that any person not entitled thereto had been registered, to strike the name of such person from the lists. The names of all persons who possessed the qualifications required by the acts and who had not already been registered, were to be added to the lists. In deciding who were to be stricken from the lists, the attention of the boards was especially directed to the supplementary reconstruction act of July 19, 1867. In order to secure a full vote at the election, it was ordered that a voter who had resided in a district for ten days might vote upon presentation of his registration certificate, or upon his affidavit that he had not already voted during the election. All judges and clerks employed in the election were required to "take and subscribe the oath of office prescribed by the law for officers of the United States." No member of the board of registration who was a candidate for office was allowed to serve as a judge or manager of election. The same regulations were laid down for the preservation of order as were prescribed for the election to decide upon the holding of the constitutional convention.[85]

Ten days later Canby issued another order, giving further details regarding the revision of the registration lists and the conduct of the election. Civil officers were instructed

[85] The order is printed in the Courier of March 16, 1868.

to render such services as were required in posting and serving notices. Registrars, by becoming candidates for office, were not to be disqualified for continuing to act as registrars. Wherever vacancies occurred in the registration boards, the post comanders were to fill them and report their action promptly to the commanding general.[36]

On information received from different sections of the State and from members of both political parties that combinations had been formed to prevent, delay, or hinder persons from exercising their rights at the coming election, General Canby issued another order on April 6, giving warning that any attempt to interfere with the election would make the offenders amenable to all the penalties of the law. If at any polling place the ballot boxes should be destroyed, or if the electors should be prevented by intimidation from voting, a new election was to be ordered for that precinct. To the end that election officers might be protected in the discharge of their duties and that voters might be protected in the exercise of the franchise, post commanders were authorized to station military commissioners at places remote from their headquarters. These commissioners were to have troops at their disposal and were empowered to exercise a general police authority during the election. All arrests made by the commissioners were to be reported to the commanding general for his decision as to whether the offenders were to be tried by a military tribunal or be brought before a civil court. All persons, whether in authority or not, were required to obey and execute all lawful orders of the military commissioners.[37]

From these regulations it is seen that General Canby spared no pains to poll the largest possible strength of the registered voters. In this regard, at least, he enforced the reconstruction acts to the very letter and by every means at his command. The bitterest radical could not have found reason to complain of his methods.

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[36] Courier, March 24, 1868.
[37] Ibid., April 7.

Some time before the adjournment, the members of the constitutional convention resolved themselves into a Republican nominating body and placed candidates before the people for the State offices. With one exception the nominations were made from the delegates to the convention. T. J. Robertson and General R. K. Scott were the candidates for the gubernatorial nomination. Scott was chosen, and, his nomination being endorsed by Robertson, the convention adopted a resolution pledging their support to Robertson for the position of United States senator. General Scott was a native of Ohio, and was, at the time of his nomination, assistant commissioner of the Freedmen's Bureau in the State. The other nominations were: for lieutenant governor, Lemuel Boozer; for state treasurer, N. G. Parker, from Massachusetts; for comptroller general, J. J. Neagle, from New York; for secretary of state, F. L. Cardozo, colored; for adjutant and inspector general, F. J. Moses, Jr.; for attorney general, D. H. Chamberlain, from Massachusetts.

These nominations illustrated how completely the new party was in the control of the outsiders or "carpet baggers." The native negroes came in for no share of the offices, and even the so-called white "scalawags" were not to be preferred before Northern men.

The convention nominated delegates to the national Republican convention, declared General Ulysses S. Grant their unanimous choice for president, and after singing "Rally Round the Flag" adjourned *sine die*.[88]

The Democratic convention assembled at Columbia April 3, and adopted a series of resolutions representing the views of their party. They professed their allegiance to and co-operation with the national Democratic party, "a party faithful to the principles of the Federal constitution as maintained by the fathers of the republic." All men prepared to act with the party were earnestly invited to form Democratic clubs in every section of the State. The people were urged

[88] The proceedings of the Republican convention are published in the Courier of March 12, 1868.

to go to the polls and vote against the constitution of the radical faction, and to vote for good and true men for all offices within their gift. "At the same time, in voting for officers under the constitution, we would put on record our protest against its validity." To encourage the negroes, the delegates declared their willingness to grant them, under proper qualifications as to property and intelligence, the right of suffrage.

After adopting a platform, the convention proceeded to nominate State officers, congressmen, and delegates to the national Democratic convention. Two addresses were also issued, one to the conservatives of the State and one to the colored people.[39]

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[39] The address to the colored people is printed in the Courier of April 6. An extract from it is as follows: "Your present power must surely and soon pass from you. Nothing that it builds will stand and nothing will remain of it but the prejudices it may create. It is therefore a most dangerous tool that you are handling. Your leaders, both white and black, are using your votes for nothing but their individual gain. Many of them you have only known heretofore to despise and mistrust, until your leagues commanded you to vote for them. Offices and salaries for themselves are the heights of their ambitions; and so that they make hay while the sun shines, they care not who is caught in the storm that follows. Already they have driven away all capital and credit from the South. What few enterprises are carried on are only the work of Southern men, who have faith that the present state of affairs is but temporary. The world does not offer better opportunities for the employment of capital than are found here, but will your radical friends send their money here to invest? Not one dollar. They would just as soon venture an investment in Hayti or Liberia as commit their money to the influence of your legislation. Capital has learned to shun it as a deadly plague. . . . . . We do not pretend to be better friends to your race than we are to ourselves, and we only speak where we are not invited because your welfare concerns ours. If you destroy yourselves you injure us and we would if we could avert the whole danger. We are not in any condition to make you any promises or to propose to you any compromises. We can do nothing but await the course of events—but this we do without the slightest misgiving or apprehension for ourselves. We shall not give up our country and time will soon restore our control of it. But we earnestly caution you and beg you in the meanwhile to beware of the use you make of your temporary power. Remember that your race has nothing to gain and everything to lose, if you invoke that prejudice of race which, since the world was made has ever driven the weaker tribe to the wall. Forsake then the wicked and stupid men who would involve you in this folly and make to yourselves friends and not enemies of the white people of South Carolina."

The address to the conservatives recited the deplorable condition of the State and the objections of the convention to the radical constitution. It urged the whites not only themselves to vote, but to persuade the negroes and show them that it was only to their interest to vote with the whites.[40] The nominee for governor was W. D. Porter, of Charleston; the incumbents of the other State offices were, with one or two exceptions, renominated.

Before adjourning, the convention requested Chairman Burt to give his opinion as a lawyer on the legality of the new constitution. He stated it as his earnest conviction that the constitution, if ratified, would be fatal to the welfare of both races. "I protest," said the speaker, "against that constitution because it seeks to destroy our past, our history—every landmark. No people on this continent can endure the burden of taxation that that constitution imposes. All taxation by that instrument is imposed upon real estate and the sale of merchandise. The taxable property is held by one race and the law-making power by the other. Not only the arduous appropriations are paid by the whites, but all others with the exception of a small tax for educational purposes. Without any qualifications whatever, one class is allowed to vote, while the other is disfranchised. Those who do not hold the property vote and make laws, while the property owners are not allowed to vote for even a constable. So cumbersome and conflicting are the details of that constitution that we will be crushed by it. The impoverished people cannot bear up under it. Every antagonism between the two races is incited by it. I call upon every white man and every colored man to unite, resist, and defeat that constitution by every means our oppressors permit us to use. It is a duty we owe to the living and to the dead." Burt's address, of which the above is only a part, was listened to with close attention and at its conclusion the thanks of the convention were tendered to the speaker. The

[40] Printed in the Mercury of Apr. 8, 1868.

address was published by the executive committee as a campaign document.[41]

The declared principles on which the Democratic party was organized did not give satisfaction to the entire body of the conservatives in the State. Some objected to the concession made in favor of negro suffrage. Others opposed the action of the convention in nominating candidates for office, thereby taking it for granted that the constitution would be ratified. The part of wisdom, it was said, was for the conservatives to vote solidly against the constitution, which they either could or could not defeat. If they could defeat it the matter would end. If they could not, to enter into a contest for offices under it was preclusive of any protest against it. On this ground Porter declined the nomination for governor. He thought it unnecessary to name candidates for State offices, as the conservatives could defeat the constitution if they could elect their nominee. "A vote against the constitution satisfies our whole political duty," he said. As an additional reason for his action, he pointed out that if elected he could not qualify under the proposed constitution.[42]

As the day for the election drew near, the press of the State and the prominent men generally became more and more earnest in their efforts to secure the rejection of the constitution. No further action was taken by the Democrats after Porter's refusal to become their candidate. It came to be generally recognized that officers had been nominated only to bring out the entire strength of the white vote. Hence the Democrats made no effort to elect officers but bent all their energies toward defeating the radical constitution. After the new act of Congress, which declared that a majority of those who actually voted would be sufficient for the ratification of the constitution, the conservatives saw that by pursuing their former policy of "masterly inactiv-

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[41] The proceedings of the convention are published in the Courier of Apr. 6.

[42] Porter's letter declining the nomination is printed in the Courier of Apr. 10.

ity" they would simply play into the hands of the radicals. In a stirring appeal for the rejection of the constitution, the Courier of April 11, said: "Our duty is now changed. It is not to abstain from, but go to the polls and vote in a solid mass against the constitution. The call of patriotism and of country, of home and of fireside, are upon us. We can either defeat the constitution or we cannot. In either event our duty is the same."

The various objections to the proposed instrument were urged upon the people as the campaign progressed. It was pointed out that the constitution would supplant intelligence with ignorance; that it would force white children into contact in the schools with negro children; that it excluded from the administration of the State government the men most fit for office, and substituted itinerant demagogues and men who were "strangers in the main to our soil;" and that it bestowed suffrage upon those who were not qualified to exercise it.[43]

The election for the legislature took place at the appointed time without serious disturbance and resulted in an overwhelming victory for the radicals.[44] Only seven of the thirty-three State senators were Democrats. Forty-eight of the one hundred and twenty-four representatives were white men, of which number the Democrats had only fourteen. The conservatives carried but five of the thirty-one counties. The vote on the constitution was as follows:

Registered voters	133,597
For the constitution	70,758
Against the constitution	27,288
Not voting	35,551

[43] This is part of an editorial in the Mercury, quoted by the New York Tribune, March 31, 1868: "It is just as well, men of the North, that you should understand now as at any other time that the people of the Southern States do not intend to be ruled by negroes. If it is the purpose of the United States government to negroize the Southern States, they may as well know now that *it has to be done with the bayonet and has to be preserved with the bayonet in all time to come.* The Southern people do not intend to be mongrelized. They prefer the sword—this they can compel."

[44] The election returns are given in Appleton, 1868, p. 657.

That the Republicans would carry the State seems to have been considered inevitable by the whites. But the figures indicate that in spite of the great numerical majority of the negroes, the election might have been much closer than it was. The whites evidently had lost hope and failed to exert themselves.

The constitution having been ratified, a copy of the instrument was forwarded to Congress for its approval. The Democrats of the State, through their executive committee, framed a remonstrance against it and sent a delegation to Washington to argue the question before the reconstruction committee. The remonstrance recited as objections to the constitution that under it the whites were disfranchised, that taxation and representation were no longer united, and that, the taxing power being held by one race and the property by the other, confiscation would follow. The last paragraph of the remonstrance closed with these words: "We do not mean to threaten resistance by arms, but the white people of our State will never quietly submit to negro rule. By every peaceful means left us, we will keep up this contest until we have regained the heritage of political control handed down to us by an honored ancestry. This is a duty that we owe to the land that is ours, to the graves that it contains, and to the race of which you and we are alike members—the proud Caucasian race, whose sovereignty on earth God has ordained, and they themselves have illustrated on the most brilliant pages of the world's history." [45]

The remonstrance fell upon deaf ears. It was submitted to the House of Representatives and there laid on the table.

South Carolina continued under military government till Congress passed the "Omnibus Bill," July 25, 1868. By the provisions of this bill, Alabama, Florida, Georgia, North Carolina, South Carolina and Louisiana were to be admitted to representation in Congress when their legislatures had ratified the fourteenth amendment and upon condition that

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[45] Appleton, 1868, p. 697.

there should afterwards be no denial or abridgement of the election franchise on account of color.[46]

Immediately after the passage of the act Governor-elect Scott issued a proclamation for the convening of the legislature on July 6.[47]

The fourteenth amendment was ratified by a vote of 106 to 12.[48] An election for United States senators was entered into forthwith and resulted in the choice of T. J. Robertson and F. A. Sawyer.[49] In the meantime the South Carolina delegates to the national House of Representatives had been sworn in. By a military order of July 13, all authorities created under the recent congressional acts were withdrawn and the so-called reconstruction of the State was complete.

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[46] Statutes at Large, Vol. XV, p. 73.
[47] Journal of the House of Representatives, 1868, p. 3.
[48] Ibid., 1868, p. 50.
[49] Ibid., p. 81, et seq.

CHAPTER V.

The Freedmen's Bureau.

The peculiar circumstances under which the Civil War was waged brought out certain aspects of the abolition of slavery which were somewhat unusual, and for which there was very little precedent. In the South there were two races living side by side whose interests in the struggle were exactly opposite. The Southern whites were straining every nerve to gain their independence of the North along with which it then seemed would follow the perpetuation of their "peculiar institution," the servility of the blacks. But, perhaps contrary to the expectation of the Northern people, the servile race, when the opportunity was presented, did not show the spirit of independence anticipated nor did they rise in insurrection against their masters, be it said to their credit. They did not materially aid their Northern deliverers in the cause of abolition. Certainly this was true, as will be seen, so far as South Carolina was concerned.

Upon the conquest of any considerable area of Confederate territory, the Federal government was called upon to assume a rôle which was a departure from the general duties of conquering powers, and for which it was perhaps in large measure unprepared. Indeed, when, early in the conflict, a small portion of South Carolina came under its control, the government of the United States was placed in the somewhat anomalous position of quasi-master. That is to say, along with the acquisition of the hostile territory it had acquired the burden of subsisting and directing the labors of the large numbers of slaves, and these were, in part, the duties of a master. The white people had withdrawn upon the approach of the Federals.

It will be remembered that by an expedition under Commodore Dupont in December, 1861, certain of the sea islands off the southern coast of South Carolina and the district of Beaufort fell into the hands of the Union forces.[1] In this scope of country the negroes largely predominated and their condition, bereft as they were of those accustomed to provide for them, was that of absolute helplessness. The military authorities being thus called upon to bear an unlooked-for burden, General T. W. Sherman, in February, 1862, issued an order urging the benevolent and philanthropic people of the North to come to the help of the blacks within the limits of the command. A deep interest was aroused in the Northern States and very soon relief associations were organized for the purpose of collecting and forwarding supplies, and for supporting teachers, preachers, and superintendents of labor. In the following month, a band of about sixty volunteer laborers, among whom were the wife of Senator Harlan and fifteen other ladies, arrived at Port Royal, South Carolina, on board an army transport vessel. This company of teachers and superintendents of labor was in charge of E. L. Pierce, of Boston, and Rev. Mansfield French, and their operations were chiefly confined to the islands around Port Royal Sound. They distributed, in considerable amounts, clothing, books, pamphlets, farming implements and seeds; and during the year they conducted schools in which about 3000 negro children received instruction.[2] But it soon became necessary to supersede the various benevolent organizations in the work of administering relief, and the treasury department was put in charge of the plantations. E. L. Pierce was made agent for South Carolina and instructed to "prevent the deterioration of the estates, secure their best possible cultivation under the circumstances," and promote the welfare of the blacks.[3]

On April 29, 1862, Secretary of War Stanton assigned

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[1] Supra, p. 11.
[2] Official Records, Ser. III, Ser. No. 123, p. 55.
[3] Report of the Secretary of War, 1869-70, I, 498.

Brigadier-General Rufus Saxton to duty in the Department of the South, directing him to take possession of all plantations formerly occupied by "rebels," which the fortunes of war had already or might afterwards bring into the department. He was at the same time to have control of the negroes remaining on the plantations, with authority to make such regulations for the cultivation of the land and the employment of the blacks as circumstances required. In cases of actual destitution among the negroes, Saxton was directed to issue rations and articles of clothing, to be furnished by the quartermaster and commissary of the department of the South. Industry, skill in agriculture, and self-improvement were to be promoted as far as possible.[4] But Saxton, for some time after his appointment, had to concentrate his attention more especially upon holding the islands against the Confederates, and the pursuits of peace continued for a while longer in the control of the agents of the treasury. But, for one reason or another, there seems to have been considerable difficulty and much hindrance in the farming operations.[5] E. L. Pierce, the special treasury agent on the islands of South Carolina and "general superintendent and director of the negroes," complained feelingly because General Hunter, temporarily commanding the department of the South, ordered the overseers of plantations of Ladies, St. Helena, and Coosaw Islands, to send all able-bodied negroes to Beaufort to be enrolled as soldiers. He explained that the treasury department had already expended large amounts, viz., implements and seeds, $5,000; mules and horses, $15,000; labor, $10,000; and clothing supplied by voluntary associations, $10,000. This order coming in May, after the planting of the crops had substantially closed, would entail the loss of practically all that had been done.[6] The negroes showed themselves very averse to bearing arms in the common defense, and reports were numerous that upon suspicions of a draft, many of them made shift

[4] Official Records, Ser. III, Ser. No. 123, p. 27.
[5] Ibid.
[6] Ibid., p. 55.

to escape to the woods.[7] The islands cultivated by the blacks had to be abandoned from time to time in proportion as the Federal regiments protecting the laborers were withdrawn during the year. In view of the withdrawal of the last regiment to Fort Monroe, General Hunter reported that St. Helena, Ladies, Port Royal, Paris, and Spring Islands, all under a fine state of cultivation, would have to be abandoned.[8]

So necessary was it thought to have a military force at hand to protect the negroes in their agricultural operations, that Saxton, in August, asked authority of the secretary of war to enroll a force not exceeding 5000 able-bodied men from among the contrabands, as a means of protection. He pointed out that along the entire coast occupied by the Federals, the colored people suffered greatly from fear of attack by their Confederate masters. Their labors were thereby more or less contracted and their efforts for social and moral improvement paralyzed. It was maintained that with an adequate military force to guarantee against recapture, an immense number of the negroes "could be withdrawn from the enemy and thereby very materially increase our power over these traitors to our country."[9]

Stanton complied with Saxton's request, granting him permission to "organize and receive into the service of the United States as soldiers 'volunteers of African descent' not exceeding 5000." Besides guarding the plantations and reoccupying the islands, this force was to make incursions into the "rebel" territory for the purpose of bringing away the negroes, and thus reducing the resources of the Confederates.[10] But this second effort to recruit colored troops was, like the first, not attended with very marked success. The number recruited fell far short of the contemplated 5000, and Saxton reported that comparatively few of the negroes were physically fit for soldiers. But it is worthy

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[7] Ibid. [8] Ibid., Series I, Vol. XIV, p. 374.
[9] Ibid., Ser. I, Vol. III, p. 375.
[10] Ibid., p. 377; Ibid., Ser. III, Ser. No. 125, p. 1027.

of note that it was under these recruiting instructions that the first negro regiment was mustered into the Federal army. It was known as the First Regiment, South Carolina Volunteers, and was commanded by Colonel T. W. Higginson, of Massachusetts. This pioneer regiment came into some notice later in connection with the military operations at Fort Wagner and Port Hudson.[11] As to results in farming operations for the year 1862, Saxton reported that the harvest did not "answer the promise of the early season." This was, he said, on account of late planting, the ravages of the army worm and the abandonment of a large acreage of cotton and corn after the withdrawal of the army and the freedmen. The yield of cotton had amounted to only about 50,000 pounds of ginned product (100 bales). But the report of the next year was an improvement on that of 1862.[12] The cotton crop for 1863 amounted to 110,000 pounds of ginned cotton, and sufficient food products had been raised to subsist the blacks in the cotton cultivation. The cotton, it was claimed, would more than meet all the contingent care and direction of 15,000 freedmen, a majority of whom, as stated, had proved self-supporting under the system; to such as required the support of the government, viz., aged or infirm persons and destitute refugees, he had issued rations.[13]

It was in the latter part of the year 1863 that the Federal government added a new feature to its policy of dealing with the blacks which, for a long time afterwards, was fruitful of much confusion and disappointment to the negroes and of real harm to both races. It will be remembered that an act for the collection of direct taxes in insurrectionary districts was passed by Congress on June 7, 1862.[14] This act was followed later by two others which were somewhat similar to the first in their purport. One of these latter was approved July 17, 1862, and provided for the punishment of

[11] Ibid., p. 1027. [12] Ibid., p. 1024.
[13] Official Records, Series III, Ser. No. 125, p. 119.
[14] Report on the Finances, 2nd sess. 38th Cong., 1864-65, p. 330.

treason and the seizure and confiscation of "rebel" property. The other act, of March 12, 1863, provided for the appropriation of abandoned property.[15] Through the enforcement of the acts, notably the direct tax act, the Federal government came into possession of practically all the landed property in South Carolina then under its sway.[16] In the furtherance of the amelioration of the condition of the blacks, it was decided to put the negroes in possession of a suitable portion of the confiscated lands.[17]

With this purpose in mind, President Lincoln, in September, 1863, issued instructions to the tax commissioners to sell all the unreserved government lands. Parts of these were to be sold at auction in lots not exceeding 320 acres; the rest at private sale for $1.25 per acre to negro families, no family to have more than twenty acres.[18] It soon was evident that the plan to enable negroes to become landholders would be defeated if these instructions were carried out. The purchase of lands in such large tracts being beyond the reach of the blacks, the great bulk of the lands, it was seen, would pass into the hands of speculators. Accordingly, on December 30, 1863, new instructions were issued to the tax commissioners, giving limited pre-emption rights, at the rate of $1.25 per acre, to all loyal persons of twenty-one years of age then residing upon, or who at any time since the occupation by the United States forces had for six months resided upon, any lands in the district. Preference was to be given to heads of families and to married women whose husbands were engaged in the service of the United States. Soldiers, sailors and marines were to be permitted to pre-empt and purchase land on the same terms.[19] But

[15] Ibid., p. 338.

[16] The manner of collecting the direct tax in South Carolina was looked upon by the white people as a great hardship. In consequence of the State's non-payment of the tax the lands in possession of the Federals were seized to pay the tax for the whole State. Plantations were put up for taxes and the authorities did not return any surplus to the owners.

[17] Official Records, Ser. III, Ser. No. 125, p. 1025.

[18] Ibid.

[19] Ibid., p. 120.

this scheme of the President's, which promised to open the way for the negro to become what he most desired to be, a land owner, did not meet expectations. The tax commissioners refused to recognize the new instructions, on the ground of their illegality, and they were suspended by the secretary of the treasury.[20] But, previous to this suspension, many of the freedmen had proceeded to stake their claims and otherwise to deport themselves as independent proprietors of the soil. Hence the confusion and disappointment resulting from the suspension of the instructions was very great. The negroes, highly emotional in their natures, were all exultation at first and afterwards despondent.[21] But the idea that they were to become, at the hands of the Federal government, permanent landlords, took possession of them, and was, as will be shown, a source of continual annoyance during the reconstruction era.

The captured lands in South Carolina having been thus disposed of to speculators and other smaller purchasers, there were no agricultural operations carried on by the government in South Carolina in 1864. The duties of General Saxton for the year were limited to the enforcement of regulations for the sanitary condition and policing of the department, and to the protection of the freedmen.[22]

Saxton admits in his report that in fulfilling his mission of "atonement for the wrongs and oppression" of the negroes, he was confronted with a difficult task and was not always successful. He found that the general feeling of the army of occupation was unfriendly to the blacks. There was a disposition, he said, among the soldiers and civilian speculators "to defraud the negroes in their private traffic, to take the commodities which they offered for sale by force, or to pay for them in worthless money." Other charges made against the Federal soldiery by General Saxton were that depredations were committed by them on the plantations of negroes, and their crops and domestic animals taken and

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[20] Ibid, p. 1026. [21] Ibid. [22] Ibid., p. 1022.

destroyed; that the colored women were held as the legitimate prey of lust; that licentiousness was widespread; and that the morals of the old plantation life seemed revived in the army of occupation. On account of these things, the joy of the negroes at the coming of the "Yankees" had tended to cool down.[23]

Thus did matters stand until General W. T. Sherman issued his special Field Orders, No. 15, on January 16, 1865.[24] As touching South Carolina the orders provided that the islands along the coast from Charleston, south, and the abandoned lands for thirty miles back from the sea, should be "reserved and set apart for the settlement of negroes." Within this reservation no white person, except military officers and soldiers detailed for duty, was to be permitted to reside. The orders further stipulated, that wherever three respectable negroes, heads of families, desired to settle on land and had selected for that purpose an island or other locality, the inspector of settlements and plantations was to give them a license and afford them assistance in establishing a peaceable agricultural settlement. To each family was to be apportioned a plot of not more than forty acres of tillable ground.[25] The negroes were to be afforded protection in the possession of their lands until Congress should regulate their titles. General Saxton was appointed inspector of settlements and plantations. It was announced in the orders that no changes would be made in the settlements on Beaufort and Hilton Head Islands, and no rights to property previously acquired, affected.

General Sherman's plan hardly had time to be put into operation before an act of Congress, entitled "an act to establish a bureau of freedmen, refugees and abandoned

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[23] Ibid., p. 1029.

[24] It will be remembered that Gen. Sherman entered on the campaign of the Carolinas early in January, 1865. His army invaded South Carolina from Savannah, and consequently overran that part of the State first which is comprehended in the southern angle. Page 21, above.

[25] This is probably the origin of the "forty acres and a mule" will-o'-the-wisp that will be so often heard of later.

lands," was passed.[26] This act did not, however, result in an overthrow of Sherman's plan, but rather aided in its fulfillment. Under it a commissioner was to be appointed as the chief officer of the Bureau and he in turn to appoint assistant commissioners for the several insurrectionary States. General O. O. Howard received the appointment as commissioner, and named General Saxton as the assistant commissioner for South Carolina and Georgia, his duties being afterwards diminished by an officer being sent to take charge of Georgia.[27]

On May 30, Howard issued a circular letter prescribing the rules and regulations for assistant commissioners. Relief establishments were to be discontinued as speedily as possible, and every effort made to render the people self-supporting. Where government supplies were advanced to destitutes, exact accounts were to be kept and held as a lien upon their crops. In all cases where the local courts refused to allow negroes to testify, or otherwise disregarded their rights, the assistant commissioners were to adjudicate the difficulties. It should be seen to that negroes were free to choose their own employers, and paid for their labor. Contracts should be entered into freely, approved by proper officers, and inviolably enforced on both parties.[28]

Immediately following this general order—June 10—Saxton issued a circular assuming control of the Bureau, with headquarters at Beaufort, South Carolina. He announced that the bureau was entrusted with the management of all abandoned lands, with the educational, industrial, and other interests of the freedmen, and, in pursuance of Sherman's policy, with "the location of such as may desire it on homes of forty acres." The policy which had been pursued on the sea islands of South Carolina and Georgia would be continued. The negroes were exhorted to be thankful for the great boon of liberty which had been vouchsafed to them,

[26] United States Statutes at Large, Vol. XIII, p. 507.
[27] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 3.
[28] Ibid., No. 70, p. 102.

while the late masters were advised to heed the teachings of the great struggle through which the country had passed.[29]

Further to instruct the freedmen as to their new relations in life, Saxton, on August 16, issued a circular exclusively to the freedmen, extending them words of counsel. They were given to understand that by the emancipation proclamation, the laws of Congress, and the will of God, they were "forever free." But freedom carried with it the responsibilities of freemen. "Your first duty is to go to work at whatever honest labor your hands can find to do, and provide food, clothing and shelter for your families. Bear in mind that a man who will not work should not be allowed to eat." Their former masters contended that in freedom they would not work, that the lash was necessary to drive them to the cotton and rice fields; but forty thousand of their race on the sea islands were proving the falsity of this charge and setting an example which all the blacks would do well to follow.

Falsehood and theft, the vices of slavery, should not be found in freedom. Contracts and agreements they should keep in good faith, it being constantly remembered that they were slaves no longer. They should not attempt to redress their own wrongs, if such should be suffered at the hands of the whites, but leave matters to be settled by an arbitration committee. The domestic relations in slavery did not require purity and honor among the blacks, but all this must change. The rules of the marriage relation, issued from bureau headquarters, should be carefully studied and put into practice. "Colored men and women, prove by your future lives that you can be virtuous and pure." No people could be truly great or free without education, hence freedmen should deny themselves even the necessaries of life to keep their children in school. They should strive to live down by good conduct the wicked lies of their enemies, who

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[29] Ibid., p. 91.

would make it appear that they were not worthy of the full rights of freemen.[80]

Pains were taken that this excellent advice should be given wide publicity. Agents of the bureau were directed to publish the circular to the freedmen, and ministers of the Gospel requested to have it read in all the churches where freedmen assembled. It is not definitely known how favorably this circular was received and what influence it exerted for good; but evidently counsel of this nature, persistently given by the head of the bureau, could not fail to have a desirable effect. And it may be surprising that the bureau, begun thus auspiciously, did not accomplish better results.[81] The difficulty must have been that the bureau, under the disorganized conditions, and administered in its numerous branches by a great variety of officers, some most unscrupulous,[82] adhered to no well-defined policy.

The assistant commissioner was not long in letting the whites understand that he meant to uphold the rights and privileges of the blacks. His first general order, issued on June 20, 1865, set forth that complaint had been made that former owners of plantations, permitted to remain on their lands on condition that they apprise the blacks of their freedom, continued to hold them in slavery and even shot them down if they dared to assert their liberty. He therefore announced that all persons employing freedmen and who failed to announce to their employes that they were free, would be held as disloyal to the United States government and their property subject to seizure and division among the freedmen. It was urged upon the commissioners and agents of the bureau to give wide circulation to this order, and to send to headquarters the name of every person guilty of its infringement.[83]

The number of acres of abandoned and confiscated land held by the bureau in South Carolina was 435,000, consid-

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[80] Ex. Doc., 1st sess. 39th Cong., No. 70, pp. 92, 93.
[81] Carl Schurz, Article in McClure's Magazine for Jan., 1904.
[82] Ex. Doc., 1st sess. 39th Cong., No. 70, p. 99. [83] Ibid.

erably more than four times as much as was held in any other two States, grouped as the States were at that time.[34] As by the establishment of the bureau it was not intended to supersede or destroy the work of settlement already done in behalf of the freedmen, the same general policy with regard to them was adhered to. Leases already made by the treasury agents were allowed to continue in force, and others in addition were made by the bureau.[35]

The wholesale confiscation of property along the coast and the general devastation of the war left the whites about as destitute as the blacks. Hence it was not long after the organization of the bureau, in view of President Johnson's policy of leniency, until the whites began to plead for a restoration of their property. The course which the bureau first adopted was to restore property to none except those who could give proof of undoubted loyalty to the Union. And the production of a pardon granted under the President's amnesty proclamation was not accepted as sufficient proof. But Johnson overruled this method of settling property rights and gave orders that his pardon entitled the holder to demand and receive immediate restoration of his property, except such as had been sold under a decree of confiscation.[36] This order of the President's called forth Circular No. 15 from General Howard, which directed assistant commissioners to turn over at once all property held as abandoned, when they were convinced that it did not fall within the province of the confiscation act of July 2, 1864.[37] They were also directed to restore property when application was made for it accompanied by proof of the claimant's title, and of his pardon. But land cultivated by refugees or freedmen should be retained until the growing crops were gathered, unless the owner made full compensation for the labor expended on it and for its products.[38]

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[34] Ex. Doc., 1st sess. 39th Cong., No. 70, p. 93.
[35] Ibid., No. 11, p. 4.
[36] Ibid.
[37] United States Statutes at Large, Vol. XIII, p. 375.
[38] Ex. Doc., 1st sess. 39th Cong., No. 70, p. 193.

Under the provisions of this circular the work of restoration progressed steadily. In his report for 1867, General Howard stated that 13,351 acres had been restored during the year, leaving 85,694 acres still in possession of the bureau.[39] In returning the lands to their rightful owners, the greatest difficulty arose over the disappointment of the freedmen in the well-founded expectations built up by Sherman's Special Field Orders, No. 15. Under direction from the war department, General Howard came to Charleston with the purpose of effecting an arrangement materially satisfactory to the land-owners and those freedmen who had "squatted" on the property of the former and refused to move. Howard then proceeded to Edisto Island, the locality in South Carolina where this question of restoration was pressing hardest for a solution. Arrived at the island, he met with and explained to the colored people the status of affairs, and asked their desires. They expressed a wish to be relieved from working under overseers, a majority of them indicating a desire to rent land, some a willingness to work for wages. Finally, it was agreed to leave the decision to Howard, who determined upon the following plan:

A board of supervisors, consisting of a representative of the government, of the planter, and of the freedmen, was to be constituted, to adjust contracts and cases of difficulty. These boards came to have authority to pass upon all offenses of which the penalty did not exceed imprisonment for one month, or a fine of one hundred dollars.[40]

Before the order of restoration could be issued, each landowner was required to sign an obligation to secure to the freedmen resident on his estate the crop of the present season, harvested or unharvested; to allow freedmen to remain at their homes so long as they entered into contracts on terms satisfactory to the supervising board; to contract with responsible negroes, a refusal to do so on the part of the latter being accompanied by a requirement to leave the

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[39] Report of the Secretary of War, 1867-68, p. 622.
[40] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 7.

estate; to interfere in no way with schools sanctioned by the board. This obligation was not to be binding beyond one year from its date of issue. If it should be faithfully complied with, land-owners deprived of their property by General Sherman's order were to have their estates restored to their possession.[41]

But the blacks appeared not to regard seriously the regulations laid down relative to entering into contracts and the adoption of more stringent measures was discussed by the whites. Said the Columbia Phoenix: "The laborers are here sufficient in numbers and effective in results in the past, but no man of ordinary observation or common sense can deny that, in their present state of transition and disorganization, some code of labor—some system of contracts between proprietors and workers binding on both parties—is absolutely necessary. The government, through the establishment of the Freedmen's Bureau, has tried to effect this object, but there are so many difficulties and embarrassments to encounter that the great end sought has not been accomplished."[42] The situation was such that Saxton felt called on to issue a circular on October 19. The impression largely prevailed among the freedmen, he said, that on January 1, 1866, the Federal government was to give them homesteads of forty acres, and that for the coming year it was not necessary to enter into contracts with their former masters or other employers. This was an erroneous impression and Bureau agents should inform the freedmen that the government had no lands to divide among them. To provide against suffering and starvation the freedmen were urged to sign agreements at once for the coming year, and the supervising boards provided for by General Howard's order were directed to arrange equitable contracts between employers and employes.[43] Complaints of the idleness of the blacks, and of their unwillingness to make contracts became

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[41] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 7.
[42] The Columbia Phoenix, Oct. 18, 1865.
[43] Ex. Doc., 1st sess. 39th Cong., No. 70, p. 95.

so pronounced that Howard directed that the full force of the vagrancy laws of the various Southern States should descend upon the freedmen. He gave it as his opinion that the prevalence of the idea that the estates of disloyal owners would be divided among the freedmen was due to stories circulated by speculators desirous of cheapening the lands.[44] But some of the native whites were of a different opinion as to who was responsible for spreading the notion among the negroes that each was to receive a tract of land of forty acres. The blame was placed upon the unscrupulous bureau agents: "They (the freedmen) have been taught to believe, by the Freedmen's Bureau, that the whole of Beaufort is abandoned and dedicated to their use—that they are to be colonized there. They therefore look upon the owners of the lands as intruders and enemies."[45]

During the year 1865, if full credit is to be given to briefs of reports sent in by the sub-assistant commissioners, the condition of the negroes was by no means favorable. Accounts from the interior were replete with instances of murders, whipping, tying up by the thumbs, defrauding of wages, combining for purposes of extortion, and other cruelties toward the negroes by the whites.[46] But it would seem from an examination of the briefs that much of this alleged cruelty was mere rumor and that the accounts were overdrawn. General Howard said that from observation the briefs did not give a true picture of the state of society in South Carolina. Owing to the sickness of General Saxton, the organization of the bureau throughout the State was delayed till near the close of the year, which might account

[44] Ibid., No. 11, p. 12. I have been reliably informed that speculators drove a thriving business in selling red sticks to the negroes, who were told that these were necessary in order to stake off a forty-acre claim. Notes of a conversation with the late Prof. R. M. Davis.

[45] Letter to Gov. Perry from citizens of Beaufort District. Phoenix, Sept. 29, 1865.

[46] These briefs of reports of sub-assistant commissioners are printed in the Report of the Joint Committee on Reconstruction, 1866, p. 222, et seq.

in part for such an unfavorable report. Still the antagonism between the whites and blacks was marked, and the "criminal list altogether too great to pass unnoticed."[46]

A not unimportant feature of the bureau was its medical department. This department was found necessary in order to regulate hospitals and asylums already in existence and to extend medical aid to freedmen who on becoming sick were totally unprovided for.[48] Surgeon N. R. De Wett, Jr., United States Volunteers, was appointed surgeon-in-chief for South Carolina and Georgia.[49] The duties of a surgeon-in-chief, as set forth in Howard's instructions to medical officers, were to ascertain the number of persons in his district needing medical attendance, to direct subordinate medical officers, and to have general supervision of the medical department. He was also to make a report to the surgeon-general of the United States army.[50] For 1865, the report showed that there were in the State one commissioned medical officer, fifteen private physicians employed under contract, twenty-nine attendants, three hospitals and six camps and colonies.[51] In addition to these efforts at sick relief, the government also undertook, on rather a large scale, to relieve the destitute. The number of dependents drawing rations in South Carolina and Georgia on September 1, 1865, was 10,664.[52] In South Carolina alone, in 1866, 1,111,847 rations were issued,[53] and in 1867, 1,052,952.

Another matter about which the assistant commissioner deemed it advisable to make regulations was the marriage of the negroes. By these regulations he said it was hoped something might be done to "correct a monster evil which meets us at the very threshold of our work."[54] Some of the more important features of the regulations were that mar-

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[47] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 26.

[48] Ibid., No. 70, p. 18.

[49] Ibid., p. 114.

[50] Ibid., p. 187.

[51] Ibid., No. 11, p. 26.

[52] Ibid. The reports of the two States for this year are not given separately.

[53] Report of the Secretary of War, 1866-67, p. 713.

[54] Ibid., 1867-68, p. 640.

ried persons of color producing satisfactory evidence of separation by slavery, and who had, in prospect of permanent disunion, been married a second time, might be allowed to assume their former relations of man and wife. Marriages of freedmen might be dissolved on account of adultery, fornication, or other prudential reason. Every freedman having only one name was required to assume a "title," and keep it. All negroes, whose marriage was only a mutual agreement between themselves without public ceremony, were required to have their marriage confirmed by a minister. A man living without a wife and finding two wives restored to him—the one having children by him, the other not—was to take the mother of his children as his lawful wife. A husband living with a wife, but having no children by her, might be permitted to take a previous wife, provided he had minor children by such wife, and provided other husbands and wives, should there be any, assented to the change. The same regulations were to apply to married women similarly situated.[55]

As already indicated, there was a pronounced effort made from the first establishment of the bureau to begin and promote the education of the negroes. One of the chief officers in each State was the superintendent of education. The superintendent appointed for South Carolina was Reuben Tomlinson.[56] The freedmen displayed great eagerness in their struggle to be, and to have their children, educated, and the pupils crowded into the schools. These were supported, some by the bureau, some by Northern benevolent associations, and some by the freedmen themselves. As to the attitude of the whites toward negro schools, Howard reported in 1866 that the better classes of the whites were coming very generally to favor the education of the freedmen. But they usually favored it with the proviso that Northern whites be not longer employed as teachers. There

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[55] Ex. Doc., 1st sess. 39th Cong., p. 108, *et seq.*
[56] Ibid., No. 70, p. 116.

were those, he said, of the lower and baser classes, who still bitterly opposed negro education; but altogether there was cause for congratulation in view of the immense results obtained. The report for the year shows that in September, 1865, there were in South Carolina and Georgia 114 schools, 174 teachers, and 9,500 scholars.[57] For South Carolina alone, in June, 1866, there were 75 schools, 148 teachers, and 9,017 pupils. $72,000 had been expended in support of these 75 schools, contributed mainly by Northern benevolent associations. The freedmen had erected five school houses and were in process of erecting others.[58] Encouraging accounts continued to come in during the year 1867. Twenty-three school houses had been erected in the different districts, and $12,200 contributed by the colored people for the support of teachers. And there was a growing conviction among the whites that to educate the blacks was the wise course to take.[59] But a later report would indicate that the efforts of the negroes in behalf of education were somewhat spasmodic. Superintendent Tomlinson announced in June, 1868, that the number of schools had decreased to 49, the number of teachers to 123, and the pupils to 6,698. These schools were taught largely by white teachers imported from the North.[60]

A very considerable amount of attention was bestowed by the bureau on the administration of justice in behalf of the freedmen. The assistant commissioners were instructed at the outset to protect the freedmen and promote the general welfare of the negroes. With this end in view, freedmen's courts, constituted of officers of the bureau, or of civilians where officers were scarce, had been early established. These courts were usually restricted to the settlement of minor cases where punishment did not exceed one hundred dollars or thirty days' imprisonment. Where the negro's rights

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[57] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 26.
[58] Report of the Secretary of War, 1866-67, p. 716.
[59] Ibid., 1867-68, p. 673.
[60] Report of the Secretary of War, 1868-9, p. 1041.

were disregarded, on account of any interruption in the civil law by reason of old slave codes, the bureau courts were to adjudicate all difficulties.[61]

There was some complexity and confusion attendant upon the administration of justice. Conflicts and many misunderstandings grew out of the activity of the provost courts as distinct from the bureau courts. This was due in a measure to the fact that the department military commanders and the assistant commissioner had their headquarters at different places, and there was no co-operation. But the situation was rendered more complex at this time by reason of the fact that the civil courts claimed unquestioned jurisdiction throughout the entire State. This condition of affairs continued until late in the year 1865, when it was remedied by an agreement between Provisional Governor Perry and the military division commander that freedmen's cases should be brought before provost courts.[62]

There were complaints and counter complaints during this period. The whites entered a general protest against the presence of colored troops, on account of whom there was a feeling of great insecurity.[63] It was alleged that labor was disturbed throughout a large district of the vicinity of a negro garrison, and that there was danger of the colored troops joining the blacks "in case of insurrection."[64] On the other hand, the bureau authorities reminded the whites that by the laws of the several Southern States the negro was regarded as an alien, that he was visited with numerous oppressions, prohibited from bearing arms in his own defense, and denied the right to serve as a juror.[65] It appears that for a year or more this crimination and recrimination relative to the status of the blacks in the courts was kept up. Finally, however, some order was restored by the discontinuance of the provost courts, which action was taken

[61] Ex. Doc., 1st sess. 39th Cong., No. 11, pp. 22, 23.
[62] Page 45, above; Ex. Doc., 1st sess. 39th Cong., No. 11, p. 23.
[63] Phoenix, Sept. 29, 1865.
[64] Ex. Doc., 1st sess. 39th Cong., No. 11, p. 26.
[65] Report of the Secretary of War, 1866-67, p. 718.

after the legislature had annulled the most objectionable features of the law discriminating against persons of color. The bureau courts were also discontinued about the same time and the blacks, with the right to testify and serve as jurors, were tried in the civil district courts.[66]

But the report for the year 1867 recommended that the bureau courts be re-established. These were needed, it was said, in order to protect the blacks and adjudicate disputes which arose in the division of the crops. In Edgefield District the white planters were alleged to have retained the entire proceeds of the crops, not allowing the negroes for their year's work any compensation whatever. Such cases did not come within the jurisdiction of magistrates, who could only sit on suits involving an inconsiderable sum. Moreover, magistrates would not bind over a white man for trial unless the complaining freedman would give security to the amount of $200 or $300, and this was generally impossible. The very poor yields of the cotton crops of 1867 and 1868 caused the planters to resort to the practice of making up their losses by unfair divisions with the black tenants, and by imposing fines for absence and sickness.[67]

Again, it was asserted that the freedmen could get no protection from the civil courts against criminals and other outlaws. One officer reported that the civil law was a source of power and oppression in the hands of a few, it being an expensive luxury. Outrages and cases of lawless violence, perpetrated upon the persons and property of the freedmen, were of unusual frequency and until the "slow but certain influence of civilization reaches this State and produces a change in the unjust and tyrannical laws by which it is governed," the bureau tribunals should be maintained.[68]

The obligation which the bureau assumed to supervise labor contracts between the whites and the blacks appears in some places to have served a very good purpose. Of

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[66] Report of the Secretary of War, 1866-67, p. 738.
[67] Ibid., 1867-68, p. 669, et seq.
[68] Ibid., p. 670.

course this depended largely upon the personality of the sub-assistant commissioner in charge of the local bureau. Major Delaney, the colored assistant at Beaufort, said that "the planters at first disliked the presence of the bureau in their midst; but powerless to retard its operations and witnessing its impartial administration and the growing prosperity of their district as a result, have reconciled themselves and some have even acknowledged it as a success."[69] But, on the other hand, numerous instances of friction were not lacking. The whites were very much annoyed by the attempts of the bureau agents to regulate the number of holidays for the blacks, by the conferring upon them of special privileges relative to bearing arms, and by not allowing the whites to eject colored tenants from their plantations except by the approval of the bureau.[70]

Again, the blacks showed a willingness, in some years, to enter into contracts; in others, they did not. It will be remembered that rather strong persuasion was necessary to get the freedmen to enter into any agreements for 1866.[71] General Saxton outlined a form of contract wherein employers were to furnish freedmen with quarters, fuel, substantial rations, medical attendance, and a given amount of money to be paid in full before the final disposal of the crop.[72] Upon these terms, Saxton's admonitions appear to have been well received; for he reported in May that the blacks had entered into contracts with a willingness and unanimity beyond the expectation of the most sanguine. Planters asserted that in most cases they were "doing more work than was ever done under the old system of forced labor."[73]

But this condition of affairs was not destined to be of long duration. The very next year it was found necessary to again issue a circular calling attention to the importance

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[69] Frank A. Rollin, Life of Major M. R. Delaney, p. 270.
[70] Report of Joint Committee on Reconstruction, p. 229.
[71] Page 120, above.
[72] Ex. Doc., 1st sess. 39th Cong., No. 70, p. 96.
[73] Report of the Secretary of War, 1866-67, p. 737.

of making contracts. All this time many things were transpiring to produce greater estrangement and ill-feeling between the races. Idleness and theft were constantly charged against the blacks, who would consume their wages in advance and then stop work. On the other hand, the blacks accused the whites of fraud in the settlement of contracts, and of dismissal from service for voting contrary to their wishes. These things and the political differences of the time caused the labor agreements for the year to be much delayed and very unsatisfactory.[74]

After the State had come into the control of the new political power, in 1868, the troubles arising out of contracts appear to have subsided. The commissioner reported in the fall of 1869 that the "contract system works favorably. But few complaints are made against freedmen for refusing to work. The approval of contracts by agents of the Bureau has had an excellent effect in securing a compliance with their provisions."[75]

The operations of the Bureau were practically closed in South Carolina in July, 1868. At that time it will be remembered that the State, completely dominated by the negroes and "carpet-baggers," had been restored to the Union. There was, therefore, no reason for continuing an institution for the protection of a people who exercised entire political control in the State. General R. K. Scott, the successor, in 1866, of Saxton as assistant commissioner, was now governor, he with many of his associates having become officers of the State instead of officers of the Bureau. An act of Congress of July 25, 1868, required the commissioner to cause the withdrawal of the Bureau from the States, except that its educational and bounty features were to remain. Notice was accordingly given to the officers and agents to discontinue operations after January 1, 1869.[76]

By way of comment, it may be said that what made the

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[74] Report of the Secretary of War, 1868-69, p. 1040.
[75] Ibid., 1869-70, p. 503.
[76] Ibid., p. 497.

Bureau objectionable and at times intolerable to the whites was the fact that it undertook to regulate, in the minutest detail, the intercourse between the races; and apparently even to say in what esteem the blacks should be held by the whites. Instead of serving as a harmonizing agency, the then all-important matter, it was instrumental in many cases in sowing seeds of discontent and in otherwise destroying friendly relations between ex-master and former slave. This charge cannot be made against the bureau as a whole in South Carolina, but certainly one gathers the general impression that its operations were by no means attended by entirely beneficial results. It may not be going too far to say that numbers of the subordinate officers, admittedly unfit for their positions and at the same time swayed by the passions of the period, chose usually to see only the freedman's side in the adjustment of a dispute. Moreover, the widely circulated report, doubtless genuinely believed by some, that the whites were using every means to re-enslave the blacks, had its weight in making the bureau agents the special champions of the negroes regardless of the facts in the case. This was not true of those higher in authority, and probably, if the bureau could have secured judicious officials throughout, many of the benefits expected would have been realized.

179.4

VITA.

John Porter Hollis was born in Chester County, South Carolina, November 24, 1872. He attended the local schools of the community, and later the public schools of Rock Hill, South Carolina. In the fall of 1892 he entered Wofford College, from which institution he received the degree of A. B. in June, 1895. During the academic year, 1895-96, he was principal of a school at Jefferson, South Carolina. In September, 1896, he was appointed to a position in the high school department of the Rock Hill Public Schools, remaining there four years. He entered Johns Hopkins University in October, 1900, where he has pursued graduate studies in History, Political Economy and Political Science. He held a University Scholarship in 1902-3, and was Fellow in History in 1903-4.

130.a.

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J. M. VINCENT

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Editors

STATE GOVERNMENT IN MARYLAND

1777-1781

BY

BEVERLY W. BOND, JR.

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CONTENTS

CHAPTER PAGE

I. ORGANIZATION OF THE STATE GOVERNMENT 9
- Introduction 9
- Legislative 10
- Executive 13
- Judicial 16

II. ATTITUDE TOWARD CONGRESS 20
- Election of Delegates 20
- Powers of Congress 21
- Proposal for a Confederation 24
- Western Lands Controversy 25
- Ratification of the Articles of Confederation 34

III. MILITARY AID 36
- Recruits 36
- Provisions 46
- Clothing 49
- Transportation 51
- Arms and Military Stores 53
- Prisoners 54

IV. FINANCE 58
- Currency 58
- Taxation 63
- Confiscation of British Property 69
- Continental Loans 73

V. COMMERCE 76
- Relations with other States 76
- Foreign Relations 77
- Internal Trade 78
- State Importations 80
- State Navy 82
- Embargo and Speculation Laws 86
- Exportations to New England, the Bermudas, Virginia, and the French Fleet 88

VI. INTERNAL DISTURBANCES 93
- Tory Laws and Outbreaks 93
- British Invasions 101
- Public Sentiment 107
- Goddard Riots 108
- Newspaper Articles 110

SUMMARY 113
- Work Accomplished 113
- Chief Authority 114
- State Sovereignty 114

PREFACE

In collecting material for this monograph, the author wishes to express his appreciation of the many courtesies extended by Mr. G. W. McCreary of the Maryland Historical Library, by Mr. Worthington C. Ford of the Library of Congress, and by Mrs. Jeffers, and Mr. L. H. Dielman of the Maryland State Library. Acknowledgment is due Dr. Bernard C. Steiner, Dr. J. C. Ballagh, and Dr. Wm. Hand Browne of Johns Hopkins University, all of whom have read the monograph in manuscript form, and have made many important criticisms. Professor J. M. Vincent, by his kind interest and by numerous suggestions, has afforded much aid. Professor Friedrich Keutgen of the University of Jena, at present a lecturer in the Johns Hopkins University, has also criticised a large part of the work, while Professor J. H. Hollander has suggested important alterations. In conclusion, the author would acknowledge his indebtedness to the numerous friends who have greatly aided him in the preparation of this monograph upon so vital a period in the history of Maryland.

STATE GOVERNMENT IN MARYLAND
1777-1781

CHAPTER I.

Organization of the State Government.

Most accounts of the Revolutionary period in American history have partially, if not wholly, neglected local conditions in the separate States. Military events, rather than legal and economic conditions, have chiefly occupied the attention of historians, when the States themselves have been at all considered. But, to understand the real situation, it is necessary to know what measures were taken by the individual governments, and what were the popular sentiments upon the different questions of public policy. The attitude of the States toward Congress before the ratification of the Articles of Confederation has an important bearing upon the doctrine of sovereignty. A survey of the local conditions should reveal whether the power of the British Crown reverted to Congress, as the central authority, or whether, before the consummation of the Confederation, the individual States acted merely as allies leagued together for a common cause.

In the history of Maryland a period most convenient for such an investigation lies between the assumption of power by the new State government, February 5, 1777, and the final ratification of the Articles of Confederation, March 1, 1781. In his monograph, the "Provisional Government of Maryland," Dr. J. A. Silver has already treated the transition from the Provincial to the State government, 1774 to 1777,[1] but he has considered only incidentally the relations to Con-

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[1] Johns Hopkins University Studies, Series 13, No. 10.

gress. The purpose in reviewing the four succeeding years, 1777 to 1781, is to exhibit the exact position assumed by Maryland, a typical State, toward Congress. Such a consideration necessarily embraces a rather minute investigation into the varied aspects of the work which the State government accomplished.

The new constitution establishing the State government of Maryland made several very important administrative changes. As an expedient to bridge over the transition from provincial rule, the provisional government is not here to be considered since its institutions had little influence as a basis for the new constitution. The keynote of the reforms inaugurated with the State government was the complete separation of the legislative, the executive, and the judicial functions.

Under the provincial constitution the governor and council had constituted the Upper House of the Assembly. In place of this, the Senate was now instituted, composed of fifteen members, nine from the Western, and six from the Eastern Shore. Every fifth year the senators were selected by a body composed of two electors chosen by the voters of each county. This indirect method of election was designed to secure a mature Upper House dependent upon the people, and not upon the favor of the governor. The old form of the House of Delegates was retained, every county electing four members annually by direct ballot; Annapolis and Baltimore each sent two representatives.[2] The suffrage basis of fifty acres freehold was retained, but the requisite visible property in lieu of this requirement was decreased from forty

[2] The property qualification for each senator was fixed at £1000; for a member of the House of Delegates, £500. Constitution and Form of Government, Articles 1-24; Mareness, Maryland as a Proprietary Province, 198 and 207; Browne, Maryland, the History of a Palatinate, 103.

to thirty pounds.[3] The Lower House possessed the exclusive right to originate money bills. Otherwise, both branches of the Assembly possessed full legislative powers.[4]

The change in the Assembly provoked opposition at the outset. Several of the newly elected senators planned to prevent a quorum by their non-attendance. In such an event they considered that the constitution would be invalidated, and that the power of forming a new one would revert to the people. Though not heartily supporting the change in government, Daniel of St. Thomas Jenifer consented to attend in order to avert such a crisis. He criticized the Senate especially as not representative, and feared much strife with the House of Delegates leading to the eventual overthrow of the Upper House.[5]

The eligibility of civil officers as members of the Assembly soon caused a disagreement. The Senate could see no reasonable ground to suppose that they might not serve acceptably. The members of the Lower House, always apprehensive of any measure tending to increase the power of the Senate, bitterly opposed this view.[6] The Senate enforced its opinion by rejecting a bill to rescind a resolution which permitted a member of the Assembly to serve until the end of his term if elected meanwhile to a State office.[7] The delegates, equally determined, refused to remove from the new constitution a clause prohibiting persons engaged in the land or marine forces from holding any State office. Militia officers, especially, revolted against this restriction which debarred them from the Assembly.[8]

This difference of opinion, which was characteristic, probably originated in the distinctive methods of election. The

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[3] Steiner, Citizenship and Suffrage in Maryland, 25-27.
[4] For an excellent analysis of the powers of the Assembly cf. McMahon's History of Maryland, 443, and Silver, Provisional Government in Maryland, 51.
[5] Daniel of St. Thos. Jenifer to Chas. Carroll and Other Senators, Feb. 2, 1777, Folio No. 87,232.
[6] House of Delegates Proceedings, Nov. 3, 1777.
[7] Senate Proceedings, Aug. 10, 1779.
[8] Senate Proceedings, July 2, 1780.

Senate, chosen by the intervention of electors, tended to become rather conservative, and tenacious of privileges, while the House of Delegates, composed of the direct representatives of the voters, was necessarily the more popular body. The influence of the Senate was on the whole rather a salutary one, often curbing the impetuosity of the delegates.[9]

Both Houses exhibited a jealous regard for the eligibility of their members. Due notice of all elections was given, great disinclination being displayed to allow the slightest irregularity.[10]

The two Houses vindicated the right to cite before their bars any person publicly accusing members of the Assembly. The Lower House in 1780 arraigned James Hindman, a delegate who had denounced all who had voted against a certain bill, and had even charged the speaker with complicity. A motion to reconsider the right to cite Hindman failed to pass. The House administered a severe reprimand, and committed the offender to the custody of the sergeant at arms upon his refusal to apologize.[11]

In order to ensure a fair hearing, the Assembly refused to receive a petition unless at least two months' notice had been given the inhabitants of the particular parish and county from which it was sent.[12] The presence of numerous witnesses in order to ascertain the real merits of these petitions often produced excessive charges.[13]

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[9] Senate and House of Delegates Proceedings, 1777-1781.

[10] For the election held the first Monday in October, 1777 the sheriffs received orders to give due notice. Council to Sheriffs, Sept. 19, 1777, Archives XVI, 380. The House declared void the election of Peter Quinton held under a writ issued by himself after he had resigned as sheriff. House of Del. Pro., Apr. 5 and 6, 1778.

[11] He was not allowed to resume his seat before a matter of great importance to his county was considered. House of Delegates Proceedings, Nov. 10, 11, 15, 16 and 29, 1780. Cf. chapter on Internal Disturbances for the summoning of Samuel Chase before the Senate.

[12] House of Delegates Proceedings, July 28, 1779; Maryland Gazette, Sept. 17, 1779.

[13] The expense of hearing the petition of Benjamin Mackall and others against Rev. Francis Lauder of Calvert county was reported as £197. This excessive charge was promptly rejected. House of Delegates Proceedings, Dec. 29, 1779.

The non-attendance of sufficient members at the time appointed for opening the sessions of the Assembly presented a serious difficulty. The poor facilities for traveling, and the frequently tardy transmission of the governor's proclamations were partially responsible. This evil increased so greatly in 1780 that the Assembly imposed a fine of twenty-five pounds for each day's absence without a valid excuse.[14] Either this penalty was insufficient or else it was not enforced, for each of the two following sessions were delayed by absent members.[15]

Important changes were made in the executive department. The creation of a Senate had deprived the governor and council of all legislative power. In place of the old system of appointment by the Crown or the Proprietary, the governor and the five members of his council were elected annually by joint ballot of the Assembly.[16] With this method of election the governor did not receive the right of veto. Subordinate to the governor and council, the justices of the peace and a sheriff in each county exercised the principal local power. The former were appointed by the governor upon recommendation of the Assembly. The governor selected as sheriff one of two candidates, elected every third year. Two registrars, one appointed for the Western, and one for the Eastern Shore divided the work of the land office. A similar separation was made of the treasurer's duties.[17]

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[14] Acts of the Assembly, Cap. IV, March session, 1780.

[15] As neither House had a quorum June 7, 1780, the House was opened June 8, the Senate, June 12. In the fall the delay was even greater. Although called to meet Oct. 17, 1780, the House of Delegates did not secure a quorum until Oct. 30; the Senate met Nov. 2, 1780. House of Delegates Proceedings, June 7 and 8, and Oct. 17 and 30, 1780; Senate Proceedings, June 7 and 12, and Oct. 17 and Nov. 2, 1780.

[16] A property qualification of £5000 was imposed upon the governor and the members of his council. Constitution and Form of Government, Articles 25 and 26; Mereness, Maryland as a Proprietary Province, 153 ff.

[17] The jealousy between the two sections of the State, as well as a desire for the more efficient despatch of business, was probably responsible for the differentiation between the two shores. Constitution and Form of Government, Articles 15, 41, 42 and 51.

The Assembly which met February 5, 1777, under the new constitution, February 13 and 14, elected a governor, Thomas Johnson, and his council. The new executive assumed office March 20 upon the dissolution of the council of safety.[18] The organization of the excutive department was completed April 3, 1777, by the appointment of an attorney-general, of the two land registrars, of 8 naval officers, of surveyors, of justices of the peace and of coroners.

Much difficulty was experienced in securing competent civil officials. Only three of the five men elected to the State council February 14, 1777, accepted, and a second choice was necessary in order to complete the requisite number.[19] Although the entire council was reëlected in the fall, nine days after the election only two had qualified. As the exigencies of public business imperatively demanded an executive power, the Assembly quickly filled the vacant places.[20] So strong was this disinclination to serve the State that many officers were only with much difficulty induced to remain at the seat of government.[21] Such an aversion to accept office under a new administration is not remarkable. As salaries increased, and the State government demonstrated its strength, this cause of complaint became less frequent.

The confusion incidental to a state of warfare, and the difficulty of communication were largely responsible for many disputed elections whose validity the executive was called upon to decide. Complaints of unfair elections of sheriffs were numerous in the fall of 1779. The policy of the governor and council was to promote a settled condition of

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[18] Senate Proceedings, Mch. 20, 1777.

[19] Senate Proceedings, Apr. 3, 1777.

[20] Journal of the Council, Nov. 11, 19, 25, and 27, and Dec. 2, 1777, Archives, XVI, 417, 424, and 426; House of Delegates Proceedings, Nov. 20 and 25, 1777.

[21] An ineffectual attempt was made to reduce the salaries of officials who absented themselves from the seat of government. House of Delegates Proceedings, Dec. 25, 1779.

government by deciding in favor of the questioned election wherever the evidence afforded the least warrant.[22]

At first there was much confusion in the land office between the provincial officials and those appointed by the State government. As late as May 1777, the Proprietary's officers granted land under his authority and seal. The official interposition of the governor and council ended this anomalous situation.[23] The Assembly in 1780 finally secured the titles of landholders by abolishing all quit rents.[24]

The chief duties of the executive department devolved upon the governor and his council. Military forces were to be raised, supplies provided, and the difficulties so numerous at this critical period must be met. Such work demanded a strong hand upon the helm of government. The firmness and energy of Thomas Johnson, the first governor, proved fully equal to the task of organization, and of enforcing the measures adopted by the Assembly. The administration of his successor, Thomas Sim Lee, was also efficient.[25]

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[22] In three counties disputed elections of sheriffs were sustained. In only one instance was a new election ordered. Journal of the Council, Oct. 25, 1779, Archives, XXI, 568; Council Proceedings, Nov. 2, and 13, 1779.

[23] Kilty, The Land Holder's Assistant, 278-79. Cf. Steiner, Sir Robert Eden, 139.

[24] Acts of the Assembly, Cap. XVIII, Mch. session, 1780.

[25] In an address to Governor Johnson upon his retirement, the Assembly thanked him "for the firmness, prudence, and integrity" he had displayed in the conduct of public affairs. Senate Proceedings, Nov. 17, 1779.

Thomas Johnson was one of the most earnest advocates of independence in Maryland. A member of the first Congress, he subsequently held many high positions in his native State, and was for a time Associate Justice of the United States Supreme Court. He declined an appointment under Washington as Secretary of State. He was considered one of the most forceful and patriotic among the Revolutionary governors of the States. Scharf, History of Maryland, II, 285-86.

As a testimony to the great esteem in which he was held, Thos. Sim Lee was accorded a unanimous reëlection. Proceedings of the Council, Nov. 13, 1780.

Thomas Sim Lee, though not so distinguished as his predecessor, enjoyed the full confidence of his fellow citizens. He was again elected governor, 1792-94, and was in Congress, 1783-84. Scharf, History of Maryland, II, 488.

The reforms introduced in the judiciary carried out the programme of separating the three departments of the government. The right of justices of the peace to hear petty cases with an appeal to the county court, the ordinary *nisi-prius* tribunal, was not disturbed. The Provincial Court was merged into a General Court, to meet upon each shore, whose three justices were to be appointed by the governor upon the recommendation of the Assembly. A special justice presided over the Admiralty Court, which had formerly been held by one of the Provincial Court justices. A new official, the chancellor, was provided to preside over the Chancery Court in place of the governor. Instead of the governor and council the constitution established a court of appeals to hear cases from the General Courts, from the Admiralty Court, and from the Court of Chancery.[26] The Assembly completed the judicial reorganization by substituting for the old probate system of a commissary general and his deputies an orphans' court in each county to be held by justices of the peace. The constitution had already ordered the appointment of a registrar of wills for every county.[27]

Nominations were made by the Assembly April 3, 1777, for a chancellor, for judges of the General and Admiralty Courts, for registrars of wills and for justices of the peace.[28] The governor and council appointed the justices to serve in the orphans' courts, June 4, 1777.[29] There is no record of a choice for the five judges of the Court of Appeals before December 12, 1778.[30] An important measure for the judicial

[26] Mereness, Maryland as a Proprietary Province, 229 ff. Constitution and Form of Government, Articles 41, 42, and 56.

[27] To preside in these courts, the governor and council designated seven justices in Anne Arundel, Baltimore, and Prince George counties, five in the other counties, of whom any two might hold court. Acts of the Assembly, Cap. VIII, Feb. session, 1777; Vallette, The Deputy Commissary's Guide, 4-7.

[28] House of Delegates Proceedings, Apr. 1 and 3, 1777.

[29] Journal of the Council, June 4, 1777, Archives, XVI, 273-74.

[30] Senate Proceedings, Dec. 12, 1778.

organization fixed the fees of the judges, the jurymen, and the witnesses in the different courts.[81]

The reëstablishment of judicial procedure constituted a very necessary measure. The suspension of all suits by order of the convention had greatly confused judicial business. The Assembly decreed that after July 1, 1777, suits might be begun, and that all civil actions pending July 26, 1775, should be reinstated in their former conditions. Legal procedure under the Provincial government was declared valid under the new administration. The county courts were to meet as under former laws. The first sitting of the General Court was fixed, for the Eastern Shore at Talbot courthouse the second Tuesday in September, for the Western Shore at Annapolis the second Tuesday in October. Two annual sittings on each shore were provided. Although the Assembly appointed the first Tuesday in October, 1777, for the initial session of the Court of Appeals, as has already been shown, the justices of this court were not named until late in 1778. Two annual sessions of the Court of Appeals were held.[82]

The alarms of British invasion, the difficulty of communication, the calls upon the militia, and various other reasons incidental to the disturbed condition of the State often caused great irregularity in holding the courts. The county courts were especially subject to such interruptions. The

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[81] In the General Court each juryman and witness received 15s. per diem. Witnesses and jurymen were allowed itinerant fees also. For the orphans' and county courts the per diem was 15s. for justices, and 10s. for witnesses with itinerant charges when they came from another county. Acts of the Assembly, Cap. XVII, Oct. session, 1777.

[82] Acts of the Assembly, Cap. XV, Feb. session, 1777. Most of the cases carried over by this act were compromised, or else abandoned. The following case is typical: Jno. Cretin had brought suit against Ann Flanagan for cutting down 200 oak trees valued at 70s. each, the property of the complainant, and then ploughing the land for her own use. The case was continued from the September term, 1772, of the Provincial Court to the October term, 1778, of the General Court for the Western Shore. As the complainant failed to appear at the time set for the trial, the defendant was awarded the charges and costs. Court Records, 64, 427.

necessary attendance at the sessions of the Assembly of many of the attorneys and of other persons having business with these courts frequently conflicted with the regular sittings. All these causes necessitated the acts, which were frequently passed by the Assembly, for the adjournment or the revival of the county courts.[83] Other measures provided for the postponement of the higher courts to accommodate the members of the Assembly.[84]

This irregularity of the courts, as well as the generally confused condition of this period, led to the forfeiture of many recognizances. Usually the governor and council granted the numerous petitions for the remission of such forfeitures.[85]

The non-attendance, not only of witnesses, but of jurymen, and even of constables, increased the legal confusion. Notwithstanding the liberal fees allowed, this practice became so great that the fines for such neglect were increased to as much as £200.[86] The Assembly further tried to remedy this evil by fixing fees in tobacco rather than in the practically worthless paper money.[87]

Needed reforms in judicial procedure were not altogether neglected. A proposal of the House of Delegates to revise completely the criminal law failed, although the Senate pro-

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[83] Acts of the Assembly, Caps. XI, and XV, Feb. session, 1777; Caps. I, and XII, Oct. session, 1778; Caps. VI, and VII, Mch. session, and Cap. II, July session, 1779; Caps. XI, and XII, Mch. session, 1780.

[84] Acts of the Assembly, Caps. I, and XIX, Mch. session; Cap. XI, June session, and Caps. VIII, and XIX, Oct. session, 1780.

[85] Cf. particularly the petition of Luther Peacock, June 17, 1778, Blue Book No. 4, 54, and that of residents of Cecil county, Mch. 13, 1778, Brown Book No. 9. In both cases the forfeiture was due to the British invasion. Other instances are found.

[86] Acts of the Assembly, Cap. XVI, July session, 1779.

[87] Witnesses in the General Court received 80 lbs. of tobacco per diem, in the orphans' and county courts, 40 lbs. per diem, and itinerant charges where they were from another county. The per diem allowed justices of the county or orphans' court was 80 lbs. of tobacco, that given jurymen was 40 lbs., while jurymen of the General Court received 80 lbs. Acts of the Assembly, Caps. XVII, and XVIII, Oct. session, 1780.

posed a joint recess committee to consider this undertaking.[38] As the records of the Assembly for this period show no further action, this revision was probably overshadowed by the many important matters for the consideration of the Assembly. A law to facilitate judicial proceedings made depositions before a justice of the peace legal testimony, except in case of disputed land boundaries. Commissions to perpetuate testimony were also legalized.[39] Another reform provided that an allowance to any one of the judges was unnecessary in a writ of *certiorari* or *habeas corpus* issuing out of the General Court to any State court in a civil cause.[40]

Much moderation had been displayed in the change from a Provincial to a State government. Old laws and institutions had been disturbed no more than was necessary. As a result of this conservatism, combined with the efficient work of the council of safety, and of the committee of correspondence, the difficulties encountered in the organization of the State government were mainly those to be expected in the ordinary course of adjustment.

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[38] Senate Proceedings, Dec. 12, 1778.

[39] Except in sickness or contemplated absence, a notice of 20 days must be given the person against whom the deposition was made. Acts of the Assembly, Cap. VIII, Mch. session, 1779.

[40] Acts of the Assembly, Cap. IV, July session, 1779.

CHAPTER II.

Attitude Toward Congress.

After the State government had become established, the attitude toward Congress became of prime importance. The disposal of the northwestern lands was the main issue involved in the long delay to ratify the Articles of Confederation. The title to these lands, which included the vast territory between the Ohio, the Mississippi, and the Great Lakes, formed the subject of conflicting claims.

As the British Crown by the Quebec Act in 1763 had assumed exclusive ownership of this region, posession apparently reverted to the Continental Congress after the Declaration of Independence. Both Virginia and New York, however, asserted that, by old charters and rights of conquest, or treaty, the northwestern territory was under their respective jurisdictions. Massachusetts and Connecticut claimed portions of these back lands.[1]

In order to appreciate rightly the opposition exhibited by Maryland to any but a common ownership of the northwestern territory, the general policy adopted toward the Continental Congress must be considered. By electing six delegates the Assembly at its first session evinced a desire to be represented in the deliberations of Congress. The ability displayed by these representatives, and by those chosen later, attests the importance attached to Congress by the State government.[2]

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[1] For a more complete account of these conflicting claims, cf. Adams, Maryland's Influence upon Land Cessions to the United States. The present study claims to have used fuller material, and especially to illustrate more adequately the motives which animated the course of Maryland. Any noteworthy disagreements with Prof. Adams' work will be noted.

[2] The delegates to Congress during this period included many of the most eminent men in Maryland. The constitution had imposed a property qualification of £1000 for these representatives.

The irregularity of elections and the indifference of the delegates formed one of the chief difficulties in securing the attendance of delegates. In one instance, the absence from Congress of all the Maryland representatives made a new election imperative.[3] To prevent repetitions of such a contingency, the Assembly in 1780 fixed the annual election of delegates in November, creating a certain rotation in office.[4] The President of Congress soon after officially complained that Maryland was not represented. A final determination had not been reached on the question of the back lands, and the council adopted prompt measures to remedy such ill-timed apathy.[5]

While desirous of being represented adequately, Maryland quickly resented any assumption by Congress of arbitrary power. The attempted arrest of Governor Eden in 1776 under direct authority of Congress had elicited a prompt remonstrance. Refusing to accede to this demand, the council of safety had nevertheless admitted the supreme authority of Congress over the colonies, but the convention, by implication, disavowed any such acknowledgment. The right of Congress even to displace any State officer whose conduct might be hostile to the American cause was denied, and the

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It is almost superfluous to mention the great services of Charles Carroll of Carrollton, whose sobriquet, "the First Citizen," was widely known. Cf. Rowland's Life of Charles Carroll.

Another prominent delegate was John Hanson, afterwards President of Congress, a leader in the struggle for common ownership of the back lands, and a man of eminence in State issues. Cf. Thomas' John Hanson.

Other prominent men who served as delegates were: Wm. Carmichael, Secretary of the American Commission at Paris, and Chargé d'Affaires at Madrid; Daniel of St. Thos. Jenifer, President for three years of the Maryland Senate, and a man of great influence in the State; Daniel Carroll, who was in the Federal Constitutional Convention, and as a member of Congress was instrumental in securing the location of the national capital at Washington; Wm. Paca, later governor of Maryland, and U. S. District Judge. Cf. House Documents No. 100.

[3] Senate Proceedings, Nov. 13, 1778.

[4] Senate Proceedings, Apr. 7, 1780.

[5] Council to John Hanson, and Jno. Henry, May 26, 1780, Council Correspondence, 107.

resolutions insisted that the State did not desire a complete separation from Great Britain, if it could be avoided.[6] Maryland afterward acceded to the Declaration of Independence; yet the convention refused to define exactly the powers of Congress, merely declaring that the Continental authority should be exercised "in adopting the wisest measures for equally securing the rights and liberties of each of the United States, which was the principle of their union."[7] The State government continued this policy by a bold resistance in at least two instances to encroachments by Continental officials upon the prerogative of administration.

Complaints were received in April, 1777, that Captain Nicholson of the Continental frigate Virginia had forcibly impressed citizens of Baltimore. The council sharply reprimanded such conduct, ordering the immediate relase of the maltreated seamen.[8] Captain Nicholson's reply to this reproof was disrespectful and even defiant. He insinuated that the rebuke was much influenced by the hostility of the council toward himself as one of the participants in the Whig Club riot. The impressment of seamen, he asserted, was a common practice. Moreover, his letter intimated that had he not been assured of the support of Congress, such a course would not have been adopted. He boldly concludes that, as he had acted in this way from a sense of duty to his country, he cared not "for the threats of any council of Maryland."[9]

Such an intemperate letter from a Continental officer elicited an immediate and vigorous protest. The remonstrance, addressed to the President of Congress and couched in no uncertain terms, asserted that if, as had been implied, Congress really approved Captain Nicholson's

[6] Council of Safety to Md. Deputies, Apr. 18, 1776, Archives, XI, 354-56; also Convention Proceedings, May 21, and 22, 1776. Cf. Steiner, Sir Robert Eden, 105 ff, and Silver, Provisional Government in Maryland, 35 ff.

[7] Convention Proceedings, Nov. 9, 1776.

[8] Council to Capt. Nicholson, Apr. 24, 1777, Archives, XVI, 226.

[9] Capt. Nicholson to Gov. Johnson, Apr. 25, 1777, State Papers No. 70, 197.

action, such a proceeding was contrary to the laws and constitution of Maryland and could in no case be tolerated. Endeavoring to appease the indignant State, Congress disclaimed affording countenance to any Continental officer in violating State laws or in treating its magistrates with contempt. Captain Nicholson was suspended from his command until he made the satisfaction required by the executive of Maryland.[10] A very conciliatory tone was adopted in notifying the council of this resolution, and leniency was bespoken for Captain Nicholson who was a most efficient officer.[11] The council administered a sharp reproof to Captain Nicholson, accepting his apology, and the affair ended.[12] The council, by vindicating its insulted dignity in this incident, had amply demonstrated to Congress that Maryland would not permit any coercion or the violation of any State right.

A somewhat similar incident in 1778 aroused the indignation of the Assembly. Major Henry Lee of the light horse cavalry instructed one of his officers to obtain horses for his dragoons on the Eastern Shore. He was to exercise powers of seizure if the generous price offered was refused. Although the governor had been empowered to afford every aid in obtaining horses for the army, the Assembly considered that, in issuing this order, the Board of War had altogether exceeded its authority. A resolve prohibiting all

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[10] Journal of Congress, II, 112; also Council to the President of Congress, Apr. 26, 1777, Archives, XVI, 229-30. A letter to the Maryland delegates in Congress strongly defined the position assumed by the State. If Capt. Nicholson's action really had the tacit approval of Congress, the letter declared: "We have very little business in our present stations, nor do we care how soon it is generally known if the fact is that the power of the Continental officers is universal, and in no wise controllable by any internal civil authority in the separate Sates." Council to Md. Delegates in Congress, Apr. 26, 1777, Archives, XVI, 230.

[11] Robert Morris to Gov. Johnson, May 1, 1777, Archives, XVI, 236-38.

[12] Capt. Nicholson to Gov. Johnson, May 5, 1777, State Papers No. 70, 209; Council to Capt. Nicholson, May 8, 1777, Archives, XVI, 244.

such seizures, together with Major Lee's instructions, was forwarded to Congress.[13]

Imbued with this independent spirit, the attitude of Maryland toward aggression by another State was a foregone conclusion. The project for a closer union was at first heartily supported, and the delegates to Congress were instructed in 1777 to vote for such a plan, reserving to the Assembly the power of ratification and of approving the admission of any additional colony to the Confederacy.[14] Such a proposal, emanating from Maryland before Congress had submitted a definite plan, proves that in the long delay for ratification the State did not reject the principle of union, but rather the terms of the compact.

Before the plan of union adopted by Congress was received, an element of discord had appeared. The House of Delegates, November 8, 1777, ordered the reading of an important motion passed by the convention, October 30, 1776, after the adoption of the Virginia constitution which had advanced an extensive claim to the back lands. As a reply to Virginia, this resolution epitomised the position subsequently assumed by Maryland, declaring "that the very extensive claim of the State of Virginia to the back lands hath no foundation in justice, and if the same or any like claim is admitted, the freedom of the smaller States, and the liberties of America may be greatly endangered, this convention being firmly persuaded that, if the dominion over those lands should be established by the blood and treasure of the United States, such lands ought to be considered common stock to be parcelled out at any time into convenient, free, and independent governments.[15] This last proposition is almost prophetic.

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[13] House of Delegates Proceedings, June 12, and Senate Proceedings, June 13, 1778.

[14] House of Delegates and Senate Proceedings, April 19, 1777. Prof. Adams has failed to mention this important proposal. In fact, his investigation is confined chiefly to the Journals of Congress, and to Hening's Statutes at Large.

[15] House of Delegates Proceedings, Nov. 8, 1777; Convention Proceedings, Oct. 30, 1776. Prof. Adams, confining his attention chiefly

The question of the northwestern territory had come up in 1776 in the controversy over the land bounties allowed recruits. Congress had evaded the avowal of any decided course, and had adopted a temporizing policy.[16]

The strength of this spirited opposition to the claims of Virginia was soon put to the test. The resolution of October 30, 1776, recalled the firm attitude of the convention upon the back lands controversy. Within less than two months the Assembly was compelled either to recede from this bold position, or else resolutely to maintain the policy of a common ownership for the back lands.

Congress sent out the Articles of Confederation, November 15, 1777, for the approval of the States.[17] Not only did this proposed plan make no attempt to settle the jurisdiction over the back lands, but the omission was intentional. After the rejection October 15, 1777, of a motion to secure a determination by Congress of the boundaries of each State, two resolutions of somewhat similar tenor had been proposed. The first empowered Congress to fix the boundaries of States claiming to the South Sea, and to dispose of the land beyond these limits for the benefit of the entire Confederation. The second resolution added the proposition of Maryland that this back land should be laid off in independent states. Both measures were lost, Maryland alone voting for the latter.[18] So strong was the opposition to these resolutions that a clause was inserted in the Articles of Confederation that no State should be deprived of its territories for the benefit of the United States. Connecticut was the

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to the Journals of Congress, has not noticed this resolution, which prepares the way for the resolution in Congress Oct. 15, 1777, and the declaration of the Md. Assembly, read May 2, 1779, which he has so greatly emphasized. This resolve of the convention is necessary to establish his proof of the influence of Md. Cf. Adams, Maryland's Influence upon Land Cessions to the U. S., 22-25.

[16] Cf. Silver, Provisional Government in Maryland, 56-59. Prof. Adams makes no mention of this controversy.

[17] Journal of Congress, II, 334-35.

[18] Journal of Congress, II, 290-91.

only one of the States claiming either the whole or a part of the northwestern territory that voted against this measure.[19]

The determination to resist the pretensions of Virginia and New York overcame momentarily the strong sentiment in Maryland for a closer union. The reply of the Assembly upon the receipt of the Articles of Confederation was speedy and trenchant. After offering minor recommendations, the main objection to ratification was embodied in a remonstrance which reiterated the attitude already assumed by the convention. For a lasting union the Assembly considered that Congress should be endowed with full power to limit the boundaries of States claiming to the Mississippi or to the South Sea. The remonstrance asserted that Maryland, in common with other members of the Confederation, was entitled to the land westward of the Alleghanies. The delegates to Congress from the State were exhorted to employ their utmost efforts to have this remonstrance made part of the Articles of Confederation.[20]

In additional instructions to the delegates in Congress, the Lower House of the Assembly afforded a proof of the State's patriotism, promising that Maryland would continue to contribute her quota of men and money for the war, would pay her part of all money borrowed or issued by Congress, and would be bound by all treaties made by that body. As the Senate apparently did not confirm this addition, it can only be considered as quasi-official.[21]

By the remonstrance to Congress, Maryland had declared in unmistakable language an unalterable opposition to the appropriation by any individual State of the back lands which, as the property of the British Crown, rightfully descended to Congress.

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[19] Journal of Congress, II, 304.

[20] The minor amendments proposed; 1st. That the Articles should be so changed that no State would be burdened with the maintenance of the poor moving in from another commonwealth; 2d. That the Articles should be so construed that only land already surveyed or granted should be required to pay taxes. House of Delegates Proceedings, Dec. 16, 1777.

[21] House of Delegates Proceedings, Dec. 17, 1777.

The Assembly reaffirmed its position June 20, 1778, resolving that the delegates to Congress should consider themselves bound by their instructions, and should ratify, after Congress had given a positive answer, only by the express authority of the Assembly.[22] Such explicit instructions committed Maryland to a policy of non-ratification until a settlement of the question of jurisdiction over the back lands.

Rejecting the minor amendments, Congress continued a temporizing policy upon the all-important question, postponing consideration of a motion founded upon the remonstrance of Maryland.[23] The strong opposition of many delegates to consider any amendments partially caused this delay. The necessity for a Confederation was immediate, and there was fear that the time consumed in submitting amendments to the different States would prove most injurious to the Continental cause.[24]

Maryland was not alone in regarding the back lands as common property. An amendment proposed by Rhode Island asserted that they should be held by the whole Confederacy, but reserved jurisdiction to the States in which they were situated. This motion was promptly rejected.[25] An amendment brought forward by New Jersey made the same provision for jurisdiction, but declared that, as the property of the enemy, the Crown lands should be used for the benefit of all the States to defray the expenses of the war.[26] This amendment was lost, and on the same day Congress definitely rejected the resolution proposed by Maryland.[27]

Although Rhode Island and New Jersey had not taken so advanced a stand as Maryland, these proposed amend-

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[22] Senate Proceedings, June 20, 1778.
[23] Journal of Congress, II, 598.
[24] Md. Delegates in Congress to the Md. Assembly, June 22, 1778, Life of Chas. Carroll, II, 7-9.
[25] Journal of Congress, II, 601.
[26] Journal of Congress, II, 605.
[27] Journal of Congress, II, 600, and 606.

ments indicate the intention of the smaller States to resist aggression by their larger neighbors. Like Maryland, neither Rhode Island nor New Jersey could expand westward, and if the claims of New York or Virginia were allowed, they were in like danger of being overawed by more powerful States. The respective motions for amendment were lost, but public sentiment at least had been awakened upon the question of the back lands.

As all the others had submitted powers of ratification, July 9, 1778, a circular was sent to the recalcitrant States, Maryland, Delaware, and New Jersey, asking them to consent at once to the Articles of Confederation. Even Rhode Island, by ratification, had abandoned the fight against the threatened domination of the Confederation by States with great territorial extent.[28] New Jersey also receded from her bold front, and ratified November 25, 1778, under a conviction of the necessity for union, even though still convinced of the reasonableness of the objections offered.[29]

Undeterred by these desertions, the Assembly issued a declaration December 15, 1778, reiterating with somewhat stronger emphasis the former arguments for a common ownership of the back lands.

Again the State promised to bear a full share of the burdens of war, and to favor a closer union. Yet it was considered fundamentally unjust that Maryland should contribute to campaign expenses without receiving a share of the proceeds from the sale of conquered lands. The Assembly would, therefore, accede to the confederation only after the insertion of an article empowering Congress to fix the boundaries of States, and ordering that the money from the sale of the remaining public lands should be used for the common benefit. The extensive claims of certain States to the entire Western country as far as the Mississippi or the South Sea was considered without foundation and

[28] Journal of Congress, II, 618.
[29] Journal of Congress, III, 135.

injurious to Maryland and to other States in similar circumstances. The declaration concluded with a significant warning that, if these divisions of opinions persisted, any disasters from this cause would be attributed to those responsible. This declaration, which was intended to define publicly the position of the State, was laid before Congress January 6, 1779, but discussion was postponed, and it does not appear to have been entered upon the journal.[30]

The instructions sent the Maryland delegates in Congress afford a fuller insight into the motives actuating this opposition to any but a common ownership of the back lands. If the States succeeded in making good their claims to the northwest territory, the Assembly was confident that the spirit prompting such action would cause aggression upon their weaker neighbors by depopulation, if not by open force. Virginia, for example, by offering cheaper land, might attract a large part of the population of Maryland. Equally to be opposed was the proposition to form of this large tract a new State dependent upon the States claiming the land. So far as the Assembly saw, either this plan had been proposed to lull suspicion, or else the interested States wished to profit by an immediate sale of the lands. Fully convinced that this unsettled territory should be parcelled out by Congress into "free, convenient, and independent governments," the Assembly again forbade the delegates to agree to the Articles of Confederation unless the desired amendment was inserted. The concluding sentence of these instructions brings into bold relief the spirit animating the Maryland Assembly: "We have spoken with freedom, as becomes freemen, and we sincerely wish that these our representations may make such an impression on that assembly (Congress) as to induce them to make such additions to the Articles of Confederation as may bring about a permanent union."[31]

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[30] Senate Proceedings, Dec. 15, 1778; Journal of Congress, III, 176.
[31] Senate Proceedings, Dec. 15, 1778.

These instructions were read before Congress May 21, 1779, and were entered upon the journal. The same day the delegates from Connecticut presented powers to ratify with twelve States only, provided Maryland was not excluded from afterwards entering the union.[32] Delaware had already ratified, still protesting against the unfairness of the Articles of Confederation, but relying upon the other States to remedy this objection.[33] In still resisting ratification Maryland, therefore, stood alone. If the proposal of Connecticut had been followed, the anomalous position of the one dissenting State might have proved exceedingly precarious. At such a crisis, the instructions and the declaration making plain the attitude of the Maryland Assembly were strong factors in arousing public sentiment to a full realization of the important issues involved in the controversy.

The policy of Virginia at this juncture was not designed to procure any compromise. As if in defiance of the attitude assumed by Maryland, the Virginia Assembly founded a land office for the survey and granting of unappropriated lands.[34] Such an arrogant assumption of authority over lands in dispute was most inopportune, and could only aggravate the conflict This action quickly brought the question before Congress. The owners of the large Vandalia and Indiana tracts in the Western country laid a petition before Congress, September 14, 1779, protesting against the measure of Virginia. Before the Declaration of Independence, the memorialists alleged, the Crown had transferred from Virginia this land which had been purchased from the Indians. It was held, consequently, not subject to Virginia exclusively, but to all the States as represented by Congress. The memorial petitioned that Congress inter-

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[32] Journal of Congress, III, 281-83. Professor Adams failed to notice this most important proposition.

[33] Journal of Congress, III, 201-2.

[34] Hening, Statutes at Large, X, 50 ff.

vene and suspend the operations of the land office opened by Virginia until the question had been fully considered.[35]

With the issue squarely presented, three courses lay open to Congress; to support the claims of Virginia and other States to the back lands; to accede to the demands of Maryland that they become public property; or, adopting neither of these courses, to evade a final determination. This last temporizing policy was adopted. Compelled to take some definite action, Congress merely requested that the Virginia Assembly reconsider its recent action; other States similarly situated were asked to forbear from settling or granting unappropriated land during the continuance of the war.[36]

Virginia had already forbidden further settlement north of the Ohio,[37] but this rather equivocal resolution of Congress elicited an emphatic remonstrance. The law prohibiting settlement in the northwest had been passed, the Assembly declared, to give every possible satisfaction to Congress, and to promote harmony between the States. Any exercise by Congress of powers of adjudication in this territory was considered a most dangerous precedent, since the boundaries of the States had been fixed in their charters. If Congress persisted in such a course, open conflict was even intimated, for Virginia was unwilling to give up her territory. To States not possessing suitable districts, the Assembly offered land for soldiers upon the same terms as to the Virginia veterans. Finally, the remonstrance declared that, while every reasonable sacrifice would be made by Virginia to the ostensible cause for delay in final ratification, any assumption of jurisdiction in the Indiana or the Vandalia cases would be promptly repudiated.[38]

This remonstrance placed Virginia in direct opposition to Maryland. Congress still hesitated to take definite action,

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[35] Journal of Congress, III, 359.
[36] Journal of Congress, III, 384; as a sign of approbation, the Maryland Senate ordered this resolution engrossed upon its journal. Senate Proceedings, Nov. 12, 1779.
[37] Hening, Statutes at Large, X, 161-62.
[38] Hening, Statutes at Large, X, 557-59.

but signs of the influence exerted by Maryland were not wanting. An act of the New York Legislature read before Congress March 7, 1780, empowered the delegates from the State to make an entire, or a conditional cession of the claims to Western lands.[39] Virginia as yet gave no sign of yielding.

Meanwhile public sentiment in Maryland showed no intention of reversing the bold front already assumed. In the controversy between the Senate and the House over the confiscation of British property, the former suggested that if the taxes required by Congress could not be raised otherwise, the back lands, as the property of the Crown, should be sold rather than confiscate the property of private citizens of Great Britain.[40] Part of a somewhat similar argument elaborated by the Senate at the next session of the Assembly exhibits especially the aim of Maryland's policy with regard to the back lands. "To render them useful to the whole of the United States, and to each State in particular, the authority of all must interpose to regulate on what conditions the land shall be purchased and held by the purchasers, and to define the limits of such States as are not accurately defined, to erect new governments, and to prescribe the terms upon which they shall be admitted to the present union." [41]

The influence upon national sentiment of the unwavering policy of Maryland became manifest September 6, 1780, when Congress assumed a more determined position. Although careful not to examine into the intrinsic merits of the controversy, this resolution admonished the States that, by following the example set by New York and surrendering their claims, they would remove all embarrassments arising from

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[39] Journal of Congress, III, 439, and 582-86; Professor Adams attempted to show, through a letter to Gen. Schuyler, a definite influence of Maryland upon this act of the New York Legislature. Cf. Adams, Maryland's Influence upon Land Cessions to the United States, 29-32.

[40] Senate Proceedings, Dec. 23, 1779.

[41] House of Delegates Proceedings, May 14, 1780.

the western lands. The pressing necessity for a Federal union was urged, while the resolution asserted that a determined non-surrender of these claims endangered the Confederacy.[42]

A later resolution, which exhibited still more the influence of Maryland, directed that any ceded, unappropriated land should be formed into States of not less than one hundred nor more than one hundred and fifty miles square, to be parts of the Federal Union, with the same privileges as other members. The resolution also provided that the United States should be reimbursed for the defense of these lands, and that Congress should be empowered to fix the terms on which they were to be granted and settled.[43]

Following the proffered cession by New York, the assumption by Congress of this definitive position was not without influence upon Virginia. In response to the recommendations of Congress, January 2, 1781, the Virginia Assembly resolved that as "the safety, strength, and happiness" of the colonies was dependent upon the ratification of the Articles of Confederation, the State yielded her claims to lands northwest of the Ohio River for the benefit of all the States. An added proviso required that the plan which Congress had adopted for dividing the territory should be carried out.[44]

This complete abandonment of the defiant position which had been assumed by Virginia bears evident traces of the influence exerted by Maryland. In a letter to Edmund Pendleton, September 12, 1780, James Madison had assigned the claims of Virginia to the back lands as the exclusive obstacle to final ratification. He considered that a compliance with the resolutions of Congress would bring Maryland into the Union.[45] The at least partial result of this

[42] Journal of Congress, III, 516-17.
[43] Journal of Congress, III, 535.
[44] Hening, Statutes at Large, X, 564-67.
[45] Jas. Madison to Edmund Pendleton, Sept. 12, 1780, Madison Papers, I, 50-51. Edmund Pendleton had been Speaker of the House of Burgesses, and was at this time President of the Va. Court of

message from so distinguished a representative in Congress is found in the reason given by the Virginia Assembly for the cession. This surrender by Virginia virtually secured for the back lands the status for which Maryland had contended. The latter could now ratify without fear of injurious territorial pretensions by the neighboring State.

The Maryland Assembly was not slow to accept this acknowledgment of the justice of its views. The House of Delegates, January 29, 1781, asked the Senate to reconsider the bill for ratification, as the question of the northwest territory might now be left to the honor and justice of the country.[46] This reasoning prevailed, although the Senate still considered the old form of union best fitted to promote the cause of the back lands.[47] As finally passed, this act empowered the Maryland delegates in Congress to ratify in behalf of the State. The Assembly did not relinquish the position that had been so long maintained, but relied upon the justice of the other States, not insisting upon an amendment.[48]

The power to ratify was laid before Congress February 12, 1781. New York made a definite cession of claims to the back lands March 1, 1781, and the same day the new Confederation became a reality. The Articles of Confederation were signed in behalf of Maryland by John Hanson afterwards president of Congress, and by Daniel Carroll who, with his colleague, had been influential in bringing the question of the western lands before the country.

Throughout the controversy over the back lands, the same spirit of independence was preserved which had repelled

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Appeals. Prof. Adams does not seem to assign to this letter its true importance. Cf. Adams, Maryland's Influence upon Land Cessions to the United States, 34.

[46] House of Delegates Proceedings, Jan. 29, 1781. Just when news of the cession by Virginia reached Maryland is not definitely known. Probably intelligence of such vital importance was conveyed in a very few days. Such a speedy transmission would account for the subsequent action of the Assembly.

[47] House of Delegates Proceedings, Jan. 30, 1781.

[48] Acts of the Assembly, Cap. XL, Oct. session, 1780-81.

with so much vigor any undue interference by the Continental authorities or by Congress in the affairs of the State. The attitude of Maryland had been that of an ally acknowledging the power of Congress only so far as the interests of the State were furthered. Other States had soon receded from their objections to the Articles of Confederation, but Maryland, undeterred by the threats of Virginia, had pursued an unfaltering course. The desire for a Confederation, so early expressed, had not been forgotten in the struggle. When a fully aroused national sentiment had become unmistakably favorable, the Assembly consented to ratification, conscious that the title to the great northwestern territory had been secured to the States in common. Even the plan proposed by Maryland for the organization of these lands was followed essentially in the Ordinance of 1787. By insisting upon a common ownership of the back lands, Maryland had prepared the way for what was one of the most important measures in the history of the United States.

CHAPTER III.

MILITARY AID.

The aid to the Continental army during the period 1777 to 1781 forms probably the most important phase of the support which Maryland accorded Congress. Situated between the northern and southern campaigns, the abundant resources of Maryland were not exhausted by much actual conflict, or by the presence of large bodies of troops. The response to the requisitions of Congress should have been ready and full, yet even in this work the State exhibited at times an independent attitude. These efforts to help the army naturally fall into three divisions: first, recruits; second, supplies; third, care for British prisoners.

Under the Provisional government a large number of troops had already been furnished, but so much difficulty was encountered in filling up the battalions assigned the State that early in 1777 recruits were exempted from arrest for small debts, and an increased bounty was offered.[1] Later the Assembly ordered 2000 enlistments apportioned among the different counties. Besides giving liberal bounties, this act appointed special recruiting officers in each county who were to receive large rewards for effective work. The results were not altogether satisfactory.[2]

In view of the near prospect of French aid, February 26, 1778, Congress asked Maryland to complete her quota for

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[1] Acts of the Assembly, Cap. III, Feb. session, and Cap. VIII, June session, 1777.

[2] Acts of the Assembly, Cap. VIII, Oct. session, 1777. As an illustration of the response, the muster rolls, which are not always complete, show that 50 recruits were enlisted in Anne Arundel county, 53 in Frederick county. The respective quotas were 145 and 253. Muster Rolls, Archives, XVIII, 312 ff.

the prospective campaign.[3] As a strong public sentiment opposed compulsory service, the only apparent expedient, this requisition provoked much discussion. The Assembly finally complied by ordering the enlistment of 2902 men by draft upon the militia, if necessary. Hoping to employ such compulsory means only as a last resort, the council ordered all bounties paid at once.[4] Recruiting under this act produced more satisfactory results, and was practically concluded by June. Much opposition had been manifested in Baltimore and St. Mary's counties, while in Queen Anne county the sheriff had been directed to employ force for the execution of the law.[5]

The opposition to drafts became so strong in 1779 that a member of the Assembly openly declared that it was better to submit to the British than to impose upon the people a measure to which he was convinced they would not submit.[6] The numerous losses of the Maryland Line by sickness and the expiration of enlistments demanded immediate measures to supply the deficiencies.[7] Although evidences of public support were not lacking, the Assembly did not risk a draft, but passed an act in October for the enlistment of 1400 men

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[3] Journal of Congress, II, 457-59; eight battalions of 504 men each, and the German regiment were assigned to Maryland.

[4] The militia of every county was formed into the requisite number of classes from each of which a recruit was to be drafted unless a substitute had been furnished by May 20, 1778. Enlistments already made under the act of Oct., 1778, were included in the 2902. Acts of the Assembly, Cap. V, Mch. session, 1778; Council to County Lieutenants, April 12, 1778, Archives, XXI, 32.

[5] Under the acts of Oct., 1777, and Mch., 1778, there were 187 enlistments in Anne Arundel county, 324 in Frederick, 32 in Calvert, 125 in St. Mary's, and 124 in Charles. The respective quotas were: Anne Arundel, 185; Frederick, 309; Calvert, 74; St. Mary's, 140; Charles, 145. Doubtless there were numerous other enlistments which are not included in the available muster rolls. Muster Rolls, XVIII, 315 ff. Council to the Lieutenant of Queen Anne County, Feb. 11, 1778, Archives, XVI, 487-88, and to Sheriffs, June 9, 1778, Archives, XXI, 127.

[6] Senate Proceedings July 29, 1779.

[7] The shortage in the Maryland Line was 957 in the summer of 1779. House of Delegates Proceedings, Aug. 5, 1779; Baron Steuben to Gov. Johnson, Sept. 24, 1779, Archives, XXI, 536-37.

with greatly increased bounties.[8] This measure was so unsuccessful that February 29, 1780, Washington estimated that there was a deficiency of one-third in the Maryland battalions.[9] When Congress urged the necessity for a draft, the Assembly, maintaining the independent attitude of the State, merely prolonged the time limit of the last recruiting act.[10]

A conflict between State and Continental interests was brought on in 1780 by a requisition for 2205 militia in addition to recruits for the regular battalions.[11] The approaching harvest, and the difficulty in equipping such a force made a compliance almost impossible. Instead the Assembly offered to enlist an extra regiment of 531 men beside the 1469 recruits to fill up the State battalions. This plan was considered much more satisfactory to the militia, leaving them to pursue their ordinary vocations in peace without fear of being forced into military service. This arrangement for the convenience of the State was accepted by Washington who stipulated that the extra regiment should be ready by the end of July.[12] The measures to enlist these recruits from the militia proved so unsuccessful that hardly one-half the promised number was obtained.[13] Early in September, Washington ordered the regiment provided in lieu of the militia to go south with the greatest haste. Apparently

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[8] Acts of the Assembly, Cap. XXXVI, Oct. session, 1779. The second battalion of Maryland militia had passed resolutions affirming their full support of all measures taken by the State government. Maryland Gazette, July 9, 1779.

[9] The available records show 274 recruits enlisted under this act, Muster Rolls, Archives, XVIII, 332-36. Washington to Gov. Lee, Feb. 20, 1780, Brown Book No. 1, 28.

[10] Journal of Congress, III, 432; acts of the Assembly, Cap. II, Mch. session, 1780.

[11] This force was to serve three months and to rendezvous by July 25. Committee of Coöperation to Gov. Lee, June 2 and 12, 1780, Folio 87, 178, and 182.

[12] Gov. Lee to Washington, undated but supposed to be in 1780, Folio 87, 197-98; Washington to Officers of the Assembly, June 27, 1780, Brown Book No. 1, 35.

[13] Acts of the Assembly, Caps. X, and XXIII, June session, 1780. 1036 recruits were enlisted, of which only 228 were in the extra regiment. House of Delegates Proceedings, Dec. 12, 1780.

little effort had been made to fulfill the agreement, for hardly half of the proposed regiment actually marched the latter part of October.[14]

In a report November 14, 1780, estimating a deficiency of over one-half in the State's quota, General Gist, commander of one of the Maryland brigades, proposed a plan of permanent organization for the Maryland Line.[15] While unwilling to adopt so advanced a step, the Assembly imposed upon property-holders a draft of 1000 recruits for the southern campaign, provided they could not otherwise be obtained. This, the last recruiting act before the ratification of the Articles of Confederation, proved quite successful.[16]

The Continental army was also aided by artillery forces from Maryland. Two-thirds of the artillery companies stationed at Baltimore and Annapolis were ordered to the front in 1777. The deficiencies in this service rendered these reinforcements specially welcome, and they were finally included in the quota of the State.[17] Owing to the great expense and little use of the forces remaining at Baltimore and Annapolis, in July, 1779, the effective part was ordered to camp, the enlistment of additional men for this service at the front being authorized.[18] The baneful State jealousy, which interfered so seriously with the organization of the

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[14] Washington to Gov. Lee, Sept. 6, 1780, Folio 87, 242; Maryland Gazette, Oct. 6, 1780; Council to Board of War, Oct. 25, 1780, Council Correspondence, 201.

[15] Gen. Gist estimated that 1051 men were needed to complete the Maryland battalions, but only 1434 were on duty. As he put the available male population at about 30,000, a force of 3385 constantly kept in the field would not have proved burdensome. Gen. Gist to the Chairman of the House of Delegates' Committee, Nov. 14, 1780, Brown Book No. 3, 31.

[16] Acts of the Assembly, Caps. XLIII, and XLIV, Oct. session, 1780. Exclusive of Baltimore and Frederick Counties, 200 enlistments under this act are recorded in the muster rolls. Muster Rolls, Archives, XVIII, 366 ff.

[17] Acts of the Assembly, Cap. V, Mch. session, 1778; Senate Proceedings, Nov. 12, 1777; Journal of Congress, II, 296-97.

[18] Senate Proceedings, Mch. 24, 1779; Council to Samuel Chester, Sept. 15, 1779, Archives, XXI, 526; Acts of the Assembly, Cap. XV, July session, 1779.

Continental army, appeared also in the effort to preserve the individuality of the Maryland artillery.[19] Refusing to form these companies into a separate corps, Washington proposed to annex them, still under the command of Maryland officers, to the Virginia artillery.[20] This proposal was accepted, but to guard against any possible infringement in the rights of the Maryland soldiers the Assembly insisted that officers should be appointed only upon recommendation of the State executive.[21]

The German regiment, which Congress in 1778 had included in the Maryland troops, was continued as a separate organization.[22] A number of recruits were enlisted for this corps, chiefly from the large German population of Frederick county.[23] Difficulty in filling up the State battalions caused so strong a sentiment against aiding independent corps that several fruitless attempts were made to form an additional battalion of the Maryland Line by uniting part of the German regiment with Col. Rawlings' rifle battalion.[24]

Maryland furnished other troops not included in the State battalions. Recruiting officers from outside worked to such an extent that serious results were apprehended in raising the State's own quota, and in 1777 the Assembly was obliged to forbid the enlistment of recruits in any but the Maryland battalions.[25] These enlistments caused much dissatisfaction, especially those made by officers from Pennsylvania and Delaware. The scarcity of men and labor was very great,

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[19] Council to Gen. Smallwood, Oct. 27, 1779, Council Correspondence, 33.

[20] Gen. Knox to Washington, Dec. 21, 1779, Brown Book No. 1, 26.

[21] Senate Proceedings, May 9, 1780; House of Delegates Proceedings, Jan. 31, 1781; Council to the Board of War, Feb. 2, 1781, Council Correspondence, 136.

[22] Journal of Congress, II, 457-59.

[23] Muster Rolls, Archives, XVIII, 78 ff., and 320-26.

[24] Senate Proceedings, Apr. 11, 1780; Col. Rawlings' corps of riflemen was raised partly in Md. under a resolve of the convention. Muster Rolls, Archives, XVIII, 77.

[25] Acts of the Assembly, Cap. VIII, June session, 1777; Maryland Gazette, May 1, 1777.

and it was felt that these outside enrollments should lighten somewhat the requisitions for troops.[26]

Occasional permission was given to enlist men for independent organizations, but no hesitation was shown in disregarding the wishes of Congress in this particular. Count Pulaski was assisted in 1778 to obtain recruits for his legion. These men were placed upon the same footing as those in the State battalions, and counted in the quota of Maryland.[27] When Pulaski, in 1779, again asked permission to make enlistments under the authority of Congress, his request was refused upon the pretext that the new recruiting law applied only to the Maryland Line.[28] Recruiting officers of Colonel Armand's regiment met with a similar rebuff.[29]

Major Henry Lee, Jr., in 1780, was permitted to enlist for his light horse corps twenty men who should count in the State quota. Major Lee had already obtained a number of recruits in Maryland.[30]

The plan adopted by Congress October 3, 1780, finally settled the status of the independent corps. All the soldiers of such battalions after January 1, 1781, were to be incorporated in the corps of their respective States.[31]

In filling the State battalions, the inability to hold enlisted men in camp caused much trouble. The loose discipline of the Revolutionary army, and the unwillingness of many recruits to serve outside their own State promoted such

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[26] At least a regiment, it was claimed, had been enlisted by Delaware and Pennsylvania, and about 300 in the Flying Camp. Before such enlistments were counted in the State quota, over 100 men had been recruited for Pulaski's legion. Council to Md. Delegates in Congress, Mch. 26, 1779, Archives, XXI, 328-29.

[27] Senate Proceedings, Apr. 21, 1778; Council to Capt. Keeports, Apr. 21, 1778, Archives, XXI, 48; about 26 recruits were enlisted in Baltimore and Anne Arundel counties. Muster Rolls, Archives, XVIII, 317-19, and 593.

[28] Council to the Chevalier de la Place, Apr. 20, 1779, Archives, XXI, 354-55.

[29] Council to the Chevalier de la Place, Apr. 15, 1779, Archives, XXI, 348.

[30] Senate Proceedings, Apr. 15, 1779; Muster Rolls, Archives, XVIII, 586-87.

[31] Journal of Congress, II, 532-33.

action. The mutual State jealousies, and the little respect often shown the wishes of Congress naturally produced these conditions. The Assembly in 1777 ordered the arrest of such deserters, while Congress offered $10 for each one returned to the army.[32] Numerous advertisements for their apprehension are found in the newspapers of the day, yet desertions became so prevalent that the council requested all justices of the peace to compel enlisted men to join their regiments.[33] Not one-half of the recruits enlisted by the act of June, 1780, remained in the Continental army.[34] Such wholesale desertions justified the subsequent measure offering large rewards for the apprehension of deserters, and severely punishing persons who harbored them.[35]

Recruits were not confined to free citizens. The enlistment of servants and apprentices, at first authorized, was soon prohibited, though the repeal of the law was not altogether effective.[36] Owing to the frequent desertions, Washington discountenanced such enlistments.[37] The Assembly in 1780 stopped the flagrant abuses by masters who sold servants with only a short period of servitude remaining, in order to obtain the bounty money.[38]

Convicted criminals were enlisted under a law absolving recruits from crimes already committed. Pardons were

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[32] Acts of the Assembly, Cap. II, Feb. session, 1777; Journal of Congress, II, 293.

[33] Maryland Gazette, June 5, 1777.

[34] 1036 were enlisted, but only 381 remained in active service. Report of Gen. Gist, Nov. 14, 1780, Brown Book No. 3, 31.

[35] Beside the $10.00 continental reward, the State offered $15.00 in Spanish money for each deserter apprehended who had enlisted for the war, $12.00 if he had enlisted for only three years. Upon conviction of harboring or concealing a deserter, the offender was considered a soldier enlisted for either two or three years; if he was the father of the deserter, he must procure a recruit, or pay a fine of £35. Acts of the Assembly, Cap. XLIII, Oct. session, 1780.

[36] Acts of the Assembly, Cap. III, Feb. session, and Cap. X, June session, 1777.

[37] Council to Saml. Smith, Mch. 26, 1778, Archives, XVI, 553.

[38] Acts of the Assembly, Cap. XLIII, Oct. session, 1780.

issued in several instances on condition that the recipient should enlist and not desert.[39]

A law of March 1778, ordered that all vagrants should be regarded as recruits, while in 1780 the enlistment of slaves was permitted with the master's consent. A number of vagrants were sent to the army, but few, if any, slaves.[40] Recruits of this kind do not appear to have given much satisfaction. Not serving from patriotic motives, they frequently deserted to the enemy.[41]

The Continental army received effective aid from the Maryland militia on several occasions. The entire militia force of the State might be called out by the governor and council in times of invasion, but only one-fifth was to be ordered outside the State.[42] In response to a call for 2000 militia in 1777 to repel the British attack on Philadelphia, a large force joined the Continental army.[43] The men were not very willing to undertake such service outside the State, and in Anne Arundel county force was necessary to suppress an organized combination of the militia against this compulsory service.[44] When the British evacuation of Philadelphia seemed imminent, May 17, 1778, Washington asked for about 500 Maryland militia to relieve the regular force guarding the supplies stored at the Head of the Elk. Hastening to meet this requisition, the council ordered the men to

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[39] Journal of the Council, Archives, XVI, 187 ff, and XXI, 1 ff. In one case five persons condemned by the Baltimore County court were pardoned on condition they enlist. Journal of the Council, Mch. 26, 1778, Archives, XVI, 552.

[40] Acts of the Assembly, Cap. V, Mch. session, 1778, and Cap. XLIII, Oct. session, 1780. No record of slave enlistments appears, 1777-1781. There are a few of vagrants. Muster Rolls, Archives, XVIII, 326, 327, and 329.

[41] Maryland Journal, Oct. 7, 1777.

[42] Acts of the Assembly, Cap. XVII, June session, 1777.

[43] The exact number of these militia forces is not known, but over 1000 Maryland militia fought in the battle of Germantown. Muster Rolls, Archives, XVIII, 652.

[44] Council to Col. Robosson, Sept. 1, 1777, Archives, XVI, 356-57.

march at once, not even waiting for arms which would be supplied upon their arrival.[45]

The effectiveness of recruits was greatly enhanced by the militia laws. The Assembly in 1777 ordered the immediate enrolment of all males between sixteen and fifty years of age. This law, which was enforced by heavy fines, provided for the complete organization of the militia, and appointed regular days for exercise.[46] An act for the more effective collection of militia fines became necessary in 1778. The same year articles were promulgated to preserve discipline while the militia was in actual service.[47] A special committee reported in 1780 that, owing chiefly to the carelessness of officers and the lack of arms, the militia was in a very inefficient condition. To remedy this situation the Assembly ordered a new enrolment, abolishing the practice of obtaining exemption from militia duty by finding a substitute. Later, more effective provision was made for militia exercise.[48]

The attempt of the Assembly, in 1777, to settle controversies over rank in the Maryland Line afforded another instance of State jealousy. The Assembly finally acquiesced in the proposal made by Washington to refer the entire matter to a board of officers, but the governor and council were still empowered to fill vacancies.[49] The wise policy of Governor Johnson in making no appointments unless authorized by Congress avoided much confusion from the ambiguous measure.[50] The Assembly increased the complication November 21, 1778, by a decision that Maryland officers

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[45] Washington to Gov. Johnson, May 17, 1778, Folio 87, 236; Council to the Lieutenant of Queen Anne County, May 23, 1778, Archives, XXI, 21.

[46] Companies were formed of not over 50 to be exercised at least seven times in a year. The companies were formed into battalions, exercised every three months. Acts of the Assembly, Cap. XVII, June session, 1777.

[47] Acts of the Assembly, Caps. XIII, and XIV, Mch. session, 1778.

[48] Acts of the Assembly, Cap. III, June session, and Cap. XXXI, Oct. session, 1780.

[49] House of Delegates Proceedings, Mch. 3, 1777; Senate Proceedings, Apr. 11, 1777.

[50] Gov. Johnson to (probably the Board of War), Jan. 11, 1778, State Papers No. 70, 237-39.

should rank according to the provisions of the convention, and that Washington could only alter any mistakes in precedence between officers of similar rank.[51] The officers had supposed that Washington possessed full power to remedy the many abuses which had been permitted. There was even danger that as a result of this meddlesome action many of them would resign from the Maryland Line. By the summary appointment of a board to report on all questions of rank and precedence, Washington averted this serious blow.[52] The governor again displayed his sagacity, confirming the decisions of this board.[53]

Great liberality was displayed toward the recruits in the provisions for pensions. The act allowing half-pay to disabled officers and privates, under which a large number of pensions were granted, was afterward extended to all officers who continued in service until the close of the war.[54] As a further mark of appreciation, December 12, 1778, each officer was voted a gift of £150.[55]

Exertions were also made to help imprisoned officers and privates. To ameliorate the condition of other prisoners, the council ordered the return of Continental officers, who had been allowed their liberty by the British and had violated their paroles.[56] Despite the wish of Congress to bring the exchange of prisoners under central authority, Maryland, in common with the other States, exchanged captives taken

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[51] Senate Proceedings, Nov. 21, 1778.

[52] Washington to Officers of the Assembly, Apr. 10, 1779, Folio 87, 239-40.

[53] Council to Washington, July 9, 1779, Archives, XXI, 469-70. The council had always displayed a great unwillingness to interfere, or to remove officers. Even in the cases of two unpopular and inefficient officers, the executive refused to take any action, Council to Chas. Rumsey, June 1, 1779, and to Capt. White's Company, Aug. 25, 1779, Archives, XXI, 436 and 503.

[54] Acts of the Assembly, Cap. XIV, Oct. session, 1778; Senate Proceedings, Mch. 25, 1779; Muster Rolls, Archives, XVIII, 626 ff.

[55] Senate Proceedings, Dec. 12, 1778.

[56] The Council was especially solicitous for the apprehension and return of Capt. Richard Davis, said to have fled to the Western country. Council to Daniel Hughes, Sept. 16, 1779, Archives, XXI, 527.

within her own boundaries for officers and privates of the State troops.[57] After an unsuccessful attempt to alleviate the sufferings of officers imprisoned in New York, £50 was ordered to be sent to each officer in captivity.[58]

Although the exact results of these efforts to obtain recruits in Maryland cannot be given, the accessible records show a marked disparity between enlistments in 1777 and 1778, and those in 1779 and 1780. This inequality is most significant in view of the more drastic recruiting laws and the measures to render the State forces more effective. The inference would be that, by the end of 1778, the first exuberance of patriotic fervor had passed, and that the inclination of the citizens of the State to serve in the Revolutionary army had greatly decreased.[59]

Besides furnishing recruits, Maryland supported Congress by forwarding large quantities of military supplies.

The poverty of the State treasury and the arbitrary conduct of purchasing agents frequently presented serious obstacles in obtaining provisions. Despite these hindrances, both the recruiting officers and the army received large supplies from the State during 1777.[60]

Throughout the severe winter at Valley Forge every effort

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[57] Journal of Congress, II, 422-24; Council Proceedings, Sept. 23, 1780; Council to Dan'l Hughes, Feb. 23, 1781, Council Correspondence, 196.

[58] Council to Henry Sheaff, Nov. 8, and to Richard Harrison, Apr. 24, 1780, Council Correspondence 206, and 93; Senate Proceedings, Jan. 5, 1781.

[59] The following table, compiled from the Muster Rolls, Archives, XVIII, gives the known number of enlistments in Maryland during the respective years. Many undated enlistments are omitted. The table shows, therefore, that no less than the number given were enlisted in the respective years. Doubtless there were others not recorded. The same incompleteness is found in summing up the number of deserters. Those given are desertions from the list of recruits as recorded for each of the four years. The numbers show that almost 14 per cent of the recruits left the army in this manner.

	1777	1778	1779	1780	Total.
Enlisted	1735	2081	459	328	4603
Deserters	260	266	83	23	632

[60] Journal of the Council, Archives, XVI, 187 ff.; Maryland Gazette, Dec. 4, 1777.

was made to provide for the army. The failure of the Continental purchasers to obtain an adequate supply induced the council to appoint purchasers of cattle with powers to seize them as a last resort.[61] The Assembly confirmed this assumption of authority at a critical juncture by the appointment of an agent in each county with similar powers.[62] A reasonable advance on the low prices paid by these officials was allowed in June, on supplies already obtained, in order to conciliate the people, if possible, to such arbitrary measures. As an abundant supply of beef had been procured, further purchases were stopped.[63] The high prices, especially in Cecil county, where Pennsylvania agents had also purchased supplies, caused much trouble in this work.[64] Much corn and wheat had been delivered by March 10, 1778, at the principal Maryland magazine situated at the head of navigation on the Elk River.[65]

The scanty crops and the activity of speculators so advanced prices that, to procure supplies for Congress, an embargo was laid upon provisions. The law against speculation was continued.[66] Although prices remained high, particularly in Harford county, almost the whole of an

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[61] Journal of the Council, Jan. 7, 1778, Archives, XVI, 456-57.

[62] In all cases of seizures, certificates were given the owner payable by the State Treasurers. Such forcible means were employed only after a fair price had been offered. In most acts conferring this power, agents were authorized to seize all supplies above what was absolutely necessary for the subsistence of the owner and his family. Acts of the Assembly, Cap. I, Mch. session, 1778.

[63] Council to Wm. Bond, July 29, 1778, Archives, XXI, 170.

[64] The withdrawal of these Pennsylvania agents was requested. Gov. Johnson to Gen. Gates, Mch. 6, 1778, State Papers No. 70, 245.

[65] This magazine, commonly called the Head of the Elk, was at the northeastern extremity of navigation upon the Bay, and was the most convenient point, accessible by water, from which to forward provisions to the Jerseys or to Philadelphia. By Mch. 10, 1778, 5000 bushels of wheat and 5000 bushels of corn had been delivered here. Contracts had been made in all for 36,000 bushels of wheat, 10,000 bushels of corn, and other provisions. Report of Henry Hollingsworth, Mch. 10, 1778, State Papers No. 70, 247.

[66] For a fuller account of these laws, cf. chapter on Commerce. Congress made a requisition, Aug. 24, 1778, for 20,000 barrels of flour from Maryland, Delaware, and Virginia. Journal of Congress, III, 31 and 77-78.

additional requisition for flour had been secured in 1779 before the end of May, chiefly by the State purchasers.[67] By prohibiting the operations of Continental agents where State purchasers had been appointed, Congress ended the frequent clashes between these different officials, and materially aided the efforts to procure supplies.[68]

Despite the substitution of salt and powder in exchange for wheat instead of the almost worthless paper money, the need of the army became so alarming that the Assembly appointed purchasing agents in each county empowered to seize when necessary.[69] Fear was even expressed that the army would be compelled to disband unless provisions were furnished. In such a crisis, the governor enjoined all State officers to carry out fully the laws for collecting provisions.[70] To relieve the grave situation of the army, Governor Lee gave orders that provisions be sent on at once, not waiting in so critical a juncture for the consent of his council.[71]

The exhaustion of the resources of many States by the trying winter of 1780 to 1781 induced a request on June 2, 1780 for a large monthly supply from Maryland.[72] This

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[67] Council to H. Hollingsworth, Apr. 26, and to Gouverneur Morris, May 28, 1779, Archives, XXI, 366, and 429. The additional requisition was for 10,000 barrels of flour by the end of June. Gouverneur Morris to Md. Delegates in Congress, Apr. 2, 1779, Archives, XXI, 338.

[68] Journal of Congress, III, 412; Maryland Gazette, Sept. 10 and 24, 1779.

[69] Acts of the Assembly, Cap. XXXII, Oct. session, 1779; as much as 8000 bushels of salt was to be exchanged for wheat at the rate of one pound of salt for two pounds of wheat. Council to R. Buchanan, Oct. 5, 1779, Archives, XXI, 550. Several barrels of powder were ordered placed at the principal mills of Frederick county, one pound of powder to be exchanged for one bushel of wheat. Council to N. Bruce, Oct. 18, 1779, Archives, XXI, 561.

[70] Besides a previous requisition for 15,000 barrels of flour, Dec. 11, 1779 Congress asked for 5000 barrels of flour, and 500 barrels of Indian corn before April 1, 1780. Journal of Congress, III, 410; Council Proceedings, Dec. 29, 1779.

[71] Gov. Lee to Col. Peregrine Tighlman, Mch. 13, 1780, Council Correspondence, 76.

[72] The monthly supply asked consisted of 2500 barrels of flour, 143,045 pounds of beef, and 11,428 bushels of grain for forage. 30,000 pounds of bacon in three equal parts was also asked for. Committee of Coöperation to Gov. Lee, June 2, 1780, Folio 87, 178-81.

resolution was not disregarded, and the purchasers appointed in the fall of 1779, who had accomplished very little, were ordered to exert the power of seizure whenever at all necessary. Additional agents were appointed in each county to purchase salt meats. Orders for large quantities of bacon had already been given.[73] As the harvest had been abundant, it was hoped that a plentiful supply of wheat would be obtained at the prices fixed by the Assembly without unnecessarily employing force.[74] The continued depreciation of the currency joined to the poverty of the State treasury so greatly hindered the work of the purchasing agents that the State was unable fully to comply with the Continental requisitions.[75]

The necessity of an adequate supply for the army operating in the South was met in October, 1780, by a tax levied partly in provisions.[76] The need for cattle was recognized early in September by orders to send them forward immediately. 500 cattle to fill a requisition of Congress were promptly collected, but as no Continental officer appeared to receive them at the Head of the Elk, part were sold to provide forage.[77]

In addition to these provisions, clothing and blankets were furnished the Maryland Line. Agents appointed April 2, 1777, to receive blankets proved so unsatisfactory that such

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[73] Acts of the Assembly, Caps. XXV, and XXI, June session, 1780; Council to Thos. Donnellson, June 12, 1780, Council Correspondence, 113.

[74] Council to J. C. Harrison, July 29, 1780, Council Correspondence, 144.

[75] Council to Commrs. of Purchase, Aug. 21, and to J. C. Calhoun, Sept. 5, 1780, Council Correspondence, 156 and 168. Under the June act, 12,212⅜ bushels of wheat, 1094 barrels of flour, 20,976 pounds of bacon, and several small items were secured. This report was exclusive of Somerset, Queen Anne, Caroline, or Washington counties. House of Delegates Proceedings, Nov. 18, 1780.

[76] Journal of Congress, III, 517. Acts of the Assembly, Cap. XXV, Nov. session, 1780.

[77] Council to Jas. Hindman, Sept. 11, 1780, Council Correspondence, 176; Council to Md. Delegates in Congress, Nov. 22, 1780, Council Correspondence, 12.

supplies were purchased in Alexandria, Virginia.[78] As the fall advanced, the condition of the Maryland troops became pitiable; clothing, blankets, even stockings were needed. Special officers were appointed in each county to collect blankets and clothing, seizing all surplus supplies, and every housekeeper in the State was asked to furnish a pair of good white stockings.[79] Another order was sent to Alexandria for large supplies of clothing and blankets. The insufficient supplies obtained made much exertion necessary to alleviate the sufferings of the Maryland troops at Valley Forge, as, barefoot and almost naked, they endured the rigors of a severe winter.[80] Large quantities of clothing were sent General Smallwood's troops, and the continued exertions of collectors soon supplied the Maryland Line, although shirts and blankets were still needed in July.[81]

Though unexpected, a requisition, September 10, 1779, for clothing to be sent the State troops was promptly met, yet there was danger that, without aid from the Continental stores, the large quantity of materials on hand would prove insufficient. Large orders were given throughout the fall for blankets and clothing, and such supplies were rushed forward in January with the utmost haste.[82] All the blankets and clothing on hand in Baltimore were sent in the spring to Annapolis in order to supply the troops on their way south.[83] The loss of all their baggage entailed much suffering upon the Maryland troops, but the State could only partially supply the deficiency.[84]

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[78] Journal of the Council, Apr. 2, 1777; Council to Jenifer and Hooe, May 13, 1777, Archives, XVI, 196 and 250.

[79] Acts of the Assembly, Cap. IV, Oct. session, 1777; Gen. Smallwood to Gov. Johnson, Nov. 8, 1777, Archives, XVI, 413-14.

[80] Council to D. Crawford Nov. 20, 1777, Archives, XVI, 419-20; Washington to Gov. Johnson, Dec. 29, 1777, Archives, XVI, 448.

[81] Council to John Randall, Feb. 13, 1778, Archives, XVI, 494-95.

[82] Council to Gen. Smallwood, Sept. 24, 1779, Archives XXI, 536; Council to Capt. Keeports, Jan. 1, 1780, Council Correspondence, 50.

[83] Council to Gen. Smallwood, Apr. 27, 1780, Council Correspondence, 94-95.

[84] Council to Board of War, Sept. 22, 1780, Council Correspondence, 186.

For the benefit of the officers in the Maryland Line, spirituous liquors, coffee, and other luxuries, as well as clothing, were bought to be sold them much below the current cost.[85] While the privates were at least partially provided with clothing by Congress, in the fall of 1778 no provision had been made for the Maryland officers. They were so destitute of clothing or of the means of obtaining it at the prevailing high prices that there was danger need would compel many of them to leave the army. The council took immediate steps to obviate such a contingency, giving numerous orders to supply them with clothing.[86] The great lack of clothing, owing to the exorbitant prices prevailing in 1779, actually caused the resignation of several officers. The Assembly relieved this situation by liberal provisions for both clothing and luxuries to be supplied at little cost to the officers.[87]

The Maryland troops passing south in 1780 were given a hogshead of rum to attest the appreciation of their services. A large supply of coffee, tea, rum, tobacco, and sugar was ordered, to be sold them below cost. The officers were given money for the journey besides a large quantity of clothing.[88]

The Assembly greatly assisted the transportation of supplies for the army. The governor and council were empowered in 1778 to impress vessels or wagons whenever necessary for the conveyance of Continental stores.[89] In response to a requisition made by Congress, June 2, 1780,

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[85] Senate Proceedings, Apr. 21 and 22, 1778.

[86] J. Henry, Jr., to Gov. Johnson, Oct. 27, 1778, Archives, XXI, 7; Journal of the Council, Archives, XXI, 227 ff.

[87] Washington to Gov. Johnson, Aug. 26, 1778, Archives, XXI, 504-05; Senate Proceedings, May 7 and 11, 1780.

[88] Council to Capt. Keeports, Mch. 27, 1780, Council Correspondence, 84.

[89] Acts of the Assembly, Cap. VIII, Mch. session, 1778. 100 wagons with horses were impressed at one time in Frederick county to convey supplies to Edenton, N. C. In Washington county the authorities were ordered to impress 50 wagons and horses for the transportation of supplies to Carlisle. Other instances of the impressment of vessels as well might be cited. Journal of the Council, May 4, and Aug. 5, 1778, Archives, XXI, 66 and 175.

the Assembly not only provided that horses and wagons might be accepted in lieu of the treble taxes upon disaffected persons, but even ordered the appointment of agents in each county to purchase them. The number of good horses already obtained in Maryland for the cavalry having made them scarce and very high, the Continental authorities were obliged to reject as unfit for service many of the ones which were collected.[90]

To expedite the march of Continental troops through the State, justices of the peace might hire or even impress vessels and wagons upon the application of any officer. Quarters were provided at the expense of Congress, and if no other accommodation was available, troops might be billeted upon private citizens.[91] Congress was asked to aid in the erection of barracks at Annapolis, at Frederick, and at the Head of the Elk.[92]

Vessels were impressed in 1780 to transport the Maryland troops from the Head of the Elk to Petersburg on their southward march, while the council in addition attempted to furnish them with provisions.[93] Warrants were again issued August 1, 1780, to impress vessels for conveying troops from Annapolis on their way south.[94] In order to provide for the transportation of Lafayette's 1500 troops from the Head of the Elk, February 27, 1781, General Gist prohibited any vessels from leaving Baltimore. This summary action upon the plea of necessity was approved by the council.[95] If General Gist had not been a most popular officer of the Maryland Line, there would probably have been an outcry against Continental aggression.

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[90] Acts of the Assembly, Caps. XXV and XXVII, June session, 1780; Gov. Lee to the President of Congress, June 19, 1780, State Papers No. 70, 261; House of Delegates Proceedings, Dec. 26, 1780.

[91] Acts of the Assembly, Caps. IV, and XIV, Feb. session, 1777.

[92] Acts of the Assembly, Cap. X, Feb. session, 1777.

[93] Council to H. Hollingsworth, Apr. 24, 1780, and to David Poe, April 27, 1780, Council Correspondence, 93, and 96-7.

[94] Council Proceedings, Aug. 1, 1780.

[95] Gen. Gist to Gov. Lee, Feb. 27, 1781, Brown Book No. 3, 24; Council to Jas. Calhoun, Feb. 28, 1781, Council Correspondence, 211-12.

Much difficulty was experienced to procure sufficient arms for the defense of the State. To encourage gun factories, money was advanced, and all persons engaged in manufacturing firearms for the State were exempted from military duty.[96] The enhanced price of iron and steel was the source of much hindrance in this work.[97] For at least part of the period 1777 to 1781, the State owned a gun-lock factory at Frederick.[98] So many public and even private arms had been sent with the different battalions that in April, 1777, the Assembly asked Congress for 2000 stands of arms. Only 1000 were granted with the promise to repay the rest as soon as they could be spared.[99] The county lieutenants in 1777 were requested to make out lists of the military stores in their respective jurisdictions.[100] The scarcity of arms became truly alarming when the danger of a British invasion appeared imminent, and in 1780 another list of military stores was called for, orders being given to repair all arms at the expense of the State.[101]

Large quantities of powder and lead were sent to the army. The Continental stores of lead becoming very low in 1778, even though the State supply was small, two tons were spared for the use of Congress.[102] 30,000 pounds of powder

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[96] Acts of the Assembly, Cap. VIII, June session, 1777. A typical contract is that by which John Razor agreed to furnish 100 muskets for £3 15s. apiece to be delivered in monthly instalments of 12. The governor and council furnished locks, barrels, and bayonets; also advancing £157 10s. upon Razor's bond to fulfill the contract. Journal of the Council, Sept. 15, 1777, Archives, XVI, 376-77.

[97] Journal of the Council, Aug. 28, 1777, Archives, XVI, 219.

[98] Acts of the Assembly, Cap. IV, June session, 1778.

[99] Council to the President of Congress, Aug. 21, 1777; Secretary of the Board of War to Gov. Johnson, Oct. 18, 1777, Archives, XVI, 221 and 400. Altogether, with the different companies it was estimated that 5400 stands of arms had been sent to the Continental army. Only 1100 had been returned. Council to Md. Delegates in Congress, Apr. 7, 1778, Archives, XXI, 15.

[100] Council to Lieutenants in the Counties, Feb. 10, 1779, Archives, XXI, 296-97.

[101] Council to different County Lieutenants, May 19 and 20, 1779, Archives, XXI 402 and 406; also June 29, 1780, Council Correspondence, 123.

[102] Council to Wm. Lux, Mch. 19, 1778, Archives, XVI, 542.

from the magazine at Frederick were delivered to the Continental agent in 1779, but Congress scarcely appreciated the sacrifice the State incurred in refusing the high prices offered by private persons.[103] An additional supply of 15,000 pounds of powder was sold to Congress in 1780, although the public store was materially decreased and little was left in private hands.[104]

Material aid was rendered in caring for British prisoners. Complying with a resolution adopted by Congress, February 25, 1777, all the British confined in Baltimore were sent to barracks prepared for them at Fort Frederick.[105] At first the attempts to secure a guard failed, but with an increase of prisoners more determined efforts were made to secure the necessary militia.[106] In case the magazine formed at Fort Frederick of all provisions collected west of South Mountain proved insufficient, it was suggested that Virginia might help with supplies from just across the Potomac. As an effective guard proved almost impossible, a proposal was made to let prisoners out to work in the neighborhood of Fort Frederick. The Continental authorities refused their assent to this plan since all prisoners of war had been ordered in close confinement until British rigor abated toward American prisoners.[107] Service in the militia greatly inconvenienced the farmers, and in the spring of 1779 the Board of War finally gave permission to hire out the prisoners.[108]

The necessity of guarding and supplying British prisoners

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[103] Finding that this powder was sold, and not lent to Congress, the Continental authorities endeavored to have the State take it back, even after it had been brought to Baltimore. Council to Board of War, Nov. 19, 1779, Council Correspondence, 40.

[104] Council to Board of War, July 29, 1780, Council Correspondence, 146-47.

[105] Council to Maj. N. Smith, May 9, 1777, Archives, XVI, 246.

[106] Council to Gen. Gates, Feb. 18, 1778; Journal of the Council, Feb. 23, 1778, Archives, XVI, 506-7, and 516.

[107] Council to Gen. Gates, Mch. 27, Chas. Beatty to Gen. Gates, Feb. 5, and Gen. Gates to Gov. Johnson, Feb. 11, 1778, Archives, XVI, 555-57, 491, and 490.

[108] Council to Dan'l Hughes, Apr. 23, 1779, Archives, XXI, 363.

was soon renewed. The prisoners at Philadelphia increased so greatly that in 1779 the Board of War ordered 400 of them to Fort Frederick. Thoroughly convinced of the futility of attempts to call out the militia, the Assembly ordered the enlistment of not over 84 men to form a permanent guard for these prisoners.[109] Preparations were made in the fall of 1780 to receive the convention troops which Congress, fearing an attempted rescue by the British, had ordered from Charlottesville to Fort Frederick. The recruits unfit for active service, yet able to march, were formed into a guard.[110] As only part of the necessary supplies could be obtained in Maryland, Virginia was asked to aid.[111] The first division of about 800 men started by November 10, 1780. Supplies and, if necessary, additional barracks were ordered, while two companies of militia received commands to guard the prisoners upon their arrival.[112] The 1500 men composing the second division did not leave Virginia.[113]

The prisoners arrived at Frederick in a wretched condition, needing shoes as well as clothing. The meager accommodations afforded by the barracks added to the general misery. The exertions of the governor and council to remedy this situation were not altogether successful, even though supplies were immediately rushed forward.[114]

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[109] Acts of the Assembly, Cap. XIII, Mch. session, 1780; Council to Dan'l Hughes, Sept. 11, 1779, Archives, XXI, 521-23.

[110] Journal of Congress, III, 521; Council to Col. Moses Rawlings, Nov. 6, 1780, Council Correspondence, 205.

[111] Council to Gov. Jefferson, Oct. 30, 1780, Council Correspondence, 202.

[112] Council to Col. Moses Rawlings, Nov. 10, 1780, Council Correspondence, 209; the German residents of the western part of the State were especially kind to these prisoners who were chiefly Hessians. Although provisions were rather scarce, in February the exertions of the State government soon obtained a sufficient supply. Von Eelking, The German Allied Troops, 216-17.

[113] Journal of Congress, III, 554.

[114] Council to the Assembly and to Geo. Murdock, Dec. 6, 1780, and Feb. 20, 1781, Council Correspondence, 37 and 187. The British prisoners in Western Maryland were afterwards augmented by part of Cornwallis' troops. Many of them worked out in the neighborhood and earned the money to purchase their freedom, usually settling permanently in the State. Such persons were known as redemptioners. Steiner, Western Maryland in the Revolution, 51 ff.

Although the results of these efforts to afford military aid fell far short of the requisitions by Congress, they were at least commensurate with the resources of Maryland. In fact the actual help which was extended to the Continental cause proved the loyalty of a State continually disturbed by Tory insurrections in its most productive part.[115]

An independent attitude was assumed in declining at first to follow the recommendations of Congress for a draft. The refusal to allow Pulaski and Armand to recruit for their commands in Maryland in 1779 was in direct opposition to the resolves of Congress. The jealous attempts to regulate the ranks of officers, and to keep the Maryland troops distinct were also the acts of an ally rather than of a State subject to the power of Congress.

Both Governor Johnson and Governor Lee exhibited a willingness to help, and in crises even exceeded their powers. Altogether, while retaining the power to reject any measure considered detrimental to Maryland, the State government had materially aided the Continental cause during the period 1777 to 1781, probably the most critical part of the Revolutionary struggle.[116]

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[115] Cf. the chapter on Internal Disturbances.

[116] The following table gives the approximate expenditures for military aid, Mch. 22, 1777, to Mch. 1, 1781. As only items have been used whose object is positively stated, the actual sum expended was probably larger than is here shown. Up to Mch. 28, 1778, the table was compiled from the Journal of the Council, Archives, XVI. The rest was taken from the Md. Account Book in the Library of Congress. The item "recruits" embraces all bounties paid, and other incidents of this service; also any money advanced to the officers and men of the Maryland Line. "Militia" includes the expenses of procuring arms, as well as legitimate expenses connected with the employment of the militia.

	1777			1778			1779		
	£	s.	d.	£	s.	d.	£	s.	d.
Recruits	24,794	10	4	41,746	11	4¼	100,021	11	9½
Militia	42,989	8	10	49,992	14	2¼	62,265	16	10
Provisions	46,754	1	7½	197,453	..	3½	456,472	8	11½
Clothing	12,932	5	7	77,460	12	7¼	25,138	7	10¼
Prisoners	5,704	12	8	9,346	6	4	6,518	9	7½
Total	133,174	19	½	375,999	4	9¼	650,416	15	¾

	1780			1781		
	£	s.	d.	£	s.	d.
Recruits	476,329	4	..	7,007	4	10
Militia	28,190	17	5	....	..	..
Provisions	188,517	1	5½	593,993	1	2½
Clothing	102,026	19	12½	350,089	18	9
Prisoners	1,289	..	4½	109	..	..
Total	796,353	3	3½	951,199	4	9½

Total for the four years, £2,907,143 6s. 11½d. paid for the most part on a paper money basis. The rate of exchange varied to 40 to 1 and even 80 to 1 toward the latter part of the period, so taking 20 to 1 as a fair average, this represents in specie, £145,537 3s. 4$\frac{7}{10}$d. The Committee Report, House of Delegates Proceedings, Nov. 20, 1779, estimated a tax of £27 on £100 necessary to raise $14,220,000.00. This would give a taxable basis for Maryland of about £12,000,000, so for the four years almost 1¼ per cent of the entire resources was devoted to military aid, and about .3 per cent annually. Since certificates given in exchange for supplies are not included, while other expenses of the government were large, altogether Maryland made a very creditable showing in the actual work accomplished.

CHAPTER IV.

Finance.

Much of the energy of the new State government was soon absorbed by the question of finance. The efforts to procure recruits and supplies entailed large expenditures. In addition, the requisitions of Congress, and the ordinary expenses of administration required large sums. Adequately to meet these demands, a vigorous financial policy was needed. The most important fiscal measures centered upon the maintenance of a sound currency, and the evolution of an efficient system of taxation.

At the outset the currency situation was alarming. The paper money issued by the Provincial government was covered by tolerably safe holdings, but the emissions of the convention and of the Continental Congress rested upon the rather unsteady basis of the public credit.[1] The legal status of these bills of credit was not exactly determined, but many leading men held that to force this paper money upon the people as lawful currency might even result in a dissolution of the State government.[2] Disregarding such appre-

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[1]

	£	s.	d.
The State held in bonds bearing 4% interest......	164,174	7	8¾
Bank of England stock owned by the State but held in London	36,131	6	6
On hand from ordinary (*i. e.,* inn) licenses.... ..	1,980	11	6
Due from ordinary (*i. e.,* inn) licenses...........	1,508	4	9¼
Total	203,794	10	6
The issues of 1766, 1770, and 1774, under the Provincial government secured by the above.....	210,886	6	11½

The convention had issued £401,333 6s. 8d. based merely upon the credit of the State. A large amount of Continental currency also circulated in Maryland. House of Delegates Proceedings, June 17, 1777, and Nov. 24, 1779.

[2] Dan'l of St. Thos. Jenifer to Chas. Carroll and others, Feb. 2, 1777, Folio 87, 232-34.

hensions, the Assembly declared all these issues of paper money legal tender. Only on debts payable to orphans or to the estates of deceased persons was an addition of 25% allowed for depreciation.[3] Charles Carroll of Carrollton pointed out the great injustice this measure imposed upon creditors who were compelled to receive depreciated money.[4] With the exception of an abortive attempt by the Senate to redeem the issue of 1766, no further efforts were taken in 1777 to remedy the difficulties due to the currency.[5]

No measures were adopted in 1778 to redeem on a large scale the paper money. To pay the unusually large journal of accounts, the Assembly at its March session issued redeemable loan certificates bearing interest at six per cent, which were legal tender.[6] The system of paper money offered great inducements to counterfeiters, and this became a favorite Tory device to depreciate the State currency. The Assembly passed laws in 1777 and again in 1778 punishing such a crime with death.[7]

Public sentiment for a sound currency was more definitely awakened in 1778. As the British in New York had extensively counterfeited the Continental issues of May 20, 1777, and April 11, 1778, Congress withdrew these emissions making them redeemable before June 1, 1779, in exchange for loan office certificates. Confirming this resolution, the Assembly arranged that these bills should not be employed in settling public accounts.[8]

The Assembly made a futile attempt in 1779 to retire the bills of credit issued by the Provincial government in 1766. Holders of this issue presenting the notes before June 1, 1780, would receive at their option either bills of

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[3] Acts of the Assembly, Cap. IX, Feb. session, 1777.
[4] Protest of Chas. Carroll. Senate Proceedings, Apr. 9, 1777.
[5] House of Delegates Proceedings, Apr. 18, 1777.
[6] Acts of the Assembly, Cap. XIV, Mch. session, 1778.
[7] Acts of the Assembly, Cap. XXIII, Oct. session, 1777, and Cap. XVII, Mch. session, 1778.
[8] Journal of Congress, III, 183-84; Senate Proceedings, Mch. 25, 1779; Council to Treasurer of the Eastern Shore, Feb. 22, 1779, Archives, XXI, 306.

exchange drawn upon the trustees of the Bank of England stock owned by Maryland, or else interest bearing certificates discountable in any assessment.[9]

The continued issue of Continental paper currency producing greater depreciation, the alarming fiscal situation was viewed with much anxiety, and various expedients were suggested for relief. The concensus of public opinion, as expressed in the press, agreed that this money, scarcely circulating at forty to one in exchange for specie, must be reduced, or altogether redeemed. Much sound economic reasoning was displayed in these discussions.[10] The continued operation of a gang of counterfeiters in Maryland during 1779 added to the fiscal burdens of the State.[11]

Various measures were passed in 1778 to put the paper money upon a sound basis. In accordance with a plan devised by Congress, the Assembly provided in June for the redemption of both the Maryland and Continental issues. Bills of credit to the amount of $25,540,000.00, if brought to the Western Shore treasurer, would be exchanged for new issues at the rate of $200.00 to $6.00. A fund to sink annually one-sixth of this new emission was created by an annual assessment for six years of one bushel of wheat, or

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[9] The issue of 1766 amounted to £35,386 6s. 11½d., secured by the Bank of England stock valued at £36,131 6s. 6d., which was held by trustees in London. House of Delegates Proceedings, Dec. 21, 1779; Scharf, History of Maryland, II, 124.

Benjamin Franklin, or else John Jay, was commissioned to name a trustee to go to London, to sell the stock and from the proceeds to discharge these bills of exchange. Acts of the Assembly, Cap. XXXVIII, Oct. session, 1779.

[10] Congress completed Nov. 23, 1779, the authorized issue of $200,-000,000.00. Journal of Congress, III, 404. To remedy such conditions, one writer proposed to call in part of this paper money, leaving the rest upon interest until Congress could arrange its redemption. Maryland Gazette, Nov. 26, 1779. Another author, probably influenced by Locke and contemporary economists, claimed that, as there was a larger supply than a demand for paper money, depreciation was the natural result. His main remedies would be the reduction and restriction of existing issues, and the commutation of taxes in provisions for the army. Maryland Gazette, Nov. 12, 1779.

[11] Va. Delegates in Congress to Gov. Johnson, Sept. 26, 1779, Archives, XXI, 537-38.

the equivalent, upon every £100 of property, real and personal. Duties, excise charges, fines, and forfeitures formed part of this sinking fund.[12]

The law making the depreciated currency full legal tender had created such a chaotic state of both public and private finances that in 1780 a rescinding act was passed. Bills of credit were to be used in the payment of debts only upon special agreement. The law repealed all restrictions against discrimination between specie and paper money.[13]

Another attempt was made in 1780 to sell bills of exchange based upon the Bank of England stock owned by the State. If these bills of exchange were not honored, the holders might recover upon the Maryland property of the London trustees.[14] A bill for £1500 was refused, and one of the commissioners appointed to negotiate this matter was quietly notified that the British Government would only allow the sale of this stock upon the order of the original depositors.[15] In anticipation of this refusal, the bills of exchange had not sold readily, and the council ordered the issue of £30,000 in paper currency, as was authorized in such an event.[16]

Although Maryland had followed the plan of Congress, the measures to secure an improved currency had not stopped the depreciation of the paper money. The scarcity of gold and silver increased, and by fall the circulation of the

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[12] Journal of Congress, III, 442-44; Acts of the Assembly, Cap. VIII, June session, 1780.

[13] Acts of the Assembly, Cap. XXVIII, June session, 1780; many instances of the hardships engendered by the legal tender act of 1777 might be noted. In one case two orphans had depended materially for their support upon the interest from £1000. When this £60 was paid in paper currency, as the act provided, at the rate of forty to one, it represented a purchasing power of only 30s. in former specie values, a very insignificant sum. The severe effect of such a law upon the holders of mortgages or other forms of bonds is evident. Maryland Gazette, May 26, 1780.

[14] Acts of the Assembly, Cap. XXIV, June session, 1780.

[15] Benjamin Franklin to Gov. Lee, Aug. 11, 1780, Blue Book No. 2, 43. V. and P. French and Nephew to Gov. Lee, Oct. 11, 1780. Red Book No. 28, 21.

[16] Council to Md. delegates in Congress, July 31, 1780, Council Correspondence, 147.

new guaranteed issues had almost stopped. In October, to relieve the situation, the Assembly fixed March 20, 1781, as a limit for the redemption of paper money. After that date circulation of all bills of credit, except those of the new issues, was practically suspended. Allowance was made for any depreciation in the new currency, and the Assembly ordered a further issue of £5400 to provide small change.[17] The reformed currency based upon a sinking fund did not at first meet with the success that had been anticipated.[18]

Closely allied to the measures for the improvement of the currency was the increase in the salaries of public officers made necessary by the depreciation of the paper money. The Assembly passed a sweeping act for this purpose in 1778.[19] The proposed increase in the allowance to members of the Assembly was differently regarded by the two Houses. Upon the plea that only rich men could serve at the pay allowed, the more popular House of Delegates asked the Senate to permit an increase from 25s. to 40s. per diem. The more conservative Senate refused to take such action, expressing approval if the possession of an independent fortune should be made a necessary qualification for the members of the Assembly.[20] The continued depreciation of the paper money made necessary in 1779 another increase in the salaries allowed public officials. An echo of the former controversy was heard before the Senate permitted a further increase in the stipend allowed members of the Assembly.[21]

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[17] House of Delegates Proceedings, Nov. 7, 1780; Acts of the Assembly, Caps. V, and XXII, Oct. session, 1780.

[18] Council to Wm. MacBryde, Jan. 18, 1781, Council Correspondence, 108.

[19] Acts of the Assembly, Cap. XVII, Oct. session, 1778.

[20] Senate Proceedings, Dec. 13, 14, and 15, 1778.

[21] Chas. Carroll of Carrollton protested against raising the per diem to £3. He claimed; 1st, that members of the assembly should not set the precedent of raising their own pay; 2d, that such a course showed a disposition to break away from the evils of depreciation of the currency; and 3d, that such action exhibited a tendency to let private interests outweigh those of the public. House of Delegates Proceedings, Dec. 24, 1779; Senate Proceedings, Mch. 19 and Aug. 11, 1779.

The great fluctuations in the value of paper money were avoided in 1780 by fixing the salaries of officials in wheat or tobacco, but to aid the circulation of the new issue of bills, the July session of the Assembly directed that the per diem allowance to members should be paid in this currency.[22]

While seconding the efforts of Congress to improve the condition of the currency, the State was not always so ready to comply fully with requisitions for money.

Taxation demanded the immediate attention of the Assembly, and the first act passed in 1777 provided for the levy of taxes for local purposes as under former laws.[23] For State and Continental needs, the Assembly imposed a tax of 10s. on £100 of property, both real and personal, due by September 10, 1777. Five tax commissioners appointed in every county nominated an assessor for each hundred. The sheriffs were charged with collection. The specie value formed the basis of assessment, but the tax was payable in the depreciated currency. Since the latter had sunk to one fortieth its value in gold or silver, this assessment was actually 3d. in £100, a very moderate rate. The clause that the sworn statement of the owner might be made the basis of valuation caused so much complaint that maximum and minimum assessed values were established for all species of property.[24]

The licenses formerly imposed on the keepers of inns, commonly termed ordinaries, and on marriage permits were continued. The Assembly in 1777 expressly forbade for two years the levy of any duties except on negroes. This last

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[22] Proceedings of the House of Delegates, May 8 and 15, and July 4, 1780.

[23] Acts of the Assembly, Cap. I, Feb. session, 1777.

[24] The assessment was really an income tax of 2s. on £1 annual value, which was commuted to 10s. on £100 of property. Salaried positions and professional incomes were taxed 5s. on £100 of clear annual profit. Debtors might discount 10s. from every £6 of interest paid. To offset this, mortgages and other forms of promissory notes were not taxed. These provisions of the assessment act are typical; the maximum assessment for land was £4 per acre, the minimum, 7s. 6d. per acre. Acts of the Assembly, Caps. XXI, and XXII, Feb. session, 1777, and Cap. XIV, Oct. session, 1777.

measure was not adopted in accordance with a recommendation of Congress, but upon the State's own initiative. It was, therefore, an exercise of one of the rights of sovereignty.[25]

The difficulty of collection induced the Assembly to postpone until November 20, 1777, the limit for collecting the 10s. assessment.[26] The unsatisfactory returns were not sufficient to prevent a material decrease in the balance reported in the Spring of 1777 by the State Treasurers.[27] With such a contracting balance, the incessant demands for advances to supply the army were met with much difficulty. By issuing warrants whenever possible, Congress tried to relieve the pressure upon the State.[28] So gloomy was the financial prospect, despite this aid, that at the end of the December session, 1777, the Senate refused to pass the usual journal of accounts.[29]

To remedy the depleted condition of the State Treasury, the tax rate for 1778 was increased to 25s. on £100 of real and personal property payable by December 20, 1778. The Council was directed to apply the proceeds so far as possible to Continental needs. For more pressing necessities, the Assembly ordered an issue of $300,000.00 in paper money.[30]

The small returns from the assessments for 1777 and 1778 were not sufficient to relieve stringent financial pressure upon the State. Early in 1778, the Eastern Shore treasurer returned dishonored an order for £3200 9s. 2d.[31] Large remittances from Congress offered material aid in obtaining

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[25] Acts of the Assembly, Cap. XVIII, Feb. session, 1777.

[26] Acts of the Assembly, Cap. XIV, June session, 1777.

[27] Apr. 5, 1777, the balance was £64,838 10s. 8d.; Dec. 9, £19,692 11s. 10½d. House of Delegates Proceedings, Apr. 18, and Dec. 22, 1777.

[28] The Western Shore Treasurer was directed even to use £4066 18s. 12d., which had been appropriated for a college, replacing it when able. House of Delegates Proceedings, Dec. 22, 1777. Congress advanced Maryland for supplies $262,600.00 during 1777. Journal of Congress, II, 9, 52, 106, 231, 240, 263 and 383.

[29] House of Delegates Proceedings, Dec. 23, 1777.

[30] This tax was really a commuted one of 5s. on £1 annual value. Acts of the Assembly, Cap. VII, Mch. session, 1778.

[31] Journal of the Council, Jan. 14, 1778, Archives, XVI, 466.

supplies, but so great was the immediate need that March 31, 1778, the Assembly temporarily appropriated $30,000.00 of this Continental money.[82] The council was obliged to ask Washington to advance the bounty money due recruits enlisted in camp, though later in the year the financial system became somewhat improved.[83]

The reorganization of the State Auditing Department in 1778 was intended to aid the efficient collection of taxes. In place of the board of auditors with salaries insufficient to justify thorough work, an auditor-general was appointed who should receive ample compensation and have a capable clerical force.[84] Yet the continued trouble in collecting taxes justified the refusal of the Assembly to increase for 1779 the 25s. assessment rate.[85]

The extraordinary demands upon the resources of the State soon overcame the reluctance of the Assembly to impose a higher tax. Early in January, 1779, Congress asked Maryland for $1,560,000.00 before January 1, 1780 to help to retire Continental bills of credit and loans issued before 1778. To meet this obligation the Assembly imposed an additional assessment of 40s. on £100 making the total rate for 1779 65s.[86] Another requisition from Congress May 21, 1779, called for $4,680,000.00 to be paid by January 1, 1780.[87] A further tax of £9 15s. made necessary

[82] House of Delegates Proceedings, Mch. 31, 1778. Congress advanced Maryland in 1778 $213,400.00. Journal of Congress, II, 419, 467, 488, 514, 531, and 567.

[83] Council to Washington, Aug. 12, 1778, Archives, XXI, 184. The following counties paid the sums indicated on the assessment for 1778: Prince George, £7681 14s. 3d.; St. Mary's £4646 17s.; Charles, £4713 12s. 2¾d.; Calvert, £1573 3s. 5½d.; Frederick, £6157 3s. 6¼d.; Harford, £2336 7s. 5d., and Anne Arundel, £7151 10s. 11½d.; total, £34,260 8s. 10d. Doubtless this report represents only a part of the total from all the counties, but it is interesting as showing that *at least* this amount was collected. Maryland Account Book, 76-77, Nov. 21, 1778.

[84] House of Delegates Proceedings, Mch. 27 and 31, 1778.

[85] House of Delegates Proceedings, Dec. 15, 1778.

[86] Journal of Congress, III, 174; the new assessment was estimated upon a basis of 8s. on £1 annual value, or a total of 13s. on £1 annual value. Act of the Assembly, Cap. XI, Mch. session, 1779.

[87] This was Maryland's share of a $45,000,000.00 requisition. Journal of Congress, III, 284.

by this new assessment increased the total levy for 1779 to £13 on £100. Such a tax would seem ruinous, but the great depreciation of the paper money in which it was paid, and the method of assessing upon a specie basis made this levy really a moderate one.[38]

The difficulty in collection continued, though in a less degree. The returns of collectors in the fall showed large balances still due for 1777 and 1778, but for 1779 there was a marked advance.[39] The reforms in the Auditing Department afforded material aid in obtaining quicker returns, as all collectors were required, under penalty, to hand in public accounts within a specified time.[40]

The continued distress of the Continental treasury induced Congress, October 6, 1779, to ask from Maryland a further assessment of $14,220,000 payable in nine monthly instalments, February 1 to October 1, 1780.[41] The committee appointed to consider means of raising this sum proposed that, as the State debt was already large, only $9,000,000 should be obtained by taxation. The remaining $5,220,000 was to be obtained by the confiscation of all British property within the State. As additional fiscal expedients, the committee recommended an increase in the license taxes, and the imposition of a poll tax of £7 10s. upon every free male citizen.[42] Beyond levying a tax of £5 on £100 for 1780, the

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[38] On property amounting to £100 specie value, which would be £4000 in paper money at the prevalent scale of depreciation, the £13 assessment would be only 6½s. in specie, less than ⅓%. Acts of the Assembly, Cap. V, July session, 1779.

[39] The collectors of ten counties reported a balance still due for 1777 of £23,022 16s. 10¾d. There was no report for 1777 from the other eight counties. On the assessment for 1778 eleven counties reported a balance due of £125,780 1s. 4¼d. The assessments for 1779 were not fully due at the time of the report, but the Treasurers noted a marked improvement in collection. House of Delegates Proceedings, Nov. 25, 1779.

[40] Maryland Gazette, May 21, 1779.

[41] This was the State's quota of a total of $135,000,000. Journal of Congress, III, 373.

[42] The committee estimated that, to raise the whole by assessment would require a rate of £27 on the £100, which, with the expense of collection, would be too great a burden. As this would have meant a tax rate of not quite 1% owing to the peculiar method of assess-

Assembly took no decided action in 1779 for the payment of this Continental requisition.[43]

The pressing Continental requisitions, added to the immediate obligations of the State, emphasized the need of an additional assessment for 1780. For only part of the provisions purchased by Maryland had payment been made, while certificates which had been given for supplies were payable in March. The Assembly met these fiscal demands by the imposition for 1780 of additional taxes of £20 in currency, and 28 lbs. in tobacco on £100 of property, both real and personal.[44]

Trouble in collecting these taxes continued throughout 1780. Apparently the threat that the commissioners would enforce the law against tardy collectors had at first little effect. In order to hasten payment of the taxes the Assembly changed somewhat the system of collection. Officials appointed in each hundred did the work of collection which the sheriff had formerly performed for the entire county. The payment of taxes was allowed to be postponed for a while.[45] These measures were not altogether successful. In many counties the tardy transmission of the laws was a great hindrance. Although numerous petitions for delay were rejected by the Assembly, the limit imposed in the collection of taxes for 1780 was in many instances postponed until June 1, 1781.[46] By the October session of the Assembly, the collectors appointed on the Eastern Shore had made

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ment, and payment of taxes, this argument was hardly justifiable. The committee estimated the State debt at £915,822 6s. 9d., including issues of paper money. An increase was recommended, on marriage licenses of £13, on ordinary licenses of £50. House of Delegates Proceedings, Nov. 24, 1779. As the requisitions of Congress were based upon paper money values, they were really not so enormous.

[43] Acts of the Assembly, Cap. XXXV, Oct. session, 1779.

[44] This tax was of course based upon the usual system of assessment. £10 was payable by June 10, £10 by Dec. 10, 1780, the tobacco tax by Sept. 1, 1780. Acts of the Assembly, Cap. XXV, Mch. session, 1780.

[45] Maryland Gazette, May 19, 1780. The £5 assessment and the £10 due June 10 were made payable Aug. 1, 1780. Acts of the Assembly, Cap. XIII, June session, 1780.

[46] House of Delegates Proceedings, Apr. 1-17, 1780.

no report. Many of the Western Shore counties also failed to make returns, and in only a few had any tax been paid in full. Yet the advance upon former years was very marked.[47]

The tardy returns from Maryland induced the Continental officials, in at least two cases, to employ rather arbitrary means to secure the required quota. In order to help to equip the army for the field, May 19, 1780, Congress asked that $1,234,500.00 of the sum already required from Maryland be paid within thirty days.[48] Efforts were made to meet promptly this obligation, but when Congress ordered warrants drawn for the sum, the council immediately protested, declaring that it would be impossible to pay them.[49] A somewhat similar incident was occasioned by the precipitate action of General Gates, who, in the exigencies of his hard-pressed campaign, on September 5, 1780, drew warrants upon Maryland for large sums. As authority for this assumption of power, he cited a resolution of Congress diverting all money raised in Maryland to supply the Southern army. The council, indignant at such unwarranted action, refused at once to honor these drafts.[50] Both incidents are significant. Maryland had willingly taken measures to aid

[47] In Somerset and Worcester counties the laws had not been received in time to make efficient collections. On the Western Shore: Prince George county made no report; three counties reported the £5 tax paid in full, four made no report on this tax, and Charles county showed a balance still due of £35,822 14s. 8d. On the £10 tax due Aug. 1, 1780, five counties failed to report; one county had paid in full; Montgomery county still owed £15,363 1s. 8d. St. Mary's county reported a balance due of £16,134 3s. 5¾d. on the £5 and £10 assessments. Four counties had paid on sundry taxes for 1780 £476,013 18s. 1d. and on the tobacco tax 803,603¼ lbs. House of Delegates Proceedings, Nov. 22, 1780. Eight Western Shore counties reported on Sept. 28, 1780, £1,287,101 15s. 10½d. had been raised for the 1779 assessment. Presumably this report included 1779 as well as 1780. It is interesting to note that at least such a large amount was obtained. Unfortunately complete records of tax proceeds are not available. Maryland Account Book, 217.

[48] Journal of Congress, III, 457.

[49] Council to the President of Congress, July 24, 1780, Council Correspondence, 133-34.

[50] One draft was for $350,000.00, the other for £100,000, Gen. Gates to Gov. Lee, Sept. 5, 1780, Brown Book No. 8, 26; Council to Gen. Gates, Oct. 5, 1780, Council Correspondence, 193.

the Continental treasury, but the least attempt at coercion was quickly resented.

For the year 1781 a large budget was reported. The balance on hand in the fall of 1780 consisted largely of tobacco which often afforded a more efficient medium of exchange than the depreciated paper currency.[51] The Assembly returned to an exclusively specie system of taxation by the levy of an assessment for 1781 of 30s. on £100 of property, to be paid in Spanish dollars. Additional taxes for county expenses were authorized whenever necessary. Precautionary measures guarded against a too high valuation of gold or silver in the assessment for 1781, and made allowance for any depreciation in the new guaranteed issue of paper currency.[52] Another measure of fiscal importance made licenses for ordinaries payable strictly on a specie basis. Licenses were required of auctioneers as well.[53]

The inconvenience caused by tardy collectors increased so greatly that early in 1781 drastic measures were adopted, the council directing the attorney general to bring suit against a number of these delinquent officials and their securities.[54] Closely connected with the scheme of taxation was the proposition to confiscate the property of all British subjects. As early as 1777 the Assembly rejected a motion to seize the property of all who did not take the oath of allegiance.[55] This measure was renewed at the fall session of the Assembly in 1779, in a somewhat milder form, when the

[51] The budget for 1781 was estimated as £221,506 6s. 8d. in real money. The balance on hand Nov. 30, 1780, was £7617 9s. 7½d., approximately £190 8s. 9d. at the prevalent rate of depreciation of 40 to 1. The Western Shore treasurer also had on hand 736 hogsheads, containing 692,129 lbs. of tobacco. House of Delegates Proceedings, Dec. 18, 1780, and Jan. 3, 1781.

[52] Justices of the peace were empowered to levy not over £200 for county expenses. Acts of the Assembly, Caps. XXV, and XLVIII, Oct. session, 1780.

[53] Acts of the Assembly, Cap. XXIV, Mch. session, and Cap. XXX, Oct. session, 1780.

[54] Council to Luther Martin, Attorney-General, Feb. 26, 1781, Council Correspondence, 205.

[55] Senate Proceedings, Dec. 9, 1777.

appropriation of all property in the State belonging to British citizens was suggested as part of the financial scheme to obtain the quota asked by Congress. The delegates attempted by quoting such authorities as Rutherford to prove that this confiscation was justified by the rules of international warfare. The Senate estimated that even the tax of £27 on £100 of property, which the delegates considered necessary unless this measure passed, would not require a levy of over 1% under the system of assessment then prevalent. If more money were needed than the State could supply, the Senate proposed the sale of the back lands, which, as the property of the British Crown, became rightfully a common possession. Above all, objection was made to the assumption of legal power by the Assembly in defining the term, British citizen. The Senate refused to discuss the bill further so late in the session, and the matter was temporarily dropped.[56] In a published address the Lower House called upon the voters of the State for their support in the proposed confiscation, ascribing to the Senate the failure to comply with the needs of Congress.[57]

In the interim before the spring session of the Assembly for 1780 the question of confiscating British property was much discussed, especially in the press. The arguments of the Senate in opposition to the measure were reiterated with much force. Several anonymous writers, by astute reasoning, tried to show that British subjects could not be aliens if they were born before the separation of the colonies from the mother country. One opponent of the measure maintained that the prevalent rate of assessment was not so

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[56] Senate, and House of Delegates Proceedings, Dec. 21-30, 1779.

[57] House of Delegates Proceedings, Dec. 30, 1779. Charles Carroll of Carrollton represented strongly the opposition to confiscation. Uncertain whether the measure would pass, he wrote: "It shall not with my vote, because I think the measure impolitic, contrary to the present practice of civilized nations, and because it may involve us in difficulties about making peace, and will be productive of a certain loss, but of uncertain profit to this State."—Chas. Carroll to Dr. Franklin, Dec. 5, 1779. Life of Chas. Carroll, II, 26-31.

inordinately high, and that armed violence might result from the execution of a law that would be a poor return for the many proofs of friendship exhibited by friends of the colonies in England. Although so much opposition was displayed, a strong public sentiment favored confiscation of British property, and several counties sent resolutions to the Assembly favoring the passage of such a bill. The necessity for money was held to be paramount to all other considerations. These advocates of confiscation argued that, as Great Britain had broken faith with the colonies, she should bear the expenses of the war. The controversy was carried on with ardor in the early months of 1780.[58]

The opening of the Assembly witnessed a renewal of the contest between the two Houses. The delegates moved the immediate passage of the confiscation bill, but again the Senate proved obdurate. Ranging himself among its chief opponents, Charles Carroll of Carrollton opposed the act as impolitic, and above all, as contrary to the bill of rights, unless British subjects had actually borne arms against the United States. The Senate afforded a proof of hostility by refusing to consider the petition of its President, Robert Goldsborough, who, as the former agent of the Proprietor, and the owner of much property in Great Britain, asked to be excused from voting.

The delegates very promptly rejected a compromise bill proposed by the Senate. The act made reasonable conditions for the confiscation of the property of those who had withdrawn from the State before August 14, 1775, and did not return before May 1, 1781. After this unfavorable vote, the Senate transmitted a long message which simply reiterated previous arguments. The Assembly adjourned without definite action, each House referring the matter to its consti-

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[58] For the principal articles in this controversy, see the files of the Maryland Gazette, Feb. 18 to Apr. 14, 1780; also those of the Maryland Journal for the same date. The latter paper inclines to rather a Tory view.

tuents.[59] These long wranglings between the Senate and the delegates were much deplored by the public.[60]

The appeal of the House of Delegates to its constituents must have been effective. The London trustees' refusal to honor the bills of exchange based on the Bank of England stock probably influenced the final confiscation of British property, while the charges of Toryism preferred by Samuel Chase against several of its members doubtless made the Senate more solicitious to avoid the appearance of holding such sentiments.[61] Whatever the dominant influence, the Senate at the fall session in 1780 withdrew all opposition to the passage of the bill for confiscation. This important act held that all persons residing in British dominions, who were born under the rule of Great Britain, were British citizens. All property held by such owners was confiscated. Exceptions were made in favor of those who had left the State after April 30, 1775, and also of those born in Maryland who had gone before that date, and had committed no overt act of hostility, provided they returned and took the oath of allegiance before March 1, 1782. As the trustees of the Bank of England stock had not honored the bills of exchange drawn upon them, a certain part of their property in the State was set aside as a fund to sink the subsequent issue of £30,000. The Assembly would fix later indemnification from the confiscated property for sufferers from British depredations, but any attempts to protect by assignment property subject to seizure were to be promptly frustrated.[62] The reports of special commissioners showed that a very large amount of property was effected by the confiscation act.[63]

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[59] House of Delegates, and Senate Proceedings, Apr. 12 to May 16, 1780.

[60] Maryland Gazette, June 9, and Oct. 27, 1780.

[61] For a full account of these charges, see the chapter entitled Internal Disturbances.

[62] Acts of the Assembly, Cap. XLV, October session, 1780.

[63] In Frederick county alone the property of British subjects amounted to 2079 acres, that of absentees to at least 8214 acres. In

Taxation and the allied measures for confiscation of British property were not the only expedients adopted to meet the needs of the Continental treasury. Congress asked for $520,000 on November 21, 1777, to be paid during 1778 in quarterly instalments.[64] Unable to comply with this request at once, the Assembly established offices to receive for Congress loans of not less than $200 at 6%. Already, a loan office had been opened at Annapolis under the direct auspices of the Continental treasury.[65] Large sums were obtained in this way during 1778 for the Continental cause.[66] A resolution of Congress, February 3, 1779, to borrow $20,000,000 at interest was enforced by an act of the Assembly authorizing the appointment of agents in each county to receive subscriptions to this loan.[67] The closing of the State loan office facilitated this work.[68]

Measures to procure loans for the Continental treasury were renewed in 1780. The June session of the Assembly confirmed the appointment of a loan agent in each county, which the governor and council had already made on their own initiative. As an example of support, the members of both Houses subscribed.[69] The large amount obtained on

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Prince George county for 1778 property owned by British subjects was assessed £24,629 14s. on a specie basis. Harford county contained 3484¼ acres of British property; in Kent county there were 3882 acres. Blue Book No. 5, 56, 58, 63 and 65. Doubtless there was much British property in other counties whose record has not been preserved, nor do these estimates include the property of the Lord Proprietary.

[64] This was Maryland's share of a requisition for $5,000,000. Journal of Congress, II, 346.

[65] Maryland Gazette, Feb. 13 and Mch. 13, 1777; House of Delegates Proceedings, Dec. 13, 1777.

[66] On the Eastern Shore £4512 10s. was collected by this means, Treasurer of the Eastern Shore to Gov. Johnson, Aug. 24, 1778. Brown Book No. 9.

[67] Journal of Congress, III, 195 and 506; Acts of the Assembly, Cap. XX, July session, 1779.

[68] House of Delegates Proceedings, Dec. 24, 1779.

[69] By Nov. 18 these loans amounted to 188 hhds. of tobacco, £159,185 7s. in bills of credit, and £20 in specie, all paid in. The Assembly had subscribed 120 hhds. of tobacco, and £23,137 10s. in bills of credit. House of Delegates Proceedings, Nov. 18, 1780; Council to Agents, May 26 and Aug. 21, 1780, Council Correspondence, 107-8, and 159; Scharf's Chronicles of Baltimore, 187-88.

this loan showed that the people of the State were both willing and ready to help. An act passed by the fall session greatly aided this work by offering premiums for prompt collections, especially of gold and silver, while the certificates given in exchange were secured by liens upon certain confiscated British lands.[70]

A further measure provided for the establishment of a State bank at Annapolis to procure loans for the purchase of provisions, but this proposal does not appear to have been favorably received.[71]

The financial policy of the period from 1777 to 1781, shows evident desire to help Congress. Yet the least signs of subserviency were avoided. In refusing in 1780 to honor the drafts of Congress and of General Gates, the governor and council, following the attitude of the Assembly, resented Continental action which might have been interpreted as coercion. The arbitrary prohibition, and the subsequent imposition of duties continued such a policy.

The financial measures which were adopted evidence a gradual growth in the comprehension of fiscal needs. The depreciated paper currency had gradually been placed upon a firm basis. In the system of taxation the State government by degrees adopted more efficient means of collection. The successful enforcement of the greatly increased levies for 1780 amply demonstrated the value of these measures.[72]

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[70] Acts of the Assembly, Cap. LI, Oct. session, 1780.

[71] Acts of the Assembly, Cap. XXVIII, June session, 1780.

[72] An exact fiscal account of each of the four years cannot be given, but approximate returns are accessible for the latter two years. The discrepancies in these printed statements can only be remedied by reference to the treasurers' books, which are not available.

RECEIPTS.

	Balance on Hand.	From Assessments.
Nov. 21, 1778, to Nov. 18, 1779— (Nov. 21, 1778)	£109,743 1s. 8¾d.	£253,160 8s. 4d.
Nov. 18, 1779 to Nov. 19, 1780— (Nov. 18, 1779)	£27,077 15s. 7¾d.	£2,623,727 12s. 1¾d.

Closely connected with the increasing severity toward the Tories was the confiscation, during the same year, of all British property within the State.

	Receipts.		
	From Congress.	From Loans.	From Licenses.
Nov. 21, 1778, to Nov. 18, 1779—	£346,847 7s. 6d.	£194,823 7s. 6d.	£2,247 10s.
Nov. 18, 1779, to Nov. 19, 1780—		£368,881 .. 4d.	£1,776 5s.

	Receipts.		Expenditures.
	From Sundries.	Total.	
Nov. 21, 1778 to Nov. 18, 1779—	£58,698 8s. 6d.	£965,520 3s. 6¾d.	£934,169 2s. 10½d.
Nov. 18, 1779, to Nov. 19, 1780—	£196,919 11s. 1¾d.	£3,218,382 4s. 3¼d.	£3,044,065 14s. 1¾d.

About £700,000 was expended in military aid in 1779, and about £800,000 in 1780. The other expenses were chiefly those of collection and of ordinary administration beside the State navy. The large increase of expenditures for 1780 is probably due to the redemption of the bills of credit, which must have absorbed a large amount. These sums are all expressed in the depreciated currency which, in 1780, sunk as low as 80 to 1 in exchange for specie. Cf. chapter on Military Aid; House of Delegates Proceedings, Aug. 4, and Nov. 26, 1779, Apr. 10, 1780, and Jan. 31, 1781.

CHAPTER V.

Commerce.

Although somewhat overshadowed by military and financial requirements, the commercial interests of the State were not neglected. Otherwise it would hardly have been possible to afford as great aid to Congress. Among other things the Assembly soon considered the adjustment of trade relations with the other States. Upon the suggestion of Congress commissioners were appointed March 18, 1777, to meet delegates from the Middle States at York, Pennsylvania, in order to consider uniform prices for labor, and to formulate united regulations on imported goods. This meeting failed to accomplish any definite adjustment of the chaotic commercial relations.[1] In December, 1777, the Assembly made another equally fruitless appointment of commissioners for a similar convention of representatives from Maryland, Virginia, and North Carolina.[2]

More important than these two ineffectual attempts for a closer union was the appointment December 29, 1777, of three commissioners to confer with those from Virginia upon the disputed rights of navigation on Chesapeake Bay, and the Potomac and Pocomoke Rivers.[3] Although the commercial interests of both States demanded a definite

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[1] House of Delegates Proceedings, Mch. 18, 1777; Council to Christopher Lowndes, Apr. 14, 1777, Archives, XVI, 211.

[2] House of Delegates Proceedings, Dec. 16, 1777.

[3] The instructions to these commissioners were: 1st, to insist that Virginia levy no tolls upon vessels passing through the Capes on their way to Maryland. Unless this condition was granted, the meeting must discontinue; 2d, that crimes and piracies committed upon the water must be tried in the State of which the victim was a citizen. House of Delegates Proceedings, Dec. 22, 1777.

understanding in regard to these common waterways, this convention did not materialize.[4]

The high prices of labor and provisions in 1779 made some regulations desirable, but after considering the proceedings of the Hartford Convention held by the New England States and New York, a special committee reported such action inadvisable, unless adopted by all the States. The impossibility of securing such action rendered futile another appointment of commissioners to a convention composed of delegates from the New England and Middle States.[5]

The readiness with which Maryland entered into these conventions showed a strong wish for harmony with the other States, but was a virtual denial of the power of Congress to establish trade relations. The prohibition of duties in 1777, followed by the later reestablishment of such charges without reference to Congress, was clearly an exercise of sovereign power.[6] The proposition to regulate the difficulties with Virginia by a convention rather than through the medium of Congress must be ascribed to the same motives.

This independent attitude was maintained in promoting foreign intercourse, especially with France. Of greatest importance for stimulating trade relations was the appointment, October 27, 1778, of M. d'Anmours as French consul for Maryland. Residing at Baltimore, this official paid special attention to commercial interests.[7] The State executive evinced an earnest disposition to settle amicably all

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[4] After waiting at Alexandria three days beyond the appointed time, the Maryland commissioners were informed that an unexpected delay in the business of the Virginia Assembly had postponed the meeting. Disheartened by such dilatory conduct, the commissioners made no further attempt to meet the representatives of Virginia. House of Delegates Proceedings, Apr. 1, 1778.

[5] House of Delegates Proceedings, Dec. 2, 1779; Chas. Carroll of Carrollton to Benjamin Franklin, Dec. 5, 1779, Life of Chas. Carroll, II, 26-31; Maryland Gazette, Jan. 7, 1780.

[6] Cf. chapter on Finance.

[7] Journal of Congress, III, 102; Senate Proceedings, Dec. 2, 1778.

disputes between citizens of France and those of Maryland, even at the expense of the latter.[8] A naturalization act gave foreigners all the privileges of native born citizens after they had taken the oath of allegiance. They were relieved of all taxation for two years, and for four years if they were tradesmen, artificers, or manufacturers.[9] The confirmation by the Assembly of the treaty between France and the United States emphasized the independent position of Maryland.[10]

A later act gave French subjects the same rights as were enjoyed by native born citizens, voting and holding office alone being excepted. They might devise property in Maryland to residents of France provided it was claimed within ten years.[11] A desire was also manifested to encourage the large German settlement in Western Maryland.[12]

Internal commercial development was not overlooked. Committees were appointed by the Assembly to receive petitions and proposals for establishing factories, and to devise means of promoting trade.[13] The State government itself proposed to embark in the manufacture of saltpetre,

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[8] Two French captains reporting that one of the State galleys had fired upon their vessels, killing one man, an investigation showed that the trouble arose from the failure of the French vessels to accord the proper salute. The council made ample apology, declaring that since the galley had been fitted out by the Baltimore merchants it was a private vessel, not entitled to a salute. Everything possible would be done to bring the commander to account.

Upon complaint that French sailors frequently deserted at Baltimore to go to Philadelphia, the council directed the ferry-keepers at the Susquehanna to allow them to pass only when they showed passports corresponding to those sent by the French consul. Council to Chevalier d'Anmours, June 10, 1779, Archives, XXI, 448-50.

[9] Acts of the Assembly, Cap. VI, June session, 1779.

[10] Senate Proceedings, Dec. 15, 1778.

[11] Acts of the Assembly, Cap. VIII, Mch. session, 1780.

[12] The Assembly ordered the most important acts translated into German for the use of the courts in Frederick and Washington counties. Senate Proceedings, Mch. 25, and Aug. 15, 1779. These Germans, who were among the most prosperous and patriotic citizens of the State, afforded much aid to the Revolution. Cf. Steiner, Western Maryland in the Revolution.

[13] Proceedings of the House of Delegates, Feb. 7 and Nov. 1, 1777.

and several factories were founded, chiefly by State aid, for manufacturing different commodities.[14]

As tobacco formed the principal crop of Maryland, the Provincial government had already adopted regulations for its inspection. The justices of each county were, in 1778, authorized to appoint the inspectors, but not until more liberal fees were allowed did the Assembly overcome the difficulty in obtaining competent men.[15] There was a thorough revision in 1780 of the laws for the inspection of tobacco. Full allowance was made for the salaries of the inspectors, who were required to pass upon every hogshead of tobacco exported from Maryland. Notes given by these inspectors for tobacco stored in State warehouses passed as legal tender.[16]

The State government attempted to remedy the great scarcity of salt by giving liberal bounties for its production, while many salt works were established with the aid of advances from the State treasury.[17] The interest manifested by private citizens in salt works, as well as the embargo acts

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[14] An agent was sent to the south branch of the Potomac to contract for saltpetre and to purchase for the State land containing materials suitable for its manufacture. House of Delegates Proceedings, Dec. 18, 1780.

Jno. McFadden was granted £500 to be repaid in three equal instalments of merchantable linen manufactured in the State. House of Delegates Proceedings, Apr. 8, 1777. This is a typical example. The aid given in manufacturing firearms has already been noticed in the chapter on Military Aid.

[15] Inspectors were allowed 7s. 6d. for each hogshead of tobacco inspected. Acts of the Assembly, Cap. XI, Oct. session, also Cap. VI, June session, 1778.

[16] Warehouses were to be built at certain specified places. A monthly charge of 2 lbs. per hogshead was exacted where tobacco remained in these State warehouses over 12 months. Acts of the Assembly, Cap. XIV, June session, 1780.

[17] £2000 was set aside to found salt works. A bounty of £5 was allowed on every 50 bus. of salt made before Feb. 1, 1778, £10 for 100 bus. A certificate that 1000 bus. had been produced received a bounty of £100. Acts of the Assembly, Cap. XI, June session, 1777. Usually not over one bushel of this "bounty" salt was allowed one family. Journal of the Council, May 1, June 11, etc., 1777, Archives, XVI, 235 ff.

and the laws against speculation helped to obtain a full supply.[18]

The efforts of Congress to obtain salt led to an incident in which an entirely independent attitude was assumed. A resolution passed on January 12, 1778, requested the immediate seizure of the sloop Penn Farmer, lying at Baltimore, and the confiscation of her cargo of salt on the pretext that the owner was a British sympathizer. Having found the charge unsustained, Governor Johnson refused to carry out this impolitic measure, fearing the effect upon the importations of salt which were freely coming in, but offered to sell Congress any quantity at a reasonable price.[19]

The council tried to obtain salt, medicine and other supplies for the army by direct importation. The master of a vessel sent to Havana in the summer of 1777 was ordered to sell the cargo of tobacco and to bring back salt and medicines. This venture, it was hoped, would prove the beginning of a profitable trade between the Spanish colonies and the United States. Probably this vessel was lost or taken by the British, as no results of the voyage are recorded.[20]

The danger from British privateers was at least partially avoided in 1778, when Samuel Hughes was commissioned to go to New Orleans by way of the Ohio and Mississippi Rivers to obtain clothing and medicine for the troops.[21] As a forecast of the Chesapeake and Ohio Canal route to the west, this journey is most important. Since no further notice has been found either of this New Orleans expedition

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[18] Numerous directions for making salt were printed. Maryland Gazette, Oct. 30, Nov. 13 and 20, 1777. Wm. Whetcroft of Elk Ridge even offered to furnish the necessary utensils free of charge. Maryland Gazette, Dec. 18, 1777.

[19] Journal of Congress, II, 402-3; Governor Johnson to the President of Congress, Jan. 19, 1778, Archives, XVI, 469-70.

[20] Council to the Governor of Havana, Aug. 8, 1777, Archives, XVI, 328-29; Maryland Journal, Nov. 25, 1777.

[21] Remittance for these supplies by flour sent to Havana was proposed. Council to Sam'l Hughes, and to the Governor of New Orleans, Mch. 23, 1778, Archives, XVI, 548.

or of a proposed loan to be negotiated in Europe in order to obtain supplies, both attempts doubtless failed.[22]

Two vessels were sent to the State agent at Martinique, in 1778, with cargoes of flour and tobacco to be exchanged for at least a good ballast of salt. Hard pressed by creditors on former shipments, the agent sold both vessels upon their arrival. Although both ships needed repairs, the disappointed council indignantly protested against such a sale.[23]

The voyage of the brig Fox to Havana with a load of flour to be exchanged for military supplies proved most satisfactory.[24] Elated by this success, the council sent three more ships in January, 1781. The proceeds from the cargoes of flour were to be invested, if possible, in sugar for Cadiz. In any case, the vessels received orders to bring back military stores.[25] Two of the vessels disappointed all hopes for this voyage by going ashore near the mouth of the Patuxent River, when chased by a British frigate. Only with much difficulty were the cargoes saved from the rapacity of the inhabitants.[26]

Several measures were passed for the benefit of the shipping interests. The Assembly in 1777 divided the State into eight naval districts, four on each shore. The principal duties of the officer appointed in each of these districts were to register vessels, to collect all harbor charges, and to grant

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[22] Council to Joshua Johnson, Apr. 3, 1778, Archives, XXI, 7.

[23] Council to R. Harrison, May 18, 1778, Archives, XXI, 93-94; Capt. Conway to Gov. Johnson, Aug. 6, 1778, Brown Book No. 9. After much correspondence the Assembly confirmed the sale of one of the vessels, Senate Proceedings, Dec. 4, 1778; the other vessel reverted to the State after long negotiations, and was later sold, Maryland Gazette, Apr. 30, 1779.

[24] Council to the Governor of Havana, June 27, 1780, Council Correspondence, 122; Diego de Navarro to Gov. Lee, Oct. 15, 1780, Brown Book No. 7, 50.

[25] Council to R. Harrison, Jan. 4, and to the Governor of Havana, Jan. 5, 1781; Council Correspondence, 79 and 80.

[26] To save the cargoes the militia were given every eighth barrel brought back. In one day's ride over forty barrels were found which had been stolen. Many men of property were included among these pilferers. Sam'l Smith to Gov. Lee, Jan. 25 and 28, and Feb. 8, 1781, Red Book No. 27, 18, 21 and 26.

clearances.[27] The prohibition of all duties except those on negroes was another measure designed to aid commerce.[28] An act passed in 1780 required the registration of all vessels, yet protected the owners from any display of injustice by the naval officers.[29] A very important measure for the commercial interests authorized the appointment of inspectors in order to prevent the exportation from Baltimore of non-merchantable flour, staves, or shingles.[30]

Numerous commissions were issued for privateers. These vessels afforded much assistance in ridding the Bay of small marauding expeditions.[31] Frequently such commissions were taken out in order to protect vessels from the many American privateers which often disregarded regular clearances.[32] The efficient work of these private armed vessels amply justified the encouragement which was shown them.

The naval force maintained by the State proved very effective in the protection of commerce on the Bay, and in the transportation of troops and supplies, but the scarcity of men for the crews greatly hampered this work.[33] The ship Conqueror, in concert with the Continental frigate Virginia, was sent in June, 1777, to clear all hostile armed vessels from the north channel of the Capes, and three galleys were ordered to Tangier Sound in the fall to stop

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[27] Senate Proceedings, Mch. 28, 1777.

[28] House of Delegates Proceedings, Mch. 6, 1777; Acts of the Assembly, Cap. XVIII, Feb. session, 1777.

[29] Every vessel, of which one-third was owned in Maryland, whose keel was over forty feet must be registered. Acts of the Assembly, Cap. XVIII, Oct. session, 1780.

[30] Acts of the Assembly, Cap. XXVI, Oct. session, 1780.

[31] For the many commissions issued cf. Journal of the Council, Archives XVI and XXI. At least 38 commissions were issued in 1779. Cf. also Council Proceedings.

[32] Council to Md. Delegates in Congress, Apr. 10, 1778, Archives, XVI, 27-28.

[33] Council to Benj. Rumsey, June 6, 1777, Archives, XVI, 279. Owing to the scarcity of hands, men were illegally detailed by force on board the State vessels. This practice became so notorious that in at least one instance the council ordered the release of such prisoners. Council Proceedings, June 24, 1777, Archives, XVI, 298.

raids upon the property of loyal citizens.[84] Although these expeditions accomplished much good, the continued scarcity of men, added to the cost of keeping the large State fleet in constant service, induced the Assembly to order the sale of three vessels. Three other State boats were anchored at Baltimore.[85]

British adherents so preyed upon commerce on the Bay that early in 1778 effective work was demanded of the State naval force. After the capture of the State boat Lydia in the Potomac, shipment of provisions by water became unsafe.[86] The difficulty of obtaining men apparently precluded complete pacification by the State galleys, and part of the vessels were offered to Virginia.[87]

Confronted by such a serious condition, the Assembly reorganized the navy, empowering the governor and council to put vessels in commission at their own discretion. The same resolution provided for a commodore in charge of the entire fleet and advanced the wages for the crews. As an inducement to enter this service, bounties were later provided.[88] The reorganized navy did effectual work in clearing the Bay, although British vessels continued from time to time to interfere with commerce.[89]

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[84] Council to Capt. David, June 16, 1777, Archives, XVI, 290; Council to Capt. Cook, Nov. 22, 1777, Archives, XVI 422-23.

[85] Council to Geo. Wells, and Journal of the Council, Dec. 22, 1777, Archives, XVI, 441-44; Journal of the Council, Apr. 16, 1778, Archives, XXI, 36.

[86] Council to Sam'l Smith, Feb. 12, and to Gov. Henry of Va., Feb. 14, 1778, Archives, XVI, 492 and 498-99.

[87] Council to Gov. Henry of Va., Feb. 14, 1778, Archives, XVI, 498-99.

[88] Acts of the Assembly, Cap. X, Oct. session, 1778; House of Delegates Proceedings, Apr. 21, 1778. Thomas Grason was appointed commodore. Council Proceedings, June 8, 1778, Archives, XXI, 125.

[89] The most important capture was that of the British vessel Mermaid, with over 140 in the crew. Henry Hooper to Gov. Johnson, July 15, 1778, Brown Book No. 9; Council to Commodore Grason, July 7 and 16, 1778, Archives, XXI, 162. Outrages continued, and two vessels which ran aground near the mouth of the Patuxent were pillaged by armed men. Deposition of Alex. Gordon, Aug. 3, 1778, Brown Book No. 9.

In the winter of 1778-79 the State government fitted out two galleys to aid Congress in the projected expedition to Eastern Florida.[40] The scarcity of men continued, despite the liberal bounties allowed, while there was little prospect of a successful outcome. Yet there was not the least hesitation in affording this aid. Congress finally decided to abandon the expedition.[41]

Early in 1779 the commercial situation became critical. The State navy proved unable to cope with the British privateers, which seized many armed vessels. Effectually to stop these depredations upon commerce, the merchants of Baltimore agreed to man two vessels on condition the State would provide arms and provisions for a two months' cruise.[42] This offer was accepted, and by the latter part of February two armed galleys accompanied by a tender were sent to the Capes with instructions to coöperate with the Virginia galley which would probably join them.[43] This cruise proved so successful that it was prolonged to three months at the instance of the Baltimore merchants.[44] Other State vessels cleared the Bay of small marauders as well as of larger piratical craft. By the first of June, commerce upon the Chesapeake was comparatively safe.[45] The quickly renewed activity of the enemy made necessary the fitting out of a second expedition to the Capes. This voyage, too, was prolonged at the request of the Baltimore merchants.[46]

In spite of such success the Assembly considered that the great cost of the naval force brought little proportionate return. The sale of all the State vessels, except two galleys

[40] Council to Md. Delegates in Congress, Dec. 10, 1778, Archives, XXI, 263.

[41] Journal of the Council, Jan. 21, 1779, Archives, XXI, 281.

[42] Samuel and Robert Purviance, and others to Gov. Johnson, Jan. 29, 1779, Red Book No. 22, 60.

[43] Council to Commodore Grason, Mch. 9, 1779, Archives, XXI, 316-17.

[44] Council to Commodore Grason, Apr. 12, 1779, Archives XXI, 343.

[45] Council to Col. Sam'l Smith, June 3, 1779, Archives, XXI, 441.

[46] Council to Commodore Grason, July 9, 1779, Archives, XXI, 469.

and a tender, was accordingly ordered.[47] To render service on this remaining fleet more attractive, the officers received the same rank and pay as those in the Continental service.[48] This measure did not produce the desired results, and to save the large sum necessary to repair the remaining vessels, they were soon sold.[49]

While the few small boats retained in the State navy were incapable of much effective fighting, they were useful for the transportation of troops and provisions. The destruction to shipping by the British cruisers and small vessels infesting the Bay became so great that the council asked for a Continental frigate to be stationed at the Capes, claiming that, if this were not done, there was danger the supplies for the troops could not be secured. When this appeal was sent, over twenty vessels were shut up in the Patuxent, prevented from venturing out by fear of British cruisers. After the great exertions by Maryland with little apparent return, the council felt that Congress should not refuse this aid.[50]

Congress did not heed this request, and the destruction to shipping increased. In sheer self-defense the merchants of Baltimore once more equipped an armed fleet to act in conjunction with vessels sent by Virginia.[51] In November, when the enemy again appeared in some force in the Patuxent, the citizens of Baltimore sent two other armed vessels, the Assembly promising to repay the expense of fitting them out.[52] This force proved inadequate to prevent the capture of several vessels in the Patuxent by British privateers. Exasperated by these inroads upon the commerce of the State, the council even tried to secure two

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[47] Senate Proceedings, Mch. 25, 1779.
[48] House of Delegates Proceedings, Aug. 15, 1779.
[49] Acts of the Assembly, Cap. XXVIII, Oct. session, 1779.
[50] Council to Md. Delegates in Congress, July 28, 1780, Council Correspondence, 142-43.
[51] Council to Jno. Sterrett, Sept. 19, 1780, Council Correspondence, 182.
[52] Council to Merchants in Baltimore, Nov. 8, 1780, Council Correspondence, 207; Senate Proceedings, Nov. 17, 1780.

vessels which were loading flour as the nucleus of another fleet.[53]

Convinced at length by these continued attacks of the necessity for defending the Bay with a sufficient force, the Assembly ordered the purchase and manning of four large vessels. The officers in charge had the same rank and pay as if they had been in the Continental service, while liberal bounties were allowed the men.[54] This effective force rendered much easier the task of protecting shipping on the Bay.

The high prices and the general scarcity of grain and other food-stuffs made necessary special measures to secure provisions for the army. The chief means was an embargo upon all such commodities. Laws against speculation, and non-distillation acts were passed for the same purpose.

Even before the Assembly had passed an embargo act, the governor prohibited any exportation from Baltimore or from the Head of the Elk, ordering that all vessels coming down the Patapsco should be searched. The necessities of the times were urged as justification of such a high-handed method.[55] The Assembly confirmed the embargo laid by Congress upon all exportation of provisions from June 10 to November 15, 1778. This act included exports to neighboring States.[56] Congress complained that this law was not effectually carried out, but the council became satisfied upon investigation that infractions had not been numerous, and that the necessary steps had been taken to preclude any further violations.[57] The decisions of the Admiralty Court left no doubt of a firm intention to execute the law.[58]

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[53] Council to Stephen Steward, Dec. 19, 1780, Council Correspondence, 54.

[54] Acts of the Assembly, Cap. XXXIV, Oct. session, 1780.

[55] Council to Capt. Cook, July 2, and to W. Paca, Sept. 1, 1777, Archives, XVI, 304 and 358.

[56] Journal of Congress, II, 581; Acts of the Assembly, Cap. III, June session, 1778.

In order to facilitate the supply of the army, the Assembly continued the embargo after November 10, 1778, although the governor and his council were empowered to allow exportation of food-stuffs upon the requisitions of Congress and of the French minister, or to the New England States. Vessels receiving such permission must be fully armed, for much grain had been captured by the British. The act imposed heavy penalties and was strictly enforced.[59]

The embargo was finally prolonged until September 30, 1780.[60] Speculators bought up such large quantities of wheat and corn in the State, hoping that certainly Delaware and Pennsylvania would remove all restrictions, that the Assembly after the expiration of the embargo prohibited exportation by land except for the use of the United States, or upon the order of the Delaware and Pennsylvania executives. Special agents were designated to receive any such supplies which were removed. The exportation of Indian corn and flour in barrels by sea was permitted. When a sufficient supply for the army had been obtained all embargo restrictions might be removed.[61]

Taking advantage of the unusual demands of the war, speculators attempted to corner the market by buying up

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[57] Journal of Congress, III, 54; Council to the President of Congress, Sept. 17, 1778, Archives, XXI, 205-6.

[58] The sloop Friendship, which had been condemned with her cargo of 140 bbls. for violating the embargo, was only released upon representation that the vessel's load had been purchased by the United States. Cf. Proclamation, Nov. 3, 1778, Brown Book No. 9.

[59] Permission was given to export a small quantity of corn to the Bermudas. The owners of vessels violating this act forfeited treble the vessel's value, one-half to go to the informer. Acts of the Assembly, Cap. III, Oct. session, 1778, and Cap. VII, July session, 1779. Even the captain of a French ship, Le Bonhomme Richard, was obliged to obtain special permission from the Assembly to take 150 bbls. of bread and 100 bbls. of flour to provision the French fleet. Council Proceedings, Mch. 30, 1780. Vessels were allowed to carry sufficient provisions for the voyage, but this privilege was frequently violated. Council to Jeremiah Banning, Dec. 4, 1779, Council Correspondence, 44.

[60] Acts of the Assembly, Cap. XVII, June session, 1780; Council Proceedings, Sept. 9, 1780.

[61] Acts of the Assembly, Caps. XIV and XXXV, Oct. session, 1780.

large quantities of provisions to sell at advanced prices. This practice, which had originated in Pennsylvania, quickly extended to Maryland, and seriously injured purchases for Continental supply.[62] To end such a condition, the June session of the Assembly in 1777 prohibited all speculation in grain and other food-stuffs under penalty of heavy fines, and even imprisonment. The law prescribed the amount of profit to be charged, and required that the original prices of goods should be publicly displayed. The owners of large quantities of supplies already bought up for speculation were obliged to sell at not over 10% profit. Severe penalties were imposed, especially for removing salt from the State.[63] The laws against speculation were continued in 1778 and 1779.[64]

The widespread custom of distilling grain into spirituous liquor greatly increased in 1778 the prevailing scarcity.[65] The Assembly in October, accordingly, prohibited the distillation of grain until July 1, 1779, provided similar measures were passed in Pennsylvania, Delaware, and Virginia. Under these conditions the act was not put in force before March 31, 1779, and was continued until March 20, 1780.[66]

The exceptions made to the embargo laws deserve special attention. Permission was willingly granted for the shipment of provisions to alleviate the distress of the New England States. In response to a resolution passed by Congress on September 2, 1778, that properly accredited vessels should be allowed to load wheat for the needy New England States, the council gave several vessels clearances in the succeeding

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[62] Gov. Johnson to W. Cowper, July 8, 1777, Archives, XVI, 313.

[63] Not over 30% profits could be charged by retailers. On salt or brown sugar a profit of 35% was permitted. No one might retain more salt than was necessary for one year's supply for his family. Acts of the Assembly, Cap. XI, June session, and Cap. XI, Oct. session, 1777.

[64] Acts of the Assembly, Cap. VIII, Oct. session, 1778, and Cap. XVII, July session, 1779.

[65] Committee of Congress to Gov. Johnson, Nov. 11, 1778, Red Book No. 7, 154.

[66] Acts of the Assembly, Cap. XIX, Oct. session, 1778, Cap. I, July session, 1779, and Cap. XXVI, Oct. session, 1779.

months.[67] The Assembly approved this action, provided the prices to be charged were first agreed upon with the commissioners.[68]

Congress asked again in 1779 that permission be given to purchase in Maryland supplies for the New England States, which were in great need. The governor of Massachusetts sent a special letter asking for help.[69] Pursuant to these requests the council readily granted clearances for vessels to load flour for New England ports.[70]

The embargo laws were set aside to ship flour in considerable quantity to Virginia. An agent at Baltimore was appointed by Virginia in 1779 to secure bread and flour, and several vessels received clearance papers.[71] When, during the succeeding winter, the increased distress of the army induced the employment of seizure as a last expedient to obtain supplies, the flour destined for Virginia was not excepted. The council assured the governor of Virginia that only under such pressing circumstances would this action have been taken, and that, after the needs of the army had been met, every effort would be made to relieve the distressed condition of his State. This promise was afterwards fulfilled.[72]

The needy condition of the Bermuda Islands was the cause of another exception to the strict observance of the embargo. Convinced of the great distress in the Islands, and assured that relief supplies would be faithfully dis-

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[67] Journal of Congress, III, 41; Council Proceedings, Sept. 12, etc., 1778, Archives, XXI, 201 ff.

[68] Acts of the Assembly, Cap. III, Oct. session, 1778.

[69] Journal of Congress, III, 214; Senate Proceedings, Mch. 20, 1779.

[70] Council to Thos. Sollers, Mch. 5, 1779; Journal of the Council, Apr. 22, etc., Archives, XXI, 314-15 and 361 ff.

[71] Sam'l Griffin to Gov. Lee, Oct. 5, 1779, Red Book No. 22, 34; Council Proceedings, Nov. 10 and 24, 1779. The council promised 2000 bbls. of flour to Virginia, as much as could well be spared. Council to Col. Sam'l Smith, Oct. 22, 1779, Archives, XXI, 564-65.

[72] Council to Gov. Jefferson of Va., Feb. 23, to naval officers at Baltimore, June 7, and to Sam'l Smith, Dec. 11, 1780, Council Correspondence, 71, 110, and 44.

tributed, May 18, 1779, Congress requested Maryland, Delaware, Virginia, and North Carolina each to permit the exportation of one thousand bushels of corn for the relief of the Bermudians. The council willingly gave the necessary permission, and in 1780 allowed further supplies to be taken to these Islands.[73]

The presence of the French fleet off the Capes and in the Chesapeake Bay entailed a heavy drain upon the resources of Maryland. Even before the arrival of the fleet numerous permits were granted for cargoes of wheat, flour, and other provisions to be taken to the West Indies for its supply.[74] Relying upon a resolution of the Assembly, the French minister instructed his agent at Baltimore to ship six thousand barrels of flour to the fleet in Martinique. In carrying out this order he was to avoid every abuse, and to conform strictly to the governor's wishes.[75] Little wheat was on hand, but the council endeavored to supply the French fleet, offering to lend a State vessel if it could be sufficiently manned. To private persons recommended by the French agent, clearances were promised for cargoes of provisions destined for the fleet. It was suggested that flour might be sent from Kent and Cecil counties to the Delaware for shipment.[76] Acknowledging the notification by the French minister of the arrival of the fleet, the council expressed pleasure that Maryland had been chosen as the station, and declared that every measure had been and would be employed, not only to provision the troops and the fleet, but also to care for the sick and wounded.[77]

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[73] Journal of Congress, III, 278; Council Proceedings, Dec. 7, 1779, Mch. 31, May 19, and June 17, 1780.

[74] Journal of the Council, July 16, ff, 1779, Archives, XXI, 472, ff; Council Proceedings, Nov. 16, 1779, ff.

[75] M. Gerard to Gov. Johnson, Aug. 13, 1779, Archives, XXI, 491-92.

[76] To obtain wheat for the French, salt was exchanged in Harford county at the rate of a bushel of salt for a bushel of wheat. Council to Wm. Smith, Oct. 2, to Robt. Buchanan, Oct. 5, and to Richd. Dallam, Oct. 22, 1779, Archives, XXI, 544, 550 and 564.

[77] Council to Chevalier de la Luzerne, Dec. 3, 1779, Council Correspondence, 43.

This pleasant interchange of courtesies was destined to a rude interruption. As the French agent by December, 1779, had received all the flour to which he was entitled, the council directed the purchasers to send the rest to the Continental representatives.[78] Purchases by real or pretended French agents had raised prices to such an extent that some prohibitive action seemed necessary, yet even then the council granted a vessel permission to load provisions for the French fleet.[79] The great distress of the Continental army brooked no hesitation, and after the Assembly had passed an enabling act the governor issued a special proclamation for the strict enforcement of the law to seize all surplus grain or flour.[80] Unless the needs of the army were soon met, an immediate disbandment was feared. Under such circumstances the council included in the order for seizure the flour collected for the French fleet.[81]

These forcible measures aroused an indignant protest, the French minister complaining to Congress that, if the order was allowed to stand, it would be impossible to supply the fleet. As the French agent had greatly exceeded the amount of flour originally allowed, the council respectfully, but firmly, insisted that these seizures must continue until the army was fully supplied.[82] Congress settled the difficulty by asking Maryland to give the French agent sufficient flour to make in all fifteen thousand barrels.[83] This settlement was accepted, provided the flour necessary to complete the contract should be deducted from the Continental requisi-

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[78] Council to Richd. Dallam, Dec. 3, 1779, Council Correspondence, 43.

[79] Pretending to be agents of the French, several persons evaded the laws against speculation in provisions. House of Delegates Proceedings, Dec. 11, 1779; Council Proceedings, Dec. 8, 1779.

[80] Council Proceedings, Dec. 29, 1779.

[81] Council Proceedings, Dec. 29, 1779.

[82] The French agent in Baltimore attempted to resist forcibly the execution of this order. Council to the Commissioners of Cecil county, and Baltimore, Jan. 17 and 18, 1780, Council Correspondence, 55-57; Chevalier de la Luzerne to Congress, Jan. 10, 1780, Brown Book No. 7, 41.

[83] Journal of Congress, III, 441.

tions. Evidently Maryland intended to accept no dictation from Congress on this score. The wheat already seized from the French agents was restored.[84] To avoid all further abuses, this flour for the French fleet was afterwards collected by the regular Continental, or by State agents.[85] Permits were readily granted to ship flour to the fleet, and upon the application of Congress three thousand extra barrels were exported for the French vessels in the West Indies.[86]

During the period from 1777 to 1781 the State government of Maryland amply demonstrated the importance which it attached to commercial interests. In the adjustment of such relations both with other States and with foreign countries, the prerogatives of a sovereign State had been exercised. Even the treaty-making power had only been delegated to Congress subject to confirmation by the Assembly. The administration had, moreover, proved fully capable, with the patriotic aid of citizens, of defending the commerce of the State, calling upon Congress only once for help.

The governor and his council had assumed the initiative when necessary, refusing to execute impolitic measures at the bidding of Congress, or to be threatened by the French minister. The expeditions fitted out to secure military stores indicated the intention to employ every possible means of helping the Continental army.

With comparatively limited resources, Maryland had relieved the needs of other States, as well as of the Bermudas, and of the French fleet. This aid, in addition to the large supplies sent the army, had constituted a heavy drain. The successful enforcement of an embargo, and of strict laws against speculation proved the strength of the sentiment in favor of the Continental cause.

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[84] Council to Wm. Smith, Apr. 1, 1780, Council Correspondence, 83.

[85] Council to Wm. Smith, Apr. 5, 1780, Council Correspondence, 84-5.

[86] Council Proceedings, Apr. 1 and 22, 1780; R. Morris to Gov. Lee, July 18, 1780, Red Book No. 8, 6; Council to Chevalier de la Luzerne, July 28, 1780, Council Correspondence, 141-42.

CHAPTER VI.

INTERNAL DISTURBANCES.

Internal resistance hindered somewhat the varied activities of the new State government. Frequent disturbances were due to the machinations of the many Tories, while alarms of British invasion often aroused the State.

Trouble on the Eastern Shore broke out early in February, 1777, chiefly in Somerset and Worcester counties. In the former county four hundred organized Tories were reported to await aid from British men-of-war in the Bay. The council of safety ordered out all the available militia to suppress this force and appealed to Congress for additional troops.[1] The Assembly issued a proclamation offering pardon to the people of Somerset and Worcester counties if they dispersed within forty days, giving up their arms and taking the oath of allegiance. The leaders of the insurrection were excepted from this amnesty.[2] The disturbance promptly collapsed before these firm measures. To prevent a recurrence of the outbreak, a small permanent force sent by Congress under Colonel Richardson was retained in the disaffected counties.[3] The magnanimity displayed even toward the leaders who had been excepted from the amnesty attests the intention of the State government to end the revolt rather than to punish the Tories. When once the insurrection had

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[1] Deposition of Capt. Wm. Paterson, Feb. 6, 1777, State Papers No. 70, 143; Council of Safety to ———, Feb. 3, and to Congress, Feb. 6, 1777, State Papers No. 70, 136.

[2] House of Delegates Proceedings, Feb. 13, 1777.

[3] Gov. Johnson to the President of Congress, Apr. 23, 1777, Archives, XVI, 225-26. With the troops sent by Congress, 1700 in all had been available, but it was necessary to use only a small part of this force. Senate Proceedings, Feb. 8, and House of Delegates Proceedings, Feb. 21, 1777.

been effectually suppressed, the display of a conciliating spirit was an excellent means of preventing a recurrence.[4]

Late in the summer of 1777 an armed body of eighty men, alleged to have been led by Methodist preachers, did much damage in Queen Anne county before they were dispersed by the militia, aided by Colonel Richardson's force.[5]

The Assembly passed several measures directed against the Tories. An act of the February session, 1777, empowered the governor and council, during an invasion of the State, to arrest any person considered dangerous, suspending the right of habeas corpus. Office holders and voters were required to take an oath of allegiance, and anyone traveling without a pass was liable to arrest. Other clauses prescribed severe punishment for any disloyalty to the State.[6] For two sessions the Senate refused to pass a bill requiring all citizens, under penalty, to take an oath of alle-

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[4] A few instances of this conciliatory policy may be cited. At one time as many as 200 Tories were discharged in Somerset county, after they had taken the oath. Rev. Jno. Bowie, one of the most violent Tories, was discharged after he had given bond to remove from Worcester county at the pleasure of the governor and council. Council Proceedings, Mch. 9 and Apr. 3 and 4, 1777, Archives, XVI, 193, 197 and 199.

Thos. and Wm. Pollitt, who had been excepted from the amnesty, averred that they were ignorant deceived persons, and asked pardon for their conduct. Their petition was heeded. "Petition of Thos. and Wm. Pollitt, Apr. 1, 1777," Blue Book No. 4, 1; Journal of the Council, Apr. 4, 1777, Archives, XVI, 200.

Only a few of the leading Tories were confined and this was done under most lenient restrictions. Dr. Cheney, one of the leaders, who was confined at Queen Anne's, received permission to exercise with his keeper not over a mile from town. Other Tory prisoners were for safe-keeping removed to Frederick. Journal of the Council, Sept. 10, 1777, Archives, XVI, 368.

[5] Wm. Paca to Gov. Johnson, Sept. 6, 1777, Archives, XVI, 364-65. Much antagonism at this time was shown in Maryland to the Methodist preachers. Wesley's intense loyalty and his writings against the revolted colonies were well known, and his followers suffered accordingly, many of them being arrested. Journal of Rev. Freeborn Garrettson, 63-68, also 112, ff.

[6] High treason was punishable with death. Other crimes, for which imprisonment and various fines as high as £1000 were imposed, were: dissuading anyone from enlisting; concealing treason; and writing or printing anything against the United States. This act was to be read publicly in the courts and in the churches. Acts of the Assembly, Cap. XX, Feb. session, 1777.

giance. Perhaps overcome by the weight of public opinion, this conservative stand was abandoned in the fall of 1777, and the universal test oath was legalized.[7] Before March 1, 1778, every male inhabitant of the State over eighteen was obliged to subscribe an oath of fidelity to the State. Upon those who refused the law imposed a penalty of treble the usual tax. After May 1, 1778, beside forfeiting all civil rights, these nonjurors were debarred from any of the learned professions or from trade. The treble tax was likewise imposed upon those who had left after August 14, 1775, unless they returned and took the oath by September 1, 1779.[8]

Numerous signatures to the oath of allegiance were obtained in the specified time. Toward delinquencies due to sickness or absence the Assembly exhibited much toleration, extending the time limit. Persons mentally unsound were relieved of all obligation.[9] Even against those refusing to take the oath, the full rigor of the law does not appear to have been enforced, except where there was actual disturbance. On the plea that the Assembly should not assume a judicial function, and that the act already passed was suffi-

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[7] Senate Proceedings, Apr. 18, 1777; Maryland Gazette, July 3, 10, and 17, 1777.

[8] Acts of the Assembly, Cap. XX, Oct. session, 1777.

[9] The incomplete returns obtainable show at least the following number of signatures in the different counties: Baltimore county, 2021; Calvert county, 724; Dorchester county, 649; Harford county, 1018; Montgomery county, 1506; Talbot county, 782; Somerset county, 509; Charles county, 1452, and Anne Arundel county, 1190, in all 9851. Gen. Gist estimated the population available for military service at 30,000, so probably 35,000 were affected by this law. The returns are incomplete even from the counties given, while 9 counties are not included, so that even an approximate estimate of the total number of signatures cannot be obtained. See Original Returns to the Governor and Council, also Red Book No. 22 and Blue Book No. 5. For the benefit of certain persons prevented by sickness from taking the oath the time was extended to Aug. 1, 1778. Two persons of unsound mind were excused by the same act. Acts of the Assembly, Cap. IX, Mch. session, 1778. Other persons were given until Feb. 14, 1779, to subscribe. Acts of the Assembly, Cap. XXIV, Oct. session, 1778. Those taking the oath in one county were required to transmit it at once to other counties in which they owned property. Acts of the Assembly, Cap. XXIII, Oct. session, 1778.

cient, the Senate refused its assent to a bill enforcing the treble tax.[10] Probably this action was much influenced by the consideration that a not too rigid enforcement of the penalties might win many Tories from their old allegiance.

This conciliatory policy continued. Those guilty of treasonable conduct were pardoned outright or else released on bond.[11] Trouble in obtaining an attorney-general delayed the special court to try Tories on the Eastern Shore until after the appointment of Luther Martin, February 17, 1778. At least two commissions had been necessary to secure justices after the proceedings of this court had been removed to Talbot County.[12] Very few, if any, severe sentences appear to have been inflicted upon the Tories. Rather they were merely chided and prevented from doing actual harm.[13] The long delay caused much suffering among the prisoners who were collected at Cambridge for safe-keeping. Crowded together and in want of sufficient clothing and food, these prisoners petitioned for speedy release.[14]

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[10] Senate Proceedings, June 23 and Dec. 15, 1778.

[11] A few instances may be cited. Edward Tighlman, Jr., committed for the General Court in default of £5000 bond, confessed that he had gone to Philadelphia without leave and had been given his parole on condition he would do nothing against the King, and would return to British headquarters when required. The council later ordered his release. Council Proceedings, Mch. 26 and July 29, 1778, Archives, XVI, 552-53, and XXI, 169. John Green, lately on board the galley Baltimore, was discharged, although accused of insurrectionary language, upon giving a bond of £250 to act as a true and faithful subject of the State. Council Proceedings, Mch. 31, 1778, Archives, XVI, 559-60.

[12] Council to Justices of Special Court, Feb. 17, 1778, Archives, XVI, 504; Council Proceedings, Jan. 9, 1778; Council to T. Wright, Feb. 11, 1778, Archives, XVI, 463 and 488. Already two commissions had been issued for this court to sit in Queen Anne county. Council to Special Commissioners, May 16, and Council Proceedings, July 5, 1777, Archives, XVI, 256 and 308.

[13] The indictments found by the General Court of the Western Shore were mainly for preaching the Gospel without previously taking the oath, for forgery, and for treasonable conduct. Court Records, 64, 351-502.

As a typical case, Joshua Cromwell was adjudged guilty of teaching the Gospel without previously taking the oath, and was fined £13 14s. 6d. Court Records, 64, 357.

[14] Petition of 47 prisoners in Cambridge jail, Oct. 3, 1777, Blue Book No. 2, 4.

A deserter named Sterling in 1778 successfully aided James Chalmers, a resident of the State, to recruit for the British in Sussex county, Delaware, and in the adjoining counties of Maryland. The Maryland Loyalist Regiment, which he enlisted, numbered 336 men in May, 1778. The lack of armed galleys precluded any effort by the State to hinder the departure of this armed force from Annimessex Island.[15]

Similar outbreaks in Delaware greatly influenced these Tory troubles on the Eastern Shore. The disorders became so great that in March, 1778, the militia of Somerset county was called out, but as few persons could be trusted with arms, this force was not very effective.[16] A party infesting Hooper's Strait and the neighboring country added to the general disorder, plundering several small vessels, and even robbing plantations. The long delay of the courts and the frequent escapes of the prisoners, it was feared, encouraged such outbreaks.[17]

To end these increasing disturbances, which threatened the security of the entire Eastern Shore, the State executive was empowered to call out the necessary militia and to fit out galleys for service in Tangier Sound. Provision was made for an infantry company of one hundred men to serve in Somerset county. The same law ordered the seizure of all firearms belonging to nonjurors, and of any vessel sus-

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[15] Wm. Duer and others to Gov. Johnson, also Council to Md. Delegates in Congress, May 16 and 22, 1778, Archives, XXI, 89 and 106-7.

Jas. Chalmers had been commissioned by Sir Wm. Howe to enlist this regiment. After the British evacuated Philadelphia, this force served in New York and then in Florida. Upon the conclusion of peace most of the men migrated to Nova Scotia. Cf. Orderly Book, Maryland Loyalist Regiment, 6-12. Among the officers were Daniel Dulaney Addison, Philip Barton Key, afterwards a distinguished lawyer and member of Congress, and the Rev. John Patterson, a notorious Tory. Cf. Sabine's American Loyalists.

[16] Nathaniel Potter to Gov. Johnson, Mch., 1778, Blue Book No. 4, 66; Council to Geo. Dashiell, Mch. 16, 1778, Archives, XVI, 538-39.

[17] Council to Commodore Grason, and H. Hooper, Mch. 30, 1779, Archives, XXI, 333-34.

pected of communication with the enemy.[18] Until the regular force was mustered, thirty-two artillerymen with two field pieces were sent to Somerset county, instructed to overcome the insurgents by arms, and, if necessary, to cross the borders of the State.[19] Apparently these energetic measures were temporarily successful.

The upper part of the Eastern Shore had not been free from Tory outbreaks. A simultaneous rising in Delaware, in Queen Anne county, and on Jordan Island in the spring of 1778 promised serious results unless speedily checked. At Jordan's Island over two hundred Tories, who had built a block house, made even daylight expeditions robbing the surrounding country, and taking several prisoners.[20] Great mischief was done by Tories in the upper part of Queen Anne and in Kent county. This disorder was finally suppressed by the militia.[21]

A liberal policy continued in 1779 in dealing with individual Tories. The Assembly temporarily suspended collection of the treble tax, and relieved certain disaffected persons of disabilities.[22] Over a thousand petitions were received from nonjurors who had been prevented from taking the oath in the specified time. Many Germans complained that the difficulty of obtaining a translation of the law had delayed them. A number of these petitions were

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[18] Acts of the Assembly, Cap. VIII, Mch. session, 1778.

[19] Council to Lt. Gale, Col. Helmsley, and Col. Bordley, Apr. 17, 1778, Archives, XXI, 38-40.

[20] Sam'l Patterson and Chas. Pope to Gov. Smallwood, Apr. 13 and 14, 1778, Red Book No. 7, 115 and 116.

[21] Council Proceedings, May 23 and 29, 1778, Archives, XXI, 107 and 114.

[22] The treble tax was suspended until Nov. 10, 1779, when it was again remitted to the close of the session. Acts of the Assembly, Caps. XIV, July session, and I, Oct. session, 1779.

Rev. Bartholomew Booth was permitted to preach the Gospel and to teach in public schools upon taking the oath of fidelity. Jas. Bartlett was relieved from all penalties imposed upon nonjurors, since he had been insane for several years. Acts of the Assembly, Cap. XIV, Mch. session, 1779.

granted, and several persons who had left the State in 1775 were allowed to take the oath upon their return.[23]

Fearing a rising of the disaffected, warning was given May 25, 1779, that the extraordinary power to arrest any dangerous individual would be unhesitatingly employed by the governor and council.[24] Extreme measures were not adopted, although notorious offenders were placed under arrest, and heavy penalties were sometimes imposed for a comparatively light offense.[25]

The policy of conciliation continued for a time in 1780. The Assembly passed an act at the spring session ordering collectors to enforce the treble tax, but in June it was suspended until fall. A few of the petitioners for absolute relief from this tax were granted until October 1, 1780, to take the oath.[26] The non-success of this pacific policy finally caused a sterner spirit to be displayed. The fall session of the Assembly deprived nonjurors of the rights to vote and to hold office, but gave them until May 1, 1781, to subscribe to the oath of fidelity.[27] The treble tax was remitted for previous years, but was to be levied and collected for 1781.[28]

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[23] Acts of the Assembly, Cap. XXI, July session, 1779; House of Delegates Proceedings, Aug. 9, 1779; Council Proceedings, July 21, etc., 1779, Archives, XXI.

[24] Council to Wm. Bordley, May 25, 1779, Archives, XXI, 419.

[25] As an instance of these heavy penalties upon disturbers of the peace, Wm. Jaris and his accomplices were convicted of riotously taking away 20 bus. of corn, the property of Francis Rawlings of Anne Arundel county. They were condemned by the General Court of the Western Shore to pay fines varying from £25 to 7s. 6d. Court Records, 66, 23.

[26] Acts of the Assembly, Cap. XXV, Mch. session, 1780, and Caps. XV, and XVIII, June session, 1780; House of Delegates Proceedings, June 27, 29 and 30, 1780.

[27] Acts of the Assembly, Cap. XLVI, Oct. session, 1780.

Benedict Calvert of Prince George county was exempted from all penalties, but deprived of the right to vote or hold office. He had presented ten horses in lieu of his treble tax which had been judged unfit to use. Instead, he was required to give 40 hhds. of good merchantable tobacco before Mch. 10, 1781.

Abraham Ditto of Baltimore county, who had taken the oath in Harford county, was relieved of all disabilities.

These two instances are typical. Acts of the Assembly, Cap. XXIV, Oct. session, 1780.

[28] Acts of the Assembly, Cap. XLVI, Oct. session, 1780.

The council ordered that any person traveling without a pass should be arrested as a suspicious character and held for further examination.[29] Strenuous efforts were made to bring to justice persons accused of treason who had fled to another State.[30]

The necessity for special measures to stop the frequent outbreaks on the Eastern Shore soon became apparent. As the islands below Hooper's Strait had long been infested by piratical ruffians, who had caused great disorder, and had afforded much aid to the British cruisers, the Assembly ordered the removal of the inhabitants with all their possessions to the mainland. When necessary, the county justices were ordered to provide for them at the public expense. For the pacification of Somerset and Worcester counties, the Assembly provided for the enlistment of a troop of light horse and an infantry company, the men to receive substantially the same bounties, rations, and pay as Continental soldiers. A fort to be erected at the mouth of the Patuxent was designed to prevent the raids of small piratical crews.[31] Since much opposition had been manifested in

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[29] Rev. Freeborn Garrettson, a Methodist minister, was among the ones affected by this order. He had failed to take the oath required in Delaware, and as he refused to do so in Maryland, he was only released upon a bond of $20,000 to appear in Delaware within 20 days. As this condition was fulfilled and he had satisfied the authorities of the latter State, he was finally released. Council Proceedings, Mch. 9 and Apr. 5, 1780; Council to Col. Joshua Beall, June 24, 1780, Council Correspondence, 120-2.

[30] Stephen Mister, accused of high treason, had escaped several times, but was apprehended at length in Richmond. The governor of Virginia was asked to give him up to Maryland for trial. Council to Gov. Jefferson of Va., Aug. 3, 1780, Council Correspondence, 150-51.

The return of Joseph Anderson was also requested. He had been captured on one of the British vessels infesting the bay, and taken to Richmond. Although appointed lieutenant on one of the State galleys, he had delivered a vessel owned in Baltimore to the British at New York. Having a thorough acquaintance with the bay, he was capable of doing much harm. He had taken the oath of fidelity, so, despite his British commission, he was no ordinary prisoner, but was wanted in Maryland for high treason. Council to Gov. Jefferson of Va., Sept. 13, 1780, Council Correspondence, 178.

[31] Acts of the Assembly, Cap. XXXIV, Oct. session, 1780.

Somerset county to the collection of taxes, authority was given to employ a small force of militia to enforce the laws.[32]

A very drastic act conferred upon the governor and council the unusual power to arrest any person whose unrestrained liberty was considered dangerous to the State. Such persons might be committed to jail or held on bond for good behavior. As a safeguard from arbitrary conduct, the Assembly required a list of all arrests of this kind.[33] Such a law was altogether in accord with the changed policy toward the Tories.

Toryism was not altogether confined to the Eastern Shore. Especially in Frederick county, there was an unmistakable sentiment in favor of the British, and many judgments of outlawry for treason were passed by the General Court at Annapolis against prominent citizens of the county.[34]

Closely connected with these Tory outbreaks were the many real or rumored British expeditions up the Bay. Rumors came late in March, 1777, that the Chesapeake was the destination of about three thousand British and Hessians who had embarked from Staten Island. If this danger should become imminent, the Assembly ordered the removal of all horses, cattle, and other stock from the shores of the Bay, and the mouths of rivers.[35] The great lack of men to form crews for light galleys precluded the coöperation proposed by the governor of Virginia for the protection of the Eastern Shore. Governor Johnson asked Congress to aid in the defense of the State.[36] Although this alarm proved without foundation in fact, it aroused a realization of the danger from a British attack.

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[32] Acts of the Assembly, Cap. XLI, Oct. session, 1780.
[33] Acts of the Assembly, Cap. L, Oct. session, 1780.
[34] Cf. Western Maryland in the Revolution, B. C. Steiner, 54.
[35] Jno. Hancock, President of Congress to Gov. Johnson, Apr. 2, 1777, Archives, XVI, 196-98; House of Delegates Proceedings, Apr. 8, 1777.
[36] Gov. Henry of Va. to Gov. Johnson, Mch. 12, 1777, State Papers No. 70, 173; Gov. Johnson to Gov. Henry, Apr. 29, and to the President of Congress, Apr. 21, 1777, Archives, XVI, 232-33, and 222-23.

Sir William Howe's expedition to Philadelphia with about three hundred and sixty vessels passed Annapolis August 20, 1777, on the way north. Expecting an immediate attack, the council ordered all non-combatants to leave the city. Preparations were made for an immediate evacuation, as the militia force was not considered sufficient for an effective defense.[37] When the enemy appeared off the Gunpowder River, the militia assembled without waiting for the governor's orders, and constructed a small fort. They were almost destitute of arms, but hoped soon to be supplied. The tradesmen of Cecil county showed an equal readiness in equipping them, and sails were seized to make tents.[38] Governor Johnson and his council also acted on their own initiative in the crisis, calling at once for two companies of militia from each Western Shore county to march to the Head of the Elk.[39] These energetic measures for self defense were of little practical service, for the enemy immediately began the journey to Philadelphia, doing little damage in Maryland except along the line of march.[40]

After the peril of invasion had passed, the Assembly relieved the governor and council of all blame for exceeding their powers in this crisis. Unpatriotic citizens who had refused to serve in the militia were fined, while any seizure of private property for the public welfare at this time was condoned.[41] Strict orders were issued for the seizure of any person communicating with the British while the vessels still

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[37] Council Proceedings Aug. 20, 1777, Archives, XVI, 339-40.

[38] Benjamin Rumsey, and Wm. Paca to Gov. Johnson, Aug. 24, and 30, 1777, Archives, XVI, 342-43, and 352-54.

[39] Maryland Gazette, Aug. 28, 1777.

[40] Washington to Gen. Armstrong, Aug. 25, 1777, Ford's Washington, 6, 52.

[41] The governor and council had ordered the militia out of the State, and had authorized certain persons to draw money from the Eastern Shore treasury without a warrant. Such acts, while strictly illegal, were necessary, and were forgiven by the act of indemnity. Acts of the Assembly, Cap. XVII, Oct. session, 1777.

remained in the Bay.[42] The militia was posted at suitable places to stop all intercourse with a British vessel which had gone up the Potomac ballasted with salt, and Virginia promised help with her galleys.[43] As a further measure of precaution, the more prominent Tories were closely confined, while many persons suspected of communication with the British were arrested.[44] The council prohibited any attempts to recover slaves fleeing to the British, since such a favor could only be granted under circumstances unfavorable to the Continental cause.[45] After this invasion, which had emphasized the danger in a severance of communication between the two shores, instructions to the county lieutenants of the Eastern Shore ordered that in such a contingency they should call out the militia without awaiting further orders.[46]

A small British fleet which came up to the mouth of the Patuxent in March, 1778, caused renewed preparations for an expected attack.[47] Kent, Cecil, and Harford counties each furnished two companies of militia, and the governor of Delaware was asked for aid in preventing a sympathetic

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[42] One man, it was alleged, had invited his neighbors to drive their cattle into his pasture, and had then sold them to the British fleet. Messrs. Tighlman and Sibley were accused of going on board, and a Mr. Atkinson, a disaffected citizen, had returned for secret purposes, it was claimed. W. Smallwood to Gov. Johnson, Nov. 5, 1777, and Council to Capt. Cook, Nov. 22, 1777, Archives, XVI, 409-10, and 423.

[43] Council to Capt. Cook, and to Lt. Ware, Nov. 21 and Dec. 9, 1777, Archives, XVI, 423 and 431.

[44] Council Proceedings, Sept. 12 ff, 1777, Archives, XVI. Upon their return, three men who had joined the British fleet from Dorchester county were arrested. A list of twelve fugitives, supposed to have fled from Cecil county to the British fleet, was handed to the council. Council Proceedings, June 4, 1778, Archives, XXI, 122.

[45] Council to Col. Lloyd, Feb. 6, and to G. Christie, Feb. 16, 1778, Archives, XVI, 484 and 501; Council to G. Dashiell, Apr. 6, 1778, Archives, XXI, 11-12.

[46] Council to Lieuts. of Worcester and Somerset counties, Jan. 9, 1778, Archives, XVI, 464-65.

[47] Council to Capt. B. Matthews, Mch. 9, 1778, Archives, XVI, 531-32.

rising of Tories on the Eastern Shore.[48] Later in the spring rumors of a larger fleet fitting out in New York for the Chesapeake proved unwarranted.[49] When reports came that an armed force of refugee Tories was destined for the Eastern Shore, preparations were made to call out the militia as soon as such an invasion should occur. The executive also took precautions against a rising of the disaffected.[50]

Constant alarms continued in 1779. An attack was feared in May from a large fleet which had been seen near the Capes. The council ordered that a large force of militia be ready to march on immediate notice for the defense of Baltimore. Part of the Anne Arundel militia came to protect Annapolis.[51] After the enemy landed in Virginia a further advance was feared, and lookout boats were sent down the Bay to give warning. An appeal for aid was made to Congress.[52] Upon the receipt of more alarming news the militia of Baltimore and Harford counties and part of the Anne Arundel quota marched immediately to Baltimore. General Gist came, at the request of the State executive, to superintend the defense of the city.[53] Several of the young men of Baltimore organized a voluntary troop of light horse to afford additional aid.[54] As the expected attack did not come to pass, the excitement soon subsided, and the militia returned home. From the frequent alarms, the public mind was at a fever heat, ready to give credence to the wildest

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[48] Council to Gov. Rodney, and to Capt. Hollingsworth, Apr. 8, 1778, Archives, XXI, 18-21.

[49] Extract of letter from Washington's headquarters, May 7, 1778, Archives, XXI, 73-74.

[50] J. Henry to Gov. Johnson, Oct. 21, and Council to Eastern Shore Lts., Oct. 21 and 25, 1778, Archives, XXI, 220-2 and 224.

[51] Council to Andrew Buchanan and Jas. Brice, May 16 and 17, 1779, Archives, XXI, 394-96.

[52] Council to Md. Delegates in Congress, May 20, 1779, Archives, XXI, 404-5.

[53] Council to A. Buchanan, Richd. Dallam, and Jas. Brice, May 20, 1779; Washington to Gen. Gist, May 27, 1779, Archives, XXI, 406-7, 426-27.

[54] Maryland Gazette, May 28, 1779.

rumor.[55] Despite the many false alarms, the militia had usually displayed great readiness to respond to these calls.[56]

Small raids which continued in 1780 were promptly checked.[57] On the Eastern Shore the continued fear of piracies rendered the inhabitants anxious for some organized plan of defense.[58] As many armed State boats as could be spared were sent in September to aid the militia in the capture of an armed barge lying off Tangier Island, which had done much damage, and was said to be aided by the disaffected on shore.[59] Three armed schooners went up the Patuxent November 5, 1780, burning two houses and taking away several negroes before a guard was appointed to prevent any repetition of this raid, which had been helped by the Tories.[60]

The rumor that Admiral Rodney's fleet, which had gone down to Sandy Hook, was destined for the Chesapeake caused general excitement, since a large British fleet had already arrived in the Bay. The State government took

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[55] Maryland Gazette, June 4, 1779; Council to Andrew Buchanan, June 3, 1779, Archives, XXI, 440. As an instance of the current credulous fear, several French vessels on their way to Baltimore created great consternation by their appearance off the mouth of the Patuxent, as they were at first confidently believed to compose a hostile fleet. Council to Gen. Gist, June 3, 1779, Archives, XXI, 440.

[56] So much trouble was experienced in holding the militia for the defense of Annapolis in camp that they were discharged to reassemble at a moment's warning. Journal of the Council, May 24, 1779, Archives, XXI, 413.

[57] Council to Andrew Buchanan, and to Jos. Wilkinson, Nov. 6 and 8, 1780, Council Correspondence, 205 and 207.

[58] The people of Vienna, a small town on the Nanticoke river, petitioned that they were practically defenseless, and feared the return of piratical crews from New York. These marauders, who were given shelter on the islands by Tories, threatened the stores of tobacco. If only a few cannon were sent them, the people promised to do their best to pay the heavy taxes which had been imposed. Cf. undated petition, Brown Book No. 5, 133.

[59] At least one citizen of Maryland had carried provisions to this vessel. Signals were arranged between the piratical crew and the Tories on shore, and 20 hhds. of tobacco had been taken in one river. Depositions, Sept. 2, 1780, Blue Book No. 4, 14; Council to Col. Dashiell, Oct. 4, 1780, Council Correspondence, 192.

[60] Jos. Wilkinson to Gov. Lee, Nov. 9, 1780, Red Book No. 32, 27.

ample measures for immediate defense.[61] In the midst of this general alarm, the necessity for some fixed plan of defense became apparent. The Assembly ordered two thousand militia armed at once, and appointed a special council to exercise full executive power on the Eastern Shore in case of actual invasion, reserving only the right to remove civil officers.[62] Certain military stores sent to Alexandria in January aided Virginia against the British. Although busily engaged in putting the State in a posture of defense, the council did not neglect to apprehend all disaffected persons, and to prevent any intercourse with the enemy.[63]

The council received many petitions during the period 1777 to 1781 for leave to go within the hostile lines. Usually such requests pleaded business as an excuse. Washington had ordered that all applications of this sort must be recommended by the State executive, and the governor and council deferred fully to his wishes.[64]

The damages to private property by the British made relief measures necessary. So much destruction took place on the march through Cecil county in 1777 that the inhabitants were unable to pay the taxes in full. The assessment law in 1778 exempted all persons whom the British had compelled to leave their homes, or had made unable to carry on their regular vocations.[65] A later act empowered the governor and council to give relief in certain designated cases.[66] To obviate the difficulty caused by the requirement that applicants for relief go personally to Annapolis, the Assembly authorized the county tax commissioners to determine the

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[61] Washington to the President of Congress, Nov. 14, 1780, Red Book No. 7, 12; Circular to County Lieutenants, Jan. 11, 1780, Council Correspondence, 92; House of Delegates Proceedings, Jan. 13, 1781.

[62] Acts of the Assembly, Cap. XXVII, Oct. session, 1780-81.

[63] Council Proceedings, Jan. 19, 1781.

[64] Washington to Gov. Johnson, May 29, 1778, Archives, XXI, 115; numerous recommendations for passes were made, but especially in the spring they were very charily granted. Council Proceedings, Aug. 27, Oct. 23, etc., 1778, Archives, XXI.

[65] Acts of the Assembly, Cap. VII, Mch. session, 1778.

[66] Acts of the Assembly, Cap. II, Oct. session, 1778.

justice of these claims.[67] To ease somewhat the burdens of the unusually heavy taxes for 1780, the lieutenants of the counties were allowed to make proper reductions.[68]

Beside the disturbances directly due to the Tories or the British there were few serious outbreaks. In both Baltimore and Frederick large number of the inhabitants rose in arms in 1777 to resist the enforcement of the militia laws, but they were soon dispersed without much difficulty.[69]

Indian outbreaks seriously retarded the development of the western frontier. They became most serious in 1778; many frontiersmen were murdered, and others were compelled to flee from their homes. The council finally sent a force of militia to quell these disturbances which were supposed to have been fostered by the British.[70] During another Indian rising in 1779 every effort was made to encourage the people to remain, and an ample force of militia was sent to aid them in the defense of their homes. The council hoped that the proposed westward campaign of the American army would effectually stop all such conflicts.[71] The few Indians residing on the Eastern Shore apparently caused no trouble during this period.[72]

Unless supported by public opinion, this energetic policy of the State government in suppressing all internal disturbances would have been impossible. The strong sentiment favoring the cause of independence was especially exemplified by the zealous readiness with which accusations of Toryism were made. Such charges rested often on the

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[67] Acts of the Assembly, Cap. XV, June session, 1780.

[68] Acts of the Assembly, Cap. IX, Oct. session, 1780.

[69] Council to Militia Officers, Oct. 3, 1777, Archives, XVI, 388-89 and 391.

[70] Council to County Officers, May 16, 1778, Archives, XXI, 86-89.

[71] Council to Dan'l Hughes, May 16, 1778, Archives, XXI, 89.

[72] Billy Nanticoke, the chief, and other members of the Nanticoke tribe residing in Dorchester county, petitioned to be incorporated with those of the tribe in New York, and that certain lands secured to them by the Assembly might be sold. The petition does not appear to have been granted at this time. House of Delegates Proceedings, Apr. 19, 1780.

merest trivialities, and sometimes provoked a lively newspaper war.[73]

Samuel Chase in 1779 arraigned four members of the Senate as Tories. One of the accused legislators resigned before the half-hearted investigation was completed. The Senate repudiated these charges, but the guilt of at least two of the others was clearly shown.[74] Before the final decision by the Senate, the drift of public opinion had been shown by the unanimous election of Samuel Chase as a member of the House of Delegates from Annapolis.[75]

The demonstrations by the Whig Club against William Goddard, publisher of the Maryland Journal, were significant manifestations of the popular feeling. The Whig Club, a quasi-secret organization, was formed by many prominent citizens of Baltimore to punish Tories and other disturbers of the peace who might otherwise escape punishment through the loopholes of the law. The constitution gave a complete organization and prescribed a fixed procedure for the trial and sentence of all accused persons. The members of the club were sworn to detect traitors and to punish conspirators against the Continental cause.[76]

The Maryland Journal, a paper of rather Tory proclivities, February 25, 1777, contained an article signed by Tom Tell

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[73] A Mrs. Hutton of Prince George county was accused of Tory proclivities owing to an alleged refusal to respond to a toast to Washington. The charge seems to have originated at a dinner party she had given. The company of ladies had all drunk to the health of the commanding general upon the toast of an American officer's wife, but Mrs. Hutton, when called upon, declared that political and public affairs should be left to men. She therefore proposed "Peace and Quietness." This incident produced a wordy newspaper war. Maryland Gazette, July 3, 1777, and following issues.

[74] Senate Proceedings, Mch. 17, July 21 and Aug. 3, 1779.

[75] House of Delegates Proceedings, July 28, 1779.

[76] Maryland Journal, Feb. 11, 1777.

Among the more prominent members of the Whig Club were: Jas. Nicholson, captain of the U. S. frigate Virginia; Daniel Bowley, Hugh Young, and David Stewart, prominent merchants; Benjamin Nicholson, judge of the Admiralty Court; Nathaniel Ramsay, a brave officer in the American army, and a delegate to Congress. A membership list of such representative men shows the great influence of this organization. Cf. list, Goddard MSS., Library of Congress.

Truth which congratulated the country upon the terms of peace offered by Lord Howe. Praising the British government in the most extravagant terms, the author expressed a desire for an early peace.[77] So pro-British a publication incurred the resentment of the Whig Club. Representatives of the organization called upon Goddard, March 3, demanding the real name of the author of the obnoxious article. When the unfortunate printer refused this request, he was haled before the Whig Club. Assuming the powers of a legal assembly, this self-constituted court condemned him to leave the town by twelve o'clock and the county within three days. Goddard, who was by this decree exiled from his home and business, appealed to the Assembly.[78]

In extenuation of this riot the officer in charge of the magazine at Baltimore reported that, upon the complaint of Goddard, he had sent a detachment of soldiers to protect him, but they had refused to fire upon the loyal and representative body of men who were engaged in the affair.[79] By order of the Assembly the governor issued a proclamation directed especially against the Whig Club, which ordered all persons associating together to usurp the powers of government to disperse. The justices of Baltimore county were asked to preserve peace and to afford full protection to all citizens, particularly to William Goddard.[80]

The severe handling he had experienced did not prevent Goddard from continuing to print articles of a strongly Tory flavor.[81] His paper gave special prominence to a most virulent acknowledgment by the Tories in New York of the terms of peace offered by the British commissioners. This address, which was copied from the London Post, intimated that there were thousands of loyal citizens in Amer-

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[77] Maryland Journal, Feb. 25, 1777.

[78] House of Delegates Proceedings, Mch. 7 and 10, 1777.

[79] Wm. Galbraith to Gov. Johnson, Mch. 26, 1777, Red Book No. 3, 44.

[80] Maryland Gazette, April 17, 1777.

[81] Cf. files of the Maryland Journal for 1777, 1778 and 1779.

ica only awaiting a favorable opportunity to declare themselves. Other equally offensive statements were made.[82]

The climax was reached July 6, 1779, by the publication, at the request of General Charles Lee, of several queries justifying his own conduct and casting severe aspersions upon Washington. Aroused by this article, an angry mob broke into the printer's room at night, demanding his appearance at the coffee house. Goddard by a vigorous defense induced the rioters to leave after they had extorted from him a promise to appear for trial in the morning. The next day he was submitted to much indignity, carted through the streets with a halter about his neck, and compelled to reveal many of his business secrets. His house was pillaged, but he at length managed to escape, and appealed for protection to the governor.[83] In a retraction he made ample apologies to Washington, though this forced statement was afterwards withdrawn.[84]

The citizens of Annapolis, also, manifested a determination to support the government. A Mr. Lawrence of Pennsylvania, against whom the Tory laws were enforced, attempted violently to revenge upon the governor his condemnation. Charles Carroll of Carrollton presided over a meeting which indignantly rebuked such conduct. Resolutions were passed requesting Mr. Lawrence to leave Annapolis as speedily as his health permitted, since his presence was most distasteful to the citizens. Nor should he be allowed to return, except with the permission of the governor and council.[85]

Under such assumed names as Americanus, Cato, and Publicus, many writers reflected in the press the drift of public opinion. The two principal newspapers in the State were the Maryland Gazette and the Maryland Journal, published respectively in Annapolis and in Baltimore. The former, as the semi-official organ, was strongly patriotic. The Tory

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[82] Maryland Journal, Jan. 5, 1779.
[83] Memorial of Wm. Goddard, July 13, 1779, Red Book No. 3, 38; Jas. Calhoun to Gov. Johnson, July 15, 1779, Red Book No. 3, 41.
[84] Maryland Journal, July 14 and 27, 1779.
[85] Maryland Gazette, Nov. 19, 1779.

proclivities of William Goddard, the printer of the latter, have already been noted.

Anonymous authors in the Maryland Gazette frequently expressed a strong sentiment against Tories and in favor of enforcing the laws passed to suppress them.[86] One writer whose article strongly smacked of Plutarch and of Rollins' Ancient History declared that, as the Tories had joined the British army in Georgia and the Carolinas even after taking the oath, they should never be treated as trustworthy friends. He insinuated that they had planned the invasion of Virginia.[87] Another anonymous author implied that some persons high in power were traitors, and warned the people against those who with soft speeches were ever ready to betray them to Great Britain. Calling attention to the agitation for enforcing the acts against Tories, this author advocated the employment of the fullest rigor of the law against such persons.[88] A resolution passed the latter part of July, 1777, by five hundred voters of Anne Arundel county instructed their representatives in the Assembly to oppose any measure for the relief of nonjurors.[89]

Despite this strong current of anti-Tory feeling, much latitude in the expression of pro-British opinion was permitted. While a few patriotic writers appeared in the columns of the Maryland Journal, Goddard published many articles tending to bring the American cause into disrepute. Only when such attacks became virulently personal did they arouse active hostility. Frequent and copious quotations were made from London papers in favor of reconciliation, and the manifesto issued by the King in 1778 to the American people was printed in full together with his proclamation.[90] Before the appearance of the queries by Charles Lee which brought William Goddard into so much trouble, a

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[86] Cf. the complete files of the Maryland Gazette in the State Library, Annapolis.
[87] Maryland Gazette, July 2, 1779.
[88] Maryland Gazette, July 16, 1779.
[89] Maryland Gazette, July 30, 1777.
[90] Maryland Journal, Oct. 20, 1778.

defense of this general was copied from the Pennsylvania Packet, which alleged that many attempts had been made during the trial to render him unpopular. At a time when patriotic feeling ran high, it is surprising that more riots were not caused by publications of this kind.[91]

A conservative policy toward the Tories had been maintained throughout the period, 1777-1781. The State government had attempted to conciliate rather than to suppress them by severe penalties. With the exception of the troubles on the Eastern Shore no serious outbreak had occurred, and even these disturbances were quickly and effectually quelled. Toward the end of the period the continual strife fostered by the Tories caused a tendency to inflict more severe punishments. The enforcement of the treble tax and the confiscation of British property were significant effects of such a change in policy.

The State government had amply demonstrated its ability to quell internal disturbances without any considerable outside help. This same self-reliant spirit was displayed in repelling British attacks, and only seldom had the aid of Congress been asked. The aggressive conduct of both Governor Johnson and Governor Lee, who had not hesitated in crises to exceed their powers, had influenced greatly the pacification of the State.

Without the support of public opinion, manifested in such various channels, it would have been impossible to resist with so much energy all these outbreaks of hostility. The loyalty of the majority of the inhabitants of Maryland had not failed in the test.

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[91] Maryland Journal, Dec. 21, 1779.

SUMMARY.

In the brief space of four years the State government of Maryland had accomplished much work. The task of organization was well carried out. A new form of administration dependent upon the people replaced the old Provincial government, in which the executive and the Upper House of the Assembly had been subject to the Crown or the Proprietary. The differentiation of the legislative, the executive, and the judicial functions marked this successful transition to the State government.

The attitude assumed by Maryland awakened public attention to the necessity for a common ownership of the western lands. As a result of so firm a stand the States asserting exclusive domain over the territory were ultimately induced to cede these claims for the general benefit. This achievement, largely due to the influence of Maryland, was of the greatest importance in the national development.

Much aid was extended to the Continental army. The State government even risked unpopular measures, imposing drafts in order to obtain sufficient troops for the campaign. At least one-tenth of the available military population remained constantly in the field, while each year the State contributed toward the varied expenses of the army about three-tenths per cent of its entire taxable basis. In addition it was necessary to keep up an expensive navy, to pay the unusually heavy cost of collecting taxes, and to meet the other expenses of government. A large part of the Eastern Shore, one of the most productive regions of the State, was almost constantly disturbed by insurrections. As the rest of the State mainly supported the burden of taxation, this record of aid is all the more honorable.

Important fiscal reforms helped to carry out these measures. The depreciated paper money resting upon the rather

insecure foundation of State credit was greatly reduced. A sinking fund guaranteed the new issues. A system of taxation was evolved which yielded each year increased returns.

The Assembly attempted to regulate commercial interests with the other States, and encouraged immigration. State aid resulted in the establishment of several factories, though commerce was much hampered by the embargo and anti-speculation laws imposed in order to facilitate the supply of the army. Large quantities of wheat, flour, and other provisions were sent to the New England States, to Virginia, to the Bermudas, and to the French fleet.

Success attended the attempts to suppress the repeated troubles on the Eastern Shore fomented by Tories. In combating Toryism the State government displayed much conservatism, enforcing harsh laws only when such action was absolutely necessary. The State militia promptly armed on several occasions in anticipation of British invasions.

The Assembly, as the sole source of legislative power, assumed the chief authority. The Lower House, rather more radical in its tendencies, was held in check by the more conservative Senate. The governor and council, aided by the local executive officials, efficiently enforced the laws passed by the Assembly. In a crisis neither Governor Johnson or Governor Lee hesitated to assume the initiative by exceeding the legal limits of their power. This action, which was principally taken to obtain much needed supplies or to pacify the State, was always marked by discretion. At a period when war absorbed much of the public interest, the work of the judiciary was of comparatively little importance.

From the inauguration of the State government, February 5, 1777, to the final ratification of the Articles of Confederation, March 1, 1781, Maryland was an independent State entering into the deliberations of Congress as a sovereign ally. This position was maintained in both internal affairs and outside relations, especially in the following instances.

Interference by Congress with internal administration was

not tolerated. The convention repudiated the arbitrary decree for the arrest of Governor Eden, and the Assembly observed the same policy, severely reprimanding Captain Nicholson and Major Lee for violations of the rights of private citizens.

As one of the allied States, Maryland preserved this attitude in dealing with Congress. The refusal of the convention to define exactly the powers of Congress was upheld by the action of the Assembly. An outcome of such a policy was the failure to ratify the Articles of Confederation without some guarantee for a mutual ownership of the Western territories. The claim that the title to the back lands, the property of the British Crown, reverted to Congress would apparently entail a corresponding admission of Continental sovereignty. Since, otherwise, the entire attitude of the States points to an opposite conclusion, it must be admitted that, in this particular instance, this argument was employed in order to gain the end in view.

Congress merely "recommended" measures to the States, with no penalty for non-enforcement. Certainly in Maryland these resolutions were inoperative, unless approved by the Assembly, or by the governor and council. They were unhesitatingly rejected when the State government deemed them inopportune. Both Pulaski and Armand, even when under the special protection of Congress, failed to receive permission to recruit in Maryland. The attempts to impose local regulations upon the Maryland line almost led to the resignation of many officers. Coercion in the form of drafts for over-due taxes was quickly resented.

The support accorded conventions to regulate the confused conditions of interstate commerce virtually disclaimed the authority of Congress over such matters. A proposal was made to settle in like manner a boundary dispute with Virginia.

Above all, in foreign relations the Assembly exercised the rights of sovereignty. The treaty-making power was delegated to Congress, not absolutely, but subject to the

approval of the Assembly. The very ratification by the Assembly of the treaty with France was a proof of State independence. In the passage of immigration laws, and in the imposition of duties the authority of Congress was not invoked, but these ordinarily sovereign prerogatives were exercised solely with regard to the interests of Maryland alone.

As a result of this independent attitude there were no calls for outside help in suppressing the various internal disturbances except in a few critical instances. Almost alone, the State forces put to flight the various marauders on the Bay, and overcame the different Tory outbreaks.

In Maryland, therefore, before the ratification of the Articles of Confederation, the sovereignty which the British Crown had possessed reverted to the State government. With respect to this particular State, Congress assumed and exercised such power only with the express approval of the legislative authority. This conclusion is in accord with the doctrine advanced by the advocates of State sovereignty.

When the Assembly was finally convinced that the necessity for union imperatively demanded ratification, and that the most objectionable obstacles had been removed, there was no reservation. Trusting to the honor of the other members of the Confederation to ensure justice, Maryland committed herself wholly to the union which she had favored from the first and which, throughout the period of the Confederation, received the whole-hearted support of the State.

LIST OF MANUSCRIPTS.

The following manuscript sources have been used in this study:

Library of the Maryland Historical Society.

Maryland Archives, in addition to the printed volumes, XVI, XVIII, and XXI:

- Liber C. B., No 22. Council Correspondence, copy, May 29, 1779 to Nov. 10, 1780.
- Liber 78, Council Correspondence, original letter-book, Nov. 14, 1780, to Nov. 10, 1787.
- Liber C. B., No. 23. Council Proceedings, original record from the minutes, April 1, 1779 to Nov. 13, 1780.
- Liber C. B., No. 24. Council Proceedings, original record from the minutes, Nov. 15, 1780 to Nov. 8, 1784.
- Folio No. 87. A Collection of Authentic Documents, Papers, and Letters on Public Affairs from 1682 to 1785, prepared and recorded by David Ridgeley under authority of a resolution of the General Assembly of Maryland passed March 26, 1836.

Original Correspondence listed as:

Brown Books:

- No. 1, 62 letters from Washington, 1777-99.
- No. 2, Letters from Gen. Smallwood, 1777-82.
- No. 3, Letters from Gen. Gist, and Gen. O. H. Williams, 1775-81.
- No. 5, Miscellaneous Papers, chiefly War Department, 1777-83.
- No. 7, Foreign Officers in the War of Independence, 1778-82.
- No. 8, Military Correspondence, 1779-81, also Correspondence of the Representatives of France, 1779-83.
- No. 9, Miscellaneous Papers, 1776-82.

Blue Books:

- No. 2, Papers relative to Md. Stock in the Bank of England.
- No. 4, Miscellaneous, 1778.
- No. 5, Papers concerning Losses during the War of the Revolution and Information about British property.

Red Books:

- No. 3, Goddard Papers and Miscellany.
- Nos. 5, 7, 8, 9, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32 and 33, Miscellaneous Correspondence, chiefly of an official character, 1777-1803.

LIBRARY OF CONGRESS.

Papers of the Continental Congress, No. 70, Maryland and Delaware State Papers, original documents, 1775-87.
Goddard MSS.
Maryland Account Books, 1778-85.

MARYLAND LAND OFFICE.

General Court of the Western Shore, Judgments, vols. 64, 65, and 66.

LIBRARY OF THE SUPERIOR COURT, BALTIMORE.

Baltimore County Court, Minutes, 1772-81.

ENGLISH COLONIAL ADMINISTRATION UNDER LORD CLARENDON

1660-1667

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ENGLISH COLONIAL ADMINISTRATION UNDER LORD CLARENDON

1660-1667

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1660-1667

CHAPTER I.

The Official Colonial System.

The period between the Restoration of the Monarchy in 1660 and the Revolution of 1688 was, in England, an epoch of the greatest commercial activity and progress. The beginnings made in the time of James I, by the founding of commercial companies, had by the end of the Cromwellian epoch begun to produce abundant results. Trading companies had proved themselves successful and had increased in numbers until they now carried on their operations in all parts of the known world. In fact the experimental stage in English commercial expansion had been passed and the period of substantial gain had been entered upon.

The statesmen of the restoration period took up and furthered this policy of commercial expansion. New companies were chartered, the patents of old companies renewed and enlarged, and new colonies planted with a readiness which, if there were no other evidence, would demonstrate the deep interest taken in industrial matters. The navigation laws, already put on trial for the building up of the English shipping industry, were re-enacted, enlarged, and made more stringent. Laws were enacted for the encouragement of home manufactures and commissioners appointed from time to time to enquire into all the various needs of the several industries, how they could best be encouraged, what articles were in most demand, and what legislation was

necessary for their advancement.[1] Not only were these matters enquired into by the government, but they were also made the subjects of many tracts, treatises, or discourses in which the authors argued with much keenness of interest the various economic questions that troubled the minds of commercial classes of that day. Such questions as the abatement of interest, the effects of the navigation acts on the shipping industry, monopolies, and even free trade, were discussed in a manner altogether new.[2]

In this growing welfare of the mother country the colonies in America and the West Indies were playing a constantly increasing part. Evidence of this appears from the frequency with which reference is made to the plantations whenever the general subject of commerce and trade is under discussion in Parliament or in the privy council, and still more from the active efforts made to secure the benefits of the colonial trade by increasing the rigidity of those clauses of the navigation acts which applied to the colonies. Thus, in the preamble of the act for the prohibition of tobacco planting in England, occurs the following statement: "The strength and welfare of this kingdom do very much depend upon them (the plantations) in regard to the employment of a very considerable part of its shipping and seamen, and of the vent of very great quantities of its native commodities and manufactures, as also of its supply with several considerable commodities which it was wont formerly to have only from foreigners."[3] The recognition of

[1] Rymer Foedera, XVII, 410; Indewick. Interregnum, 74; Thurloe, State Papers, IV, 177; Domestic Papers, 1667, p. 607. In addition to the charters for the American colonies passed during Clarendon's ministry, the following companies were founded, enlarged, or reorganized:

1661, The Levant or Turkish Company, charter enlarged.
1661, East India Company, new charter.
1661, Royal Fishery Company of Great Britain.
1662, English-African, or Guinea Company.
1665, The Canary Islands Company.

[2] Some of the more noted publications were: Josiah Child, Discourse of Trade; Roger Coke, Treatise on Trade; William Petty, Commercial Arithmetick; Polexsen, Discourse on Trade.

[3] 12 C. II, c. 34.

the facts here stated resulted in the devoting of more attention to the development and management of the colonies. In fact, what has been called the beginning of a definite and consistent colonial policy has been ascribed to this period and to the authorship of Lord Clarendon. This policy was expressed in the navigation acts. While the principles upon which these acts were based, did not originate at the restoration, nor was Clarendon their discoverer, it was under the direction of that minister that their action was first brought to bear directly on the management of the colonies. The object of this policy was to make the colonies contribute solely to the wealth and prosperity of the mother country. To this end their own welfare was to be completely subjected. Their resources were to be developed along lines which would contribute to but not compete with the commerce of England. Anything that might interfere with the business of merchants at home, lessen the demand for goods that could be manufactured there, or decrease the custom duties levied on imports, was to be strictly avoided.[4]

Under these circumstances, it would appear that the administration of the colonies should have been closely associated with and dominated by the administration of domestic trade and commerce. This was not, however, the case during the ministry of Clarendon. At the restoration the privy council was revived as the nominal administrative center of the government. But while this body was to outward appearance the same that had wielded so much power under former kings, and was in fact composed largely of the same members as under Charles I, its real position in the state was henceforth quite different. Under Charles II, the privy council as a whole was a purely political body. It was never consulted except on matters of form and on occasions of ceremony.[5] Its membership was too large and too diverse for active business. For political purposes, the king had appointed a number of Presbyterians and their

[4] Cunningham, Growth of English Commerce and Industry, II, 153.
[5] Dicey, Privy Council, 135.

advice was looked upon by the Episcopalians as dangerous. Hence, Clarendon devised a scheme for the subdivision of the council into special committees, of which there appear to have been four principal ones, with the understanding that when special occasions required the king was to appoint others. This plan was not carried out strictly, but it did have the effect of centering the actual direction of affairs into the hands of a few persons. One of the committees, that for foreign affairs, composed of Clarendon, Southampton, Ormond, Monk, and the two secretaries of state, transacted all the most important business, both domestic and foreign, and became in reality a cabinet council which virtually superceded the privy council.

According to Clarendon's scheme one committee was to be devoted to trade and foreign plantations. Soon after the return of the king, this committee was appointed. It consisted of ten members and was to hold meetings "every Monday and Thursday at three of the clock in the afternoon."[6] But for some reason this plan was abandoned, for, some months later, two entirely different bodies were established, known as the Council for Foreign Plantations and the Council of Trade. The membership of these councils exceeded all bounds of select committees of the privy council. The commission for the first, under date of December 1, 1660, named forty-six persons beginning with Clarendon, and including all the principal officers of state; nine were members of the privy council; thirteen belonged to the nobility; while eleven were knights, eleven county esquires, ten merchants, and one was denominated a master in chancery.[7] On nearly the same date the council of trade was appointed likewise composed of lords, knights, esquires, and merchants to the number of sixty-one and with Clarendon again at the head.[8]

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[6] Sainsbury, Calendar of State Papers, Colonial, America, and the West Indies, 1660, July 4; O'Callahan, Documents Relative to the Colonial History of New York, III, 30.

[7] Colonial Papers, 1660, Dec. 1; New York Documents, III, 32.

[8] Calendar of State Papers, Domestic, 1660-1661, pp. 319, 353; N. Y. Doc., III, 30.

To this arrangement two criticisms suggest themselves. In the first place, the councils were too large and too cumbersome. Active business could not be readily dispatched by such an unwieldy body. In the council for foreign plantations, an elaborate organization was necessary with a president, secretary, treasurer, door-keeper, and messengers, and the council had to be divided into a number of subcommittees which reported to the council; the council in turn reported to the privy council and thus there was opportunity for numerous and unnecessary delays. No one felt the responsibility in such a large council, and great difficulty was soon experienced in getting sufficient attendance to hold a meeting. That this defect became apparent is shown by the attempts made to reduce the number of members. Soon after the fall of Clarendon the membership was lowered to ten; in 1675, the entire council was dismissed and an attempt made to get back to the original committee scheme, by transferring all colonial business to a committee of the privy council. In the second place, the administration of the colonies was separated from the general management of domestic and foreign trade, at a time when the sole purpose of a colony was avowedly to contribute to that trade. This was an innovation and did not prove satisfactory. Numerous commissions had been appointed by the rulers prior to this time to enquire into the state of trade and industry, but in these instances the consideration of foreign, domestic, and colonial trade, had not been separated. While this separation was not in itself objectionable and might have proved advantageous had the object of colonial administration not been such as it was, in the face of the economic theory then accepted it would appear to have been an unwise if not impossible undertaking. It is difficult to see how the administration of the plantations could be kept distinct from that of the trade, navigation, and commerce of the kingdom when it was the declared purpose of the government to use the colonies solely as feeders for home industries. Nor is it easy to

understand why such a separation was desirable even if possible. The interference of the two councils was inevitable. The farmers of the customs soon had cause to complain to the king that they were losing 10,000 pounds per annum by reason of the failure of the council for plantations to enforce the navigation acts in the colonies.[9] The disadvantages of this division were so great that, in 1672, this feature also of Clarendon's scheme was overthrown by the consolidation of the two councils into one body known as the Council for Trade and Foreign Plantations. This united management was retained in the councils and committees that appear during the remainder of the reign of Charles II, and the reign of James II, and was continued after the Revolution when the colonies were placed under the charge of the Board of Trade.

It seems to have been the intention of Clarendon to give the council for foreign plantations ample scope of authority to deal with all matter relating to the colonies. By its commission, that body was authorized not only to gather information from all sources, sift this, and make recommendations, but also to dispose of all matter relating to the good government and management of the plantations.[10] Yet this was not carried out. When the very first matter of any consequence came before the council, it found itself unable to dispatch a carefully considered letter to New England. It was made to await the pleasure of the king in council, and saw its work virtually thrown away by the long delay which followed. In fact the council, except as an agency for gathering information, proved useless. Clarendon, while he remained in the service of the king, was the actual director of the council for plantations as well as all the important committees of the privy council. Thus, as virtual prime minister, he had his hands full with the great questions of state, and it is not unlikely that many of the delays in the dispatch of colonial business were owing to

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[9] New York Documents, III, 47.
[10] Ib., 34.

Clarendon's time and attention being taken up by other more weighty affairs. In this event the correspondence with the colonies, as well as the details connected with the transaction of colonial business, fell to the secretaries of state, two in number, both members of the council. The men who held this office during the ascendency of Clarendon were Sir Edward Nicholas, Sir William Morrice, and Sir Henry Bennet. The latter, better known as Lord Arlington, was chiefly noted for his utter unscrupulous subserviency to the king and his antagonism of Clarendon. Nicholas, whom he displaced in 1662, and Morrice who held the position until 1668, seem to have been industrious and efficient subordinates but were handicapped by lack of authority.

After the fall of Clarendon the management of the colonies became weaker and fell into great disorder. Numerous attempts were made to reorganize the council for foreign plantations on a more efficient basis but they all proved futile. It could not be expected that colonial administration would become stable or efficient while the home administration was in such a state of turmoil and transition as prevailed from 1668 to the end of the reign of Charles II. On the retirement of Clarendon the king attempted to become his own chief minister; it is, therefore, only necessary to remember his hatred for business, his unfaltering devotion to pleasures, and his shameful dishonesty in matters of public concern generally, to explain the weakness and inefficiency of the government during this period. For two years after the retirement of Clarendon, Lord Arlington was at the head of the council. Then in 1670 an entirely new body was appointed with the Earl of Sandwich at its head, few of the former members being retained. Here the names of Prince Rupert, Buckingham, Lauderdale and Culpepper appear, strangely enough, as colonial administrators. A year later the Earl of Shaftesbury became president of the council which was a decided improvement. But in 1674, the whole council for foreign plantations was discharged. The management of the colonies was then reunited with the

direction of trade by the appointment of a committee of the privy council on trade and plantations.[11] This organization was retained, with frequent changes in the membership of the committee, during the remainder of Charles' reign.

It has been stated that in the period following the restoration it became the policy of English statesmen to regard the colonies as existing solely for the benefits of the mother country. This being true it is not strange that the chief emphasis in the administration of the colonies was directed to the enlargement and enforcement of the navigation acts which expressed that policy. The navigation act of 1651 was intended by Cromwell as a blow to the maritime power of Holland. At that time the carrying trade of England was largely in the hands of the Dutch. To break up this practice, the law provided that imports and exports to and from England or the colonies must be carried in English ships and that certain enumerated articles, the chief of which were sugar and tobacco, could be exported from the colonies only to England or another colony. The resulting struggle between these two rivals for the supremacy in the shipping world led immediately to a commercial war in 1652.[12] Cromwell's law was revived in 1660 with but slight change except the additional requirement that ships must be English built, as well as owned and manned by Englishmen.[13] But from this time on the severity of the law was steadily increased and another object appears alongside the desire to harm the trade of Holland. The act of 1663 required foreign goods destined for the colonies to be first landed in England, and states that its object is to bring the colonies into greater dependence, increase the shipping and revenue of the kingdom and make "this kingdom a staple of the commodities of the plantation, it being the usage of other nations to keep their plantation's trade to themselves." It also increased the penalty imposed on colonial governors for

[11] Colonial Papers, 1668, Dec. 4; 1670, July (?); 1671, March 20; 1672, Sept. 16; 1674, Dec. 21; 1675, Jan. 2, Feb. 9; 1679, Apr. 22.
[12] Cunningham, II, 110.
[13] 12 C. II, c. 18.

violations of the act, by adding to the penalty of mere removal from office, that of incapacity to hold office under the king in the future, and a fine of 1000 pounds.[14] In 1672, the law was further extended so as to prohibit the carrying of the enumerated articles from one colony to another without first paying the duty which would be imposed had they been carried to England. And five years later this protective policy reached the absurd climax of prohibiting entirely the trade with France, on the ground that it produced an unfavorable balance.

There was, however, an apparent exception to this subjection of colonial to home interests, namely, the law for the prohibition of tobacco planting in England. The preamble of this act clearly sets forth that it is of great "concern and importance that the colonies and plantations of this kingdom in America be defended, protected, maintained and kept up, and that all due and possible encouragement be given unto them."[15] Yet it should be noted that other reasons have been assigned for this act, which possibly had equal weight with this philanthropic motive. Tobacco raised in England was inferior in quality to that produced in the colonies, and could never hope to supply the full demand; and as it was impracticable to levy an excise upon the home product the importation of tobacco from the colonies furnished an important source of revenue.[16]

As soon as the attempt was made to enforce the navigation acts the reasons for the supremacy of the Dutch in the carrying trade became apparent. The shipping of England was inadequate to meet the requirements of her trade. It is true that her merchant fleet increased rapidly after 1660, but for the time being the exclusion of foreign vessels from colonial ports worked a hardship on those who had vested interests in the colonies. The inhabitants of the Leeward Islands complained that their ports were empty. From

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[14] 15 C. II, c. 4, 7.
[15] 12 C. II, c. 34.
[16] Cunningham, II, 154.

Barbadoes came the news that food and clothes were wanting and the people discontented; "free trade," it was said, "is the life of the colonies." The shipping of the sugar plantations fell from 400 to 150 sail in about five years, and the imports and exports dropped to one-third their former amount.[17] Lord Willoughby wrote from the Leeward Islands asking that the navigation acts be dispensed with, so that food might be procured from the nearest port, as the people were starving; even the king's fleet would at one time have been in great disorder had it not been supplied from New England. Governor Atkins, of Barbadoes, took the bolder ground that "for planting new colonies free trade is necessary; when the machine fails," he wrote, "that supplies the people with provision the engine must needs stand still." He urged that the king's customs would be increased and risks avoided if customs were paid in the colony instead of in England and "goods allowed to go where they please."[18] Soon after New York was conquered from the Dutch, Nicolls, the governor, wrote that the whole plantation was suffering, and the people going about naked, because no English ships came to take the place of the Dutch ships which had formerly carried on the trade. Conditions finally became so bad that Nicolls also advised the suspension of the navigation laws, so that vessels from Holland could trade at New York as formerly. But to all these appeals the authorities in England, influenced by English merchants and shippers, turned a deaf ear. Commissioners were sometimes instructed to enquire whether trade would improve if "more open and free," and once the expression occurs that "trade must be courted not driven." But on the whole there was never any doubt on the part of the ministers as to what was best to be done. The council for plantations stated that free trade for new plantations would prove dangerous to the others, and voted "to give Governor Atkins a cheque for upholding this maxim of free trade."[19]

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[17] Colonial Papers, 1664, Aug. 25; 1666, May 12; 1668, Jan. 23.
[18] Ib., 1672, April 8; 1676, July 4.
[19] Ib., 1676, Oct. 26; 1681, Dec. 12.

In fact, as to the navigation laws, the question was not as to their wisdom, but the means of administering them. In the face of the lack of English shipping, this proved to be a very difficult undertaking. A circular letter was dispatched to all the colonies in 1663 requiring the several governors to see that the laws were properly enforced.[20] It was soon found that the existence of Dutch plantations in close proximity to the English was the most serious obstacle in the way of the success of the policy. Accordingly in 1664, the conquest of the most important Dutch colony was undertaken. New Netherland was annexed and this obstacle overcome. But during the war which followed and which lasted until the close of Clarendon's administration, no progress was made toward securing the main end aimed at, so that immediately after Clarendon's retirement the council for plantations reported an almost universal disregard of the navigation acts in America and the West Indies.

Another object, expressed when the council for plantations was appointed in 1660, was to draw the colonies into a closer union with one another, increase their dependence upon the mother country, and establish one uniform system of administration for them.[21] There was great need for the carrying out of this purpose. During the administration of Clarendon, as well as that of the succeeding ministers, the condition of the colonies "cried aloud for the authority of the crown." [22] Whenever the council for plantations did interfere, it found dishonesty and contention. Especially was this the case in New England where the religious and

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[20] See below, p. 65.

[21] The commission for the council for plantations, December, 1660, states that the colonies "should now noe longer remain in a loose and scattered but should be collected and brought under such an uniforme inspection and conduct . . . ." Instruction for the same, par. 4; "and all of them being collected into one viewe and management here, may be regulated and ordered upon common and equall ground and principle"; par. 5; "and for the bringing of the several Colonies and Plantacons, within themselves, into a more certaine civill and uniforme of government." N. Y. Doc., III, 32, 34.

[22] Colonial Papers, 1677-80, preface, 55.

territorial disputes were ready at any moment to terminate in bloodshed. In other places the existence of political cliques, or the fear of foreign invasion equally demanded some sort of efficient supervision from England. Many obstacles stood in the way of harmonizing these differences. In the first place the charters or constitutions of the several colonies were widely different, and to this difficulty Clarendon deliberately added, when he passed new colonial charters providing for such diverse communities as the almost independent democratic states of Rhode Island and Connecticut and the virtually sovereign proprietary dominions of Carolina and New York. Here, it would seem, was the opportunity to take a long step toward securing uniformity and system, by erecting the new colonies according to a consistent plan with the end in view of maintaining a close connection with the central administration in England. Just the opposite was done. If the purpose expressed in the appointment of the council was ever really understood, it was quickly lost sight of.

Another difficulty in the way of close dependence and uniform control, was the inadequate means of communication with the plantations and between the several plantations, and the consequent delay and expense in obtaining reliable information regarding them. From first to last this problem stared the council for plantations in the face. On the whole there was a genuine spirit of fairness manifested to hear the arguments of the colonists before taking action, and more than one delay was occasioned because their side of the case had not been presented.

Many expedients were tried to overcome this deficiency. In 1663, an order was issued for the establishment of a post system among the colonies, under the management of the postmaster-general of England. The central office was to be in Barbadoes, with branches in other colonies, and the governors were instructed, "to take care that a constant correspondence may be had from all parts as often as opportunity affords."[23] Requests for information were re-

[23] Colonial Papers, 1663, June 1.

peatedly sent out to the several governors, who frequently delayed, or failed entirely to answer them; or the answers which were received were laid aside and forgotten. Agents from the colonies were required to attend the council in England and answer questions but they frequently failed to bring, or refused to give definite information on the points at issue. In the failure of all these methods, the king, in 1664, went to the "extraordinary charge" of sending commissioners to the plantations in New England to investigate conditions, settle disputes, gather information, and bring in a report. The commissioners, four in number, remained in the colonies nearly two years, travelled throughout New England, and on their return made a report to the council for plantations. Yet even the information thus obtained was defective and one sided. In appointing and intrusting the commissioners fatal defects appeared, showing that the ministers in England had as yet little conception of the real conditions existing in the colonies.[24] The report was laid aside, nothing was done for ten years to investigate or carry out the changes and suggestions it made, and consequently the whole field had to be gone over again, when, finally, in 1675, the council for plantations was reorganized, and the affairs of New England again came under consideration.

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[24] See below, pp. 82, 146.

CHAPTER II.

THE ROYAL CHARTERS OF CONNECTICUT AND RHODE ISLAND.

News of the restoration of the Stuarts to the throne of England was received in the American colonies with varying degrees of satisfaction or disapproval. In Maryland and Virginia the change of sovereignty was accepted without opposition. To Lord Baltimore it was welcome because it at once put an end to the attempts to overthrow his power in the province. The endeavors of Fendall to establish a commonwealth in Maryland fell to the ground as soon as it was known that the commonwealth government in England had given way to the monarchy. In the month following the entry of Charles II into London, Baltimore commissioned his brother, Philip Calvert, who was then in the province, as lieutenant governor.[1] On the 19th of November, the governor proclaimed his authority in the name of the proprietor. On the same date another proclamation announced the accession of Charles II, to whom the crown of England, " did by inherent birth-right and lawful and undoubted succession descend."[2] To this authority the people were commanded to submit. Pardon was offered to all engaged in the late sedition, except Josiah Fendall and John Hatch. On November 29, Fendall submitted to the authority of Governor Calvert, and was placed in prison to await trial. Not less prompt was the acceptance of the king's authority in Virginia. There, in 1658, the protector, Richard Cromwell, had been proclaimed, and his authority recognized. When, however, news of the events of the following year leading to his downfall reached the colony,

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[1] Archives of Maryland, Proceedings of the Council, 391.
[2] Ib., 392, 393.

the hopes of the royalist party were revived. The assembly which met in the spring of 1660 anticipated the accession of the king by electing a royalist governor, William Berkeley, with the announcement that the supreme authority within the colony should remain in the assembly "until such a command and commission come out of England as shall be by the assembly adjudged lawfull."[3] In October, the first assembly, after the restoration had been accomplished in England, styled Berkeley, "his Majestie's Governor." Thus the sovereignty of the king was fully recognized without protest. In March, 1661, Berkeley was sent to England to represent the colony before the king from whom he was soon to receive a royal commission and instruction confirming him in the position to which he had been chosen by the colonists.[4]

In the New England colonies, on the other hand, the change of government in the mother country was by no means so acceptable. During late years these communities had grown accustomed to the management of their own affairs. Having escaped the attempt of Charles I to destroy their liberties, they had welcomed the supremacy of parliament, because in parliament they recognized a form of government similar to that which they desired to maintain for themselves. This government had shown itself friendly to their religion and had interfered but little in civil affairs. Three of the communities had taken on corporate existence in this period and still, in 1660, held patents granted by parliament. Massachusetts, whose charter antedated the late disturbances in the mother country, had assumed a more independent position and had resisted the attempts even of parliament to interfere in her government. While a friendly correspondence had been maintained equivalent to a vague recognition of sovereignty, in none of the New England colonies had the authority of Oliver Cromwell been formally proclaimed. Massachusetts had ignored an ex-

[3] Hening, Statutes at Large, I, 530.
[4] Ib., II, 9, 17.

press command that announcement should be made of the accession of his son, Richard Cromwell.[5] In short, these colonies had given evidence that what they desired was not only freedom for their religious principles, but autonomy in civil matters as well. Their cry was not for recognition and protection, but simply to be let alone.

Nothing could have suited the New Englanders better than to have continued in this indefinite relation with the mother country. Consequently, the news that Charles II had ascended the throne filled the minds of the people generally, except those in Rhode Island, with grave forebodings. Especially was this true of Massachusetts, which had in many ways assumed a leadership among the Puritan communities. Thus, news of the progress of events in England was long discredited, and, when it could no longer be doubted, was made the occasion of public fasts and prayer. It was feared that the restoring of the Stuarts to the throne meant that "the reformation gained by so much war and blood should be given up again to Papists and heretics."[6] No official notice was taken of the event until long after the king had been seated on his throne, his government formed, and their agent in England, Leverett, had informed the colonists that their inaction was causing unfavorable criticism.

This extreme attitude was not, however, adopted by all of the neighboring colonies. While none of the New England colonies were as prompt in recognizing the accession of the king as Maryland and Virginia, they were not all as dilatory as Massachusetts. Rhode Island was most loyal in her attitude. Although this colony had accepted a patent from parliament, her people probably felt that as compared with the treatment they had received at the hands of the New England Confederacy, from which they had been excluded, they had little to fear from the king. Promptly,

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[5] Hutchinson, History of Massachusetts, I, 193.

[6] Diary of John Hull, Archæologia Americana, Col. of Am. Antiq. Soc., III. Hull made this entry under date of Jan. 15, 1660.

therefore, on the receipt of a letter from Clarke, their agent in London, the court of commissioners met at Warwick and ordered that "the officers of the trayne band of this towne doe rally the company or trayne band of this towne together to solemnize the proclamation" of the king the next morning at 8 o'clock, October 19, 1660. All other towns within the jurisdiction were ordered to do likewise and all writs and public documents were ordered to be made in the king's name.[7] Plymouth did not take similar action until June, 1661, when the king had been on the throne more than a year.[8] In Connecticut there was some delay which the court attributed to the fact that the news arrived in the dead of winter, when it was impossible to get the members together. But at the beginning of spring, 1661, the court met and voted it to be their "duty and very necessity" to declare allegiance and loyalty to Charles II; "declaring and professing ourselves, all the Inhabitants of this Colony, to be His Highness loyall and faythfull subjects."[9]

New Haven, following in the influence of Massachusetts, was more dilatory. In the latter colony the proclaiming of the king was a matter looked upon with the greatest fear and approached with profound reluctance. News as to what was going on in England reached the colony before the adjournment of the May court, 1660.[10] In July, a ship's captain brought definite information of the acts of the convention parliament. In October there was another session of the court in which a motion was made for an address to the king, but it failed to pass, on the ground that England was yet in a very unsettled condition.[11] On November 30, a vessel arrived bringing official news of the restoration, and with it the equally unwelcome information that the delay of

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[7] Rhode Island Colony Records, I, 432.

[8] Brigham, Charter and Laws of the Colony of New Plymouth, 134.

[9] Colonial Records of Connecticut, I, 361.

[10] Hull, Diary, May 31, 1660.

[11] Hutch. Hist., I, 194. One of the ministers, John Norton, who was afterward agent for the colony in England, made the motion and urged its passage on the ground of public policy.

Massachusetts in recognizing the king was producing adverse comment at court.[12] Accordingly, a few weeks later the court prepared addresses to the king and parliament, praying for favor, but made no public acknowledgment of the new sovereignty. Thus matters were allowed to drift along in the vain hope that something might occur to render unnecessary the dreaded act. In the following May the alarm of the colonists was increased by the receipt of their first official communication from the royal government, the order for the arrest of the regicides. The magistrates had already debated what course to pursue in such an event and the governor acknowledged the warrant and ordered its execution.[13] A few weeks later a favorable answer to their address was received in the form of a letter from the king promising to respect the liberties of the colony. But this communication was not even answered.

There was, however, considerable opposition to this prolonged inactivity. In May and June, 1661, petitions from several towns were presented to the general court, asking that the king be proclaimed forthwith, that earnest efforts be made to execute the warrant against the regicides, and that an answer be given to the king's recent letter. The omission of these matters, the petitioners urge with much truth, " will give too great occasions both to Himself and to our Enemies to question the Integrity of your late Address and to brand us as infamous for hipocricy." [14] But these appeals fell upon deaf ears. The magistrates still refused to recognize the king by any public act or to make any change in the style of their public documents. It was not until news arrived that the privy council was preparing to send peremptory orders that the king be proclaimed and allegiance formally owned that further delay was seen to be useless. Accordingly, on August 7, the general court

[12] Hutchinson, Collections, 322.

[13] Hull, Diary, 1661, Feb. 27; Records of the Colony of Massachusetts, IV (i), 450, 453 (ii), 26.

[14] One of these petitions, signed by 36 persons, is preserved in Mass. Archives, vol. 106, p. 36.

was assembled and public proclamation made that Charles II was their lawful sovereign, care having been first taken that there should be no outburst of enthusiasm or noisy demonstration of loyalty on the occasion.[15] A letter was at once dispatched to New Haven informing that colony of the dissatisfaction at court, and of the action taken at Boston, and on the 21st of the same month the king was there proclaimed in due form.[16]

Thus, it was more than fifteen months after the king had ascended the throne that his authority was recognized in one of is largest dependencies. This fact is significant. Of all the American colonies, Massachusetts had most to fear from the king. Her commanding position in the confederacy, as well as the independent attitude she had adopted in her public acts were sufficient to make her position under the king insecure should those acts once become, as they were certain to become, the subject of investigation in England.[17] The colonists realized this danger as they learned of the doings of the new government in England. The desecration of the graves of Cromwell and the parliamentary patriots, the restoration of bishops, the corporation and uniformity acts, the expulsion of two thousand Presbyterian clergymen, were sufficient to make the magistrates extremely anxious about their future. By delaying the proclamation of the

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[15] Mass. Rec., IV (ii), 30. Hull states that there was a great multitude of people all standing bare and that the ceremony ended with "a shout sundry volleys of shot from the soldiery, the guns in the castle, fort, tower, and ships. All the chief officers feasted that night at the expense of the country." Diary, Aug. 8. After the proclamation had been attended to the court prepared another address to the king, which for empty laudation of the monarch it would be difficult to surpass. Charles is termed the "best of kings, who to the other titles of royalty common to him with other gods amongst men, delighted therein to conform himself to the God of gods, etc." The magistrates thought better of the matter, however, and did not send the address. Mass. Rec., IV (ii), 32; Hutch. Col., 341.

[16] New Haven Colonial Records, II, 419, 422.

[17] That the magistrates apprehended at this time the loss of their charter is shown by their instructions to Leverett in Dec., 1660. "If any objection be made that we have forfeited our patent in several particulars, etc." Mass. Rec., IV (i), 456.

king they did not improve their position. Compared with all the other colonies, except New Haven, their action in this respect was disrespectful if not disloyal. Long after the other colonies had made satisfactory representations at court, Massachusetts left her agent, Leverett, without instructions, so that ground was given for the complaint, soon to be made, that the colony had withdrawn her representative and did not intend to recognize the king. Thus from the very beginning it must have been apparent to Clarendon that the chief problem with which he would have to deal in the administration of the colonies would be in connection with Massachusetts.

Meanwhile, by the opening of the year 1661, the council for foreign plantations had completed its organization for active business. Already, prior to this time, a number of important items of business had been decided upon. Berkeley had been appointed by the king governor of Virginia the previous July, though he had not yet departed for his new government. During the same month Lord Francis Willoughby was restored to the governorship of Barbadoes, from which he had been thrust out by the authority of Cromwell, and in the following February, Colonel Edward D'Oyley was appointed to a similar position in the newly acquired province of Jamaica, with authority to choose his own council, and instructions to establish a civil government in the island in the place of the military government under which it had been placed by Cromwell.[18]

It was in connection with this Jamaica business that the affairs of the New England colonies were first brought definitely before the council. On January 7, 1661, the council for foreign plantations appointed a committee of sixteen, with Sir Anthony Ashley Cooper at the head, to obtain information and make recommendations concerning New England and Jamaica; another committee was instructed to write letters to the colonies. A week later the

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[18] Calendar of State Papers, Colonial, 1660, July 9, 31; 1661, Feb. 8.

former committee brought in its report about Jamaica, but had not yet sufficiently informed itself regarding New England.[19] The difficulties in the way of obtaining reliable information concerning these communities was thus experienced from the beginning. It was, in fact, several months before anything definite was accomplished.

There were, however, a number of persons in London at this time with grievances against the New England government, so that evidence on one side of the question at least was not wanting. On March 11 and 14, these men were called in and given an opportunity to state to the committee their knowledge. One, Edward Godfrey, formerly governor of Maine, complained that he had been expelled from his government after having resided in the province for over twenty years, and gave his opinion that the pretext of "propagating the gospel in New England are in effect to establish there a free State."[20] Testimony of a worse nature was given by one Captain Thomas Breedon.[21] Not only was New England like to become a free state, he said, but this change was actually in progress. The distinction between church-members and non-members is as notorious as that between roundheads and cavaliers; a gentleman supposed to be the king was arrested in Massachusetts and would have been sent to England had not some one appeared who better knew the king; in December last

[19] Colonial Papers, 1661, Jan. 7, 10, 14.

[20] Ib., Feb. 19, Godfrey's statements were evidently inflamed by personal animosity. In 1629 he had been Gorges' agent in Maine. In 1646 he was chosen governor by a court at Wells. New Hamp. Prov. Papers, I, 68; Williamson, Hist. of Me., I, 303, 335, 677. When Massachusetts took possession of Maine in 1652, he at first resisted, and then submitted and became a freeman of that colony. Later he became dissatisfied about certain grants of land near York and went to England to represent his case there. Mass. Rec., IV (i), 129, 208, 229.

[21] Colonial Papers, 1661, March 11. Breedon was a commercial adventurer. He was in Massachusetts as early as 1657. Mass. Rec., IV (i), 342. In 1662 he was in England and fraudulently obtained an appointment as governor of Nova Scotia from which he was immediately put out. Colonial Papers, 1662, Feb. 28. The same year after returning to Massachusetts, he was fined for attempting to usurp authority over the government. Mass. Rec., IV (ii), 69.

the council sat a week before they could agree to write His Majesty, there being so many opposed to "owning the king or having any dependence on England;" they have not proclaimed the king and do not act in his name and do not give the oath of allegiance, but force an oath of fidelity to their own government; for his attitude against Whalley and Goffe he was maligned and threatened; two-thirds of the soldiers are non-freemen and would be glad to have an officer with the king's commission and a governor from the king; many laws are contrary to those of England and many thousand pounds are lost yearly because of illicit trade with the French and Dutch. In support of this testimony, Breedon presented a book of laws of Massachusetts. Breedon and Godfrey were in frequent attendance on the Council, along with others who had complaints. Some English merchants had expended 50,000 pounds in developing iron works in New England, but for some pretended debt their estates have been seized and withheld, and they asked relief at the hands of the council. An outcast from Barbadoes testified that he was dragged from his lodging in Boston, and thrown in prison for merely walking on the streets after sunset on Saturday evening. A petition was presented in behalf of the Quakers complaining of illegal fines, imprisonment, and whipping; their ears have been cut off, their faces branded, estates seized, and they themselves banished. They have feared to petition the king lest, not being recognized, they would be punished for it. They ask for laws of England and a governor appointed by the king. On March 14, Godfrey again gave testimony advising the appointment of a general governor. He complained that he had waited three years in Massachusetts for redress before coming to England and that then Leverett, their agent, refused to recognize him. Early in April a petition arrived from Ferdinando Gorges calling attention to the usurpation of Massachusetts in his province of Maine and asking for relief. In May came further complaints and petitions from the Quakers. Eighteen cases of whipping were separately

described and a "compendious representation" made of "cruel and inhuman sufferings inflicted," embracing twenty-eight cases of whipping, three of cutting off ears, including that of a woman sixty years old, and twenty-two of banishment on pain of death. Appeals to England were forbidden.[22]

While all this testimony was accumulating against Massachusetts, that colony, as has already been pointed out, had done nothing to offset it. Indeed, the fact that the king had not yet been proclaimed would, at the English court, go a long way to confirm certain of the statements made by Godfrey and Breedon. The address from the general court which had been sent the previous December was presented to the council of foreign plantations by their agent, Leverett, on February 11. But while it was profuse with assurances of loyalty, it contained no convincing evidence or guarantee that the king's authority was legally recognized in the colony. In it, the authors reviewed the causes which had led them to move to the wilderness, and justified their leaving their native country on religious motives and not because of "any dissatisfaction as to the constitution of the civil state." They anticipated the charges of the Quakers by admitting that they had been banished and had brought "blood upon their own heads" by returning. The Quakers were denounced as "malignant and assiduous promoters of doctrines tending to subvert both our Churches and State." Yet there was a tone of suspicion and fear as to their standing before the king. Their conduct has been such as the king would not approve, they fear it will be reported to him and they will be denounced; but aside from condemning the Quakers they have not a ward to correct any false impressions about their laws or government. "Touching complaints put in against us, our humble request only is, that for the interim wherein we are dumb by reason of absence, your Majestie would permit nothing to make an

[22] Colonial Papers 1661, March 14, April 4, May 17.

impression upon your Royall heart against us untill we have opportunitie and license to answer for ourselves." And again, "Let not the king hear men's words."[23] Yet their agent was in London at this time and received a letter of instructions along with this very address. Had he been properly authorized he might have done something to counteract the adverse testimony before the council. The cause of their being "dumb by reason of absence" was that Leverett was so limited that he could do nothing. On only two points was he told to use his judgment and knowledge to obtain the best conditions possible, namely, regarding the iron works and the Quakers. If called upon to answer other particulars, he was told: "give them to understand that wee could not impower any agent to act for us, or answer in our behalf, because we could not foresee the perticculars wherewith wee should be charged."[24] The petition to parliament was of much the same perfunctory character as the address to the king. Referring to the dispute about the jurisdiction in Maine, it stated that they had been requested to assume the government of that province by the inhabitants and had complied only after they had found, after a careful survey, that it came within their boundary, and "not out of desire to extend a dominion."

These petitions were all that was offered to the council for plantations against the personal testimony of men like Godfrey, Breedon, John Mason, and Ferdinando Gorges, the two latter being well known at court. Instructed as he was, Leverett, who might have done much at this critical time to defend the colony against false accusations, did nothing, except to keep the magistrates well informed by frequent letters, as to the trend of affairs in England. The receipt of the petitions was acknowledged by the king in February in a polite letter expressing good-will toward the colony and promising to settle its affairs favorably to the people.[25]

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[23] Mass. Rec., IV (i), 450. The petition is dated Dec. 19, 1660.
[24] Ib., 456.
[25] Colonial Papers, 1661, Feb. 15.

But the magistrates of Massachusetts, suspicious of the word of a Stuart king, made no reply to this friendly note, hoping thereby to avoid as far as possible the discussion of their affairs at court. They thus neglected the opportunity of entering into a friendly correspondence with the king before any decisive action could be taken against them.

Accordingly, at the beginning of April, the sub-committee of the council for foreign plantations brought in a report on New England, based upon the evidence they had been able to collect. They recommended that a letter be sent to Massachusetts informing the colonists of the appointment of the council, and instructing them to proclaim the king "in the most solemn manner." The complaints were referred to but not stated very specifically, and the colonists were required to collect their laws and records in order to vindicate themselves "to be a people not unworthy the large privileges and concession bestowed upon them." They were to send a description of their government, and their trade, and to appoint persons to represent them.[26] This letter was not destined to reach the colony. The council for plantations referred it, together with the complaints and petitions, to the king's consideration in the privy council, where it was disapproved. In their report made at this time, the council for plantations stated that the Government of Massachusetts had "strayed into many enormities and invaded the rights of their neighbors,—exceeded and transgressed their grants and powers;" enacted laws repugnant to those of England; managed their trade against the interests of the crown; weakened their dependence on England by increasing their stock of sheep to near 100,000; their agent, Leverett, claims that his agency has expired, "by all which it appears that the government there have purposely withdrawn all manner of means for their affairs to be judged of in England as if they intended to suspend their absolute obedience to the king's authority." In another

[26] Colonial Papers, 1661, April 8. The letter was ordered to be drawn up, "like those sent to Barbadoes and Virginia."

report, undated, but apparently within a few days of the above, the king was urged to send the letter without delay and to bring the colony into "such a compliance as must be necessary, as they are an English colony, which ought not and cannot subsist but by a submission to and protection from his Majestie's crown and government." But at the same time the council for plantations admits that it is "in no capacity to give any judgment therein, having heard but one side." After about three week's delay, the privy council decided that the letter was "not thought fit to be sent now, nor at all by the Council of Plantations."[27] There is no explanation as to what caused this unfitness. Certainly both the letter and the accompanying report were entirely warranted by the evidence so far at the command of the council. Accompanied as they were, by the desire to hear the other side of the question before coming to any final decision in the matter, it was unfortunate that the letter was not promptly dispatched. More than a year elapsed before any action was taken in its place.

The responsibility for this delay must rest with Clarendon, who was not only the chief adviser of the king, but also the head of the council for foreign plantations.[28] He seems to have had in mind at this time a reorganization of the council. It was too large and its membership too diversified for efficient service. Accordingly, an attempt was made to reduce the number of persons responsible for the management of the colonies. On the same day that the above letter was disapproved, an order in council was issued naming Clarendon and nine other high officers, together with the two secretaries of state, "a committee touching the settlement of the government of New England—for the purpose of framing letters, proclamations or orders, for the king's

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[27] Colonial Papers, 1661, April 29, 30; May 17.

[28] That Clarendon personally had the business in charge appears from a memorandum addressed by him, some months later, to Secretary Nicholas calling for the papers relating to New England, which he had formerly delivered to Nicholas. Colonial Papers, 1661, Dec.

signature."[29] But for some reason this plan was not carried out, for nothing more is heard of the committee. Meanwhile, in the delay occasioned, Clarendon missed what probably would have proved the most opportune moment for a dispatch calling upon the delinquent New England colonies to perform their duty as dependencies of the crown. Had the letter prepared by the council of plantations in April been sent out at once, it would have reached Boston in the midst of the agitation there about the proclamation of the king. The petition which had been presented to the general court in June, called upon that body to make "all endeavors possible to Answer his Royall Warrant" regarding "Such as are fled into this country from Justice in England," and proposing "whether after the example of our Neighbour colonies you may not with Safety, you ought not in Duty to proclaim his Royal Majesty."[30] These were the very demands which the proposed letter was to make upon the colonists. It may well be asked whether, had this letter been in the hands of the magistrates, and its contents known to the people, the petitioners would have remained quiet, or the court would have been able to ignore them.

Clarendon's delay has been attributed to his timidity. It is thought that he overestimated the strength of Massachusetts and hesitated to offend her until affairs at home should become more settled and better information obtained from New England.[31] But the settlement at home was no longer in doubt, inasmuch as the cavalier parliament, so subservient to the king's desires, had already been chosen, and assembled two weeks prior to the disapproval of the proposed letters.[32]

Moreover, if Clarendon feared the strength of Massachusetts and her neighboring colonies, there was all the more reason for prompt and consistent action. But as a matter of fact there was nothing in the letter to offend the colony.

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[29] Colonial Papers, 1661, May 17.
[30] See above, p. 24.
[31] Palfrey, History of New England, II, 494.
[32] Parliament met May 8; the letter was disapproved May 17.

Taking into consideration the evidence before the council, its tone was exceedingly mild, and its demands entirely warranted. It ordered the proclamation of the king which ought to have been attended to long before, but which was not accomplished until some months later. Then, expressing a desire to hear both sides before coming to a decision on other matters, it required the sending in of the very information for which he is supposed to have been waiting. And again, on this assumption, the minister was inconsistent, for within three months he allowed an order for the freeing of the Quakers from persecution, much more likely to displease the New Englanders, to be carried out to the colony by an exiled Quaker, a person who could not but be offensive to them.[33] Under these circumstances, it seems far more probable that the letter was at first held up on account of Clarendon's plan for reconstructing the council for plantations, and was then overlooked or forgotten by the busy minister in the press of other affairs, and that the delay had no connection with any extensive plan or policy in the mind of Clarendon for the future reduction of Massachusetts.

This order relating to the Quakers, which was the only definite act decided upon in connection with New England during the remainder of the year 1661, was brought about by additional testimony adverse to the colony. Thus, Colonel Thomas Temple informed Secretary Morrice that he believed that the regicides were still in the colonies; and John Crown testified that when Whalley and Goffe arrived at Boston they were embraced by the governor, Endicott, and welcomed to New England, that they were held in high esteem, visited by the chief men of the colony, and preached and prayed at their meetings.[34] As these men had both been eye-witnesses of the proceedings in the colonies and were

[33] Colonial Papers, 1661, Sept. 9.

[34] Ib., 1661, No. 161, Aug. 20. Temple was interested in the proprietorship of Nova Scotia and had passed through Boston on his way to England to look after his interests. He was appointed governor of that region July 17, 1662.

known at court, it may be supposed that their words had some weight. In anticipation of these statements, Governor Endicott wrote to the king. He stated that diligent search had been made for the regicides and warrants issued for their arrest, and enclosed the court's order to this effect, as well as the sworn report of the two officers engaged to apprehend them.[85] But his report was at best that of a failure to carry out the king's orders and could hardly offset the testimony as to his, Endicott's, friendly reception of the outlaws. And the report of the officers employed for the task of arresting the regicides contained abundant evidence of the insufficiency of the measures taken to faithfully execute the warrant.[86] Moreover, the governor made no attempt to answer other complaints. Especially was he silent touching the Quakers. Accordingly, the king, appealed to by members of the sect in England, on September 9, ordered a letter to be sent to New England directing that all proceedings against them should cease and that those under accusation or in confinement should be sent to England for trial. And on the request of one of the leaders of these English Quakers, Edward Burrough, he consented that the letter should be carried to the colony by one Samuel Shattock, a Quaker who had been imprisoned and banished from Massachusetts. Thus, if danger was to be apprehended by offending Massachusetts, the very step was taken certain to bring about that end.[87]

In Massachusetts, meantime, the attitude was that of sullen compliance with the orders from England when these could no longer be avoided. The order of the general court

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[85] Colonial Papers, 1661, Aug. 7.

[86] Their report is printed in full in Hutch. Col., 334. The officers themselves were zealous enough but they were strangers to the country.

[87] Sewel, History of the Quakers, II, 345-8. Shattock reported that the people "were somewhat struck in Amaze when they sawe what we were." Not being noticed at first, he came ashore, and "found all very still & a very great calm." When he came before the governor, the latter, "had few words with us, only asked why I came again; and why I did not send for my family to England." Mass. Hist. Soc. Coll., 4th series, IX, 160.

for the arrest of the regicides, and the means employed to execute it, were so defective that there was not the slightest chance of its meeting with success. In like manner, the command to cease disturbing the Quakers, though unwelcome was obeyed. Doubtless it was a bitter pill for a man of Endicott's temperament and belief to receive a letter of this import from one whom he had recently treated as a criminal.[38] Nevertheless a special session of the court was called on November 27, 1661. Here the magistrates expressed their belief that if the king were rightly informed he would not have thus favored the Quakers, yet in order that they might "not in the least offend his majesty," they ordered that the laws in question should be suspended in so far as they affect corporal punishment or death, until "this court takes further order."[39] None of the Quakers were, however, sent to England for trial. Instead, a few days later the council issued an order to the keeper of the prison at Boston directing him "forthwith to discharge and release the Quakers" in his custody.[40]

The king's order for the relief of the Quakers brought to the magistrates a fuller realization of their delinquency at court and hastened preparations for sending representatives there.[41] From time to time the court had already debated the expediency of raising money "to be always in readiness" for use "in the prosecution of such business of our colony as shall fall out." But the strict Puritan party had delayed final action on this matter, as they had the proclaiming of the king, until compelled to it by necessity.

[38] Bishop says, it was as a "dagger in (his) heart," and that on Shattock's arrival he "fretted with himself." History of the Quakers, 344. The only answer the magistrates gave Shattock was, "We shall obey his majestie's command." Sewel, II, 345.

[39] Mass. Rec., IV (ii), 34.

[40] Sewel, II, 345. Palfrey, without referring to this order states that the command of the king "produced little effect." Hist. of New Eng., II, 520. It, however, had a very decided effect. See below, p. 52.

[41] In the letter sent to Lord Say at this time the magistrates state that the chief object in sending the agents is to get relief from the Quakers. Hutch. Coll., 360.

It was not until near the end of December that at a special session of the general court, they could bring themselves to the actual naming of agents to go to England to represent them at the court of their sovereign. At the same time a committee was appointed to make the necessary arrangements. In this committee which met ten times between January 4 and February 7, 1662, serious discussion arose not only as to the proper representations for the agents to make the council for plantations, but also as to the expediency of their going there at all.[42] The strict party opposed it, fearing that the agents might make some concession prejudicial to interests of the colony. This element was led by the governor and deputy governor, Endicott and Bellingham, both of whom refused to attend the session of the committee; and though the latter's presence was repeatedly requested, he persisted in excusing himself. This distrust of the agents was owing partly to the fact that one of those selected for the mission, Norton, minister in one of the independent churches, had been the first to oppose, in the preceding year, a public recognition of the king, while the other, Bradstreet, was known to be of a slow and timid nature. The party that supported the movement came from the younger commercial element which was not so strict about abstract principles of theology, and believed that the best interests of the colony lay in an open compliance with such demands of the mother country as their colonial relations required. It included many of the signers of the petitions in the previous year, and the selection of Norton as one of the agents may be taken as an index of their increasing influence.[43]

The instructions finally agreed upon by this committee for the agents, reveal again, as had the instructions to Leverett, the policy of delay and inaction. Bradstreet and Norton were authorized to represent the colonists as loyal subjects,

[42] Proceedings of the Committee, Hutch. Coll., 345-71.

[43] The heaviest contributor toward the expenses of the agents was Hezekiah Usher whose name was prominent on the petition of June 19. Mass. Archives, 106, 36.

and to endeavor "to take off all scandall and objections" against the colony; "you shall, as opportunity presents, endeavor to understand his majesty and councill's apprehentions concerning us, and to endeavor the establishment of the rights and privileges we now enjoy." But, it was ordered, "you shall not engage us, by any act of yours, to anything which may be prejudiciall to our present standing according to pattent."[44]

This meant that the colonists expected to maintain the same indefinite relations with England that had prevailed during the commonwealth period, and that the agents were to make no arrangements which would provide for the proper use of the king's name in the enacting of laws or the dispensing of justice. In other words, they wished to continue in the enjoyment of the virtual independence to which they had become accustomed. The agents were so restricted that they could make no positive engagement and for this reason were sent home by the king almost as soon as they arrived in England. In addition to the instruction for the agents, the committee prepared an address to the king, and letters to Clarendon, Saltonstall, Ashurst, and Temple, asking them to represent the colony before the king. The address to the king was short and manly in tone. It asked that the agents be protected, the charter confirmed, and that authority be given the colony to deal with the Quakers "lest under present conditions they cause some calamity."[45]

That the entire business was looked upon by the agents as well as by the committee to be a delicate and even dangerous undertaking, is evidenced by many things. Careful arrangements were made to keep absolutely secret the communications from the agents to the colony.[46] The agents appealed repeatedly for a guarantee against loss in their estates should "any change come upon the country." They

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[44] Mass. Rec., IV (ii), 37.
[45] Hutch. Coll., 356.
[46] They were to use the most "secret and faithful conveyance, directed under cover to V. to be by him delivered to S. with advice to him to acquaint the Governor." Hutch. Coll., 361.

were so sensible of the shortcomings of the colonists in loyalty, or were so filled with distrust of the king, that they feared for their personal safety. There was an utter lack of that buoyancy which would indicate a belief that they could vindicate themselves. More than once the agents helplessly asked the committee whether they considered the voyage necessary. When arrangements were completed, they delayed the starting with various excuses. The ship was held five days because Norton was suddenly taken ill, all hope of the agents' departure was given up, and the secretary of the court was ordered to dispose of the money and provisions collected for their use. But finally, the "Lord so strengthened and encouraged the heart of the Rev. Mr. Norton that he expressed himself ready and willing to go that day."[47] Even after they had arrived in England, reports were current in the colony that Norton had been imprisoned in the tower and that Bradstreet had been driven from court by the influence of the Quakers.[48] These reports and the misgivings which prompted them, go to show how much the people of Massachusetts misjudged the intentions of the English government at this time, and how far a more candid correspondence between colony and mother country might have gone toward correcting the many false impressions concerning each other. For, when the agents reached London in the latter part of March, they were well received, given several hearings before the council, "had fair promises of a full grant to their whole desire in their country's behalf," and were permitted, within four months, to return home with a letter confirming their charter. And if "their writing which they drew," stating the desires of the colony, remained "at last unsigned," it may be attributed to the fact that they had no authority to answer definitely or bind the colony to any conditions.[49]

When the agents from Massachusetts reached London, to-

[47] Hutch. Coll., 370; Hull, Diary, 1662, Jan. 7.
[48] Sewel, II, 279, 280.
[49] Hull, who accompanied the agents says they reached London March 24, 1662, and were home again by Sept. 3.

ward the latter part of March, 1862, they found already there, representatives from all of the king's other American dependencies. Berkeley, about to assume again the governorship of Virginia, had presented for the council's consideration the laws passed by the Virginia assembly in the previous year and was preparing to submit his own recommendations for the improvement of the colony. The acts of Maryland had also been presented for confirmation and Lord Baltimore was consulting with Berkeley, before the latter's departure, regarding the proper policy to be pursued with reference to the over production of tobacco in the two colonies.[50] The other New England colonies had also brought their affairs before the council for plantations. In January, 1661, Dr. Clarke, already in London as the representative of Rhode Island, had received a renewal of his commission with instructions to present an address to the king and bring the affairs of Rhode Island to His Majestie's attention. Clarke had acted at once, and the submission of his colony to the new government in England, together with her humble request for recognition and protection in the form of a new charter of incorporation, had been before the council for plantations more than a year before the arrival of Bradstreet and Norton from Boston.[51] Both Connecticut and Plymouth also took action to secure favor at the court of the mother country. From the former colony, the governor, Winthrop, was sent as a special agent to make request for a new charter of privileges, and had reached London about a month in advance of the agents from Massachusetts. Thus again as in proclaiming the king, Massachusetts was behindhand.[52] New Haven alone had refused or failed to open any communication with England.

Under these circumstances, the affairs of Massachusetts and New Haven were not likely to receive favorable consideration at the hands of the English ministers. Already,

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[50] Colonial Papers, 1661, April 17, Sept. 12; 1662, March 23, April 1, May 14, July (?).
[51] Ib., 1661, Jan. 29, Feb. 5; R. I. Rec., I, 433.
[52] Colonial Papers, 1662, Feb. 12; Conn. Rec., I, 369.

on February 15, 1662, more than a month prior to the arrival in London of Bradstreet and Norton, the New England business was again called up when the sub-committee of the council for plantations reported on the petitions from Mason and Godfrey regarding the usurpation of Massachusetts in New Hampshire and Maine. This report was of a decidedly serious character. It stated that since 1652, Massachusetts had usurped the government of both of these provinces, and that "they (of Massachusetts) have declared (their government) to be independent of the Crown of England." They have issued writs in their own name, coined money with their own stamp, exercised arbitrary power, and allowed no appeals to England. "Some have publicly affirmed they would oppose any Governor sent by the King and rather than submit any appeal to England would sell their colony to the King of Spain."[53] This report aroused Clarendon and the king to action. Ten days later an order in council was issued directing that "all persons who have any commissions from those in New England interested in the affairs of that plantation, or who can give any account in reference to the king's service and the benefit of those parts to attend the board on the 6th March, and particularly that Colonel Thomas Temple and Mr. Winthrop and such as they shall advise be summoned to attend."[54]

It does not appear from the papers in the English State Paper Office, what the particular business was which this meeting of the council for plantations was intended to discuss, or whether the meeting was held at all. But it seems most likely that it was planned to bring to an issue the conduct of Massachusetts and to take some definite steps to enforce the king's authority there. When, however, in the midst of these proceedings, Bradstreet and Norton arrived and presented their credentials, it was found that they had

[53] Colonial Papers, 1662, Feb. 15. The report is printed in Belknap, History of New Hamp., Farmer's Edition, I, 436. The petitions had been referred to the council for plantations in the previous November.

[54] Ib., 1662, Feb. 26.

not sufficient power to act in the name of the colony which they represented. In this event two courses of action were open to Clarendon. He might have settled the matter at once on the rather one-sided evidence in possession of the council, by issuing orders requiring Massachusetts to withdraw from New Hampshire and Maine and bring her laws and government into conformity with the English model, or he could have postponed the matter until better information should be obtained, taking in the meantime requisite steps to secure such reports as could be made the basis of final action. What he actually did was in the nature of a compromise between these two courses. Soon after the agents had received a hearing before the council and it was found that their instructions were insufficient, they were allowed to return home bearing a letter to the colony, in the king's name. In this letter, destined to become the basis of many future negotiations, the king confirmed the Massachusetts charter but commanded the colony to bring its civil and ecclesiastical government into conformity with that of England.[55] No mention was made, however, of the usurpation in New Hampshire and Maine. This and other important questions were reserved for further investigation. And the manner in which this was to be carried on appears from a declaration made by Clarendon before the council about two months later in which he mentions his intention of sending commissioners to New England to look into their affairs. If this plan had been carried out promptly and vigorously, it might have been attended with success. But delay was inevitable at the English court during this period. As the letter and the recommendations of the council for plantations drawn up in the previous year had been put off, neglected, and forgotten, so now the resolution to send out commissioners was postponed for nearly two years before being brought to a conclusion. And in the meantime, no steps whatever were taken to see that the commands of the king sent back by the agents to Massachusetts were being complied with.

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[55] See below, p. 51.

It was while affairs were at this stage, when the serious problem of controlling Massachusetts under her liberal charter was fully confronting the English ministers, that charters were granted to two more New England colonies, conferring even more independent powers than that of Massachusetts. As already stated, Connecticut and Rhode Island immediately after the king had been proclaimed had resolved to seek new grants. The patents under which they at this time existed had been issued by the authority of parliament after the downfall of Charles I, and the colonists naturally felt insecure in the enjoyment of their privileges, especially as there were a number of rival claims to portions of the territory over which they exercised jurisdiction, based on patents granted by former kings.[56] Accordingly, Rhode Island had instructed Clarke to press for a new charter soon after the king had returned to England and a similar service for Connecticut was one of the chief objects of Winthrop's mission to London in the following year. The request of Connecticut was first to find favor at court. Winthrop had influential friends in England so that his petition asking for a charter was well received. It was presented early in February, 1662, and on the 28th a warrant was issued ordering the charter to be drawn; this was approved on April 14, and the royal grant passed the seals on the 23d of the same month.[57] The Rhode Island grant progressed much more slowly. Clarke had petitioned for a charter as early as February, 1661, but no steps seem to have been taken toward granting his request until after the Connecticut charter had been agreed upon. Then Clarke objected to the boundary which Connecticut had received and some delay was occasioned while this was being rectified, and the Rhode Island charter did not pass the seals until July 8, 1663.[58]

These charters, alike in almost every particular, granted

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[56] The most important was that held by the Duke of Hamilton. See below, p. 103.
[57] Colonial Papers, 1662, Feb. 12, April 14, 23.
[58] Ib., 1661, Jan. 29, Feb. 5; 1663, April 7, June (?), July 8.

to the colonists an extraordinary degree of independence. There was no reservation of authority in the hands of the English government, other than that implied in the requirement of allegiance to the king. The colonies were placed in precisely that position relative to the mother country, which Maryland, or later, New York, would have been in, if the proprietors had taken up their residence in their respective provinces, and in which Massachusetts was actually placed after the governor and company had removed to the colony in 1630. That is to say, there was no provision for a direct and established means of official communication between the dependency and the sovereign. To determine whether or not the laws of England, including those expressed in the charter itself, were being complied with, extraordinary means were necessary, such as sending commissioners to investigate, or requiring the presence of an agent in England. Both of these methods were unsatisfactory. Moreover, the charters were granted at the very time that Clarendon was learning how difficult it was to control Massachusetts under a similarly comprehensive charter, and when he was attempting to enforce a commercial policy hostile to the interests of the colonies. Already complaints had begun to arrive at the colonial office as to the disastrous effect of the navigation acts, although the most oppressive portion of these laws was yet to be enacted and the most determined opposition to them had not yet been felt.[59] But by the act of 1660 it was provided that all colonial governors should take an oath to enforce its provisions and make a yearly return to the English customs office of the bonds required from ships trading in colonial ports and carrying enumerated articles. The charters just granted provided no means for supervising the enforcement of these requirements. Should these colonies resist the navigation acts, there was no way of enforcing them without violating, or going beyond, their new charters.

In addition to these administrative defects, the charters, instead of putting an end to the troublesome boundary dis-

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[59] See above, p. 15.

putes, between the New England colonies, rather added confusion to these controversies. Between the more settled portions of Rhode Island and Connecticut lay a tract of land, the jurisdiction over which was claimed by both colonies. This was known as the Narragansett country, and the ownership of a considerable portion of the territory was claimed on various grounds by a group of men, chiefly from Massachusetts, under the name of the Atherton Company. With the agents, Winthrop and Clarke, in England, there could be no excuse for ignorance on the part of the ministers as to the situation of this district and the character of the claims to it. This being the case, it appears strange that the claims of Rhode Island should be completely ignored and the jurisdiction granted to Connecticut without consulting Clarke in the matter,[60] unless it was intended to humiliate and weaken Rhode Island. That this is unlikely appears from the fact that so liberal a charter was presently granted to this colony, and that when Clarke protested, the question was opened for argument. The desire of the chief planters in the disputed land, the members of the Atherton Company, to be subject to Connecticut rather than Rhode Island, and their efforts to bring about this end may have had some influence in determining the boundary.[61] But this should not have prevented Clarke being heard on the subject, especially when he had been negotiating for a charter for over a year. Later, when Clarke learned of the unfavorable procedure, the matter was referred to a joint commission which, on April 17, 1663, rendered a decision which handed the Narragansett lands back to Rhode Island and made the Paucatuck River the boundary instead of the Narragansett Bay.[62]

This amicable settlement was not, however, the end of the affair. The agreement contained a clause permitting the

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[60] That this was done appears from a letter from Winthrop, dated Sept. 2, 1662, in which he says that he did not even know that Clarke was agent for Rhode Island up to the time his charter was granted. Arnold, Hist. of R. I., I, 379.

[61] They wrote to Winthrop to bring about this result, and sent one John Scott, as their agent. See following paragraph.

[62] Printed in R. I. Rec., I, 518.

members of the Atherton Company holding land in the disputed region, "to choose to which of those Colonies they [would] belong," a statement practically invalidating the decision in favor of Rhode Island inasmuch as it was well known that these men preferred Connecticut for their protector. And, as if in anticipation of this loophole, the members of the Atherton Company had already sent a petition to the king, complaining of the Rhode Island interference and asking for a letter authorizing Connecticut or Massachusetts to give them protection. This was quickly answered by a circular letter from the king to the governors of New England, instructing them to protect the petitioners in their right and assist them against any unjust molestation or oppression.[63] Taken together, this letter and the last clause of the agreement of the arbiters would seem to indicate that there was some intention to defeat Rhode Island in obtaining possession of the land which apparently had been awarded her. If so, this was entirely removed a few weeks later when the Rhode Island charter passed the seals with the provision that the western boundary of that colony should be on the Paucatuck river, as provided for in the agreement of April 17. Nevertheless, these contradictory grants so obscured the intentions of the home government that its real desire regarding the limits of the colonies remained in doubt and they were left to fight out the difference and settle their boundaries as best they might. Each colony asserted its claim to the disputed land with increasing violence, until by an extraordinary exercise of royal power violating these same charters, the question was taken out of their hands and referred back to England for settlement.[64]

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[63] Colonial Papers, 1663, June (?), June 21. This letter was obtained by a bribe to the value of 60 pounds expended by Scott, the agent of the Atherton Company. See a letter from him to Captain Hutchinson. Arnold, History of Rhode Island, I, 383.

[64] The king afterward claimed that when the Connecticut charter was granted, "several debates arose therefrom before our Chancellor of England and before persons appointed by him to accommodate the same," and that they could make "noe clear determination of the right," and that as commissioners were about to be sent to

Various theories have been advanced to explain the action of the English government in making these liberal grants. Both Connecticut and Rhode Island had been very prompt and loyal in proclaiming the king, and both were fortunate in the agents which represented them at court. Winthrop especially was a man of experience and great talent, who had travelled extensively on the continent and was familiar with the ways of courtiers and possessed the graces necessary to win favor among them. The story of his presenting the king with a ring which his father had received from Charles I, may, or may not, have any foundation.[65] It is certain that he had gained influential friends by his interest in scientific investigations, and that the assistance of the powerful Lord Say and Sele, and the Earl of Manchester was elicited in behalf of the colony. But historians generally have sought for some other explanation. They have found it in the hypothesis, that the granting of these charters was part of a definite policy entertained by Clarendon which had for its object the disruption of the New England confederacy in order to render Massachusetts helpless and bring about her submission to the crown. He hoped, it is claimed, by the annexation of New Haven and the Narragansett land to Connecticut, to make this colony amenable to royal dictation and arouse the jealousy of her northern neighbor. Rhode Island was favored by a liberal grant, and Plymouth was offered a similar advantage, and so it appeared that Massachusetts would be left single handed.[66]

New England, the charters were passed upon the promise of Winthrop, that "we should find the same submission to any alteration at that time, and upon such a visitation, as if no Charter were then passed to them." New York Documents, III, 55.

[65] Mather, Magnalia, Book II, ch. XI, par 5; Trumbull, History of Connecticut, I, 248.

[66] Mr. J. A. Doyle asserts that "Connecticut was but the instrument of the home government," but admits that there is no documentary evidence of it. He thinks it impossible that Clarendon did not know and approve of what was going on between Connecticut and New Haven. Doyle, Puritan Colonies, II, 160. Palfrey, New Eng., II, 542, adopts the same view, for without it he cannot see why "a wary and arbitrary minister who in the new zeal of office was gathering into his master's hands all the power that could be

This theory proceeds upon the assumption that Clarendon, while deeply interested in reducing Massachusetts to conformity with English laws, was timid about offering any offense to that colony until he had removed all danger of an uprising there against the king's authority. Some evidence of his alarm over the growing strength and independent spirit of Massachusetts is found in a memorandum relating ot the settlement of New England, supposed to have been written by him two years later. Certain facts, however, make it extremely doubtful whether this paper was the work of Clarendon; some portions of it could not have been written while he was minister.[67] And many other circumstances appear to question the likelihood that Clarendon mapped out any such definite policy in regard to the New England charters as that ascribed to him. Thus, while his aim might at first seem plausible with regard to Connecticut, it loses its significance in the case of Rhode Island. This colony was already sufficiently ill-disposed toward Massachusetts, on religious and political grounds, to prevent any union or understanding with that colony. Moreover, this colony had already been forced, by the oppression of the others, into a position of complete dependence on and attachment to the mother country, so that no sop in the way of favors was needed to gain her support in a struggle with the other New England colonies. Yet Rhode Island received in her charter, privileges greater even than Connecticut. If this charter was granted to gain the good-will of the colony and separate it from the other New England communities, as has been averred by historians, it was a useless act to bring about a condition which already existed; if this was Clarendon's intention, he was deceived and was

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seized was brought to make a formal grant of what almost amounted to colonial independence." As to the annexation of New Haven to Connecticut, he is not certain "whether Winthrop easily consented or Lord Clarendon absolutely insisted." Yet Winthrop was made to promise not "to meddle with any towne or plantation that was settled under any government" and that he would afterward submit to any alteration of the charter. Mass. Hist. Soc. Coll., 3 s., II, 9. Below, p. 96.

[67] See below, p. 76.

needlessly raising up a constitutional barrier in one colony to that policy which he hoped to enforce in another. If his aim of enforcing the navigation law in New England and of bringing that community into its proper state of dependence on the sovereign was to be carried out, he must expect in the near future to amend or violate the laws he was enacting. Not less inconsistent was the case with Connecticut. For, long before the dispute with Massachusetts had been settled, nearly half of Connecticut was again granted away to the Duke of York, an act which, had it been carried out, would have defeated the supposed aims of Clarendon by driving the Connecticut settlements into closer union with Massachusetts. Finally, it seems altogether unlikely that a monarch so firmly seated on the throne as was Charles II at this time, or a minister so bigoted and self-willed, so devoted to the principles of monarchy and opposed to democratic government as was Clarendon, would adopt such a round-about policy in order to enforce his authority in a colony like Massachusetts.

The charters of Connecticut and Rhode Island have all the appearance of being passed with the same reckless prodigality that had permitted the setting up of an almost independent sovereignty in Maryland, and was soon to characterize a similar policy in Carolina and New York.[68] In fact, the charter for Carolina was being prepared at this very time and was passed just ahead of that for Rhode Island. It granted a vastly larger territory than the New England patents combined, and complied in equal measure with the wishes of the beneficiaries in respect to religious and civil autonomy. Charles II's liberality to those who had gained his favor is well known. That Winthrop stood in this relation is equally certain.[69] He had the assistance of Sir Robert

[68] They were "carelessly granted by a very careless monarch." McPherson, Annals.

[69] The king afterwards stated that the charter was passed, "rather upon the good opinion and confidence we had in Mr. Winthrop than that the differences were composed," and also on the promise of Winthrop that he would submit to any change later on. New York Documents, III, 55.

Boyle, who was personally known to Clarendon.[70] Lord Say and Sele himself makes the statement that he joined with the Earl of Manchester "that their godly friends in New England" might be given their liberties.[71] Both of these men stood high in the king's favor, Lord Say being the keeper of the privy seal, and Manchester holding the post of chamberlain. Winthrop is known to have communicated directly with these courtiers. He carried with him a draft of the charter desired by the colony in which even the boundaries were specified.[72] The king at this time was exerting himself for religious toleration. What more is needed to explain the New England grants? Winthrop by his own exertions and the aid of his influential friends secured the adoption, almost unchanged, of the outline draft which he presented. Clarke, with equal abilities in diplomacy, but with fewer friends at court, was kept waiting more than two years.

The new charters were received by the people of Connecticut and Rhode Island with transports of joy, and letters offering their heartfelt thanks were at once forwarded to the king and his minister. On their return, the agents who had procured these liberal grants were hailed as the benefactors of their fellow-countrymen.[73] Very different, however, was the reception given to the agents from Massachusetts on their return to Boston. As already stated, Bradstreet and Norton, contrary to their own expectations and that of their fellow colonists, had been well received in England and their petitions listened to with respect by the king. It was soon found, however, that their powers were not such as would enable them to make any settlement in the name of the colony which they represented, or bind themselves to see that the king's orders were executed. Accordingly, they were soon allowed to depart, bearing a letter from the king, expressing his commands direct to the colony.

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[70] Danforth Papers, Mass. Hist. Soc. Coll., 2 s., VIII, 49.
[71] Letter to Winthrop, Trumbull, I, Appendix, 515.
[72] Conn. Rec., I, 579.
[73] Ib., 390; R. I. Rec., I, 509.

This letter was very shrewdly drawn and became one of the most important state papers in the whole controversy between Massachusetts and the mother country. It begins by speaking of the petition brought by the agents as "very acceptable." The king is satisfied that the people mean to be loyal and dutious and he, therefore, "confirms the patent and charter granted by his Royal father, which his Majesty is ready to renew whenever they desire it, that they shall enjoy all their privileges and liberties." Any past deviation from loyalty he attributes not to "evil intentions," but to the "iniquity of that time," and he, therefore, pardons all who have transgressed against him during the late troubles except such as may have been attainted by parliament. But if the people are at heart loyal, as the letter has thus far graciously assumed, it is taken for granted that they will not object to a few reasonable demands; consequently, the letter goes on to direct that all laws "derogatory to the King's Government" must be annulled, the proper oaths of allegiance taken, and justice administered in the king's name. As the object of their charter was "liberty of conscience," this must be granted also to those who desire to use the Book of Common Prayer, and all "freeholders of competent estates not vicious in conversation and orthodox in religion" must be allowed to share in the civil government. The former order about the Quakers is reversed, and it is not to be understood that the liberty of conscience above referred to is to be extended to them. On the contrary, it having been found necessary by advice of parliament "to make a sharp law against them, we are well contended that you do the like there." The colonists may also if they find convenient, reduce the number of assistants required by the charter to ten. Finally the letter concludes with the instruction that it is to be published at the next court with the announcemen that the "king takes the plantation into his protection and is ready to receive any application or address from his subjects there." [74]

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[74] Hutch. Coll., 377.

This communication was in every way politic and diplomatic as well as just.[75] Starting with the assumption that the people were really loyal, there is no hesitancy in confirming their charter and the privileges which it guarantees. The king is willing to make it the basis of his demands. By this liberal concession at the beginning, the odium for refusing to comply with the requirements following, which do not violate the charter but which are necessary to bring the colony as a whole into a state of loyal dependence upon and conformity with the mother country, is thrown directly upon the colonists themselves. If, after having their charter confirmed, they should be unwilling to administer justice in the king's name and grant recognition to the religion established by the laws of England, they would prove themselves unworthy of the confidence placed in them.

But this was not the view taken in regard to the letter by the people of Massachusetts. According to their plans, the agents had been sent to England merely to obtain privileges and not to receive commands. Their object was to have the charter confirmed and obtain liberty to take action against the Quakers. On all other matters they were merely to make representations and "feel the pulse" of the king and his ministers, and if questioned and pressed for answers, to plead lack of power. But this diplomatic bid for delay had not succeeded. In the arts of diplomacy, Bradstreet and Norton were far inferior to Winthrop and Clarke. While they succeeded in having their requests granted, they were not able to prevent the counter demands being made.[76] Hence the letter aroused the greatest indignation in Massachusetts. The strict magisterial party looked upon the agents as traitors. Norton in particular, perhaps because he had already taken a stand in favor of concession, was regarded as having "laid the foundation of ruin to all our

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[75] Doyle says of it: "Judged by modern political ideas these injunctions were fair and moderate. There was no infringement of the privileges of the charter, no interference with the course of justice, no assertion of any right to tax." Puritan Colonies, II, 178.

[76] "Their writing remained at last unsigned." Hull, Diary.

liberties."[77] The royal commands were not obeyed. When the general court met in October, the letter was read and, after some discussion, ordered to be printed. The liberty to exclude the Quakers was at once made use of and the former laws against them were reissued. An order was also passed requiring that henceforth all public writs and documents be drawn in the king's name. Further than this the magistrates refused to go. On the contrary, all persons were ordered to suspend "all manner of actings in relation thereunto untill the next general court."[78] And while this course of action, or inaction, was not satisfactory to all, the opposition to it was disregarded. Norton, who answered the censure directed against him with the bold assertion that "if they complied not with the king's letter, the blood that would be spilt would lie at their door," passed out of notice and soon after died, it was said, from disappointment and chagrin.[79] Some of the merchant class who had been rising into prominence but had thus far been excluded from political rights, came forward and "boldly offered their votes to the freemen when they were together for the nomination of magistrates."[80] There was, however, no widening of the franchise in compliance with the order from England. On the contrary, as time passed without evidence of further action by the English government, the spirit of the magistrates seems to have grown stronger and their resistance became more determined. The next general court, which met in May, 1663, instead of taking action on the king's letter, after "long and serious debate of what is necessary to be done" referred the matter to a committee "to draw up what they shall judg meete to be our duty to doe in reference thereunto" and report it to the following session in October, to be further debated and considered.[81] Thus was an entire year spent in "debating and considering," with the outcome that the committee made no report and no further action was taken on the subject.

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[77] Mather, Magnalia, Book, III, I, 297.
[78] Mass. Rec., IV (ii), 58, 59.
[79] Hutch. Hist., I, 204, note.
[80] Hull, Diary, 1663, March 9.
[81] Mass. Rec., IV (ii), 73.

About this time, however, Governor Endicott, in the name of the general court wrote to the king acknowledging the receipt of his letter. He thanks the king for confirming the charter. He professes to know of no law derogatory to the king's government, nor is he aware that any have "as yet appeared among us to desire" the Book of Common Prayer. In reference to elections, he states that it has always been the custom "that men of wisdom, integrity, and virtue be chosen to places of trust," and that to secure this end it is necessary that the electors be orthodox in religion, and not vicious in conversation; that all those who have proved themselves to be such, "in their places where they live, have from time to time been admitted in our elections." He assured the king that if anything "yet remains to be acted by us respecting the premises, it is under consideration among us to that end."[82] This consideration did not, however, result in carrying out the requirements of the king's letter.

On the contrary, when the general court met again in October, an act was passed apparently in direct opposition to the king's directions. This act recited that there were many enemies of the government who would not yield obedience to authority civil or ecclesiastical, but combined in some towns to try to control elections, and hence ordered that "all persons, Quakers or others, which refuse to attend upon the public worship of God *established here,* that all such persons, whether freemen or others, acting as aforesaid shall and hereby are made incapable of voting in all civil assemblies" during their continuance in such ways and until certificate be given of their reformation.[83] The Book of Common Prayer was not admitted in the established religion in Massachusetts, and should a person withdraw himself to worship in the Episcopalian fashion, he lost his vote, however competent his estate for the enjoyment of the franchise. So it remained for years; long afterward when Randolph came out as the king's collector and representative

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[82] Endicott to Secy. Morrice, undated, Danforth Papers, Mass. Hist. Soc. Coll., 2 s., VIII, 47.

[83] Mass. Rec. IV (ii), 88, Oct., 1663.

in New England, it was with the greatest difficulty that he could secure a building in which to hold the services of the English church.

Meanwhile, it is noteworthy that the English government was doing nothing to enforce the order sent to Massachusetts. In September, 1662, about three months after the letter had been dispatched, Clarendon had, indeed, declared to the council for plantations that it was the king's intention to send commissioners to New England. It might be expected that this plan would have been followed up with vigor when news reached the court of the colonies' dilatory and disobedient action. Such information seems to have been at hand in the following April, when, on hearing papers from New England read before the council, the king renewed the declaration that commissioners would be sent out to reconcile disputes between the colonies and ascertain how they were complying with their charters.[84] This was nearly a year after the letter containing the orders from the English government had been sent out. Yet another full year was to elapse before the plan here proposed to see that they were enforced, was carried into execution. This delay is hardly in conformity with the supposition that the transactions with Connecticut and Rhode Island in 1662 were conducted with a view to preparing the way for the settlement of Massachusetts. If the idea was to isolate Massachusetts by disrupting the confederacy, that end had already been accomplished. That the commissioners were not dispatched in 1663 to enforce the king's orders to Massachusetts, and that when they were finally sent, as will appear later, the immediate and dominant object was not a settlement with Massachusetts but the conquest of New Netherland, is further confirmation of the belief that, in his dealing with Connecticut and Rhode Island, Clarendon had in mind no reference to the affairs of Massachusetts, nor, in fact, any well-defined policy other than his well-known desire to further colonial development.

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[84] Colonial Papers, 1662, Sept. 25; 1663, April 10.

CHAPTER III.

The Founding of Carolina and the Conquest of New Netherland.

At the same time that the New England charters were preparing, great interest was being manifested by English statesmen in other colonial projects. In 1663, a few months prior to the passage of the Rhode Island grant, the extensive region south of Virginia, extending from the boundary of that colony to the limits of the Spanish possessions in Florida, was erected into a province and bestowed upon eight of the king's friends and servants. Just a year later a charter was drawn up conferring on the Duke of York, the king's brother, the territory between Delaware Bay and the Connecticut River, together with Long Island and that portion of Maine eastward from the province of Ferdinando Gorges and extending to the St. Croix river. By these extensive grants of land the whole Atlantic seaboard in America from the French territory in the north to that of the Spanish in the south, not already occupied by the English, was definitely appropriated by the English government and opened for colonization by the English nation. In both of these grants Clarendon, the Lord Chancellor, was directly concerned. When the charter for New York was being prepared, he purchased Long Island from the Earl of Sterling and presented it to his son-in-law, the Duke of York, as the nucleus for his new province, while in the charter for Carolina his name appears at the head of the list of proprietors. Both charters also exhibit the same liberality, not to say prodigality, in respect to governmental concessions as well as territorial limits, as appears in the corporate charters for Connecticut and Rhode Island. It appears also that, like the New England charters, these grants were

drawn in accordance with the wishes and the varying interests of their respective beneficiaries. The proprietors of Carolina, desiring to participate in the profits that were beginning to be realized from colonial trade, and particularly from the nearby West Indian plantations, in order to attract a sufficient number of planters to their territory to make the venture a profitable one, had placed in their patent the guarantee that the colonists should be consulted in the enacting of laws and that there should be complete freedom as regards religion. The Duke of York, on the other hand, both because he would be called upon to rule over a considerable foreign population, already settled in his province, and because he was by nature opposed to these popular methods of government, desired neither of these provisions, and they are consequently not to be found in his charter. In fact, there is nothing in either of the documents by which these enormous tracts of land were granted away, to indicate the existence of any new ideas or principles in the disposition of colonial territory consonant with change of policy, or the beginning of a policy, looking toward the more systematic and centralized administration of the colonies. The whim of the monarch or the favor of the courtier is as influential as ever.

The model for the charter of Carolina is to be found in the grants to Sir Robert Heath of the province of "Carolana" in 1629, and to Lord Baltimore of the province of Maryland in 1632, the only difference being that the land is to be held in free and common socage instead of by military tenure in knight's fee. The grantees are made absolute proprietors saving only allegiance to and sovereign dominion in the king. The province is to be held as the manor of East Greenwich in the county of Kent, with all the rights and powers that the bishops of Durham have ever enjoyed. And, as in the Maryland charter, the proprietors are given authority practically to ignore the rights of the planters in making laws by the provision extending to them the power to make ordinances with all the force of law. The recipients of these extensive

rights over a territory of unknown limit, were all friends of the restored king, who had from time to time rendered him personal service. Clarendon and Lord John Berkeley had shared his exile; the Duke of Albemarle, General George Monk, had done much to bring about the restoration; two others had fought in the civil war on the royal side, Carteret, having held the Island of Jersey against the parliamentary forces, was the last to surrender, and Colleton, after losing near 100,000 pounds in the king's service, went to Barbadoes where he continued to maintain the royal interests; Ashley, who was recommended to the king by Monk, had acquired the position of Secretary of State, and by virtue of his high political talents was soon, as the Earl of Shaftesbury, to become the leading minister; finally, the Earl of Craven, a soldier of the civil war, had been promoted in the peerage by Charles II, after his return to England, and Sir William Berkeley, having refused to serve as governor of Virginia during the commonwealth, was restored to that position on its downfall in 1660.

The interest of these statesmen and courtiers in Carolina was mainly, if not solely, commercial.[1] They appear to have been negotiating for the grant several years before it was finally procured,[2] and for a number of years afterward they acted merely as large land agents controlling a territory to be disposed of to planters on the best terms that could be obtained. The tobacco and sugar plantations in Virginia and the West India Islands were becoming at this time exceedingly profitable. The increasing rigidity of the navigation acts furnishes evidence of this fact, as well as of the determination of the English statesmen to secure for themselves and for their merchants and shippers the benefits arising therefrom. More or less determined efforts were

[1] Proposals, or Advertisement, for the settlement of Carolina. Also, Concessions, etc. North Carolina Colonial Records, I, 43, 75-93. McCrady states that South Carolina was "planted to assert the dominion of Great Britain against that of Spain in disputed territory." South Car. under Pro. Govt., p. 4. But he cites no documentary evidence of such an idea existing at this time.

[2] Letter from the Proprietors to Berkeley, N. Car. Rec., I, 52.

being made to increase both the quantity and the variety of the commodities which the colonies should produce. It was desired and believed that the several colonies might be made to furnish a greater number of the staple articles which England had been accustomed to secure from foreign markets, and thus the customs duties could be increased and the profits of the English merchants and ship owners greatly enhanced.[3] With this end in view, Maryland and Virginia were urged, tobacco having become a drug on the market, to turn their attention to other staples, such as silk, hemp, flax, potash, and pitch. It was thought, by the ministers in England, that, by a little care and experimenting, in a few years great profit and revenue could be made on these articles. When Berkeley was recommissioned governor of Virginia, in 1662, his instructions authorized him to give special attention to these experiments and promised him a ship load of tobacco when he sent over the first load of other commodities. As an additional incentive in this direction these new products were made free of duty in England for a period of five years.[4] The belief that these commodities could be produced with profit in America was one of the chief reasons why proprietors of Carolina were so deeply interested in that province. In their proposals, or advertisement, issued in 1663, to attract the attention of prospective colonists, they enumerate, in addition to the staples, tobacco and sugar, wine, oil, silk, ginger, cotton, and indigo as articles which may be grown or produced in the new plantation.[5]

The new York charter, though somewhat differently worded and much less prolix, conferred upon the proprietor even more absolute powers and independent sovereignty than that for Carolina. The form of tenure was the same, but the Duke of York was not required to obtain the consent of the colonists in legislation nor was he bound to grant any toleration in religion. And, while the idea of profit was

[3] Colonial Papers, 1661, Feb. 18; 1662, July (?), Sept. 12.
[4] Ib., 1662, Sept. 12; 1664, Nov. 25.
[5] N. Car. Rec., I. 43, 46.

by no means foreign to the minds of those concerned in the province, the motives leading up to this extraordinary grant were quite different from those assigned for the charter of Carolina and the principles involved vastly more far-reaching. The chief portion of the territory granted to the Duke of York had already been peacefully occupied for upward of half a century by the Dutch, whose title had been recognized in England by both king and parliament. Their claim was based on discovery and occupation. Against this the English could bring forward only a vague claim of discovery, based on the supposed exploration of the whole Atlantic coast as far south as the region of the Chesapeake by the Cabots. This claim had, however, been repeatedly declared insufficient. Queen Elizabeth had first announced the principle that "prescription without possession" of unoccupied territory does not give a good title. This principle was acknowledged by James I in 1606, when he opened the coast from Acadia to Cape Fear to colonization, by excepting any land actually occupied by any Christian people. It was subsequent to this that the Dutch explored and began the settlement of the Hudson Valley. Their right was again recognized by James I, in the Plymouth charter of 1620 when he again excepted from the land granted, any already occupied. This was confirmed the following year by parliament in the assertion that "occupancy confers a good title by law of nations and nature."[6] But precedents such as these had little weight with Charles II or his ministers. Having decided after several months consideration that the possession of the Dutch territory was necessary or desirable, the title by prescription was revived, the Dutch were denounced as intruders, and the region quietly granted to the king's brother. In the charter the Dutch were not mentioned. The territory was granted away as though absolutely unoccupied.[7]

The desire on the part of the English statesmen to possess

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[6] Brodhead, History of New York, II, 10.

[7] Brodhead speaks of the Charter of New York as, "the most impudent ever recorded in the colonial archives of England."

New Netherland was by no means an unreasonable one. Lying as it did between the Puritan colonies on the north and Maryland and Virginia on the south, this province occupied a position of the greatest importance in the administration of the English colonies. Communication between the two portions of the English dominion was rendered difficult if not impossible, and if the ministers looked forward to a time when some sort of centralized administration of the colonies should become desirable, the obstacles presented by the Dutch possession of this middle territory were insuperable. There is evidence that this idea of uniting the colonies, or at least of bringing their governments into greater harmony with each other, was vaguely entertained at the time of the appointment of the council for plantations in 1660; and later in the reign a plan to realize it was actually proposed and urged upon the ministers by Edward Randolph.[8] For the present, however, the several charters granted from 1662 to 1664, would seem to indicate that it had been abandoned or forgotten. There is no evidence that it had any weight in bringing about the decision to seize New Netherland. Other motives, however, were not wanting. New Netherland was regarded by the king as a "constant receptacle and sanctuary for all discontented, mutinous, or seditious persons" flying from justice or running away to escape debts in the neighboring English colonies. The business of the Dutch was said to be to oppress their neighbors and "to engrosse the whole trade to themselves by how indirect, unlawfull, or foule means soever" as the massacre at Amboyna in a time of peace would go to prove. Therefore, "'tis high time to put them out of a capacitie of doing the same mischiefe here."[9] In other words, it was commercial rivalry that induced the attack.

The relations between the Dutch and English plantations in New England, although not precisely such as the king's words would indicate, had not been entirely peaceable and

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[8] See above, p. 17.

[9] Instructions for the Royal Commissioners, New York Documents, III, 52.

satisfactory. From the beginning, the Dutch had made indefinite claims to the land along the coast as far as the Connecticut river.[10] The English claim was equally indefinite. The Connecticut and New Haven settlers had appropriated lands not already occupied and pushed farther and farther to the westward until their outposts came into actual contact with those of the Dutch. As early as 1633, the latter had obtained a deed from the Indians for lands around Hartford, and a number of them had settled there.[11] In addition to these mutual contests for the land between the Connecticut and the Hudson, other disputes had arisen. Fugitives from justice and debtors from one colony were sometimes given refuge in the other; selling arms and ammunition to the Indians was mutually charged; and the Dutch governor had seized a vessel in the harbor of New Haven for alleged violation of the Dutch trading laws.[12] In 1650, soon after Stuyvesant came out as governor of New Netherland, these issues had all been settled by a treaty made at Hartford between Stuyvesant and the commissioners of the united colonies covering all the points in dispute. Criminals were to be delivered up and the colonies were to live in friendly union. Regarding boundaries it was agreed that the posession of the two nations should be separated by a line starting from the " west side of Greenwich Bay, being about four miles from Stamford, and so to run a northerly line twenty miles up into the country, and after as it should be agreed by the two governments of the Dutch and of New Haven, provided this said line come not within ten miles of Hudson River." The Dutch were to keep all lands actually occupied at Hartford, but all the remainder was to belong to the English. Long Island was divided between the claimants by a line from the " westernmost part of Oyster Bay " due south to the sea.[13]

This settlement of the local difficulties proved fairly satis-

[10] Hazard, State Papers, II, 97, 132, 154.
[11] Ib., 54, 58.
[12] New Haven Records, I. 508, 511, 515.
[13] Hazard, II, 218; N. Y. Doc., II, 228.

factory for a number of years. While the mother countries were engaged in the commercial war undertaken by Cromwell, the colonies were on the verge of hostilities. But on the return of peace, the States General of Holland ratified the colonial treaty, and, while this sanction was never given by the English government, it was regarded as binding by the colonies. This condition was terminated in 1662 when the Connecticut charter was granted. According to the terms of this charter, Connecticut was to extend west to the South Sea. Trouble began at once. The government of Connecticut had the charter made known to the Dutch colonists and ordered them not to molest any of the English inhabitants on lands included in its bounds. Stuyvesant at once claimed that the English were attempting to get the towns under Dutch authority to revolt. When he sent commissioners to Hartford to endeavor to have the agreement of 1650 renewed, the authorities of Connecticut answered that it was "a nullity and of no force."[14] In the correspondence which followed there were mutual references to bloodshed if one side or the other persisted in its course. The Dutch held that the king of England must have granted the charter to Connecticut with the same understanding as to territorial limitations as had appeared in earlier charters, that is, on conditions that the lands shall not have been previously occupied. The magistrates of Connecticut, on the other hand, contended that the Dutch really held only a commercial patent, that while they would respect a charter for the territory granted by the states general, and would not interfere with land already actually occupied, they must not be hindered from appropriating lands not occupied and included within the limits specified by their charter.[15] Reports of this controversy reached the council for plantations and aroused the desire of the English ministers to destroy the Dutch colony. Similar complaints came from the Earl of Sterling, proprietor of Long Island, whose petition that

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[14] Conn. Rec., I, 387; N. Y. Doc., II, 388.

[15] Conn. Rec., I, 410, 413, 415; N. Y. Doc., II, 224, 380.

the Dutch should be expelled from the western end of that island had been in the hands of the council since 1660.[16]

Meanwhile, the commercial jealousy of the two nations, which after all was the prime reason for the seizure of the Dutch colony, had become more and more prominent. The navigation acts had been aimed especially at the Dutch, to break up their control of the carrying trade and divert this business to the English shippers and merchants. By the enlargement, in 1663, of the original acts, the colonies were brought particularly within the scope of this policy. Not only must all goods entering or leaving colonial ports be carried in ships built and manned by English subjects, but all the more important colonial products must be sent direct to the market offered in England, and the same market was made the sole source of supply for goods of European growth or manufacture. With the Dutch in New Netherland, it was becoming daily more apparent that this provision could not be enforced. When the foreign market offered better profits than the English there was an irresistible temptation to take advantage of it. Either the Dutch ships were permitted to load tobacco and other products surreptitiously in colonial ports, or goods were carried to New Netherland and shipped from there to various European markets. News of this state of affairs was not long in reaching the council for plantations, and was not allowed to pass unnoticed. Soon after the Earl of Sterling had made his complaint about Long Island, information was received that great loss was being sustained by English merchants and shippers by reason of the illicit trade between Virginia and the Dutch plantations, and that two Dutch ships were about to depart for Virginia which, if they were permitted to enter, would inflict a loss of 4000 pounds to the king's customs. In April 1661, the council for plantations reported that New England was becoming a source of supply of wool for the Dutch plantations, receiving in return other articles needed, so that her trade with England had about

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[16] Colonial Papers, 1663, Dec. 2; N. Y. Doc., III, 21, 22, 42.

ceased.[17] In 1663, Samuel Maverick sent to the council a petition full of complaints, chiefly regarding New England, which contained a hint that a part of the New England population, having become familiar with the Dutch on account of trade, would not be averse to removing to the Dutch plantations, if their rights were not recognized.[18] A still more alarming report was made in December of this year by the farmers of customs, to the effect that the loss to the king's treasury occasioned by illicit trade with his American colonies would amount to 10,000 pounds per annum. For this loss they demanded redress from the king.[19]

There is no doubt about the connection between these reports and the decision to annex the Dutch territory. The office of receiver general for all the colonies was established in April, 1663, to be under the direction of the lord treasurer or the chancellor. The office was granted to two gentlemen for life and by them at once delegated to George Povey, a member of the council for plantations. He was to supervise the collection of all rents, revenues, and profits, from the king's dominion in America and Africa. While this was being arranged, a circular was drawn up and sent out to all the colonies, stating the provisions of the navigation acts and commanding their enforcement under pain of the king's displeasure.[20] Just prior to the dispatch of this circular, but after the appointment of the receiver general, three former residents in New England had entered a serious complaint of Dutch aggression in Connecticut and Long Island; at the same time the Earl of Sterling's petition was called up. The complainants were at once ordered to draw up a statement setting forth the king's title "to the premises," the "Dutch intrusion" there, their "strength, trade and government" there, and lastly "the meanes to make them acknowledge and submit to His Majestie's Government or by force compell them thereunto or expulse them." They

[17] Colonial Papers, 1661, April 30; N. Y. Doc., III, 43, 44.
[18] Colonial Papers, 1663, Aug. 1, 30.
[19] Ib., 1663, Dec. 7; N. Y. Doc., III, 47.
[20] Colonial Papers, 1662, Oct. 14; 1663, April 9, June 24, Aug. 25.

were ordered to bring in their report within a week.[21] As a result of their investigation, it was found by January, 1664, that the Dutch in Long Island numbered only 1300, and that they might be overcome with men levied in New England, if three ships of war should be sent over. Immediately the Duke of York was directed to prepare the ships and the lieutenant of ordnance was ordered to turn over the necessary arms and ammunition to fit them out.[22] Meanwhile, the Earl of Sterling sold his claim to Long Island to Clarendon. Whether this was done merely to get rid of opposing English claimants, or whether it was intended to furnish the nucleus of a new province and an excuse for proceeding against the Dutch, the island was, at any rate, immediately turned over to Clarendon's son-in-law, the Duke of York, and included in his charter, which passed the seals in March.[23]

It is needless to point out that however necessary to the administration of the English colonies, and however essential to the prosperity of English merchants, the possession of New Netherland may have been, the means taken to secure that territory were thoroughly perfidious and unscrupulous. In September, 1662, Clarendon had ratified a treaty with Holland providing that all acts of aggression on the part of the subjects of either state should be reported to the other, the offenders punished, and just reparation made.[24] Yet when the Dutch government made representations concerning the quarrels between the colonists of the two nations in America and attempted to have the boundary between the provinces there settled, it was constantly put off with delusive and dilatory answers, each one framed in such a manner that it would "serve for a year longer."[25] The English ministers made no claims upon Holland for damages suffered in New England. On the other hand, they endeavored, by pressing insignificant claims arising from other regions, to conceal

[21] Colonial Papers, 1663, July 6; N. Y. Doc., III, 46.
[22] Colonial Papers, 1664, Jan. 29; Feb. (?), 25.
[23] Duer, Life of Sterling, 37; D'Estrades, Letters and Negotiations, II, 57; Colonial Papers, 1664, March 12.
[24] Lister, Life of Clarendon, II, 246.
[25] Ib., III, 276.

their intentions regarding New Netherland. Downing, the English ambassador at the Hague, himself bought up some of these claims for a trifle, magnified them, added others of his own invention, and kept them constantly before the minds of the Dutch statesmen.[26] By this means the Dutch were kept entirely in the dark up to the very moment that the expedition against New Netherland was ready to sail. Even after the expedition was on its way, Charles II continued to assure the Dutch ambassador that he intended to enquire into the matters in dispute "without coming to any Action which might interrupt the good correspondence he had with the States," and that he was surprised that on a single complaint the Dutch "should proceed to make such considerable warlike preparations as they had done in their Ports." [27] Yet for several months prior to this, while the Duke of York had been getting his charter for the lands occupied by the Dutch and fitting out his ships, Downing had been writing to Clarendon that the Dutch did not desire war, were not prepared for it, and if handled right would do almost anything to avoid it. "Those that govern here have neither design nor desire to fall out with His Majestie. On the contrary it is the thing in the world they dread most." [28] Clarendon was equally duplex. In October, more than five months after the Duke's expedition had left England, and in fact more than a month after New Netherland had been seized, he wrote to Downing that he was sorry the Dutch had not been inclined to peace sooner; "for I scarce see time left for such a disquisition as is necessary. They have too insolently provoked the king to such an expense." [29] When the Holland government justly protested that the king of England "had taken New Netherland by force, without so much as saying a word to us," Downing arrogantly replied that the king "did not look upon himself as obliged to give

[26] D'Estrades to Louis XIV, June 5, 1664, Letters, etc., I, 264. D'Estrades was the French ambasador at the Hague.

[27] Ib., July 3, I, 276.

[28] Lister, III, 305, 310, 322. His letters are dated April 18, April 22, May 13.

[29] Ib., 346. Clarendon to Downing, Oct. 28.

any account of what he did in relation thereunto; * * * no more than he should think himself obliged to lett them know his mind, or to have their consent in case he should think fit to proceed against any Dutch that live in the Fenns in England."[30]

Arrangements for "reclaiming" this territory which had never been taken possession of, but which had been quietly occupied by another tenant for over half a century, were pushed on actively, though in secret, during the months of March and April, 1664. Colonel Richard Nicolls, a soldier in the service of the Duke of York, was made the latter's deputy governor for the province about to be conquered, and commander in chief of the expedition raised for that purpose. This consisted of four frigates from the royal navy with about 450 soldiers and a full complement of arms and ammunition aboard. With the expedition, came four commissioners, Nicolls being one, whose business it was, after assisting in the reduction of New Netherland, to examine into the government and administration of the New England colonies. About the middle of May the armament sailed from England, and after a voyage of ten weeks arrived on the coast of Massachusetts in the latter part of July.[31] Requisitions were at once made on the several colonies for assistance against the Dutch plantation. These requests were favorably responded to, Massachusetts alone agreeing to raise two hundred men "for his majesty's service against the Dutch." And although the ready submission of the Dutch rendered the sending of this force unnecessary, the two messengers appointed by the court attended the commission at Long Island with information of the action of the colony.[32] From the other colonies the response was not less prompt. From Plymouth came Captain Willett, and from Connecticut, Governor Winthrop himself, his son Fitz John, and several other magistrates.

[30] Lister, III, 350, Nov. 4.
[31] N. Y. Doc., III, 65.
[32] Ib., 66; Mass. Rec., IV (ii), 119, 125.

New Haven sent Captain Scott with a number of men. These men, especially Winthrop and Willett, were acquainted with the Dutch governor and familiar with conditions at New Netherland and were able to render material assistance in bringing about a submission.

In the early part of August, Nicolls and the other commissioners proceeded to Long Island and were engaged in operations against the Dutch until near the end of the year. The fort at New Amsterdam was wholly unprepared to resist such an armament as the English brought against it. This had often been pointed out to the Dutch West India Company by Governor Stuyvesant. When, in spite of the secrecy employed, he got wind of the approach of the English expedition he renewed his demands for assistance. It was not, however, until June 1664, that the West India Company, becoming suspicious of the activity in English ports, requested aid both of the city of Amsterdam and the States General. Amsterdam promised help, but the States General, not being then on good terms with the commercial companies, refused, preferring to put confidence in the reports of their ambassador in London that the king protested "he would not in any way violate his alliance with the Dutch."[83] Left thus to his own resources, Stuyvesant had endeavored to get powder and arms from Fort Orange and the settlement on the Delaware, and to bring the inhabitants in from the towns on Long Island to assist in the defense of New Amsterdam.[84] But all his efforts were useless. The Dutch residents themselves asserted that their fortress was "incapable of making head three days against so powerful an enemy," while the English were "exceedingly well fitted with all necessaries for warre, with much injineers and all other expedients for forcing the strongest fortifications."[85]

But the want of munitions of war and proper defenses was not the only matter which troubled the Dutch governor. As

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[83] Lister, III, 310; N. Y. Doc., II, 243.
[84] N. Y. Doc., II, 429.
[85] Ib., 248.

it was the object of the Duke of York to make his province profitable, he desired to win the good-will of the Dutch and induce them to remain there and become English subjects. He was, therefore, willing to offer them very liberal terms if they would submit without a struggle. In pursuit of this policy, Nicolls, as soon as he arrived at the west end of Long Island, caused a proclamation to be made known in the neighboring Dutch towns setting forth that all those who would submit themselves to the king's government might expect his protection, peaceable enjoyment of their estates, and all privileges of subjects of England.[36] News of this spread rapidly among the Dutch inhabitants and soon became known to the burghers at New Amsterdam. The result was that when Nicolls sent a summons to Stuyvesant for the surrender of the fort, the citizens demanded to be made acquainted with the terms offered. The governor refused, at first, fearing that the effect of the liberal offer upon the people would be to win them over to the English side. But they persisted, and the terms offered were made known, being substantially the same as those embodied in the proclamation. Winthrop now advised Nicolls that if the additional guarantee of free intercourse with Holland were offered, the Dutch inhabitants would all be willing to submit to his authority. Nicolls at once agreed to this concession, and Winthrop then drew up a letter to Stuyvesant informing him of this new concession and advising him as a friend to submit and avoid useless bloodshed. The letter was signed by Nicolls and two other commissioners.[37] Winthrop himself, together with his son Fitz John Winthrop, Mr. Willys of Connecticut, and Mr. Willett of Plymouth, crossed over to New Amsterdam to deliver it. As soon as Winthrop had departed, Stuyvesant, having read the offer, angrily tore the letter up and threw it on the floor in order to prevent its contents from becoming known. But the burghers had seen Winthrop hand it to the governor and, immediately he

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[36] N. Y. Doc., II, 411; Trumbull, I, 268.
[37] Mass. Hist. Soc. Coll., 4 s., VI, 527.

was gone, raised a clamor to be informed of its contents. All the efforts of Stuyvesant to keep it secret were of no avail. The burgomasters demanded it in order to communicate it to the people. With difficulty, a copy was made by his clerk from the torn fragments and this was given out to the people.[38] The effect of this letter, together with the proclamation which preceded it, was to put all thought of resistance out of the minds of the inhabitants. A few days later when Nicolls began to land his troops in Long Island opposite the fort, and Stuyvesant was about to order his gunners to fire, he was presented with a remonstrance from the principal citizens, setting forth their helpless and defenseless condition and begging him to submit to the English.[39] Stuyvesant reluctantly complied with these requests. Negotiations were opened and four days later, August 29, the fort was surrendered without a shot having been fired.

The conditions agreed upon for the surrender were such as might mollify even the martial pride of the Dutch governor. They have been called "the most favorable ever granted by a conqueror." The Dutch soldiers were to leave the fort "with their arms, drums beating and colors flying, and lighted matches"; those who wished to remain were offered 50 acres of land. All Dutch citizens were allowed to continue free denizens; their property was to be fully retained; local officers were to retain their places until the regular time for elections; and religious liberty was fully guaranteed. But the most noteworthy provision was that regarding trade. Dutch vessels were given liberty to trade at New York, and for a period of six months all ships were to be allowed to enter and depart as under the Dutch government.[40] In granting this freedom of trade, however, Nicolls exceeded his authority inasmuch as it was a violation of the navigation acts, which not even the king himself had the right to set aside. The articles of surrender were signed by the agents from Massachusetts and Connecticut as well as the royal

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[38] N. Y. Doc., II, 445, 476.
[39] Ib., 248.
[40] Ib., 250.

commissioners, the reason for this being, as Nicolls explained, that these colonies might be involved if any future trouble should arise with the Dutch.[41]

Immediately after the surrender, Nicolls directed his attention to the outlying Dutch communities. Sir Robert Carr was sent to reduce the settlement on the Delaware, and Colonel Cartwright proceeded up the Hudson to receive the submission of Fort Orange. Nicolls himself remained to take up the work of organizing the government of the new province. Cartwright carried out his mission with energy and promptness. By September 24, he had received the submission of the Dutch fort, changed its name to Albany, and negotiated a treaty with the Iroquois Indians. Not so with Carr on the Delaware. Fort New Amstel refusing to surrender, Sir Robert in hot haste ordered it to be stormed. In this operation, however, the English sustained no loss, Carr himself remaining on shipboard while it was in progress, and the Dutch had only three killed and ten wounded. Plundering was then in order, in which Carr, having now come ashore, himself seems to have gotten a good share of the booty. An agreement was finally entered into with the inhabitants on about the same terms as had been granted at New Amsterdam, and the name of the place was changed to New Castle. But Carr was not content with this. More anxious to satisfy his desire for gain than to carry out the instructions of the king, he remained on the Delaware, confiscating lands for himself and his friends, thus violating the instructions given him by Governor Nicolls. Nor were the summons of the other commissioners sufficient to recall him; Nicolls himself went to New Castle and later sent another commandant to supersede him, but he still lingered there, unwilling to abandon his prizes, until the following January, thus delaying the work of the other commissioners in New England.[42]

The conquest having been completed, it remained to

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[41] N. Y. Doc., III, 103.
[42] Ib., III, 67, 69, 72, 82, 83, 84.

organize a government for the new English province. This was accomplished by Nicolls with only an almost imperceptible interruption of the local government. In theory the government was merely resumed by the English as though they had always been rulers there. It was the Duke of York's object to make the province as profitable as might be in order that it should become a substantial addition to the realm to which he was heir. The articles of surrender had retained the municipal officers in their positions. The day after the surrender the courts of burgomasters and schepens assembled and transacted business as though nothing had occurred. Most of the Dutch inhabitants came forward and took the oath of allegiance to their new sovereign and continued almost undisturbed in their daily pursuits.[43] Nicolls organized the provincial government by appointing a secretary and two members of his council from among those who had come over with the expedition; to these were added two councillors from among the inhabitants. As neither the Duke's charter nor his commission to Nicolls made mention of any representation of the people in the government, the Dutch gained no popular rights or privileges by the change of masters. Yet they accepted the new conditions gracefully, and appear soon to have become good English subjects.

Thus was accomplished the determination to "expulse" the Dutch "intruders." It has been denounced as a "scandalous outrage," "planned in secret," and "accomplished with deliberate deceipt," which "none but Englishmen had the impudence" to perpetrate. Yet the author of this denunciation is compelled to admit that the "temptation was irresistable," and its "accomplishment only a question of time."[44] Putting aside the methods employed, the acquisition of New Netherland was by all means the wisest and most beneficial act of colonial administration performed in this period. The territory held by the Dutch

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[43] N. Y. Doc., III, 74.
[44] Brodhead, Hist. of N. Y., II, 37.

lay right athwart the lands included in the charters of Massachusetts and Connecticut which extended westward to the " South Sea." Sooner or later the steadily expanding New England communities must have come into deadly conflict with this foreign people for these lands which they believed to be their own. Indeed the conflict may already be said to have begun. Added to this was a possibility, also previously hinted at, that the disaffected party in Massachusetts would make common cause with the Dutch, if their rights were not recognized.[45] In Holland, belief in this amalgamation of interests was looked on as an immediate probability and was regarded as a source of strength to the Dutch colony. It was thought that the Puritans would prefer to live in amity with the Dutch rather than run the risk of loss of their religious liberties for the sake of which they had left their native land.[46] And while this view was proven to be unfounded by the readiness with which the New England communities rendered assistance in the conquest of New Netherland, this merely shows that as yet the feeling of nationality was stronger than the desire for religious autonomy, and that the idea of independence had not yet become fixed in the minds of the New Englanders. By the reduction of the Dutch, the English colonial possessions were territorially rounded out and brought into continuous contact with one another, and the monopoly of colonial trade, then so much sought after, could, it was thought, be more easily enforced now that there were no foreign ports in the midst of the colonies. This object was entirely in accord with economic theory of the times and the practices of other nations, and the English ministers were justified in their desire to bring it about, if not in the means by which they accomplished it.

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[45] See above, p. 65.
[46] N. Y. Doc., II, 235.

CHAPTER IV.

The Royal Commissioners in New England.

It was not, however, the possessions of the Dutch alone that were infringed on by the Duke of York's charter. The eastern boundary of his province extended to the Connecticut River, thus including a considerable portion of Connecticut already occupied by settlers, and the whole of New Haven which had recently been annexed to that colony. Clarendon is supposed to have had a definite object in view in annexing New Haven to Connecticut, namely, to gain the support of the latter colony and isolate Massachusetts, in order to render that colony more amenable to royal authority. He now, before Massachusetts had been brought to terms, and while she was still in an attitude of sullen defiance to the king's orders, abandoned or overlooked that object by taking from Connecticut, not only the New Haven territory so recently granted, but also a large district, including the capital, Hartford, which had always been recognized as within her jurisdiction. It is not only possible but probable that had any effort been made to enforce this boundary arrangement upon Connecticut that colony, as well as the New Haven towns,[1] would have been driven to open alliance with Massachusetts, the confederacy strengthened instead of weakened, and the difficulty of enforcing the king's authority in New England increased instead of lessened. Since the dispatch of the king's letter to Massachusetts in 1662, no steps had been taken to bring that colony to submission. It was in order to settle the questions raised by that letter, as well as the new difficulties occasioned by the resolution to conquer New

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[1] The government of New Haven had not yet submitted to the Connecticut Charter. See below, p. 94.

Netherland that the affairs of New England were again brought before the council for plantations in the Spring of 1664.

The departure of the expedition against the Dutch was thought a favorable opportunity for the dispatch of the commissioners so long delayed by Clarendon. This project appears not to have been referred to in the council since April, 1663. And it was not until the spring of 1664, after all the arrangements had been made for the conquest of New Netherland, the Duke's charter passed, and the governor appointed for his new province that, in the latter part of April, the New England business was taken up and the commissioners actually appointed. Then the Duke's governor for New York was placed at the head of the commission, and they were instructed in "the first place of all business" to proceed against the Dutch. The inference from this is that the suppression of Massachusetts had come to be looked upon as a secondary consideration, and was made to await the convenience of other more important matters. If the desire to enforce the king's authority in Massachusetts had ever held the prominent place in Clarendon's mind, which is assumed in the theory that he passed the Connecticut and Rhode Island charters with that end in view, that desire was now overshadowed by more important business. Nevertheless there is a document among the colonial papers in the English State Paper Office which has been supposed not only to show Clarendon's personal interest in the affairs of Massachusetts in 1664, but to furnish reason for his hesitancy, prior to this, to take decided action against that stubborn colony.

This remarkable paper is in the form of a memorandum entitled "considerations in order to the establishing his Majestie's interests in New England." It is undated and unsigned, but in the calendar of the documents it is placed along with the papers relating to the appointment of the commissioners sent to New England in 1664.[2] It is supposed to

[2] Colonial Papers, 1664?, No. 706.

have emanated from Lord Clarendon, though it is not in Clarendon's handwriting.[3] The paper contains statements, however, inconsistent with the supposition that it could have been written at any time during the ministry of Clarendon. Thus it opens with the remark that the "King judging it convenient for his interests in New England to accept the surrender of Mason's patent for the Province of Hampshire on conditions already agreed upon, and Ferdinando Gorges being in treaty for the surrender of his patent for the Province of Maine," it becomes necessary to consider what shall be done with these territories. It states that "the King hath now a propriety as well as a dominion, by the surrender of the grants," and that the aim is to get "a submission to the King's own right upon those two Provinces." It is impossible to reconcile these statements with the facts regarding the provinces of Maine and New Hampshire in 1664, or at any time during Clarendon's administration. On the contrary they are in entire accord with the facts regarding those provinces ten years after the fall of Clarendon.

In 1664 the proprietary rights of Gorges and Mason in America had just been recognized and established anew by the king's order. Immediately after the restoration a petition from Mason that his province be restored to him was referred from the council for plantations to the attorney-general, Sir Geoffrey Palmer, for an opinion. In his report, dated November 8, 1660, the attorney-general stated that Mason "had a good and legal title to New Hampshire." Again in 1662 Mason's claim was affirmed by a committee of the council.[4] Gorges also succeeded in bringing his claims to Maine to the attention of the king at the beginning of 1664. The matter was referred to the same authority as had decided Mason's claim; the report was favorable to Gorges, and the king approved it and ordered the inhabitants of Maine to submit to the proprietor.[5] Moreover, the charter

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[3] Palfrey, II, 578.

[4] Colonial Papers, 1662, Feb. 15; Belknap, New Hampshire, I, 59, 436.

[5] Colonial Papers, 1664, June 8, 11; Hutch. Coll., 385.

issued to the Duke of York at this time is itself a confirmation of Gorges' territorial rights, for, in addition to New Netherland and Long Island, it granted him the "maine Land of New England" from the St. Croix to Pemaquid. Pemaquid was the eastern boundary of Gorges' province which was thus left intact. It seems impossible to reconcile with these conditions the clause in the memorandum under consideration, referring to the completed surrender of Mason's patent and negotiation for the surrender of that of Gorges, if this memorandum is assigned to the year 1664. On the other hand in 1677 conditions were such that the claims of the memorandum are all perfectly clear. Mason and Gorges were never able to establish their authority in their respective provinces in face of the opposition of Massachusetts, and wearying of the attempt, in 1674 joined with the Earl of Sterling in a plan to surrender their rights to the king. It seems to have been the intention to erect a great province out of these territories for the Duke of Monmouth.[6] This part of the scheme fell through, but not the proprietors' determination to get rid of the government of their provinces. In 1675, Mason obtained a new hearing on the validity of his patent. At first it was reaffirmed by the attorney-general. But later the whole matter was gone into more thoroughly by the justices of the king's bench, who decided that Mason had no right to the government of New Hampshire, inasmuch as his grantee, the Plymouth Company, had possessed no authority to convey such, but that the right to the soil would have to be tried in the territory; that Massachusetts had no right to this territory, or government there; and that Gorges had a good claim to the province of Maine. This report was confirmed by the king.[7] The towns of New Hampshire being thus declared beyond the limits of Massachusetts and Mason's rights being withdrawn, their government reverted to the king. Mason, already advised

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[6] Colonial Papers, 1672, Aug. 9, June 19; 1674, March 20; Hutch. Coll., 451, 472; Belknap, 65; Williamson, Hist. of Me., I, 448.

[7] Colonial Papers, 1675, March 14; 1677, May 31, March 31, June 7, July 17, 19, 20.

by his counsel that his governmental rights would be withdrawn, soon after made a settlement with the king, by which, for his proprietorship in the lands of New Hampshire, he was to receive a stated quit-rent of "sixpense in the pound" in lieu of all other dues. And in order that the king's authority and government might be established there, a letter was sent to Massachusetts ordering that colony to withdraw all pretentions to New Hampshire.[8] In this same letter the king expressed his displeasure at the purchase of Maine by Massachusetts, because "he was in treaty at the time" for that province. Gorges' plan for getting rid of his burdensome possession had not been abandoned. But finding the king a slow purchaser, probably owing to the state of the exchequer, he had closed with the offer of 1200 pounds made by John Usher as agent for Massachusetts. Not only was the king displeased at this, but, determined not to be thwarted in his plan of getting control of Maine, he stated his expectation "that on reimbursement of the sum paid, all deeds, etc., (would) be surrendered by their future agents."[9]

Thus, the words of the memorandum referring to New Hampshire and Maine would apply accurately to the conditions between July 20, 1677, when the governmental rights of Mason in New Hampshire were overthrown, and March 25, 1678, when the king learned of the sale of Maine to Massachusetts, or even after this date, for, according to the king's letter, he still had intentions of getting possession of that province. It remains to be seen whether there was at this period any intention of sending commissioners to New England as referred to in the memorandum. Here also the facts point to the later date as the one to which the paper should be assigned. The colonial papers show that from 1676-9, the affairs of New England were debated in council more thoroughly than at any time previous. In 1676,

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[8] Colonial Papers, 1679, June 20, July 1, 2, 24; Hutch. Coll., 522.

[9] Colonial Papers, 1678, March 25; 1679, May 20, June 20; Hutch. Hist., I, 281. The deeds are in Me. Hist. Soc. Coll., II, 257. That from Gorges to Usher is dated March 13; Usher to Mass., March 15, 1678.

Edward Randolph had been sent to Massachusetts, nominally as the king's collector, but in reality to gather information for the settlement of the government there.[10] The letters of this active and zealous agent opened the eyes of the English ministers as to affairs in Massachusetts. In the discussion resulting from his representations, it was frequently suggested that agents or commissioners be sent out to New England, particularly to settle the questions relating to New Hampshire and Maine.[11] This agrees fully with the words of the memorandum, which suggests that the proposed commissioners proceed first to New Hampshire and settle the king's authority there and in Maine, and that they make no "applications or demands to Boston until the king's unquestionable right of propriety to New Hampshire and Maine be in good measure settled." On the other hand the actual instructions given to the commissioners in 1664 refer hardly at all to the two northern provinces, but place the chief emphasis on the conquest of the Dutch and the submission of Massachusetts.

The matter of the date and authorship of the memorandum is of importance, not only as bearing on Clarendon's interest in the affairs of New England, but also because it contains evidence as to its author's opinions concerning conditions in Massachusetts. Thus the paper states, with reference to that colony, "it may be presumed that they will harden in their constitution, and grow on nearer to a commonwealth, toward which they are already well-nigh ripened, if, out of present tenderness the attempt shall be deferred or neglected, whilst this and that government are at present under such and so many circumstances that look and promise fairly toward the effecting what is aimed at."

Here, it is said, is evidence of Clarendon's fear to offend Massachusetts until conditions were favorable for the enforcement of the king's authority there. Massachusetts is

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[10] Colonial Papers, 1676, March 20.

[11] Ib., 1675, May 1; 1676, March 20; 1677, May 6, June 7; 1678, April 8, 18.

well-nigh ripened into a commonwealth. But if this memorandum is referred to the attempt to bring New England to terms made in 1677-8, under the direction of Randolph, it removes all evidence of a motive for Clarendon's delay in bringing that colony to terms, and leaves but one explanation for his repeated failure to assert a legitimate control over New England, namely, that in the press of state business heaped upon this minister, who held, and was jealous to retain in his own hands, all the threads of government, both domestic and foreign, this colonial business was overlooked, postponed, and delayed; and that the expulsion of the Dutch from New Netherland was the determining factor which brought about the dispatch of commissioners to New England, and not the possibility that the way had been prepared by liberal grants to Connecticut and Rhode Island. The failure to dispatch the circular letter in 1661 points to this conclusion; so far as there is any documentary evidence to explain the granting of the charters in 1662-3 it suggests the same state of affairs; and all the details of the appointment of the commissioners in 1664 are of like evidence.

The commissioners for New England were appointed in the latter part of April, 1664, more than a month after the charter for New York had passed the seals. As this was the first body of commissioners ever sent out by the English government to investigate conditions in the colonies, the matter of their selection and the instructions drawn up for them are of much historical interest. It cannot be said that in either particular the ministers manifested a very high degree of wisdom. The membership of the commission foredoomed it to failure. Either as a matter of courtesy or because its work was to be so closely associated with the reduction of the Dutch, the matter of selection seems to have been left with the Duke of York.[12] Accordingly, at the head of the commission, appears the name of Colonel Richard Nicolls, whom the Duke had already appointed to be his deputy governor in New York. This was a wise selection

[12] Colonial Papers, 1662, Sept. 25.

so far as the fitness of the man is concerned. Nicolls was a man of ability and integrity, and was closely attached to the interest of the Duke. He had been in exile with the royal family, during which time he had seen service with the French armies under Turenne and Condé. At the restoration, he became one of the gentlemen of the bed-chamber of the Duke of York, and during his residence in New York as governor of the province he demonstrated abilities as a faithful and just administrator.[13] While the other commissioners were looked upon with suspicion by the New England colonists, Nicolls inspired their confidence and was held in respect by them.[14] What was not so wise was the giving to the governor of the province of New York the chief place on the commission. Any two of the commissioners were empowered to act, Nicolls being one of them; without Nicolls the approval of all the remaining three was required to make a decision. Evidently the distance between New York and Boston and the difficulties of communication between these places were matters not appreciated in London. The inability of Nicolls to leave New York for more than a few weeks to attend the proceedings of the commissioners in Massachusetts was destined to cause serious delay, and to a considerable degree accounts for the failure to accomplish any good results there.[15]

This defect of Nicolls' enforced attention to other matters, was not overbalanced by the capabilities of the other members. They were partisans and fortune-seekers. The best of the three was Colonel George Cartwright, a morose, saturnine, and suspicious man, with considerable energy and ability.[16] Sir Robert Carr was a man of violent temper known in England as a high drinker. Both he and Cartwright were officers in the royal army. Carr was a "high-handed royalist and Episcopalian" violent in his feelings

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[13] New York Documents, III, 106, 114, 174; Brodhead, History, II, 137; Chalmers, I, 578.
[14] Mass. Rec., IV (ii), 168, 252, 255, 266, 274.
[15] N. Y. Doc., III, 93.
[16] Williamson, I, 409.

and supercilious in his conduct.[17] He was ready on the least pretext to denounce the colonists as traitors.[18] His chief object was to get a grant of land and a settlement for himself in New England from the king, and he permitted this private concernment to take precedence of and interfere with his discharge of public duties. So that his misconduct was more than once commented on by Nicolls, who was finally compelled to refer the matter to Lord Clarendon.[19] The remaining member of the commission, Samuel Maverick, was one of the original settlers in Massachusetts.[20] As a man perfectly familiar with the conditions in Massachusetts and the questions at issue, he should have been a valuable member. But his violent prejudices and the reputation he bore in the colony rendered him unfit for such a position. As a royalist and an Episcopalian he had been looked upon with suspicion by the general court and, at the restoration, had hastened to England to take revenge for the mistreatment he believed himself to have received. He there appeared repeatedly before the council for Plantations with testimony highly adverse to Massachusetts. He had not hesitated to accuse the government of that community with tyrannizing over its subjects and attempting to set up an independent state.[21] That such a person was selected as one of those sent out, on what Clarendon is supposed to have considered a very delicate mission, shows either that minister's carelessness in the matter or his failure to understand the true situation in Massachusetts. Maverick seems to have been given the appointment on his own request and as a reward for the services he had rendered to the council for plantations.[22]

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[17] Pepys, Diary, III, 314.
[18] Mass. Rec., IV (ii), 266; Hutch. Hist., I, 233.
[19] N. Y. Doc., III, 69, 72, 92, 109.
[20] Hutch. Hist., I, 26, 137.
[21] Mass. Rec., IV (ii), 168. In March, 1665, Clarendon, having heard complaints about Maverick's conduct, warned him not to "revenge any old discourtesies at the king's charge," or to "do anything upon the memory of past injuries." N. Y. Doc., III, 92.
[22] Colonial Papers, 1663, Aug. 1, 30.

The membership of the commission having been determined upon, much attention was given to instructing the commissioners in the work they were to undertake. In addition to their commission of appointment they were furnished with a separate letter of instruction for each of the New England colonies they were to visit, and another "secret instruction" for their guidance in Massachusetts. In addition to this the council for plantations wrote letters to the several governors of the colonies, informing them of the reasons for sending the commissioners thither.[23] These letters were to be presented by the commissioners to the governors on their arrival. That to the governor of Massachusetts is most elaborate and sets forth most clearly the purpose of the commission. Six principal reasons are given for the king's going to "this extraordinary charge": (1) To discountenance and suppress all "malicious calumnies that the king's subjects in those parts do not submit to his Majesties Government" but look upon themselves as independent, and that the king has not confidence in their obedience, all of which reports must vanish upon this manifestation of "his extraordinary and fatherly care." (2) That the colony may know it is not the king's intention to infringe their charter or liberty of conscience. (3) To settle all disputes as to bounds or jurisdictions between the colonies or have the same referred to the king. (4) To obtain full and particular information as to the condition of the neighboring foreign colonies in order that relations with them may be adjusted. (5) To protect the colonies against any foreign invasions or usurpations, such as the Dutch have perpetrated, to the destruction of trade, and to secure the reduction to obedience of the places held by the Dutch. (6) To secure greater compliance with the terms of the king's letter of June 28, 1662, than has yet been obtained.

Their own letter of instructions for Massachusetts was for the most part an elaboration of the points above mentioned.

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[23] Colonial Papers, 1664, April 23. The documents are printed in N. Y. Doc., III, 51-65.

Some additional directions were given, principally on the side of restraint.. Thus the commissioners were warned against "giving too easy an eare to clamours and accusations," and were told to take no notice of such rumors unless well substantiated. They were not to interrupt the regular proceedings in justice, by hearing cases, unless those proceedings were expressly contrary to the charter. As regards boundaries, they were to make no final decision, but only a temporary arrangement, unless with the consent of the parties concerned and where the terms of the charter were uncontradicted by any other grant. They were furnished with copies of the addresses sent formerly by Massachusetts to the king, and the king's reply, and were authorized to secure compliance with the orders of the king expressed in his letter of June, 1662, regarding the oath of allegiance, the administration of justice in the king's name, and freedom for the use of the Book of Common Prayer. They were to find whether the regicides were, or had been, in the colony and get the names of any persons who received or harbored them, and, lastly, they were to see that provision be made for the enforcement of the navigation laws.[24]

These instructions for Massachusetts the commissioners were to apply as far as posible to Connecticut. In addition thereto, they were to investigate the differences and disputes with Rhode Island about their boundaries and the title to the Narragansett lands claimed by the Atherton Company, and, if they found reason, reclaim this territory in the king's name. For Rhode Island and Plymouth they were to follow the suggestions given in the instructions for Massachusetts and Connecticut, and in cases not mentioned to use their own discretion.

So far, the purpose of the commission appears to be strictly within the limits justified by the circumstances. The demands made and the ends aimed at were such as any superior power would be expected to make and to enforce toward a dependency. But the private instructions go

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[24] N. Y. Doc., III, 51.

farther than this and express a purpose far more questionable. All the points already mentioned are confirmed; the commissioners are told again to avoid any act which would suggest that the religion of the colony is to be interfered with, otherwise than in the securing of liberty for the use of the Book of Common Prayer; they were even, to this end, urged to frequent the services in other churches; they were again warned against giving ear to factions, particularly such as might desire a change in religion, and any who should propose settling a revenue on the crown; and they were once more informed that the great object was to secure conformity in government with the provisions of the charter, and in legislation with the laws of England. Then the commissioners were instructed, after "insinuating" themselves "by dexterous carriage into the good opinion of the principal persons" to have a general assembly called to which they were to make "the utmost endeavors privately," but "without offence, to gett men of the best reputation and most peaceably inclined" chosen. To this assembly they were to make their appeal, so far as possible, over the heads of the governor and council, conferring "with them upon all particulars relating to your negotiations," assuring them "that wee look upon them with the same fatherly care as if they lived in the centre of eyther of our kingdomes," and communicating to them all the letters and addresses that had passed between the colony and the king. By these means they were to try to gain several points not referred to in the open instructions or in the letter to the colony: (1) "That wee may have the nomination of the governor or approbation." (2) "That the Militia should be put under an officer nominated or recommended by us." (3) It would be regarded "as a good omen, if they might be soe wrought upon at the general assembly as that Colonel Nicolls might be chosen by themselves for their present governor, and Colonel Cartwright for their Major Generall." (4) While the raising of a revenue is explicitly denied, the language suggests that this will in time be demanded, as it is stated "all

designes of proffit *for the present* seem unseasonable and may possibly obstruct the more necessary designes." [25]

There seems little doubt that if the points here mentioned were found to require the alteration of the charter, the intention was not to stick at even that.[26] Indeed, the commissioners were commanded to take note of all such clauses in the charter as " are either too short and restrained and the enlarging whereof would bee for the publik benefit of the plantacon; or such other inconvenient ones, as for our dignity and authority should bee altered by a generall consent and desire." One of these convenient changes is even suggested, namely, " that the severall governors should hold their places three or five years and that before the middle of the last yeare three names should be sent over and presented to us, that one of these might be chosen by us for the next Governor." Finally, the commission of appointment, which invested the agents with legal authority for the acts they were to perform, was expressed in such general terms as would warrant, for the time being, the complete suspension of the charters and local governments in the colonies. It conferred power " to hear and to receive and to examine and determine all complaints and appeals in all cases and matters as well military as civil and criminal, and proceed in all things for the providing for and settling the peace and security of the said country according to their good and sound discretion " and subject to their instructions. Some restraint was commanded by these instructions, as has been pointed out. But the commissioners were themselves to be judges of the necessity for overstepping the restraint. And there can be no doubt but that the power of hearing and determining appeals was a violation of the charters, by which no such right had been reserved even to the king himself. Whether the alteration of the charters so as to gain to the king the control of the executive branch of the colonial

[25] N. Y. Doc., III, 57.

[26] " It may be if they will consider their charter they will not find that they have in truth the disposal of their own militia as they imagine."

governments, and the right to hear appeals was absolutely necessary for the enforcement of the commercial laws and administrative policy of England, is open to a possible doubt. On the face of the matter it would appear to be practically impossible to enforce a hostile policy by legal means upon a community with which there was no legal official means of communication. The charters of Massachusetts, Connecticut, and Rhode Island were in this respect administrative errors of the worst kind. But this method of correcting the error was unworthy of the English government. The insidious and insinuating policy urged upon its commissioners was deceitful and dishonest. In the end it proved unfortunate for their own interests. For the magistrates of the colony were informed in advance of the suggestions made in the "secret instructions," and the intention there so plainly set forth, of altering their charter, so prejudiced them against the commissioners, that they were ready to use every means in their power to defeat even the less harmful and wholly proper objects.[27]

When the magistrates at Boston learned of the coming of the commissioners, and the powers that had been conferred upon them, they were naturally much alarmed and made preparation for the defence of their liberties. The general court, in May, ordered the captain of the castle to keep a lookout for the ships, and, "on the first sight and knowledge of their approach," give warning to the governor. Two captains of the militia were ordered to go aboard the ships immediately on their arrival and "acquaint those gentlemen that this Court hath and doeth by them present their respects to them," and that it is desired "that they take strict order that their under officers and soldiers, in their coming on shoare to refresh themselves, at no time exceed a convenient number, and that without arms, and that they behave themselves orderly amongst his magistys good subjects heere, and be carefull of giving no offense to the people

[27] N. Y. Doc., III, 136. Nicolls was confident that the document had been stolen by John Scott and conveyed to New England.

and lawes of this place." With this rather pointed reminder, the visitors were to be invited ashore, and the military commandant was to arrange for their reception. But the care of the Bostoners did not stop here. Arrangements were made "to keepe the Pattent safe and secret." It was brought to the court and delivered to a committee composed of the deputy governor and four other officers "to dispose thereof as may be most safe for the country."[28]

Before the commissioners departed from Boston to prosecute their design against the Dutch, after they had presented their request for soldiers, they took opportunity to remind the magistrates that "there were many more things to signify to them" and, in order that they might employ the interval profitably, the king's letter of June, 1662, was referred to them for a "more satisfactory answer than formerly." Accordingly when the general court met in August, it immediately, before considering the question of advancing against the Dutch, proceeded to comply with some of the requirements of that letter, which up to this time had been disregarded. The first entry on the records of this meeting is that of the repeal of the law limiting freemen to church members. In its place they passed an act providing that all English householders twenty-four years of age, ratable in one single rate to the amount of ten shillings, on presenting a certificate from the ministers of the place where they live, that they "are orthodox in religion and not vitious in their lives" might be admitted to the "freedom of this commonwealth" by the vote of the general court.[29] The haste with which this change was made, shows that the rulers of the colony were now thoroughly alarmed. Up to this time they had placed great importance on the maintenance of a standard of religious conformity for membership in their body politic. The law which they repealed had been enacted after the receipt of the king's letter in 1662. They now abandon that extreme position and take their stand upon

[28] Mass. Rec., IV (ii), 101, 102, May 18, 1664.
[29] Mass. Rec., IV (ii), 118.

more certain ground. Yet, although by this change they surrendered a principle, practically they conceded nothing. It was a shrewd move, for technically they had complied with the king's requirements. Not three freemen in a hundred were rated so high as ten shillings at a single rate, and besides, the requirements of a certificate of orthodoxy from a minister, placed the operation of the law virtually under the control of that class. The commissioners were quick to see through this scheme of the magistrates, and were able to turn it to account against the colony. Cartwright wrote that they had admitted two or three men not church members "that by it they might avoid the king's letter in that poynt." Later the three commissioners wrote to Secretary Bennet that the few exceptions they had made were in order "to gain some to their partie, and to serve to delude the king with a show of complyance." Following this line of argument they reached the conclusion that religious liberty could not be enforced in the colony "without a visible force."[80]

Having taken this step toward reconciling themselves with the king, the magistrates resolved to make an attempt to have the royal commissioners recalled. A committee composed of two magistrates and one minister was appointed by the court to prepare a petition to the king with this object in view. The work was undertaken with great care and the document which was drawn up was approved by the general court in the following October.[81] While unnecessarily adulatory in some points, this petition was on the whole a bold and manful appeal to the sovereign to respect the rights and liberties of a poor people who had already suffered much for their conscience sake. It speaks of the king as "numbered here among the Gods." Then, with "moving eloquence," it reviews the great sacrifices, hardships, privations, and labors of "this people," who "did at their own charges transport themselves, their wives, and families, over

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[80] N. Y. Doc., III, 84, 102.
[81] Mass. Rec., IV (ii), 119, 129.

the ocean, purchase land of the natives, and plant this colony." It refers to the king's promise of clemency in 1661, and to his letter of June, 1662, confirming their charter and privileges. Regarding the other particulars mentioned in that letter it states, "we have applied ourselves to the utmost to satisfy your majesty, so far as doth consist with conscience of our duty toward God and the just liberties and privileges of our patent." The petition then takes up the question of the royal commissioners. The colonists are pleased, it states, with "your majesty's gracious expressions," in the letter brought by the commissioners, and that "your majesty hath not the least intention or thought of violating or in the least degree infringing the charter."[32] Yet they are alarmed at the terms of the commission "wherein four persons (one of them our known and professed enemy) are empowered to hear, receive, examine, and determine all complaints and appeals . . . and to proceed in all things for settling this country according to their good and sound discretion; whereby instead of being governed by rules of our own choosing . . . and by laws of our own, we are like to be subjected to the arbitrary power of strangers, proceeding not by any established law but by their own discretions." If these things go on they will be forced to "seek new dwellings or sink and faint under burdens that will be to them intolerable." If there have been expectations of great profit here, the king will be disappointed and will lose by the operation. The cost of the expedition is greater than can be the gain to the king. The country will support only a "meane people" and will not provide a gentleman even with "livings and revenue." If the people are driven out of the country "for to a coalition therein they will never come," no other will be found to withstand the burdens of the wilderness. They came here not to seek great things but to keep themselves within their line and "meddle not with

[32] Considering that the terms of the "secret instruction" were not supposed to be known to the magistrates, this must have appeared to the king as a good joke.

matters abroad." "A just dependence upon and subjection to your Majesty, according to our charter, it is far from our hearts to disacknowledge." Yet it is "a great unhappiness" to be so reduced "as to have no other testimony of our subjection and loyalty offered us but this, viz., to destroy our own being, which nature teaches us to preserve, or to yield up our liberties, which are far dearer to us than our lives."[33]

Along with this petition the court sent letters addressed to Robert Boyle, Lord Clarendon, and Secretary Morrice. To Boyle they said "we can sooner leave our place and all our pleasant outward enjoyments, than leave that which was the first ground of wandering from our native country."[34] Secretary Morrice they asked to appear for them in the debates before the council. "We are poor and destitute as to interest with any that have power to be helpful to us at such a time, except the Lord be pleased as formerly he hath done to move your Honor's heart in our behalf."[35] But these letters, like the petition, made no impression upon those to whom they were addressed other than to create surprise at the demands they made. Boyle answered that he was "amazed to find that they demanded a revokation of the Commission," that after reading over the instructions with Clarendon he thought their demands unreasonable, and that their "friends there will be much discouraged from appearing in their behalf."[36] And Clarendon wrote that he had read over their petition to the king, and that he confessed to them he was "so much a friend to their Colony, that, if the same had been communicated to nobody but himself, he should have dissuaded the presenting the same to his Majesty," who he presumed would not "think himself well treated by it." He says that he and Mr. Ashurst have read over the instructions to the royal commissioners and cannot

[33] The commissioners reported that underhand dealings were employed by the magistrates to have this petition adopted. Cartwright to Nicolls, N. Y. Doc., III, 84.
[34] Hutch. Coll., 388.
[35] Colonial Papers, 1664, Oct. 19.
[36] Danforth Papers, Mass. Hist. Soc. Coll., 2 s., VIII, 49.

understand what is meant by their saying the charter is in danger. The commissioners are to see that the charter is observed and not to meddle with justice. But in special cases where injustice has been done it cannot be expected that the king has no remedy and the people no redress by appeal. And he adds, " it will be absolutely necessary that you perform and pay all that reverence and obedience which is due from subjects to their king." [37] And Secretary Morrice answered his letter and the petition, by writing that the king was not pleased with the letter, " and looked upon it as the contrivance of a few persons who had had too long authority there," and that " his Majesty had too much reason to suspect that Mr. Endicott, who had during all the late revolutions, continued in the governorship there was not a person well affected to his Majesty's person or government." Hence they were requested to choose some one else in his place.[38]

While this ineffectual attempt was being made to have them recalled, the royal commission had completed the subjection of the Dutch colony. They now, before leaving New York, took up the important task of adjusting the boundary between the Duke's province and Connecticut. Here there was a decided conflict of claims, both based on recent royal grants. The western limit of Connecticut had been designated as the " South Sea " thus including both New Haven and the Dutch possessions, while the Duke of York's charter ex-

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[37] Letter from Clarendon, March 15, 1665, Hutch. Hist., I, app. 464. One would like to know whether Clarendon really thought true what he was writing, or whether as in dealing with the Dutch in the previous year, he was merely keeping up the deception. With Boyle and Ashurst, it was somewhat different as they probably knew nothing of the secret instruction. For these conflicting views about prerogative and charter rights, see below, p. 140. But whether Clarendon believed it or not he thought that his maintaining the prerogative, and the king's answer to the petition would " dispose them (the magistrates) to a better temper." Clarendon to Maverick, March 15, 1665, N. Y. Doc., III, 92.

[38] Letter from Morrice, Feb. 25, 1665, N. Y. Doc., III, 90. It was the king's desire that Nicolls be chosen governor; see above. Before the letter reached the colony, Endicott was beyond reach of the king's displeasure. He died, March 15, 1665.

tended his province eastward to the Connecticut River. It was not strange, therefore, that Connecticut, in spite of the favorable treatment she had so far received from the home government, should, at the approach of the royal commissioners, view her liberties as in "equal danger with those of their sister colonies." But Connecticut adopted a different method to protect her rights from that pursued by Massachusetts. Instead of obstructing and opposing, the general court proceeded "to congratulate his Majesties Honorable Commissioners" and made them a present of four hundred bushels of corn.[39] Yet, while putting forward this conciliatory attitude, they were anxious to have the question of their jurisdiction over New Haven settled in their favor, before the commissioners should take up the matter of boundaries. The resistance of New Haven to the Connecticut charter had been carried on vigorously since 1662 both in her own court and that of the united colonies, and while she was fighting a losing battle owing to the defection of her outlying towns to Connecticut, yet the government was by no means ready, in the summer of 1664, to make a submission. This controversy was now looked upon as endangering all the New England colonies, for, if it should come to the ears of the commissioners, New Haven might be annexed to New York, the Duke's province extended to the Connecticut River, and royal authority thus brought much nearer to Boston. But New Haven preferred union with Connecticut rather than absorption in New York. Accordingly, when this phase of the situation was brought to the attention of that colony immediately on the arrival of the commissioners at Boston by messengers from Massachusetts and Connecticut, the struggle was given up.[40] The general court met in August at New Haven and after "much debate" the "danger of standing as we now are if the king's commissioners come amongst us" was so apparent that it was voted to submit to Connecticut until the matter should be deter-

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[39] Conn. Rec., I. 433, 435; Trumbull, I. 272.
[40] New Haven Rec., II, 545.

mined by the court of the confederation.[41] But when this court assembled in the following month it refused to change its decision of the previous year or to interfere further than to urge, on account of the common danger, a speedy settlement of the dispute.[42] Thus, although the formalities of submission were not carried out until December, when the royal commission took up the question of the boundary of New York in November, they were presented with the claim of but one colony; New Haven had to all intents and purposes ceased to exist.[43]

In October, after the preliminary submission of New Haven had been made known, the general court of Connecticut took up the important question of her boundaries with other colonies. Besides the uncertainty as to her western limits her eastern boundary line was in dispute. Connecticut had never given up the claim to the land as far as Narragansett Bay to which her charter entitled her, in spite of the express rejection of the claim in the Rhode Island charter which was passed subsequently. At the same time, then, that a committee consisting of Governor Winthrop, his son Captain Winthrop, Messrs. Allyn, Gold, and Richards were authorized to treat with the royal commissioners regarding the boundary with New York, another committee of five was sent to settle the dispute with Rhode Island and Massachusetts about the possession of the Narragansett country. But it is noteworthy, as regards the attitude of Connecticut in these disputes, that while the former commitee received no official instructions, the latter were forbidden to give up any lands included within the bounds

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[41] N. H. Rec., II, 546.

[42] Records of the court of commissioners of the united colonies, Hazard, II, 488, 497. In the previous year, the court had voted that New Haven "may not by any act of violence have their liberty of jurisdiction infringed by any other of the United Colonies."

[43] Conn. Rec., I, 437; N. H. Rec., II, 549, note. The prolonged debate had, however, reached the ears of the royal commissioners. New Haven boasted that they had been "silent as to the making of any grievance known to the royal commissioners." But Connecticut complained that "their non-compliance was soe abundantly known to those gentlemen." N. H. Rec., II, 552-4.

described by the charter.[44] The uncompromising spirit of this instruction might be expected to render the mission futile, while the more liberal authority given to the former resulted in a settlement entirely favorably to the colony.

Winthrop and his associates after having witnessed the conquest of New Netherland in November met with the royal commissioners at New York to arrange the boundary. The question was fully discussed and the case for Connecticut eloquently presented. It was urged that, should New York be extended to the full limit authorized by the Duke's charter, Connecticut would be practically annihilated. On the other side, it was Colonel Nicolls who, as leading commissioner and Governor of New York, took the most conciliatory attitude. In spite of the fact that the commissioners were informed in their instructions for Connecticut, that, owing to "a difference in matter of fact" in which the king "could make noe clear determination of the right," the Connecticut charter had been granted on the understanding with Mr. Winthrop "that we should find the same submissive to any alteration at that time, and upon such a visitation, as if no charter were then passed to them,"[45] Nicoll's advice was that the Duke's right should not be enforced to the fullest extent. He was of the opinion that such a settlement would violate the Connecticut charter recently granted and so "cast disfavor upon his majesty." Hence, it was agreed that towns purchased, possessed, or gained, by New Haven or Connecticut should belong to Connecticut, provided such a settlement would not bring the Connecticut boundary nearer than twenty miles from the Hudson River. Although this arrangement would considerably reduce the extent of New York, Nicolls assured them it "would be an acceptable service" to the Duke.[46] As a means of fixing more definitely the line twenty miles from the Hudson river, the Connecticut committee suggested, as a starting point, the

[44] Conn. Rec., I, 435.
[45] N. Y. Doc., III, 55.
[46] Ib., 106, 231; Conn. Rec., II, 341.

Mamaroneck Creek which they assured Nicolls would be "twenty miles everywhere from the Hudson River," and "about twelve miles to the east of West Chester." An agreement was then drawn up and signed on November 30, "that the creek or river called Mormoroneck . . . and a line drawn from the east point or side, where the fresh water falls into the salt at high water mark north-northwest to the line of Massachusetts, be the western boundary of the said colony of Connecticut." The southern boundary was declared to be the sea; and Long Island was "taken under the government of his royal highness the Duke of York as is expressed in plain words in the said patents respectively." [47]

It was supposed that the question had been thus satisfactorily settled; yet this did not prove to be the case. On the understanding that the boundary should be twenty miles from the Hudson River, the line was an impossible one. It started about ten miles from the Hudson and instead of running due north, as it should, followed a northwesterly direction. The line described crossed the Hudson near Peekskill and cut the extended southern line of Massachusetts near Ulster County, New York. The royal commissioners, ignorant of the lay of the country, would seem to have been deceived. For, it can hardly be supposed that the members of the committee from Connecticut were all unaware of the location of the line. In the boundary settlement made with the Dutch in 1650 a similar principle had been followed, the line then agreed on running ten miles instead of twenty from the Hudson. The starting point of the line of 1650 had been the west side of Greenwich Bay.[48] Now, Greenwich Bay is only a very short distance east of Mamaroneck Creek, so that if the people of Connecticut supposed, as they did and which is nearly correct, that Greenwich Bay was ten miles from the Hudson River it is impossible that they could have been so ignorant of the location of Mamaroneck Creek as to think it twenty miles

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[47] Conn. Rec., II, 339, 570; Trumbull, I, App., 525.
[48] See above, p. 62.

from that river. Moreover, the line of 1650 was to run due north twenty miles, whereas that of 1664 was deflected to a northwesterly direction. The commissioners afterwards stated that they had been "mistaken by wrong information."[49] That they should be ignorant of the places and distances in question was natural. What is not so excusable is that they did not make some effort to investigate. They must have had the means at hand of determining the general trend of the Hudson River; and a journey from New York ten or twenty miles to the eastward could not have been a very arduous undertaking at that time of the year, in comparison with the long trips they made through New England in the dead of the following winter. But this is not the only instance of their carelessness in the work they were engaged in.

The agreement was never ratified in England either by the king or the Duke of York. When the new charter for New York was drawn up in 1674 it described the eastern boundary of the province in the same terms as the earlier one had done, namely, as formed by the Connecticut River. When Edmund Andros came out as governor of New York immediately afterward, he attempted to enforce the provision of the charter. But Connecticut persisted in adhering to the agreement made in 1664. And the Duke of York, two years later, instructed his governor that he was content to let the matter rest for the present, provided the people of Connecticut did not come closer to the Hudson than twenty miles.[50]

As soon as the boundary between Connecticut and New York had been arranged, Cartwright and Maverick proceeded to Boston where they arrived before the middle of January, 1665. Nicolls remained in New York, and Carr still tarried on the Delaware.[51] Accordingly, as two commissioners could not act officially unless Nicolls was one,

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[49] Commissioners' Report, Colonial Papers, 1665, Dec. 14.
[50] Conn. Rec., II, 339, 570; N. Y. Doc., III, 235.
[51] N. Y. Doc., III, 83, 84, 87.

Maverick and Cartwright began to "insinuate" themselves with the people of Massachusetts. In January they reported that the people were in great alarm over the safety of their government; that they were complaining of the great expense of 300 pounds to which the colony had already been put for entertaining the commissioners; that it was rumored that a tax of 12 d. per acre of land was to be imposed; and that three or four persons had been admitted to the general court in order to avoid the censure of the king.[52] By February rumors as to what was to be done had increased. The discipline of the church was to be overthrown and appeals allowed to England. The people were making wagers that the commissioners would not sit as a court in Boston. Cartwright had given up hope of getting a good election and suggested instead, that the freemen should be called together to hear the proposals from the king, and that the other colonies should be visited first in the hope of getting their submission as an example for Massachusetts. He himself had not yet dined with any of the freemen, but said he would not "hinder his Majestie's service" by "saving of a little expense."[53] Maverick, however, knew the country better and could not resist the opportunity to parade as the king's officer. According to his idea Cartwright had been "too retired." He hoped that he had "not been over sociable." He had visited his friends, and was mistaken if he "did not undeceive both Magistrates and Ministers and other considerable persons. It cost (him) unavoydably 10 pounds."[54]

Carr finally reached Boston on February 4, having stopped for several days on his way at Newport, where "his presence gave great satisfaction" and where he delivered to the magistrates of Rhode Island the letter from the king.[55]

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[52] Cartwright to Nicolls, Jan. 25, 1665, N. Y. Doc., III, 84. Compare Mass. Rec., IV (ii), 136.

[53] Cartwright to Nicolls, N. Y. Doc., III, 87; to Secy. Bennet, ib., 89.

[54] Maverick to Nicolls, ib., 88.

[55] Ib., 87; Arnold, History of Rhode Island, I, 314.

The three commissioners now resolved to carry out the plan already suggested by Cartwright, of visiting the smaller colonies first. Accordingly, having obtained guides, they set out on the 16th for Plymouth, where they arrived before the 22d; passing on, accompanied by the governor and Major Winslow, they reached Rhode Island on March 4, having been met at Seaconck by a committee from the general court; they then visited Connecticut, and, returning through the Narragansett country, Maverick and Cartwright reached Boston again on the 14th and 13th of April, respectively, while Carr, as usual behindhand, had not arrived at that place by the 19th.[56] In each of these colonies the commissioners were well received and their acts met with no particular opposition. In Rhode Island they were made to feel most at home; their presence afforded a "guarantee of safety and increased the feeling of loyality."[57]

To each of these colonies the commissioners presented the same demands, similar to those which had been addressed to Massachusetts in the royal letter of June 28, 1662, namely: (1) That all householders take the oath of allegiance and that justice be administered to the king's name; (2) That all men of competent estate and civil conversation be admitted as freemen; (3) That all persons of orthodox opinions, civil lives, and competent estates be given liberty of conscience in religion, either by admitting them into congregations already formed or permitting them to form new congregations; (4) That all laws and expressions in laws derogatory to the king, if any exist, be repealed. To these a fifth was added for Rhode Island, urging that the colony be put in a posture of defense. Most of these propositions accorded with former practices in the several colonies. When this was not the case, the demands were readily

[56] Maverick to Nicolls, N. Y. Doc., III, 93; Cartwright to same, ib.; Arnold, I, 314.

[57] Arnold, ib.; Clarke had been sent to New York with a congratulatory letter; Governor Brenton invited them to stop at his home; and the court voted to pay all expenses of their entertainment. R. I. Rec., II, 86, 92.

assented to.[58] In answering the third, Plymouth added the proviso that persons have not the liberty of withdrawing from the support of an established minister "until they have one of their own," and that in such places as are capable of maintaining "two congregations, so that such congregations as are already in being should (not) be rooted out."[59] The commissioners assented to this condition, and when the propositions were presented to Connecticut and Rhode Island the third was made to conform to this alteration. The general court of Rhode Island objected to the oath required in the first proposition, but substituted an "engagement" to the same effect which was also accepted as satisfactory.[60]

In addition to these general matters the commissioners gave their attention to several things of particular interest to each colony. To Plymouth they suggested a new charter which would bring the colony into closer dependence on the mother country, with the provision that the governors might be appointed by the king. But the colonists "preferred to remain as they were."[61] Another suggestion was made to Plymouth which seems not to have been referred to any of the other colonies. The commissioners said that the king had been informed that the New England confederation was "a war combination made by the four colonies, when they had a design to throw off their dependence on England, and for that purpose." Accordingly they were requested to make a statement to the effect that the articles of confederation did not oblige them to "refuse his Majesty's authority, though any one, or all, of the other three, should do so." To this the colony replied, "the league between the colonies was not with any intent (that we ever heard of) to cast off our dependence upon England, a thing which we utterly abhore."[62] This denial seems to

[58] Commissioners to Secy. Bennet, N. Y. Doc., III, 96; Plymouth Rec., IV, 85; R. I. Rec., II, 110; Conn. Rec., I, 439.
[59] Hutch. Hist., I, 214.
[60] R. I. Rec., II, 112.
[61] Ply. Rec., IV, 92.
[62] Letter from Cartwright to Plymouth Colony, Mass. Hist. Soc. Coll., V, 192; Hutch. Hist., I, 215.

have been sufficient to satisfy the commissioners as to the objects of the confederation for the matter was not referred to in their dealings with the other colonies. Rhode Island was still more submissive. Here the commissioners sat as a court of appeals and heard a number of petitions and complaints, some of which were settled while others were referred to the general court. Of the latter, one at least was referred back again to the commissioners, it being a complaint involving a charge against the governor.[63] The government of the colony thus freely recognized the authority of the commissioners to act as a court of appeals while the commissioners, having gained this acknowledgment, and perhaps in order to establish a record for leniency which would encourage Massachusetts to make a similar submission, were, no doubt, glad to be rid of the responsibility and the trouble involved in deciding the petty disputes of the colonists. Two petitions, however, of greater importance than the others, involving serious charges against the justices of Massachusetts, were reserved for consideration when the commissioners should arrive again in that colony.

But by far the most important question that came before the commissioners while in Rhode Island and Connecticut, was the adjustment of the claims to the Narragansett and Pequot country. To this territory or portions of it all the New England colonies laid claim. Massachusetts by right of conquest from the Pequot Indians and by a submission to her authority made by the settlers at Pautuxet in 1642.[64] Plymouth as a part of the grant made by the council for New England to Bradford in 1630.[65] Rhode Island by virtue of occupation and the royal charter of 1663 which expressly nullified all other grants, and gave to that colony the land as far west as the Pawcatuck river. And

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[63] R. I. Rec., II, 98-109; N. Y. Doc., III, 96.

[64] Mass. Rec., IV (i), 353 (ii), 26, 27; Conn. Rec., I, 570; Hazard, II, 395, 448. Massachusetts also held a patent for this territory granted by Parliament during the Civil War. Rec., III, 49; R. I. Rec., I, 133. She had, however, never attempted to enforce this grant.

[65] Winthrop, History, II, 59; Hazard, II, 200.

finally Connecticut, by right of her charter of 1662 and the original grant to Lord Say and Sele extending east to the Narragansett Bay, both of which, however, were made void, so far as affected this land, by the Rhode Island charter. In addition to these claims, the Duke of Hamilton held a patent from the Plymouth Company, granted in 1631, for a tract of land 60 miles square on the east side of the Connecticut River. The Duke, just prior to the departure of the commissioners from England had petitioned the king to restore this land to him, and his petition had been referred to the commissioners.[66] But the question did not end here. In 1644, Samuel Gorton and several others, settlers at Warwick in the Narragansett country, in resistance to the attempts of Massachusetts to drive them from their lands, procured a deed from the Narragansett Indians surrendering the whole territory claimed by that tribe to the king of England and placing the people under his protection. Two years later this deed was carried to England by Gorton and laid before the Parliamentary Commission.[67] The royal commissioners were fully aware of the existence of this deed. But these same Narragansett Indians had in 1659 sold a considerable tract of this land, lying twelve miles along the west side of the Narragansett Bay, to a group of men known as the Atherton Company. Later, they had mortgaged the remainder of their land to the same company for the insignificant sum of 735 fathoms of wampum. By the foreclosure of this mortgage, the whole Narragansett country had come into the possession of this company which was composed of men from Massachusetts and Connecticut.[68] When the charters for Connecticut and Rhode Island were being applied for, the company had made an effort to have their lands included in the former colony and had partially succeeded, an agreement having been made that they should be allowed to chose for themselves which

[66] Trumbull, I, App., 524.
[67] R. I. Rec., I, 134, 367.
[68] R. I. Rec., I, 464, 465; Conn. Rec., II, 541; Mass. Hist. Soc. Coll., 3 s., II, 5.

colony they would submit to. Accordingly, in 1663, the company placed their lands under the jurisdiction of Connecticut and that colony accepted the surrender and appointed magistrates to assume the government there.[69]

In the face of so many conflicting claims the royal commissioners made no attempt to determine the right of jurisdiction claimed by the several parties. But they were obliged to take some action to put a stop to the contentions between the colonists which had more than once threatened to break out in open violence.[70] For this purpose it was deemed best to seize the territory in the king's name and postpone a definite settlement until the question of right could be determined in England. An Indian sachem was found who confirmed the earlier grant from the Narragansetts to Charles I. This was then adopted by the commissioners, the land was settled on the Indian occupants, they were taken under the king's protection, the district was named King's Province, and the magistrates of Rhode Island were given authority to administer justice there until the king's decision could be heard.[71] Having determined upon this general line of action it remained to fix the bounds of the province and settle the question of ownership in the land. As the Atherton Company was composed of men chiefly from Massachusetts, it appeared that that colony, by encouraging the members, was attempting to prevent the growth of Rhode Island, for it was found that the Narragansett country was "almost all the land belonging to this colony which cannot subsist without it."[72] Accordingly the titles of that company were declared void on the ground that no sufficient consideration had been paid and that its members knew of the previous surrender to the king. The company was ordered to vacate the land within six months, provided the purchase price had been returned by that time. To prevent such aggression in the future the

[69] See above, p. 46; Conn. Rec., I, 407, II, 542.
[70] R. I. Rec., I, 452, 455, 463, 469-473, 493.
[71] Ib., II, 59, 60, 93, 127; N. Y. Doc., III, 96.
[72] R. I. Rec., II, 127.

commissioners issued a decree prohibiting any colony from disposing of land conquered from the Indians beyond its chartered limits. Grants made by Connecticut and Massachusetts as well as by the confederation in the conquered Pequot country were thus nullified.[73] King's Province having been thus reclaimed it was extended from the Narragansett Bay to the Pawcatuck River and the southern boundary of Massachusetts.

But it was one thing to issue decrees, another to get them obeyed. Six months was found to be too short a time for the settlers in King's Province to remove; consequently in August the decree ordering their removal was revoked. More severe measures were taken against an old Indian, Pumham, who claimed some land in the province and was also backed up by Massachusetts as an "appendant towed at their stern." Although repeatedly ordered to remove, he remained, stubbornly refusing to vacate, until Sir Robert Carr secured him a present of 40 pounds, and threatened to eject him by force.[74]

As to the Duke of Hamilton's claim, the commissioners found that it embraced the best parts of both Rhode Island and Connecticut. When they visited Connecticut they informed the authorities there of the Duke's petition and that the matter had been referred to them. In answer the general court drew up a statement setting forth that the original grant to Lord Say and Sele of the same territory was prior to that to the Duke of Hamilton, that the latter had never made any attempt to settle or occupy his land, whereas they had been in quiet possession for thirty years, and that their rights to the land had recently been confirmed by the king. They, therefore, asked that the Duke of Hamilton's claim be silenced by the king. The court at the same time requested the commissioners to represent "unto his majesty" their allegiance and their "ready compliance with his royal

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[73] R. I. Rec., II, 60, 93.

[74] Ib., 94, 95, 132, 134, 137; N. Y. Doc., III, 158; Mass. Rec., IV (ii), 229.

will and pleasure" and asked the "continuance of the shines of his royal favor upon (their) mean beginnings." And as they had "presumed to put the name or appellation of New London" upon one of their towns they requested that it be made "a place of free trade for seven, ten or twelve years." [75]

Having concluded these proceedings with the three smaller colonies, the royal commissioners again, in the middle of April, approached Massachusetts. They did not, however, arrive there in a body but one at a time "in an obscure manner" so avoiding the "honorable reception" provided for them in Boston.[76] Prospects for a favorable termination of their business with this colony had not improved since their former visit. Soon after their arrival Cartwright described the colony as being "in a great uproar" with rumors that he was a papist, Carr was keeping a "naughty woman," and that Maverick was their professed enemy. The ministers and magistrates were holding a secret meeting. They have a better opinion of Nicolls, and, therefore, Cartwright urges him to spare eighteen days to come and aid them in Massachusetts.[77] Nicolls complied with the request and leaving New York, joined the commissioners in Boston by the first of May.

Thus it appears that the controversy with the government of Massachusetts which began on the 2d of May and continued for nearly a month,[78] was undertaken in no compromising spirit on either side. Each party was suspicious of the other. In their first communication with the general court the commissioners referred to the "slanders" circulated, that it was their intention to raise a tax of 5000

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[75] Trumbull, I, App. 530.

[76] Mass. Rec., IV (ii), 177.

[77] Cartwright to Nicolls, N. Y. Doc., III, 93. Cartwright had previously, in January, urged Nicolls to come to their assistance in New England, ib., 87.

[78] The last communication between the commissioners and the general court passed on May 26, Mass. Rec., IV (ii), 215. A letter to Secretary Bennet written on the 27th was signed by Carr, Maverick, and Cartwright. Apparently Nicolls had left for New York. N. Y. Doc., III, 96.

pounds a year for the king and to take away from the colony its civil and ecclesiastical privileges, and intimated that it was their intention, not as private men, but as "persons employed by his sacred majesty," to demand justice from the court against those who had raised, reported, or made them.[79] From the first they had, in accordance with the spirit of their secret instructions, attempted so far as possible to appeal over the heads of the magistrates and general court to the inhabitants of the colony. They had hoped by "insinuating" themselves and prejudicing the people to have some of the existing magistrates displaced. But before their departure to the three southern colonies, Cartwright wrote that there was no hope of getting a "good election," and suggested instead that they should call all the freemen together at the regular time for election.[80] Accordingly, on February 15, the day before they started for Plymouth, they had met with the governor and several magistrates at the former's house and requested that orders be given for the assembling of the freemen on election day so that "they might understand his majesties' grace and favor" to them. And as the magistrates declined to comply, on the ground that such a step would leave the remote towns defenseless against the natives, the commissioners themselves had notices sent out to several towns calling upon the freemen to present themselves at Boston on election day.[81]

The magistrates on their side approached the subject with no less determined spirit. Their line of defense had already been made clear in their petition and letters to England in the previous fall. They were resolved to stand

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[79] Mass. Rec., IV (ii), 184; Danforth Papers, 55. In addition to the narrative of the proceedings with the commissioners prepared by the court and inserted in their records (IV (ii), 157-273), a number of the documents, together with notes on the debates which took place while the controversy was going on, are preserved in the Danforth Papers. These are printed in Mass. Hist. Soc. Coll., 2 s., VIII.

[80] N. Y. Doc., III, 87.

[81] Mass. Rec., IV (ii), 173, 174. To the court's objection Cartwright replied that the motion was so reasonable "that he that would not attend it was a traitor."

firmly on the platform furnished by the terms of their charter. Whether they were familiar with the conditions of the secret instructions, as is probable, or not, they felt certain that an attempt was being made, in spite of the protestations to the contrary, to interfere with the working of the charter as they understood it. In their petition they had quoted at length the terms of the commission giving the agents of the king authority to hear and determine appeals, asserted that this was contrary to their royal grant, and asked that the commissioners be recalled. Having failed in this, they were prepared to resist any attempt on the part of the commissioners to interfere with the course of justice within their jurisdiction. It mattered not that other colonies with equally comprehensive charter privileges, had admitted the right of the king, through his officers, to hear appeals from their courts of justice. They would not discuss the king's prerogative.[82] Their charter was a royal grant, it had been recently confirmed, and until it was distinctly overthrown or superseded, it was to them equally valid with any other act or grant of whatever nature that the king could make. And in all their dealings with the commissioners they were careful to maintain this position; they were the king's subjects, acting under the king's charter, and administering justice in the king's name. This was equivalent to asserting that the king had no authority to change or interfere with or inspect the justice administered under his own enactments. Indeed, while they were willing to take a qualified oath of allegiance to the king, they were careful to limit that allegiance with a declaration that it should not interfere with their duty toward the charter.[83]

The commissioners' dealings with the general court began on May 2, the day before election, while the magistrates were busy preparing for that event. Between that date and the ninth, the commissioners made known, in three

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[82] See below, p. 142.
[83] Danforth Papers, 91.

separate communications, their letter of instructions with reference to Massachusetts.[84] There were twelve headings or subjects, and to most of these the commissioners, in communicating them, added some explanation or comment of their own. In these instructions, the commissioners were directed: (1) To express to the governor and magistrates the king's good will and his intention to preserve the charter. (2) To require aid for the conquest of New Netherland. (3) To communicate to the general court the king's good will and have that body made acquainted with the letters and orders from the king. (4) To require that an accurate map be made of the whole country. (5) To enquire into the relations of the colony with the Indians and how far they were under royal protection. (6) To enquire into the means employed for education both of the colonists and the Indians. (7) Without giving too ready attention to unsupported accusations, "to proceed in examination and determination" of cases where there was undoubted injustice. (8) Where the proceedings of the magistrates had been against equity and contrary to the charter, "to proceed according to justice after a due examination of all matters and circumstances." (9) To require a more complete answer to the royal letter of June 28, 1662, than had yet been given. (10) To apprehend any traitors that might be found within the colony and take the names of any persons who had sheltered them. (11) To inform the government of the colony of violations of the navigation acts, especially of the case of Thomas Deane in 1661, and to require that they be enforced. (12) To collect data in regard to the trade, population, products, and government of the colony.

To most of these enquiries the general court returned fairly satisfactory answers. The magistrates referred to the preparations they had made to send a force of two hundred men to aid in the conquest of the Dutch as an instance of their loyalty. A map of the country was being pre-

[84] Mass. Rec., IV (ii), 178-86, 189-94; N. Y. Doc., III, 51.

pared and they hoped would soon be ready; their relations with the Indians had been upright and for the most part peaceable and they offered to the inspection of the commissioners their own records as well as those of the confederation relating to that subject; an account of their schools and especially the college at Cambridge was furnished showing the amounts of money expended and the results obtained; as to the traitors they had supposed that Whalley and Goffe had left England prior to the act of parliament excepting them from clemency, yet when orders for their arrest came, although the regicides had then left the colony, they had taken measures to have them apprehended; statistics as full and accurate as might be expected were prepared regarding the government, industry, and population of the colony; and as to the navigation acts they were not conscious of having "greatly violated the same," orders having been given by the court for the enforcement of the laws; and in the particular case of Mr. Deane, the commissioners would find on examining the records that complete justice had been done.[85]

Regarding the king's letter of 1662, however, the answer was not so easy to make. The action of the general court at the time that letter had arrived, had been such as to place the magistrates in a very difficult position. Of the five commands then given to the colony, the court had at the time complied with but one, namely, to administer justice in the king's name.[86] Realizing this delinquency, after a delay of two years, when the royal commissioners had first appeared in the colony, the court had changed their laws on the admission of freemen so as to comply technically with the king's requirements. The three remaining orders were still ignored. Nevertheless, the magistrates now informed the commissioners that they had "endeavored formerly to satisfy his majesty's expectations therein." They declared their resolution to "bear faith and true allegiance

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[85] Danforth Papers, 71; Records, 187, 198-203.
[86] See above, p. 51.

to his majesty, and to adhere to their patent," stating that their first governor, Matthew Cradock, had taken the oath of allegiance and that they had given order that the same be taken in the future by all officers and freemen. But the oath which their records prescribed for this purpose was one entirely different from that prescribed by parliament, and was so worded as to make the upholding of their charter a matter of equal importance with their allegiance to the king. As to the use of the Book of Common Prayer, they referred to their late petition to the king setting forth their objections to such usage, and added: "we conceive it will disturbe our peace in our present enjoyments." The commissioners on the other hand cited the recent letter from the king and chancellor as evidence that satisfaction had not been given. They pointed to the oath of allegiance into which the court had put "provisions not therein expressed; and, in short, would curtail the oath as (they did) allegiance, refusing to obey the king." Colonel Nicolls came into court and told the magistrates plainly that such an oath would not "be acceptable to his majesty." Referring to their order for the admission of freemen, he stated that he would like to "understand what is meant," that he might "misinterpret the word" and, therefore, desired that any "penman of it would interpret it."[87]

But the controversy was not to be settled on the question of answering the royal letter of 1662, or interpreting the orders of the court relating thereto. The seventh and eighth "instructions" submitted by the commissioners, involved the matter of hearing appeals. Along with these instructions they had presented a petition received by them from one John Porter, and an inquiry as to where the magistrates preferred to have the case tried, whether in Boston, Providence, or the King's Province. Porter had

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[87] Danforth Papers, 75-76. Nicolls continued, "Abuse not the king's clemency too much. Remember that when the king had well weighed all the expressions in your last petition, and the temper and spirit of those that framed it, though he would not impute it to the colony, yet he was not pleased with it."

been convicted by the general court in Boston of disobedience to his parents and had been sentenced to jail, whence he had escaped and fled to Rhode Island. The recognition given by the commissioners to his complaints alarmed the magistrates the more because Porter was a person of generally bad reputation.[88] The court accordingly informed the commissioners that they "apprehended (their) patent and his majesty's authority committed unto (them) to be greatly infringed," and asked an explanation on the subject before giving in their answer. The commissioners then offered to confer with a committee of the magistrates, and convince them that their charter was "not in the least infringed." The meeting took place on the eleventh of May.[89] Each party insisted that it was acting according to orders of the king; the magistrates cited their patent, giving them full right to administer justice; the commissioners urged the authority delegated to them to hear appeals. Neither side would concede a point and hence no agreement could be reached. The commissioners went to the full length of their power, declaring that as they had a commission of oyer and terminer, they would decide cases without a jury, according to the laws of England, and would admit of new evidence. The committee answered that this would encourage "all sorts of persons formerly punished" to "hope for some reparation to be made to them," and would prove an "insufferable burden" so that they would prefer to return to England and live under the protection of the king "rather than be under the arbitrary determination of his commissioners whose rule is their discretion."

After this conference had broken up, on the same day, the general court gave its formal answer on the question of appeals. They cited their charter granting them full rights of government, and pointed out that the king's recent promise that it should be strictly observed was inconsistent with

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[88] Mass. Rec., IV (ii), 216.

[89] The court appointed a committee of eight to meet the commissioners, among them being Bradstreet, Danforth, and Leverett. Rec., 195-7.

the "hearing and determining appeals and complaints" against them; yet, as they desired to be "doers of truth," they agreed to give such an answer regarding any particular complaints of injustice as would prove to the king that their actions had not been "such as evil-minded men would willingly represent them."[90] On receipt of this statement the commissioners resolved to test the matter. They asked the court whether it would "acknowledge his majesty's commission wherein (they were) nominated commissioners, to be of full force to all intents and purposes therein contained."[91] The next day the court replied by repeating their previous answer, adding, perhaps to divert attention, that they were now ready to take the oath of allegiance as prescribed by their charter. But the commissioners were not to be turned aside from their main object; they renewed their question and demanded a positive answer. The magistrates, however, would not give a straightforward answer which might involve them in a charge of treason. They replied: "We humbly conceive it is beyond our line, to declare our sense of the power, intent or purpose, of your commission; it is enough for us to acquaint you what we conceive is granted to us by his majesty's royal charter."[92] Annoyed by these "dilatory answers," each "more dubious" than the other, the commissioners proceeded without delay to test their authority in another manner. On the 23d they informed the court that they would proceed the next day at "nine o'clock in the morning at the home of Captain Thomas Breedon" to "sit as his majesty's commission to hear and determine the case of Mr. Thomas Deane and others, plaintiffs, against the governor and company, and Joshua Scottow, merchant, defendants," for injustice done Mr. Deane when he had tried to enforce the navigation laws in 1661. At the same time a summons was issued to Joshua Scottow to appear at the time and place men-

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[90] Danforth Papers, 67; Mass. Rec., IV (ii), 199.
[91] Ib., 75; 204.
[92] Ib., 81; 207.

tioned.[93] The general court immediately refused to be made defendants before such a tribunal or to permit the case to be heard. They drew up a statement of their position, their objections to the course the commissioners were pursuing, and the evils it would lead to, concluding with the following order, addressed to the people of the colony: "In observance of our duty to God and to his Majesty, and to the trust committed unto us by his Majesty's good subjects in this colony, wee cannot consent unto, or give our approbation of the proceedings of the aforesaid gentlemen, neither can it consist with our allegiance that we owe to his Majesty to countenance any shall in so high a manner go crosse unto his Majesty's direct charge, or shall be their abettors or consentors thereunto. God save the King."[94] A copy of this resolution was sent to the commissioners. But, it being ignored, the court, at eight o'clock the next morning, had it proclaimed by sound of trumpet in several parts of the town.[95] The case was not heard and the royal commissioners were completely defeated. The next day they sent a statement to the court that they would waste no more labors, but refer the matter to the king, "who" they said, "is of power enough to make himself to be obeyed in all his dominions." The magistrates then informed them that the case of Thomas Deane would be taken up before the court the next day at nine o'clock, and invited them to be present at the hearing. The commission replied that this would be "an unheard of practice" inasmuch as the colony was a party to the dispute and could not act as judge. Thus ended the attempt of the royal commission to "reduce" Massachusetts.[96] On the day following this last

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[93] Danforth Papers, 83; Mass. Rec., IV (ii), 208.

[94] Mass. Rec., IV (ii), 210.

[95] Letter of Carr and Maverick to Secy. Bennet, N. Y. Doc., III, 107. "Under Col. Cartwright's window, he being then lame of the gout at Captain Bredon's where we intended to have sit."

[96] They reported: "neither example nor reason could prevail with them to let the commissioners to hear and determine so much as those particular causes, which the king had commanded them to take care of." N. Y. Doc., III, 110.

communication, Nicolls went back to New York and a few weeks later the other three commissioners proceeded to New Hampshire.

The provinces of New Hampshire and Maine had for a number of years been under the government of Massachusetts, although the heirs of John Mason and Ferdinando Gorges had never abandoned their claims to propriety there. The king's instructions to the commissioners made no mention of these provinces. Yet before leaving England they had been charged with various items of business which required their presence there. Mason had made Colonel Nicolls his agent and attorney for New Hampshire and had entrusted him with the papers relating thereto.[97] On June 8, 1664, the king's attorney-general had made a report affirming Gorges' proprietorship in Maine. Three days later, letters in the king's name were directed to the government of Massachusetts and the inhabitants of Maine, requiring the one to immediately withdraw all officers and cease exercising jurisdiction within the territory, and the other to render obedience to Gorges or his agent or immediately show cause for the contrary.[98] An agent for Gorges, John Archdale, accompanied the commissioners who also brought these letters from the king. As soon as they had arrived in America, Archdale had proceeded to Maine, published the king's letter, and began to stir up opposition to Massachusetts.[99] Securing the support of a portion of the inhabitants he directed a letter to Massachusetts calling upon that colony to surrender its claims to Maine, in obedience to the king's orders. On November 30, 1664, while the royal commissioners were still engaged in the reduction of New Netherland, the governor and council answered this letter. They asserted that Maine belonged to their colony by patent, and that it was the king's pleasure that they have opportunity to make answer to the claim of Gorges before the

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[97] Joseph Mason to Robert Mason, Colonial Papers, 1665, July 16.
[98] Colonial Papers, 1664, June 8, 11; Hutch. Coll., 385.
[99] Williamson, I, 414.

question was definitely settled, and that, therefore, no commissioners or agents, other than their own, ought to exercise any authority in Maine.[100]

In fact the government of Massachusetts had not the slightest intention of withdrawing its authority from either New Hampshire or Maine. As soon as the general court met in the following spring, in the midst of the controversy with the royal commissioners, the magistrates took pains to reassert that authority in no unmistakable terms. On May 3, new officials were sent into both provinces to keep order and see that the regular laws were enforced; should they be hindered or interfered with by any persons, they were instructed to have such persons arrested and brought to trial.[101] In preparing the map required by the commissioners the court included the territory along the coast as far as Casco Bay, and accompanied its presentation with an elaborate defence of their claims, in which, as usual, they professed to adhere strictly to the terms of the charter. The attempt resulted in an excellent example of Massachusetts sophistry. According to the charter the northern boundary of the colony was to be three miles northward of the Merrimac River.[102] In determining this line the government of Massachusetts had surveyed the river to its head waters in Lake Winnipiseckik and run a straight line from there east to Casco Bay, nearly one hundred miles north of the mouth of the Merrimac. The boundary thus established included all of the settlements in New Hampshire and nearly all of those in Maine. Such a line was claimed as necessary to "comprehend the breadth and retain the lattitude of the patent's line," for "if it did wind crooked with the river it would lose both breadth and latitude at the sea compared

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[100] Mass. Rec., IV (ii), 247.

[101] Ib., 147, 245, 248.

[102] "Or to the northward of any and every part thereof and all lande and hereditaments whatsoever lying within the limits aforesaid north and south in latitude and breadth and in length and longitude of and within all the breadth aforesaid throughout all the main lands there from the Atlantic to the South Sea."

with what it hath at the river's head."[103] The magistrates denied that Ferdinando Gorges had expended any such sum as twenty thousand pounds in Maine, or that they had been the first to interrupt his authority there. They claimed that their own charter antedated the grant to Gorges by several years, and, therefore, should be first satisfied, that their failure to establish this complete boundary when the colony was first planted was owing to the expense it involved and in no wise invalidated their rights, and they presented the affidavits of several Indians and surveyors who had located the head waters of the Merrimac River and the line from there to the coast.[104]

When the commissioners proceeded into New Hampshire, they were handicapped by the absence of Nicolls who as the representative of Mason should have been present in person. Nevertheless, learning that Massachusetts had originally asserted authority only to a point three miles beyond the Merrimac River, they concluded that the exercise of jurisdiction beyond that line was usurpation, maintained by terrifying the people into submission.[105] They then proceeded, by similar methods, to overthrow the authority of the usurper. With considerable difficulty, threatening violence and destruction to such as opposed them, they succeeded in obtaining a few signatures to a petition urging that the province be taken into the protection of the king.[106] Acting upon this petition as an expression of the voice of

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[103] Mass. Rec., IV (ii), 236-7; . . . "two north lines the one straight the other crooked is altogether incongruous to the patent. The words 'all lands hereditaments etc.' and 'all the breadth,' the word 'all' thus repeated can imply no less than to comprehend all the lands in the line and latitude and breadth aforesaid." The words "all lands and grounds etc. lying within the said bounds and limits . . . confirm that one straight line must be continued from the said river head to both the seas named or some part within the said limits will be left out."

[104] Mass. Rec., IV (ii), 240-42.

[105] Commissioner to Secretary Bennet, N. Y. Doc., III, 101; Colonial Papers, 1665, Dec. 14.

[106] Mass. Rec., IV (ii), 266; New Hamp. Prov. Papers, I, 277. The best portion of the people refused to sign. The instigator was Abraham Corbett. See below.

the people, the commissioners proceeded to release the towns from the jurisdiction of Massachusetts, which, they promised, should not come further than the ancient "bound house," and to appoint justices and magistrates to carry on the government in the king's name.[107] On July 9, the circular letter from the king requiring the colonies to be put in a posture of defense against an attack by the Dutch reached the commissioners.[108] They made this the pretext for an order to the inhabitants of Dover, Portsmouth, and Exeter, to assemble and hear the king's commands. Immediately upon hearing of this order the people of Portsmouth dispatched a messenger in hot haste with a letter to the governor of Massachusetts informing him of the action of the commissioners and asking for instructions. The messenger arrived at the home of Governor Bellingham in Boston about midnight, July 11. The same night Bellingham sent word to the deputy governor and several magistrates to meet at his house the next day. At this meeting an order was addressed to the constable in Portsmouth directing him in the king's name to "warn all persons so assembling to depart home to their respective places" and to report the names of those refusing to obey, to the general court. While this prompt action did not prevent the commissioners from holding their meetings and delivering the king's letter, it did result in keeping many people away, thus defeating the object of the commissioners which was by public meetings to get the assent of the populace to their acts.[109] The governor and council then addressed a note to the commissioners complaining of their conduct in holding meetings in the towns, pointing out that in their instructions they were "directed by his Majesty in a more orderly method," and asserting that the general court held itself bound to keep peace.[110] In answer, the commissioners stated that they

[107] Mass. Rec., IV (ii), 272.
[108] Letter to Bennet, N. Y. Doc., III, 101.
[109] New Hamp. Prov. Papers, I, 270, 271, 273, 275.
[110] N. Y. Doc., III, 98.

were driven to this course of action by the proceedings of the general court in cutting off further proceedings in Boston by "blare of trumpets." They have found that for twelve years Massachusetts acknowledged her boundary to be three miles north of the Merrimac River which shows her present occupation of the territory to be wrong. Their orders to the town of Portsmouth were based on the king's warrant, and the magistrates of Massachusetts are commanded not to contradict orders so given. They informed the governor that his warrant to the constable of Portsmouth gave ground for the fear that he was ready to rebel against the king and warned him not to go too far. "Striving to grasp too much may make you hold but a little. Tis possible that the Charter which you so much idolize may be forfeited." [111]

A few days after receiving this answer the governor and council, hearing also of the circulation of the petition and that the country was being possessed in the name of the king, issued orders for a meeting of the general court to be held on the first of August. When the court met a letter was sent to the commissioners requesting a meeting to discuss the affairs of the northern provinces, but an unfavorable reply having been received from Carr, the magistrates and deputies proceeded to take action on their own account. A committee consisting of Danforth, Lusher, and Leverett was appointed to go into New Hampshire and Maine, summon the people who had been disturbing the government there, proceed against them, and settle the government of the towns by appointing constables and holding courts.[112] This committee appears not to have set about its work until near the beginning of October, after the commissioners had passed on to Maine. But as soon as it did appear in New Hampshire all prospect of the success of the royal commission there vanished. The leading people of Dover, Exeter, and Portsmouth came forward and disclaimed,

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[111] N. Y. Doc., III, 99; Commissioners to Gov. Bellingham, July 16.
[112] Ib., 100; Mass. Rec., IV (ii), 278.

under oath, any part in the petition to the king or the acts of his commissioners. The petition, they asserted, was obtained for the most part in a secret and underhand manner and received but few signatures. A warrant was issued for the arrest of Abraham Corbett, the chief instigator of these proceedings, and the authority of Massachusetts was restored in all the towns. When the commissioners made their report to the king they were compelled to admit that they had left New Hampshire as they found it, in the possession of Massachusetts.[113]

In Maine the commissioners met with somewhat better success. They disregarded both the right of Gorges and the authority of Massachusetts. A petition was circulated setting forth that the people had long been distracted by the conflicting patents and claims, that they feared worse entanglements if Gorges' propriety was recognized, and asking that they be taken under the king's government without dependence on any patent. Some signatures were obtainel from the party of royalists and those dissatisfied with Massachusetts; others were frightened into signing by the same means as had been employed in New Hampshire.[114] The commissioners then received the inhabitants "into his majesties more immediate protection and government" and forbid either Gorges or Massachusetts "to molest any of the inhabitants of the province with their pretences or to execute any authority" there. As soon as this had been done they appointed justices and magistrates for all the towns and gave them authority to hold courts and administer justice. These justices, together with deputies to be chosen from the towns, were authorized to meet as an assembly at York which was designated to be the seat of government. About two months were spent in the province. Before they left they had declared void all land titles derived from Indian deeds or the Lygonia patent.[115]

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[113] Records, ib., 267-73; N. H. Prov. Papers, I, 280; N. Y. Doc., III, 101; Colonial Papers, 1665, Dec. 14.

[114] Colonial Papers, 1665, July 26; Mass. Rec., IV (ii), 249; Williamson, I, 415.

[115] Records, ib., 250; N. Y. Doc., III, 101; Williamson, I, 424.

These proceedings appear to have been in violation of the king's letter of June 11 affirming Gorges' rights. Yet the commissioners justified their acts on the ground that the people were tired of the contentions between Massachusetts and Gorges and that such a course was necessary in order to secure peace within the province. They asserted that more care was necessary and better government, or the territory would never be well peopled or well cultivated.[116] For some time the inhabitants quietly submitted to the new government. When the members of the committee, sent by the general court of Massachusetts to protect its interests in the northern provinces, arrived at the Piscataqua on the borders of Maine, they were warned back by Sir Robert Carr who ordered them to proceed no further.[117] Fearing that an attempt to enforce their authority in Maine might lead to bloodshed, Danforth and his companions turned back. And for more than two years the province of Maine continued under the authority established there by the royal commissioners. But if the government which these emissaries found there was loose and distracted, that which they left proved to be even more inefficient. The justices soon became unpopular and their efforts to dispense justice unavailing. Even while acting in the name of the king they were guided by the laws and customs of Massachusetts. The last assembly under the commissioners' arrangement was held in 1668. After this, general confusion prevailed, and, a portion of the people appealing to Massachusetts for protection, that colony resumed its former jurisdiction.[118]

From Gorges' province the royal commissioners proceeded eastward into the territory beyond Pemaquid which had been included in the grant to the Duke of York. Here

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[116] N. Y. Doc., ib. There was some ground for this complaint. The towns were widely scattered and separated by considerable distance from Boston. For two or three years their deputies had not appeared in the general court at that town. Mass. Rec., IV (ii), 2, 41, 72, 100.

[117] N. Y. Doc., III, 107; Mass. Rec., IV (ii), 273; Colonial Papers, 1665, p. 335.

[118] Records, ib., 370-2, 400; Williamson, I, 425, 436.

a government was established in the name of the Duke, resembling that which had been provided for Maine. The territory was erected into a county and the name changed to Cornwall. But here also their arrangements were altogether inadequate. They reported the country as consisting of three small plantations, composed mostly of fugitives from justice, and fishermen, who "have as many shares in a woman as they have in a fishing boat."[119] For such a community it was not deemed necessary to provide a system of legislation, trial by jury, military defence, or the support of religion.

With these acts in Maine and the county of Cornwall, the collective proceedings of the royal commissioners ceased. Soon after returning to Boston, Cartwright sailed for England carrying the official papers and report of the proceedings.[120] Carr remained in Boston until December, 1665. He then went to Rhode Island where he spent the remainder of the winter. Being anxious to remain in the colonies he requested that the territory in Delaware for which he had "risked his life" be confirmed to him. Failing in this, he asked for a grant in the Narragansett country or to be made governor of Maine. Later in the year he went to New York and in the Spring of 1667 sailed for England.[121] Maverick, after spending more than a year in Massachusetts, made several journeys between that colony and New York in pursuit of his own and the king's interests, and finally settled down at the latter place in a house on the "Broad Way" given him by the Duke of York.[122]

In estimating the work of this commission, attention should be directed to the objects for which it had been sent out. The reduction of New Netherland was its first and most important mission, and this had been successfully accom-

[119] Colonial Papers, 1665, Dec. 14; Williamson, I, 421, 423. The country had previously been called Sagadahock or New Castle.
[120] N. Y. Doc., III, 106.
[121] Ib., 109, 114. 115; R. I. Rec., II, 133, 134.
[122] N. Y. Doc., III, 116, 160, 173, 185.

plished.[123] As has already appeared, their work in New England had, in more than one way, been sacrificed to that end. Consequently the outcome there had not been so satisfactory. Some questions, such as the boundary disputes among the colonies to the south of Massachusetts, were settled temporarily in such a manner as to put an end to the controversies for the time being, and, in some cases, so as to furnish the basis upon which the boundaries were permanently arranged. Thus, the Narragansett country being put virtually under the jurisdiction of Rhode Island, the bounds between that colony and Massachusetts and Connecticut were fixed almost exactly as they have remained ever since.[124] The principle also, upon which the line between New York and Connecticut was to be adjusted, was agreed upon although the line itself was not accurately located.

But in virtually everything that concerned Massachusetts the effort to make a definite settlement proved futile. The magistrates of this colony, backed up by the elders and ministers of their churches, had met the royal commissioners on their own ground, namely, the right of the king to interfere with the charter as that document was understood in the colony, and had successfully resisted every attempt to divert their government from the channels in which they had been accustomed to see it move. They had refused to admit the oath of allegiance in its unqualified form, to allow the use of the Book of Common Prayer, or permit appeals from their courts of justice to be carried to England. The failure to reach an understanding on any of these points was due in part at least to the personnel of the commission.

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[123] Writing to Nicolls in April, 1665, Cartwright had said: "I cannot deny the reducing the Dutch and visiting the English Colonies to be 2 distinct things, and the first to be of the greatest consequence." N. Y. Doc., III, 94.

[124] The line between Rhode Island and Plymouth could not be agreed upon, the former colony claiming, "a thread of land three miles broad" on the east shore of Narragansett Bay which Plymouth would not agree to. The provisional settlement was in favor of Plymouth. R. I. Rec., II, 128.

The colonists were naturally suspicious of a man whom they had had occasion to punish for various misdemeanors and who had carried extravagant reports of their disloyalty to England. Nor could men of Puritan convictions be expected to relish changes in their religious establishment when suggested by men who were suspected of popery, who were accused of losseness in their private morals, and who were ready to denounce them as traitors on the least provocation. Had all the commissioners borne the character of Nicolls their reception in Massachusetts might have been different. Unfortunately, owing to the supreme necessity for his presence in New York, Nicolls was able to give but little attention to the affairs of New England and consequently the work of collecting information, observing conditions, and adjusting disputes, fell to the three commissioners least capable.

Not less unfortunate was it that in their anxiety to find some flaw in the government of Massachusetts, the commissioners should listen to the complaints of men who were known outlaws or disturbers of the peace in several colonies. The first representative of this class who secured their intervention was John Porter who had been convicted of blasphemy in public, disobedience of parents, and denying the authority of the magistrates, and had been committed to jail whence he had escaped and taken refuge in Rhode Island.[125] The attempt to give Porter a new hearing before the commissioners was the first point about which the general court and the commissioners came to a direct disagreement. The alarm of the colonists was increased when the appeal of Gorton and his followers was pre-

[125] Porter had first been committed to the house of correction at Ipswich. Released, he was again complained of, had a regular trial, and was sentenced to stand on the gallows with a rope about his neck, receive a severe whipping, and committed to the house of correction. From there he had escaped. The punishment was not unusual, nor out of keeping with the law and custom of the day. Mass. Rec., IV (ii), 216.

sented. The magistrates justly urged that if such appeals as these were allowed, "all sorts of persons formerly punished would now hope for some reparation to be made them." The most that the commissioners should have attempted in such cases would have been to make a thorough investigation to determine whether the judgments against these persons had been made according to due process of law and on sufficient evidence. For such an examination the general court offered all assistance and prepared to open its books of records to inspection. But this would not suffice. The commissioners must needs have a new trial with themselves as judges, without a jury, in which new evidence would be admitted, and the decision based on the laws of England.[127] Such a course of procedure in these cases was not only to question the right of the colonists, clearly granted in their charter, to enact laws, and the competency of the courts established under the charter to decide cases arising under those laws, but also to throw the whole administration of the government into utter confusion.

The appeal of Thomas Deane was of somewhat different character. In this case the colony as a corporate body was charged with neglect in connection with the administration of the navigation acts.[128] The petitioner, Thomas Deane, claimed that on representing his case in England he had been "charged by a great minister of state that the matter should not be heard but by the king's commissioners." Inasmuch as this was a question of the enforcement of a

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[126] Most of the events which Gorton complained of dated back over twenty years. He had disturbed and troubled three colonies. "Whipt in Plimouth patent, whipt and banished from Rhode Island, imprisoned and only banished out of Massachusetts." Mass. Rec., IV (ii), 256. The principal charge against him in Massachusetts was, "a blasphemous enemy of the religion of our Lord Jesus Christ . . . and also of all civil authority among the people of God." Records, II, 51. Plymouth accused him of "stirring up the people to mutynie in the face of the court." Ply. Rec., I, 105. In Rhode Island, Roger Williams wrote of him, "Mr. Gorton having fouly abused high and low at Aquidnecke is now bewiching and maddening poor Providence." Mass. Rec., IV (ii), 256.

[127] Mass. Rec., IV (ii), 197.

[128] Ib., 35, 208.

recent act of parliament, its determination would appear to have been entirely within the jurisdiction of the king's commissioners and their hearing the case not in violation of the privileges of the colony. But whether alarmed by the nature of the other appeals, or because of a stubborn determination to acknowledge no authority within the jurisdiction not specified in the charter, the magistrates made no distinction between this and the other appeals. They offered, themselves, to see that full justice was done to the petitioner, and summoned Deane to appear and bring his complaint before the court, which, however, he, pleading the order of the "great minister of state," refused to do.[129]

Having completed their progress through the colonies and having failed to secure the submission of Massachusetts it remained for the commissioners to report their acts to the home government and await further instructions. During their journeys from colony to colony they had kept the secretary of state informed as to the state of feeling among the people and had related their chief proceedings. Their formal report was placed before the ministers in London under date of December 14, 1665.[130] In this report and the letters which had preceded it the commissioners spoke very favorably of their reception in Plymouth, Rhode Island and Connecticut. The colonists there desired to thank the king for sending them; justice was administered in the king's name; admission to the body of freemen and to religious congregations was opened to all; and no laws were found derogatory to the king or in opposition to those of England. In Plymouth and Connecticut few complaints were heard and these were trifles. More complaints were heard in Rhode Island but these were freely submitted to the adjudication of the commissioners, even the governor being willing to be tried before them. And they also mentioned that all the colonies had complaints against Massachusetts

[129] Mass. Rec., IV (ii), 219.

[130] Colonial Papers, 1665, Dec. 14; Letters from the Commissioners to Secretary Bennet, May 27, July 26, Nov. 20, N. Y. Doc., III, 96, 101, 106.

and that they constantly heard of the designs formed by that colony to defeat their work. They informed the minister of the establishment of the King's Province, and the adjustment of boundaries. Regarding the Duke of Hamilton's claim they stated the answer and petition of Connecticut, with the information that it included the greater part of Connecticut and Rhode Island. Regarding the northern provinces, New Hampshire and Maine, they reported that the people were in favor of direct government by the king. They attempted to assert the king's authority, but in New Hampshire were prevented by a committee of the general court. Massachusetts has determined to keep that province "though the king write never so often to the contrary." The people of Maine were thankful for their intervention and after the government had been reorganized, asked that they might have Sir Robert Carr for their permanent governor.

Regarding Massachusetts the commissioners reported more at length. The good example of the southern colonies had no effect there. The magistrates would not permit the commissioners to hear a single case, asserting that it was a breach of privilege and stopping proceedings "by sound of trumpet under Colonel Cartwright's window." In this way they silenced about thirty petitions. They have changed the law about admission to the body of freemen so as to comply with the king's order; but a non-church-member to be admitted must be taxed at ten shillings which not more than three in a hundred do pay, whereas church members are admitted whether they are tax payers or not. Attendance at church is enforced by a fine of five shillings. They have many laws derogatory to the king which have been referred to them for amendment but which have not yet been changed. The regicides, Whalley and Goffe, were protected by the people, and Captain Gookin is reported to have brought over and managed their estates for them. For this reason the commissioners attempted to seize for the king a large number of cattle in the King's Province

belonging to Gookin, but the latter refused to answer their summons for a hearing of the case and so nothing was done. The magistrates stand on the charter, and say that so long as they pay one-fifth the gold and silver found "they are not obliged to the king but by civility." They hope by writing to tire out the king, being able to hold out in this way, seven years, and are heard to say, who knows "what may be the event of the Dutch Warr." They gave much aid to Cromwell and asked to be declared a free state. They have often used the expressions "this state," "this commonwealth," and now believe themselves to be so. This colony has engrossed the whole trade of New England. There is a college at Cambridge; "it may be feared that the college may afford as many schismaticks to the church, and the corporation as many rebels to the king, as formerly they have done if not timely prevented." There are many loyal people who petitioned from the first for submitting to the commissioners and compliance with the king's order, but they were ignored. These people say they "had rather suffer as they doe than take up arms" against their brethren. The best course is for the king to "take away their charter which they have in severall ways forfeited, as King Charles I was about to do a little before the Scottish war in 1636 or 1637." "But this without a visible force will not be affected." And if they were assured that they would "not be tyed to religious ceremonies" the majority would not object to a change in their government. "Without this course it will be impossible for the King ever to attain those two ends mentioned in our private instruction. If His Majesty should now let these people rest, having so much declared themselves against his authority over them," the loyal ones will never again dare speak and other ill consequences will follow.[131]

Meanwhile the colony on its part had not been silent. Immediately after the conclusion of the controversy with

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[131] Letters to Bennet, N. Y. Doc., III, 102.

the royal commissioners in May, Governor Bellingham had answered the king's letter regarding the jurisdiction in Maine. He wrote to Secretary Morrice that on the best information obtainable the general court was convinced that that province was within their bounds, and that their patent was granted over eleven years prior to that of Gorges.[132] At the same time the magistrates replied to the king's answer to their former petition. "We cannot acquit ourselves of whatever transgressions the petition contained by laying it upon the contrivance of some few, it being the action of the General Court upon such considerations as our weakness then enabled us unto." But, they continue, referring to the commissioners, "their actings since have sufficiently showed that our fears were not causeless." They have sequestered estates of the king's subjects, protected notorious malefactors, and "summoned our Governor and Company * * * to answer before them to the complaints of particular persons within our own jurisdiction, which tends not only to lay prostrate at once the whole authority of this government and the administration thereof, but also abridges us of the native privileges of Englishmen." The magistrates complain that Maverick has called them "traitors again and again, and threats destruction" to them. They answer the charges against them one by one, and conclude by thanking the king for his assurances that their charter will be preserved.[133] The court at this session also resolved to send the king a present, "in the best commodity that may be procured in this his colony * * * to the value of five hundred pounds."[134] A narrative was drawn up setting forth the entire transaction with the commissioners and containing the full answers of the court to all the demands made upon them, "for the clearing the Massachusetts colony, where they have not fully concurred with the proposals and mandates of his majestie's commissioners,

[132] Bellingham to Morrice, Colonial Pepers, 1665, May 30.
[133] Colonial Papers, 1665, May 31.
[134] Mass. Rec., IV (ii), 150.

from these aspersions of disowning and disobeying his majestie's authority so often reflected on by all his majesty's said commissioners." [135] In the following August this narrative was forwarded to England, together with another petition from the court. In this latter document they assert that Nicolls, "had not his hand in many things that are grievous to us, and we think would not," but that the three other commissioners have violated their instruction and have gone "wee believe, very much against your gracious disposition and inclination" so that the good ends to be obtained in sending them have been frustrated and instead, "your poor subjects threatened with ruin," their government interfered with, the Indians incensed against them, their neighbors animated against them, their bounds reduced, and the unity of the colonies discountenanced. They acknowledge a just dependence; but maintain, that "to be placed upon the sandy foundation of a blinde obedience unto that arbitrary, absolute, and unlimited power which these gentlemen would impose upon us, * * this, as it is contrary to your majestie's gracious expression, and the liberties of Englishmen, we can see (no) reason to submitt thereto." The designs of some to set the colonies "into the flame of contention and confusion" cannot bring any honor to the king. They are willing and hope they are able to clear themselves of any complaints brought against them.[136]

With these reports before the English ministers it was incumbent upon them to decide whether they would support the acts of the commission or permit the colony to have its way. By the spring of 1666, Cartwright had arrived in England and was able to give his personal testimony before the council. The necessity for a prompt decision was at the same time urged by Col. Nicolls, who wrote, "all the other colonies are at a stand to see what reproffe His Majesty will send over." [137] But Clarendon appears to have

[135] Mass. Rec., IV (ii), 219. This narrative covers 116 pages in the Massachusetts Records.
[136] Ib., 274, 292.
[137] Nicolls to Arlington, April 9, 1666, N. Y. Doc., III, 114.

been undecided. "I know not what to say," he wrote, "of the demeanor of the Massachusetts Colony, only that I am very glad that the other Colonies behave themselves so dutifully."[138] That minister was already losing his hold upon the direction of state affairs and it is not possible to say how far he was responsible for the course now adopted. To the three southern colonies, identical letters were written on April 10, by Secretary Morrice in the king's name, thanking them for their "dutifulness and obedience." The king assures them that their conduct "doth of itself most justly deserve (his) praíse," yet it is "sett off with more lustre by the contrary deportment of Massachusetts." He, therefore, assures them that he will "never be unmindful" of their behavior and will on all occasions "take notice of it to (their) advantage."[139] The letter to Massachusetts, written in the same form and on the same date, was quite different in tone. After examining the reports the king, Secretary Morrice states, has found that those who govern the colony, "doe believe that his Majesty hath noe jurisdiction over them, but that all persons must acquiesce in their judgments * * * and cannot appeale to his Majesty, which would be a matter of such a high consequence as every man discerns where it must end." They have been wanting in "duty and respect" to the commissioners, and the king has accordingly declared his "just dislike thereof." He "thinks fitt to recall his royal commissioners" in order that they may report more in detail and that he may pass his final judgment thereon; and, that there may be no question about his being willing to hear both sides, he commands the colony "to make choice of five or four persons to attend upon his Majesty, whereof Mr. Richard Bellingham and Major Hathorne are to be two." In the meantime the colony is commanded not to interfere in any way in the government of Maine or disturb the bounds of the several colonies as arranged by the commissioners, and to set at liberty all per-

[138] Clarendon to Nicolls, April 13, ib., 116.
[139] Hutch. Hist., I, App., 465.

sons who have been imprisoned for petitioning the said commissioners.[140]

The recall of commissioners at this point was thus not intended as an admission of their defeat or as putting an end to the controversy. The scene of action was merely shifted. Instead of giving the commissioners additional instructions, approving or disapproving their actions and providing them with the means of enforcing their orders, they were called in, and the issues were to be settled by dealing with agents of the colony. The proceedings of the commissioners were in substance approved. Clarendon wrote, they " have in truth done all they ought to doe, at least as much as they are supposed to doe." [141] Nevertheless, this was a weak method of conducting the controversy. Unless the event of Massachusetts refusing to send the agents required was provided for in the king's plans, and unless it was fully resolved to carry out those plans promptly, the impression would be given that the recall of the commissioners amounted to a disapproval of their acts and that the matter would be permitted to drop. As a matter of fact this was exactly what occurred. The colony refused to send the agents, the matter was not at once followed up in England, and the Massachusetts' magistrates soon gave out the impression that they had won a decided victory. In November, 1666, Nicolls wrote, " the grandees of Boston are too proud to be dealt with, saying that his Majesty is well satisfied with their loyalty and hath recalled both his commission and disgraced his Commissioners." [142]

It is probable that Clarendon was not altogether responsible for this turn in the controversy with Massachusetts. The tone of his letters indicates that he was, even in 1666, losing his hold upon the management of affairs of state. But the failure to carry out a consistent policy toward the New England colonies at this time, was not due to the de-

[140] Hutch. Hist., I, 466.
[141] Clarendon to Nicolls, N. Y. Doc., III, 116.
[142] Nicolls to Arlington, N. Y. Doc., III, 167.

cline of Clarendon's influence so much as to the fact that the attention of the English ministers and the resources of the English kingdom were engaged in another direction. The attack on New Netherland had, as was foreseen, provoked a war with Holland. And as the war began, so it was conducted throughout by the English, as a war of colonial conquest. Not only were the colonies, from New England southward, ordered to put themselves in a state of defense against the Dutch, but plans were elaborated between the ministers and the colonial governors "for rooting the Dutch out of the West Indies." Tobago, Berbice, and Curacao, were to be attacked, and it was believed that the name of the Dutch would, "ere three months expire, be forgotten in the Indies."[143] When later France joined with Holland against England, Canada was added to the list of conquests to be made. For this colonial extension the aid of the colonies themselves was required. Just prior to the recall of the commissioners, the king had ordered the New England colonies to "damnify the French to the utmost of (their) power from (their) adjacent Plantations."[144] Massachusetts and Connecticut were ordered to consult with Sir Thomas Temple, Governor of Nova Scotia, about the conquest of Canada.[145] And when, at the beginning of 1666, the French began the attack by invading the northern part of New York, Nicolls wrote to Connecticut and Massachusetts urging this as an excellent opportunity to carry out the king's suggestion and rid themselves of their troublesome neighbor to the North. If Massachusetts would furnish one hundred and fifty men and Connecticut a proportionate number, he believed the French could be entirely cut off.[146] But not only was the aid of these colonies requested against the enemies on their own borders; in the following August, the king asked them to send assistance

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[143] Colonial Papers, 1665, Feb. 16, Nov. 16.
[144] Ib., Dec. 5.
[145] Ib., 1666, Feb. 22; Danforth Papers, 102; Conn. Rec., II, 514.
[146] N. Y. Doc., III, 118, 120.

to his fleet in the West Indies which was in a precarious condition. "Wee cannot," he wrote, "as yet finde fitte to spare them those supplyes from hence that are necessary." Considering the importance of the island plantations, the colonies were, therefore, asked to join together to devise "some fitt number of forces such as (they could) best spare to be speedily sent to the reliefe and defense of the said Caribee Islands."[147]

While the English government was in the mood to "request" assistance from its stubborn dependency and was not able to "spare supplyes" for its war fleets, the likelihood was not great that it would make any move which would unnecessarily antagonize that dependency. If in 1661 Clarendon had desired to await a better settlement of the affairs of the kingdom before calling Massachusetts to account, he had not in any way improved the opportunity. But the crippling of the Dutch trade and the destruction of Dutch colonies was far more important in his eyes, and those of the king, than the enquiry into the conduct of Massachusetts. So the people of that colony understood the matter. While the Dutch war continued they felt secure. They thanked the king for warning them of the danger, put their coasts in a state of defense, and reorganized their militia.[148] They had also furnished assistance for the conquest of New Netherland. But both Connecticut and Massachusetts, after consulting with Sir Thomas Temple, declined to undertake the conquest of Canada, giving as their reasons, the danger of a rising on the part of the Indians within their own border, the great distance they would be required to march, and the reported strength of the French forts.[149] Nor is it likely that they saw any advantage to themselves in the transfer of Canada from French to English Dominion. Massachusetts, however, sent to England

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[147] Arlington to Connecticut Colony, Aug. 28, 1666, Conn. Rec., II, 515.
[148] Mass. Rec., IV (ii), 276; Conn. Rec., II, 21, 45.
[149] Mass. Rec., ib., 316; N. Y. Doc., III, 120, 137.

a ship load of masts which arrived in time to be of service before the close of the war. And while the colonies were unable, owing to lack of shipping and ammunition, as well as soldiers, to go to the assistance of the Caribbee Islands, in the following year, 1667, Massachusetts raised a voluntary subscription of provisions for the relief of the fleet there, which Governor Willoughby reported to have arrived just in time to prevent great disorders among the sailors and soldiers.[150]

The treaty of Breda, which settled the war, is considered to have been favorable to England. While Acadia was given up to the French, New York was retained by England, and Dutch interference with the trade of the American colonies was at an end. But in the pursuit of this success, Clarendon's original plans for the chastisement of Massachusetts had been entirely forgotten. Immediately on the recall of the royal commission, that colony began to assume even a more independent attitude than before. The king had commanded the colony to send agents to England, and to set at liberty persons imprisoned for aiding the commissioners. And Clarendon had assured Nicolls that if they did not obey the king's orders, they would have "cause to repent it. For His Majesty will not sett downe by the affronts which he hath received."[151] But about the same time that the king and his ministers were thus fulminating against Massachusetts the general court of that colony was quietly taking its vengeance on Abraham Corbett of New Hampshire, who had been arrested and thrown into prison, because of his zeal in circulating a petition asking the protection of the king. In May, 1666, Corbett was tried and found guilty "of a seditious practize stirring up of sundry of the inhabitants of the place where he lives to discontent against the laws and government here established," and of being "in his course and practize the cause of much trouble to the peace of his neighbors and by keeping of a

[150] Mass. Rec., ib., 318, 327, 345, 347; Colonial Papers, 1672, April 8.
[151] N. Y. Doc., III, 116.

house of common entertainment is a seminary of much vice and wickedness." For this somewhat vague offense he was fined 20 pounds and costs, put under bond of 100 pounds to keep the peace, forbidden to sell any wine or liquor, and deprived of the right to hold any office during the pleasure of the court.[152] In September following, the king's letter was handed to the magistrates by Maverick, who was still in Boston.[153] It produced great excitement for the time being. A meeting of the court was called and several days were spent in prayer. The answer was debated at length in the council. Bradstreet and Dennison took the lead in urging a compliance with the king's order; Willoughby, Bellingham and Hathorne were against such a measure. Petitions signed by upwards of one hundred and seventy-five freemen were sent in from Boston, Ipswich, Salem, and Newbury, requesting that the persons, required, be sent to England, "to clear the transactions of them that govern this colony * * * from the least imputation of so scandalous an evil as the appearance of diss-afection or disloyalty to the person and government of their lawful prince and sovereign." Bradstreet argued: "many of them that have estates to send to England are afraid they will suffer there if nothing be done." Willoughby answered, "we must as well consider God's displeasure as the king's; the interest of ourselves and God's things, as his majesty's prerogative * * * for if the king may send for me now, and another tomorrow, we are a miserable people."[154] The matter was carried over to the next meeting of the court in October at which the chief petitioners were ordered to appear.[155] Here the debate was renewed with vigor. Some were for answering the king's requirement in full, others for ignoring it completely, while a mid-

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[152] Mass. Rec., IV (ii), 293, 304; N. Y. Doc., III, 108, 109.
[153] N. Y. Doc., III, 160; Mass. Rec., ib., 315.
[154] The record of this debate is preserved in the form of notes, in the Danforth Papers, 98-110.
[155] Mass. Rec., IV (ii), 317.

dle party thought other agents than Bellingham and Hathorne should be sent to present a ship load of masts and plead with the king. This last proposition was opposed by the governor, Bellingham, and others, so vigorously "that no orderly debate (could) be had to know the mind of the Court." It was said that the attempt to collect money to pay for the masts would "provoke and raise a tumult."[156] In the end, however, the governor and his followers had their way, and again the king's orders were disregarded. In the same letter by which they declined the expedition against Canada, the magistrate stated to the king: "We have * * given our reasons, why we could not submit to the commission and their mandates the last year, which we understand lie before his majesty, to the substance whereof we have not to add; and, therefore, can't expect that the ablest persons among us could be in a capacity to declare our case more fully."[157] But at the same time, means were found for the collection of money with which to pay for the masts, which were accordingly sent, and friends in London were authorized to raise a loan of 1000 pounds and disburse it for the good of the country. Then as if to emphasize their refusal to obey the king's orders, the colonists in the following spring, 1667, re-elected Bellingham and Hathorne to their former positions of governor and assistant respectively. A year later they overturned the king's authority in Maine by sending magistrates beyond the Piscataqua to assert their former jurisdiction in the county of Yorkshire. After a short controversy with the justices left there by the royal commissioners, these officers were successful in their work, and Ferdinando Gorges' province once more passed into the control of Massachusetts.[158] Nicolls wrote from New York to both the council and the

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[156] Danforth Papers, 110.
[157] Ib., Sept. 11. Bradstreet and Dennison recorded their votes against this answer. When the answer became known, Nicolls, Carr, and Maverick wrote to the court protesting against it and asking a reconsideration. Hutch. Coll., 408.
[158] Mass. Rec., IV (ii), 370, 372, 401.

general court to protest against this "open breach of duty" in usurping "a power over townes and persons after that it hath pleased His Majestie to signify his pleasure" otherwise.[159] But this protest was utterly ignored.

This was the last communication between Nicolls and Massachusetts. A few months later he returned to England where he resumed his position in the service of the Duke of York, and where he could report in person his impression and advice about the management of the colonies. For, though his last protest, like the earlier commands of the commissioners, had produced no effect, Nicolls had the insight to detect and the boldness to propose a remedy by which the "grandees of Boston" might be brought to terms. As early as the fall of 1665, soon after his return from Boston, he wrote to the Duke of York, "I may without boasting assure your R. Highness that within five years the staple of America will be drawn hither, of which the brethren of Boston are very sensible." [160] In the following April he wrote to Secretary Arlington; "to mee it is evident that the scituation of this place will withdraw in short time most of their trade hither, where I have begun to sett up a schoole of better religion." [161] When he learned that the general court had refused to send the agents to England, he addressed Secretary Morrice: "The Massachusetts Colony persist or rather fly higher in contempt of His Majestie's Authority * * The eyes and observations of all the other Colonie are bent upon this strange Deportment of the Massachusetts." But, he suggested, "His Majestie is wise and may easily chastise their undutifullnesse, not by force, which might frighten the innocent as well as the nocent, but by a Temporary Embargo upon their Trade, till such and such persons are delivered into the hands of Justice;" he points out that the well affected among the people "would soone give up the Ringleaders;" nor would the

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[159] N. Y. Doc., III, 170, 172, June 12, July 30, 1668.
[160] Ib., 106.
[161] Ib., 114.

king lose any revenue by the embargo, for if care were taken to send enough ships and goods to New York, "all the trade of Boston would be brought hither, and from hence carried into England."[162] Maverick also, in 1667, besought the secretary that "some speedy order may be taken for a full settlement of His Majestie's colonies in New England entirely under his obedience." A year later, in November, 1667, the matter was again pressed before Secretary Arlington by Nicolls; "when His Majestie is truly informed how advantagiously wee are posted by scituation to bridle his enemies and secure all his good subjects, I humbly praesume to think that his Majestie would afford much of countenance and regard unto us."[163] But these appeals brought no response either from Clarendon or the king. Already, before the Treaty of Breda had released the attention of the English ministers, so that proper consideration might have been given to the administration of the colonies, Clarendon was being displaced in the confidence of Charles II in favor of the unscrupulous Henry Bennet, lately created Lord Arlington. Soon after that treaty had been signed, Clarendon was compelled to leave England to escape the vengeance of his enemies. Those who took his place had neither the energy nor the ability to carry out the project which he had left unfinished. For nearly ten years, until Edward Randolph was sent out to Boston as the king's receiver general in 1676, Massachusetts was allowed to assert her "false Sophistry" unmolested.

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[162] N. Y. Doc., III, 136. This course was recommended by Randolph a few years later. It is noteworthy as the punishment attempted against the same town a century afterwards.

[163] Ib., 167.

CHAPTER V.

RESULTS.

This was the end, after six years of effort, of Clarendon's attempt to bring Massachusetts into that state of dependence "as must be necessary, as they are an English colony, which ought not and cannot subsist but by a submission to and protection from his Majesty's crown and government."[1] During this long controversy it had become plain, perhaps for the first time, that the views held in Massachusetts regarding charter rights were absolutely inconsistent with the views held in England regarding the prerogative rights of the king. From first to last the magistrates of the colony maintained that their charter guaranteed them against any kind of interference or the exercise of any kind of authority on the part of the mother country, except such as was specifically provided for in that document. Their obligations to the king of England were confined to the payment to him of one-fifth of the gold and silver mined in the colony, and a vague recognition of his sovereignty. The force and meaning of this recognition was to be determined by their charter. "Considering how I stand obliged to the king's majestie, his heires and successors, by our charter and the government established thereby, doe sweare accordingly etc.;" this was the form in which they expressed their allegiance.[2] In 1661 when it was learned that Clarendon was preparing to assert his authority in the colony, the general court prepared a statement regarding their liberties and their relations with the mother country. "Wee conceive the pattent (under God) to be the first and

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[1] See above, p. 32.
[2] Mass. Rec., IV (ii), 201.

maine foundacon of our civil politye here . . . " Their duty to the king was expressed under three heads: (1) "We ought to uphold and to our power maineteine this place as of right belonging to our soveraigne lord the king, as holden of his majesties mannor of East Greenwich, and not to subject the same to any forreigne prince or potentate whatsoever." (2) "Wee ought to endeavor the preservation of his majesties royall person, realmes, and dominions," and make known any plot or conspiracy. (3) "Wee ought to seek the peace and prosperitie of our king, and nation" by faithfully governing the colony.[3] These expressions comprehending all their obligation to, or relation with, the authorities in England, they believed themselves fully justified in refusing to admit the use of the Book of Common Prayer, because "it is apparent that it will disturbe our peace in our present enjoyments"; or to admit of an appeal to a tribunal not constituted under their charter, because such an act would be "inconsistent with the maintenance of the lawes and authority here . . . under the warrant of his majesties royall charter."[4]

The magistrates and elders believed their charter to be a mutual compact entered into on their part for convenience, because the king of England had asserted a vague title to the territory in which they wished to settle. But their real title to the land came through purchase and conquest from the natives. They thus owed a kind of voluntary subjection to the king and this was expressed in the charter.[5] In return for a quiet title to the land, and the right to make laws, and administer justice for themselves, they agreed not to subject the country to any foreign prince, to make no laws

[3] Mass. Rec., IV (ii), 25.
[4] Ib., 200, 210.
[5] Belknap, I, 63; Hutch. Hist., I, 230. "Keep to your patent . . . it is instrumentally your defense and security. Recede from that one way or the other, and you will expose yourself to the wrath of God and to the rage of man. Fix upon the patent, and stand for the liberties and immunities confered upon you therein; and you have God and the king with you, both a good cause and a good interest." President Oakes' Election Sermon, 1673.

repugnant to those of England, to christianize the natives, and to yield a fifth of the gold and silver mines to the crown. They believed that they had held rigorously to their part of the contract, and they maintained that the king should be equally scrupulous in adhering to his part. The king's prerogative or the sovereign right of the English government over all English dependencies they refuse to recognize. Bradstreet declared: "The king's prerogative gives him power to command our appearance." Dennison asserted: "the king's commands pass anywhere; Ireland, Calais, etc.," and that in England they were entitled to "a trial at law." "Prerogative is as necessary as law, and is for the good of the whole." "What," he asked, "will the king say? Is it not plain that jurisdiction is denied to his majesty?" But his was the view of the minority. Willoughby enquired "whether Calais, Dunkirk have not been governed by commissions; and if this be allowed, how easily may the king in one year undo all that he hath done." He urged "that the interest of ourselves and God's things" should have as much consideration "as his majesty's prerogative." And Hathorne asserted: "many treatises . . . do affirm that prerogative is not above law but limited by it, and the law states in what cases prerogative is to take place." When the matter was put to the vote it was the view of Willoughby and Hathorne that prevailed.[6]

Under the influence of this conception of their relations with the mother country, the magistrates were confused by the sending of the commissioners within their borders, and were utterly unable to understand how the king could in one breath confirm their charter and yet authorize his agents to examine into, and interfere with their government. On the other hand it was impossible for the people of England to appreciate or comprehend their views. Sir Robert Boyle, and their English agent, Mr. Ashurst, were familiar with the charter and friendly to the liberties of Massachusetts, yet these gentlemen saw nothing in the least objectionable

[6] Danforth Papers, 99.

in the power granted to the royal commissioners. After reading over the instructions and commission, these gentlemen refused to intercede with Clarendon for the recall of his agents. Clarendon wrote "I know not what you mean by saying, the commissioners have power . . . inconsistent with your charter." And he informed them that in cases where injustice had been done, "it cannot be presumed that his Majesty hath or will leave his subjects of New England without hope of redresse by an appeal to him, which his subjects of all his other kingdomes have free liberty to make."[7] And Secretary Morrice, in the name of the king, wrote, the commissioners "are so far from having the least authority to infringe any clause in the said Charter" that it is their chief object to "see that the Charter be fully and punctually observed;" nor can the king "understand your objection except you believe that by granting your Charter he hath parted with his sovereign power over subjects there."[8] The commissioners themselves were not less emphatic in asserting the king's prerogative right. They informed the general court "the king did not grant away his Soveraigntie over you when he made you a Corporation;" in giving them the right to make laws and administer justice "he parted not with his right of judging whether those laws were wholesome, or whether justice was administered accordingly or no;" in giving them authority over his subjects there "he made them not your subject nor you their supream authority. That prerogative certainly His Majestie reserved for himself."[9]

But beyond making these bald assertions regarding the king's prerogative, the royal commissioners made little or no progress toward reconciling these conflicting views. As the first agents of the home government who had enjoyed the privilege of travelling through the plantations from the Delaware River northward, with the express purpose of

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[7] Hutch. Hist., I, App. 465.

[8] Answer to the Petition of New England, N. Y. Doc., III, 90.

[9] Commissioners to the Governor and Council, July 16, 1665, N. Y. Doc., III, 99.

observing conditions and reporting officially to the minister in London, they had an excellent opportunity, by drawing a faithful picture of the condition prevailing there, to correct the false impressions regarding the colonies and to furnish the information necessary for a thorough understanding of their needs. But the character of the commissioners, and the circumstances under which they performed their work made such an outcome impossible. Not only were all of the commissioners except Nicolls thoroughly disliked and distrusted by the people of Massachusetts; but their prejudices, to which they gave full play, made an impartial account of what they saw impossible. The work of studying conditions in New England, and of formulating the report was done almost entirely without the restraining and moderating influence of Nicolls who, with the exception of the few weeks spent in Boston on his first arrival, made but one visit to that town during his entire stay in America. This report is full of inaccuracies and furnishes but little information of value. The latter defect may, it is true, have been due to the unfortunate circumstances under which the report was made. Col. Cartwright, who returned first and carried the original records of the commissioners' proceedings, was captured on his way to England and carried to Spain by a Dutch ship, and though he succeeded in reaching England later, the papers were irretrievably lost.[10] More than a year later, Sir Robert Carr returned to report personally, but died at Bristol immediately on his arrival in England.[11] Yet it must have been malice that dictated the statements, that all the colonies had complaints against Massachusetts; that the answers which the magistrates of

[10] N. Y. Doc., III, 106, 116. The report is in the name of George Carr. It states that the papers, by which it might have been enlarged and substantiated, "were lost in obeying his Majestys command by keeping company with Captain Pierce, who was laden with masts." Had it not been for this, the ship which carried them would "have been in England 10 days before . . . the Dutch caper who after two hours fight took, stripped and landed (them) in Spain." Colonial Papers, 1665, Dec. 14.

[11] N. Y. Doc., III, 161.

this colony gave to the commissioners were "dilatory and impertinent;" that the people "will marry their children to those whom they will not admitt to baptisme, if they be rich;" that Quakers had been "beaten to a jelly;" that the "Colony furnished Cromwell with many instruments out of their Corporation and Colledge;" that they "did solicit Cromwell by one Mr. Wensloe to be declared a Free State;" and that the Indians were converted by "hiring them to come and hear sermons, and by teaching them not to obey their heathen Sachems."

As to the industrial and commercial condition of the colonies, the report gave only the most cursory account. For Massachusetts but four lines sufficed: "The commodities of the country are fish, which is sent into France, Spaine, and the Streights, pipe-stems, masts, fire-boards, some pitch and tarr, pork, beef, horses, and corne, which they send to Virginia, Barbadoes, etc., and take tobacco and sugar for payment, which they (after) send to England. There is a good store of iron made in the Province."[12] Narragansett Bay was reported as the best port in New England for trade, and Rhode Island as raising the best grass and most sheep. "Corn yields eighty for one, and in some places they have had corn twenty-sixe yeares together without manuring." New Hampshire possessed a very good harbor at Piscataqua which could be well fortified, and in which dry docks could be built. "Excellent masts are gotten" there, and the commissioners saw twenty saw mills along the river. Considering that great efforts were being made at this time to extend English trade, shipping, and manufacturing, and that the colonies were regarded as a means contributing to that end, these are very meager statements upon a subject so little understood in England as this one. There is nothing about the extent, the natural resources, or, except in the case of Rhode Island, the fertility of the soil of these plantations. Nothing is suggested about the opportunities for further colonization,

[12] Report, Massachusetts, N. Y. Doc., III, 110.

traffic with the Indians, or the introduction of other staple commodities. In fact there were no statements of any kind about the particular or general needs of the colonies.

However, as these items were either omitted from the instructions furnished the commissioners or made entirely secondary, the blame should not be placed so much to the credit of the commissioners themselves, as to the minister who was responsible for the instructions given them. The commissioners were sent out with two definite objects in view, namely: to annex the Dutch plantations, and to settle the questions in New England about religion, government and boundaries. Concerning the broader questions of colonial administration there is hardly a suggestion. Moreover, as to the two principal objects, there is no doubt, as Cartwright wrote to Nicolls, that the subjugation of the Dutch held first importance. This having been accomplished the commissioners were practically lost sight of. While the commissioners wrote often, individually as well as collectively, either to Clarendon or one of the Secretaries of State, their letters seldom received any answer. Clarendon assured Nicolls that he had "never omitted any opportunity that hath been offered" to write, and said that he had reason to believe "that many of (his had) miscarried."[13] Nor were the commissioners properly supplied with funds with which to support themselves and prosecute their travels through the colonies. As early as January, 1665, Cartwright wrote that nearly all that had been allowed them had been spent and that they were without credit. In July, Nicolls wrote that they had had no supplies since the surrender of the Dutch; in November, he informed the Duke of York that his credit had been stretched to the utmost. By April, 1666, he was, he said, "ruined in estate and credit," while "the commissioners have neither money nor creditt to follow the trust reposed in them, from place to place."[14] If it be said that the Dutch war was responsible for this

[13] N. Y. Doc., III, 116.
[14] Ib., 83, 103, 104, 115.

condition, it is not less true that that war must have been foreseen when the commissioners were directed to sieze New Netherland, and it was a shortsighted and inefficient policy that left them thus, practically stranded in a new country.

The conquest of New Netherland removed one of the chief obstacles in the way of the enforcement of the navigation acts in the American colonies. So long as the Dutch remained in control of that central province, it was impossible to prevent their trading with the surrounding English plantations. Colonel Nicolls was not slow to see the great advantage their subjection gave to England. He was no sooner seated in his governorship of New York than he began to point out to the authorities at home how this advantage should be made use of. He informed them that thousands of English colonists, from Virginia to New England, had been accustomed to be supplied with goods by the Dutch; this source of supply is now cut off; but no advantage can accrue to England unless sufficient ships laden with "merchandise to the trade with Natives and both the English, Dutch and Sweedes" be sent out. Hence he suggested that a company of merchants be formed to trade with New York. His appeal for ships and supplies was, however, not answered, and from this time to the end of his governorship his correspondence, like that of Governor Stapleton's later from Barbadoes, formed a continuous supplication for assistance that never came. "Tis a pitty," he wrote in 1665, "that this place should be neglected, for the trade will be quite lost and all the planters upon the River goe naked if not supplied." A few months later he informed the Duke of York: "The whole trade both inwards and outwards is lost for want of shipping." He said he did not live "so much in apprehension of the Dutch as in the hopes of the arrival at this Port of some English ships to the supply of Trade."[15]

It was probably with a view to this deficiency that Nicolls

[15] N. Y. Doc., III, 69, 103, 104, 106.

had, in the articles of surrender, granted the Dutch the right to trade with Holland for a period of six months. At least he now urged that this liberty be confirmed and extended. He pointed out that three-fourths of the inhabitants were Dutch whose commercial dealings had been entirely with friends at home, and that "the sudden interruption of their factory with Holland (would) absolutely destroy all the present inhabitants." If they should be granted moderate terms of trade, they would in a short time become the best support of the plantation.[16] Following out these suggestions the council for plantations listened to the petition of Stuyvesant in behalf of the Dutch traders and residents at New York, and recommended that permission be granted the Dutch to trade there for a period of seven years. Accordingly the king issued an order in council granting the privilege for three Dutch ships to visit New York yearly for seven years.[17] The English merchants, however, objected to others enjoying the benefit of a trade which they could not themselves supply, and entered a protest claiming that the three ships gave excuse to the Dutch to send others, and that by this means the whole trade with the American colonies and the West Indies was being engrossed by them, to the utter discouragement of English merchants. In consequence of this protest the privilege was withdrawn in November, 1668, and it was ordered that henceforth the navigation acts be strictly enforced.[18]

But Colonel Nicolls was not the only one to lament the inability of England to furnish ships to handle the trade of the plantations, nor the Dutch residents in New York alone in suffering from failure of supplies because of the restriction which confined the commerce of England to English ships. From 1664 on, complaints became common enough that the effect of the restriction on trade was to ruin the

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[16] N. Y. Doc., III, 114.

[17] Ib., 165, 166. The reason assigned is, "in regard the necessity of a present trade in those parts which cannot at this time bee supplied from hence." Yet the date is Oct. 17, 1667, several months after the close of the war.

[18] Ib., 175, 177.

industry of the colonies. Especially was this true of the sugar plantations, where the stoppage of trade with the French was most keenly felt. The outbreak of war with Holland made conditions worse, inasmuch as many merchant ships and seamen were drawn into the service of the government, and it became increasingly difficult to secure transportation for produce from, and supplies to, the colonies. In fact the war so interfered with the English carrying trade, that the home merchants soon found their supplies cut off. Consequently they petitioned that the navigation acts be suspended for the time being, in order that goods might be imported in foreign vessels, and so escape seizure by the Dutch. But the farmers of customs opposed the scheme on the ground that it would give foreign nations too much of an insight into the condition and products of the colonies and that, once having become accustomed to visit colonial ports, it would be difficult to keep them out in the future. Moreover, they asserted, it would not serve the end hoped for because the Dutch were so familiar with English goods, that they would recognize and seize them even in foreign ships.[19] In place of this, they recommended that the ships sailing home from the colonies should come at stated times, not singly, but in fleets, and accompanied, if possible, by a convoy. By this plan it was thought the Dutch privateers might be avoided, and colonial products safely landed in England. Accordingly for several years orders were issued with a view to enforcing this scheme. Licenses were refused for ships going out to the colonies, except at the time agreed upon. But the result was not entirely satisfactory. If ships were by this method kept out of the hands of the Dutch, the goods with which they were laden often perished, owing to the inevitable delay of getting the fleet together.[20]

Under these circumstances no progress could be made toward securing a strict enforcement of the navigation acts. They were avoided on all sides. In New England the

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[19] Colonial Papers, 1665, Feb. 28.
[20] Ib., 1665, Nov. 16; 1666, Dec. 15, No. 1365.

connivance of officials was becoming notorious. Nicolls proposed as a punishment to Lord Baltimore for allowing trade between Maryland and New Netherland, that his patent be forfeited, or at least that he be compelled to surrender that part of his province which had been conquered from the Dutch. Clarendon, by subjecting New Netherland, struck a severe blow at the Dutch trade. But he was not destined to see the navigation policy which he had fostered, successfully enforced. One of the first acts of the ministers who succeeded him was to investigate the status of colonial trade. They found that the governors of colonies had not all taken oath to enforce the laws, that ships not qualified by law had been permitted to trade in colonial ports, and that there was much carelessness in the matter of bonding ships and forwarding the bonds to the authorities in England, as required by the acts of parliament. As a remedy, they proposed that the king maintain an officer in each plantation to administer the oath to the governors to enforce the laws. Several years later this suggestion was acted upon with regard to New England by dispatching Edward Randolph thither.

JUSTICE IN COLONIAL VIRGINIA

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CONTENTS

CHAPTER PAGE

Introduction: Preliminary Steps in the Organization of the Judiciary (1607-1619) 9
- Local Government of the Colony 10
- Judicial Powers of the Local Council 10
- Character of the Justice Administered by the Council 11
- Lord De La Warr Chosen Governor 12
- The Martial Laws Enforced by Dale 13

I. Judicial Powers of the Assembly 19
- Organization of the Assembly 19
- Jurisdiction of the Assembly 19
  - Highest Judicial Authority 19
  - Power to Pass Bills of Attainder 20
  - Jurisdiction in Criminal Causes 21
  - Jurisdiction in Civil Causes 21
- Method of Procedure 23
- Character of the Justice Administered by the Assembly 24
- Appeals to the Assembly Stopped 24
- Appeals to England 28

II. The Superior Courts 33
- The Quarter or General Court 33
  - The Evolution of the Quarter Court 33
  - Time of Meeting of the Court 34
  - Place of Meeting 37
  - Appointment of Judges of the Court 38
  - Number of Judges 42
  - Attendance of Judges at Courts 42
  - Compensation of Judges 43
  - Method of Procedure 44
  - Judicial Powers of the Governor 44
  - Jurisdiction of the Court in Civil Causes 45
  - Jurisdiction in Chancery Causes 48
  - Jurisdiction in Criminal Causes 48
  - Presentments by Churchwardens 49
  - Character of Justice Administered by the Court 50
  - Elements of Weakness in the Constitution of the Court 53
- Courts of Oyer and Terminer 57
  - Special Courts of Oyer and Terminer 58
  - Struggle over the Formation of the Regular Court of Oyer and Terminer 59
  - Terms of the Court 66
  - Juries in the Oyer and Terminer Courts and the General Court 66
  - Benefit of Clergy 68
- The Ecclesiastical Court 70
- Admiralty Courts 71

CHAPTER PAGE

III. THE INFERIOR COURTS 74
Monthly, or County Courts 74
Monthly Courts Established 74
Personnel of the Court 75
Method of Appointing Judges 76
Number and Attendance of the Judges 77
Time and Place of Meeting of the Court 79
Jurisdiction 80
Method of Procedure 83
Juries 84
Character of Justice Administered 88
Extra-Judicial Duties of the Court 91
Relation of the Court to other Branches of the Government 92
Weakness and Strength of the County Court System 93
The County Courts an Agency for Education 94
Circuit Courts 95
Courts of Examination 96
Slave Courts 97
Courts of Hustings 101
Coroners' Courts 104
Courts-Martial 105
Courts-leet and Courts-baron 107

IV. COURT OFFICIALS AND LAWYERS 108
Sheriffs 108
Constables 113
County Clerks 114
Officers of the General Court 115
Lawyers 115
CONCLUSIONS 122

PREFACE

Considerable attention has been devoted to the study of executive and legislative institutions in the American colonies, but so far the judicial institutions have been comparatively neglected. It is for this reason that this inquiry into the origin, history, and growth of the Virginia colonial judiciary has been undertaken. The purpose of this monograph is to describe the judicial machinery, give the stages of evolution through which it has passed, and show the character of the justice administered by the courts. Some attention is also devoted to the part played by the judiciary in the history of the colony. The aim is to present such facts as will be of value to the historian rather than those that will be of interest to the lawyer. Therefore, a detailed account of legal procedure is not attempted.

I wish gratefully to acknowledge my obligations to Dr. J. C. Ballagh, of Johns Hopkins University, at whose suggestion this work was undertaken, and whose advice and criticism have been of great value in its preparation. My thanks are also due to Professors J. M. Vincent, W. W. Willoughby, and B. C. Steiner, of Johns Hopkins University, and J. A. C. Chandler, of Richmond College, who have made valuable suggestions and corrections; and to Mr. W. G. Stanard, of the Virginia Historical Society, whose advice was very helpful to me in the use of the historical sources that are in the libraries of Richmond, Virginia.

JUSTICE IN COLONIAL VIRGINIA

INTRODUCTION.

PRELIMINARY STEPS IN THE ORGANIZATION OF THE JUDICIARY (1607-1619).

When Virginia was settled, English institutions came with the settlers; but these institutions had, in many cases, to undergo changes before they were prepared to enter the new environment into which they were carried by colonization. They had to return to their infancy and in some instances to pass through stages of growth in the new world similar to those through which they had already gone in the old. This second evolution was more rapid than the first; and America in one century reached a stage in institutional progress which it had taken Europe more than a millennium to attain. Only those parts of the old constitution that were suited to the new conditions survived and became a permanent part of the colonial system of government. For the first decade of its existence, Virginia's constitution, therefore, presented few points of similarity to its great prototype, and, in fact, it was not until 1619 that the likeness of the colonial government to that of the mother country became plainly discernible.

The constitutional history of Virginia begins on April 10, 1606, when King James I. granted to the Virginia Company letters-patent for the establishment of two colonies in America. By this charter, the local government of the southern colony was to be entrusted to a resident council composed of thirteen members.[1] In accordance with the instructions given by the King to the Company, the general council in England (which was to exercise a supervising control over both

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[1] Stith, History of Virginia, Appendix, 3.

the southern and northern colonies) appointed seven men to be of the Council of Virginia. Their names were put in a sealed box, which was not opened until April 26, 1607, after their arrival at Cape Henry.[2]

The local council was to govern the colony according to the laws of England, and was not allowed to pass ordinances affecting life or limb. But with the exception of these two restrictions, its powers were almost absolute. In this council were vested all the functions of government, legislative, judicial, and executive. The opinion of the majority was to prevail in all decisions, and the president could cast two votes in case of a tie. The council was a self-perpetuating body; it had power to fill vacancies and remove members for just cause, and also to elect its president, who was to be chosen annually. The crown reserved to itself the power to punish all persons living in the colony who should at any time "rob or spoil, by sea or land, or do any act of unjust and unlawful hostility" to the citizens of friendly states.

But the council, acting in its judicial capacity, was to try all other offenders, except those who should attempt to seduce any of the colonists from their allegiance to the King and the established religion. Such of these as could not be brought to repentance by imprisonment were to be sent to England for trial. By the instructions given by the King, certain offenses, as "tumults, rebellion, conspiracies, mutiny, and seditions in those parts which may be dangerous to the states there, together with murther, manslaughter, incest, rapes, and adulteries," were made punishable by death, and except for manslaughter, the benefit of clergy was not to be allowed for any of them. In every arraignment for these

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[2] Neill, Virginia Company, 5-6. Brown, Genesis of the United States, 56, 57. Purchas, His Pilgrimmes, IV, 1705. The members of the first council were Bartholomew Gosnold, Edward Maria Wingfield, Christopher Newport, John Smith, John Martin, John Ratcliffe, and George Kendall. Why thirteen were not appointed, in accordance with the provisions of the charter, does not appear from the documents.

crimes, the accused was to be tried by a jury of twelve men unless he confessed his crime or stood mute, in which case judgment was to be passed by the president and council, or "the major part thereof." For minor breaches of its ordinances, the council, by a majority vote, could, without calling in a jury, inflict such penalties as fines, imprisonment, and reasonable corporal punishment. The judicial proceedings were to be conducted orally; but a record was to be made of all cases decided by the court. Persons convicted of capital charges could be reprieved by the council, but only by the King could they be pardoned.[3]

Thus the government of Virginia began as an oligarchy. Gosnold wielded a great influence in the council, and as long as he lived affairs in the colony moved on with comparative smoothness. But after his death the spirit of strife, no longer controlled by his commanding presence, broke out among the rulers, and Wingfield and Kendall were deposed.[4] The majority of the council were not unmindful of their power to expel offending members from their body, but did not show an equal willingness to comply with that part of their instructions which required them to fill vacancies. Consequently, after the expulsion of Kendall and Wingfield, Newport having returned to England, the number of councillors was reduced to three, Ratcliffe being president.

Inimical relations continued to exist between the councillors, and dissentions never ceased to rise until another form of government had been adopted by the colony. Several other members were added to the council, but, by the spring of 1609, the number had been so reduced by deaths and removals that Smith was left sole councillor.[5]

During the period of Ratcliffe's presidency, judicial deci-

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[3] Brown, Genesis of the United States, 67-71, 73, 74; Wingfield, Discourse in Arber, Works of Captain John Smith, p. LXXX.

[4] Percy's Discourse, published in Brown's Gen., 167, 168; Wingfield's Discourse, published in Arber's Smith, LXXVI, 95.

[5] Arber, Works of Smith, 95, 404, 432, 435, 466.

sions were not characterized by the fairness becoming a tribunal of justice. Private spite influenced the councillors to pass unjust sentence against those who had incurred their dislike.[6] However, during Smith's administration, justice seems to have been evenly meted out to all. Offenders were punished, but not undeservedly. Some of the penalties that Smith inflicted for the correction of evil-doers were whipping and "laying by the heels." He made threats of hanging, sent some offenders to England, and ordered certain men to slay the treacherous Dutchmen who were plotting against his life with the Powhatan. As a remedy for the sin of swearing, he employed the water cure in a unique way.[7]

A very important change was made in the government of the colony by the second charter, which was granted to the Company in 1609. A governor was appointed by the Company to supersede the local council and was given almost absolute power in the government of the colony.[8] Lord De La Warr, who was chosen for this responsible place, did not go to Virginia until next year; but in the meantime Sir Thomas Gates had been sent over with a commission to act as governor. He was shipwrecked off the coast of the Bermudas and detained on those islands for nine months, and, therefore, did not reach Virginia until the spring of

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[6] A blacksmith by the name of Reade was sentenced to death for "giving bad language" to President Ratcliffe and threatening to strike him with some of his tools. Reade bought his pardon by betraying a conspiracy headed by Kendall, who was tried and shot.

When Smith returned from his Indian captivity, some of his enemies united with Ratcliffe in an attempt to have him put to death. They charged him with complicity in the murder of his two companions, who had been killed by the Indians, and claimed that according to the Mosiac law he was responsible for their death. But Captain Newport arrived from England just at this time and kept them from carrying out their murderous designs. Arber, Works of Smith, 12, 13, 22, 23, 401.

[7] Every oath that the men uttered during the day was registered, and at night a can of cold water for each was poured down the sleeve of the blasphemer to wash away his sin. Arber, Works of Smith, 126, 168, 169, 401, 473, 480, 481, 483.

[8] Brown, Genesis of the United States, 208, 233, 234, 375-380.

1610, just in time to drop the curtain on the closing scene of the "Starving Time." The council, into whose hands the reins of government had fallen on Smith's departure, now surrendered their authority to Gates, the lieutenant-governor. Prior to this time, a few provisions in the King's instructions were the only rules that had been given to the councillors to guide them in the performance of their judicial duties. But Gates now initiated a system of justice by which judicial decisions were to be rendered in accordance with laws made to suit the peculiar conditions that then obtained in the colony. He wrote out certain rules and ordinances by which the settlers were to be governed during his short rule in the colony and posted them in the church at Jamestown. He thus proclaimed the first legal code ever put in practice in English-speaking America.[9]

In June, Gates was superseded by Lord De La Warr, who, on his arrival in Virginia, selected six men to constitute his council. They were to act only as an advisory body, and did not in any way limit his authority. He had power to remove any of them whenever he saw cause for so doing. Just what part the council played in the administration of justice for the next nine years cannot be determined; but it may be safely inferred from Lord De La Warr's commission and other documents, that during this period the councillors acted only as advisors to the governor in the trial of causes.[10]

The laws proclaimed by Gates were "approved and exemplified" by Lord De La Warr. They were afterwards enlarged by Sir Thomas Dale by the addition of certain articles taken from the martial code of Holland. In this amended form they were sent to Sir Thomas Smith, the Treasurer of the Company, who approved of them and had

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[9] Strachey, A True Repertory of the Wracke and Redemption of Sir Thomas Gates, Knight, printed by Purchas, 1748-1749.

[10] Strachey, A True Repertory, etc., printed in Purchas, IV, 1754. Brown, Genesis of the United States, 380. Proceedings of the Virginia Company, I, 187. Neill's Va. Company, 42, 43.

them printed for the use of the colony.[11] From 1611 until 1619, the colony was governed according to these stern and cruel laws (though the severity of them was afterward toned down considerably), which were known as "Articles, Lawes and Orders, Divine, Politique, Martiall." These laws (which Dale perhaps considered divine in their purpose) made stealing grapes or ears of corn from the public or private gardens an offense punishable by death. Soldiers who should cowardly run away from battle without attempting to fight, and all persons giving to masters of ships commodities to be taken out of the country for their own private use, were to receive the death penalty. Blasphemy, for the second offense, was to be punished by having the offending tongue thrust through with a bodkin. Absence for the third time from any one of the two Sunday church services was a capital crime. Some other punishments mentioned were whipping, cutting off ears, and tying neck and heels together. Sometimes the unfortunate culprit had to lie in this position for forty-eight hours. Any one who violated a certain article of these laws had to lie feet and head together every night for a month.

The colony being under martial law, the captains and lieutenants had the power to punish the soldiers of their companies for certain misdeeds. The officers subordinate to them reported disorders to their superiors, and in their absence punished minor offenses. But the most important cases, both civil and military, were referred to the court martial for trial. In this tribunal sat the captains of the companies, and when any of them were absent, their places in the court were filled by their lieutenants. Offenders who were to be arraigned for trial were kept in the custody of the provost marshal.[12]

It is difficult to say how much severity Dale and his suc-

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[11] Proceedings of Virginia Company, II, 187. Colonial Records of Va., 74.

[12] Articles, Lawes, and Orders, Divine, etc., printed in Force's Tracts, Vol. III, 10, 14, 16-18, 21-26, 38, 40, 46-48, 52, 56. Works of John Smith, ed. by Arber, 507, 508.

cessors put into their execution of these laws. If we are to trust entirely an account of their rule which was given by the party of opposition in Virginia in a memorial sent to England in 1624, we cannot but believe that the rigor of these laws was increased rather than diminished in the execution. According to the statement of the "ancient planters"—as the authors of this document styled themselves—the colonists were kept in a state of "slavery" by their rulers. Cruel and inhuman punishments were inflicted without trial by jury and sometimes for trivial offenses. Among the penalties to which the settlers were subjected, they mentioned hanging, burning, and breaking on the wheel. Some of the colonists were hanged for "stealing to satisfy their hunger." One case is given in which a law-breaker "had a bodkin thrust through his tongue and was chained to a tree until he perished." Many of the settlers, they said, found the government intolerable; some of them committed suicide, while others hid themselves away in holes dug in the ground in order to escape its horrors.[13]

However, it would not be just to Dale and the court party in the Company to accept without question this severe indictment brought against their colonial policy by their enemies. Sir Thomas Smith said that some of these laws were promulgated with no intention of being carried out, but only for the purpose of terrorizing the settlers into obedience to the government regulations.

Furthermore, the Rev. Alexander Whittaker, one of the ministers who lived in the colony during this period, did not consider that Dale's rule was unjustly harsh. In speaking of it, he said: "I marvel much that any men of honest life should fear the sword of the magistrate which is unsheathed only in their defence."[14] Another prominent settler, Ralph Hamor, declared that such severity as that practiced by

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[13] Colonial Records of Virginia 74 et seq. Stith, History of Va., 305.

[14] Purchas, IV, 1771.

Dale was at that time necessary to keep the colony from ruin.[15]

We must also not forget that many of the settlers that Dale and his successors had to deal with were a class of men who would not work except when driven to it by the task-master. This was proved by the fact that when the pressure on them was somewhat relieved they relapsed into habits of idleness. When Dale first came to Virginia shortly after Lord De La Warr's departure, he found the colonists playing at bowls in the streets of Jamestown to the utter neglect of their crops.[16] So we see that the ills of the colony were such as could not be remedied except by heroic treatment. But even after discounting fully the *ex parte* evidence against Dale and his successors and making due allowance for the character of the settlers under their control, we are bound to admit that they erred greatly on the side of severity in subjecting the settlers to such a merciless system of government.

The first twelve years of the colony's history was a period of discipline and suspension of constitutional rights. This abridgment of the personal rights of the colonists was due partly to the character of the settlers and the difficulties which a parent state always encounters in founding distant colonies, and partly to the mistaken policy of the faction controlling the London Company. But by 1619, when Yeardley became governor,[17] the colony was established on so firm a basis that the need for military rule ceased, and the Virginians began to enjoy the rights of other Englishmen. When, however, the old military tyranny gave place to the new regime, after the victory of the Sandys party in the government of the Company, some of the old governmental machinery remained to be employed by Yeardley and his successors. Thus we find that the provost marshal con-

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[15] Smith's Works (Arber ed.), 508.
[16] Smith's Works, 507.
[17] Yeardley was commissioned governor in 1618, but he did not arrive in Virginia until the spring of 1619. Hening, I, 3. Colonial Records of Virgnia, 81.

tinued for some time to perform a part at least of his old duties, and that the commander of the hundred was, in his judicial capacity, transferred from the court martial to the monthly court.[18]

In 1619, the Virginia constitution began to crystallize into its permanent form. Soon the executive, legislative and judicial functions of the government began to be distinguished and assigned to three departments, though the separation in the beginning was only partial and never approached completeness during the entire colonial period. The institutional growth of the colony had not gone far before three channels of administration were found for justice, the assembly, the Quarter Court, and the monthly courts. For a good many years, these were the only courts of justice in Virginia.

The assembly was the supreme court in the colony until about 1682, at which time it was deprived of its authority to try appeals. Its jurisdiction was both original and appellate and extended to both civil and criminal causes. Next to the assembly in the order of jurisdiction came the Quarter or General Court, which was composed of the governor and his council. It, too, had jurisdiction in both civil and criminal cases; but, as a rule, the causes of which it took cognizance were more important than those that were usually determined by the lower courts. It was the most important criminal court in Virginia, and for about three decades after appeals to the assembly were discontinued, it was the only regular tribunal that could try freemen charged with offenses punishable by loss of life or member. In the first quarter of the eighteenth century, a regular court of oyer and terminer was established, and from that time until the Revolution it shared with the General Court the authority to try the more important criminal offenses. These were the only superior courts in the colony. The monthly or

[18] Colonial Records of Virgnia, 20. Accomac County Court Records, 1632-40, 10, 20. Robinson MS., 58. Hening, Statutes at Large, I, 125. See pp. 75-108.

county court was the most important inferior court, and during the greater part of the seventeenth century it was the only one in Virginia. The first monthly courts were organized as early as 1624; and when the colony was divided into shires, a separate court was appointed for each. In 1643, the name *county court* was substituted for that of *monthly court.* In 1662, circuit courts were established, which were to try appeals from the county courts. But these courts were expensive, and for this reason were abolished by an act of assembly passed in December of this same year. Out of the county court there had developed in each county, probably by the end of the seventeenth century, and certainly by the beginning of the eighteenth century (1705), a special court for the examination of criminals charged with grave offenses. In 1692, provision was made for the organization in each county of a special court for the trial of slaves accused of capital crimes. Two courts of Hustings were established in the first half of the eighteenth century, one at Williamsburg in 1722, and the other at Norfolk in 1736. Courts martial were held once a year or oftener in each county, by which militiamen were tried for delinquencies and insubordination at musters. These were the inferior courts. Appeals were allowed from the inferior courts to the General Court and from it to the assembly. Appeals were also allowed to England, even from a very early period. In addition to the courts already mentioned, there was a court of Vice-Admiralty, which was established in 1698, and the Court of the Commissary of the Bishop of London. Strictly speaking, the last two should not be classed either with the superior or inferior courts; but for the sake of convenience, they are treated in the chapter on superior courts.

These classes of courts will now be treated in the order of their jurisdiction.

CHAPTER I.

Judicial Powers of the Assembly.

On July 30th, 1619, there assembled in the church at Jamestown the first representative legislative body that ever convened in English America. This assembly was composed of two representatives from each of the eleven[1] plantations in the colony, who had been chosen in obedience to an order of Governor Yeardley. The governor, sitting in the midst of his council, who were ranged on his right and left, welcomed the Burgesses, as the deputies were called, in the choir of the church. After the opening prayer, the Burgesses went to the body of the church, and the meeting entered upon its work. The assembly thus organized developed into a bicameral legislature like the English Parliament, the governor and council were the upper house, and the Burgesses, corresponding to the Commons in England, constituted the lower house.[2]

Though the duties of the assembly were mainly legislative, yet from the beginning until the latter part of the seventeenth century, it also acted as a court of justice, being the highest judicial tribunal in the colony. It was not, however, the intention of the legislature to compete with the courts for an equal share in the administration of justice. Even at their first session, the Burgesses, by referring two cases to the governor and council for trial, showed a disposition to leave the settling of disputes to a tribunal better

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[1] The two delegates representing Captain Martin's plantation were not allowed to take their seats because Captain Martin would not surrender the rights of his patent, by which it seems that he was freed from the authority of the Virginia government. This left only twenty representatives, and in a few days one of the deputies died, which reduced the number to nineteen. Colonial Records of Virginia, 9-12, 18, 20 et seq.

[2] Hartwell, Blair, and Chilton, 32.

qualified to decide suits than a parliamentary body.[3] They must have realized that they could not weigh evidence so carefully or mete out justice so evenly as a smaller court composed of experienced judges. Besides, as the country developed, the legislative demands on the assembly grew apace, and left it less and less time for other business. Then, too, as the court system grew in efficiency, the need for calling on the legislature to decide causes correspondingly diminished.[4]

The assembly was the fountain head of justice, and exercised a supervisory control over the courts. By a statute of 1662, the first day of every session of the assembly was to be set aside for hearing indictments made by grand juries and for inquiring into the methods employed by the courts and abuses practiced by judges and juries.[5] The legislature never conceded to the judiciary the right to pass upon the constitutionality of any of its laws, but plainly declared by enactments made at different times that no order of court should contravene an act of assembly.[6]

The assembly, like the Parliament of England, had authority to pass bills of attainder against notorious offenders, and this privilege was not abrogated by the King's order which deprived it of its authority to try appeals. But this power was not the source of any great and lasting injustice to the people, as it was very rarely called into use. Only two instances have been found in which bills of attainder were passed. The assembly that convened in February, 1677, immediately after Bacon's Rebellion, declared Nathaniel Bacon and certain of his followers to be guilty of treason and ordered their goods to be forfeited to the crown. This act of attainder was in large measure reversed in June, 1680, when a bill of pardon covering the offenses of most of those

[3] Colonial Records of Virginia, 24, 25.

[4] Hartwell, Blair, and Chilton, Present State of Virginia, 25, 26. Sainsbury MSS., 1679-1682, 151.

[5] Hening, Statutes at Large, II, 108.

[6] Ibid., I, 264, 447; II, 108.

included in the first act was brought over by Governor Culpeper and unanimously agreed to by the assembly.[7] In 1701 the occasion for another act of attainder arose, the victim this time being, not a political offender, but an outlying slave. A certain negro had for several years been "lying out and lurking in obscure places," during which time he had been destroying crops, robbing houses and committing other injuries to the people. To put a stop to these annoyances, the assembly voted a sentence of death against him and offered a reward of one thousand pounds to any one who would apprehend or kill him.[8]

The jurisdiction of the assembly was, for some years at least, both original and appellate and extended to both civil and criminal cases. From certain statutes enacted in the latter part of the Commonwealth period, we learn that its criminal jurisdiction at that time was concurrent with that of the Quarter Court. Criminal causes which were punishable by loss of life or member were tried in the assembly, or Quarter Court, whichever should first convene after the offender had been apprehended.[9] Just how long criminal causes were determined originally by the assembly does not appear from the records. Its civil jurisdiction was, as early as 1641, limited mainly to appellate cases, as is shown by an order of the Quarter Court made in that year. At that time many petty suits were coming before the legislature to the exclusion of more important business. In

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[7] Another act of 1677 prescribed penalties to be inflicted on those that had played a minor part in the rebellion. Some of these were ordered to appear before the governor and council and afterwards before their respective county courts and there to acknowledge their fault with ropes around their necks. The justices of Rappahannock seem to have been unwilling to subject the offenders of their county to such a degradation and allowed certain ones to appear in court with tape-lines, instead of ropes, about their necks. This failure to execute properly the orders of the assembly was deemed an act of contempt too flagrant to be passed over unnoticed, and so the General Court ordered the offending magistrates to appear before the assembly to answer for this high contempt of its authority. Hening, Statutes at Large, II, 370-380, 458-464, 557.

[8] Hening, Statutes at Large, III, 210.

[9] Ibid., I, 398, 476.

order to relieve this state of congestion, the governor and council issued a proclamation declaring that for the future no private causes "should be admitted to the court [assembly] except such as are at this [Quarter] court referred to a fixed day or such as should [shall] concern as a party some member of this grand assembly."[10] While it is probable that the judicial activity of the assembly in civil cases was from this time on generally limited to the determination of causes coming up by appeal from the Quarter Court, still its doors were not completely closed against all other suits. A few years later a law was passed which recognized the right of the county commissioners to refer to the assembly any case in which there was no known law or precedent to guide them in their decisions. Besides, there was to be admitted to the assembly for trial any cause that had had a hearing in any court, provided an act of injustice had been committed by the award of the lower tribunal.[11]

For some years there were no minimum restrictions on appeals with respect to the amount involved, and the most trivial suits could be brought before the Quarter Court or the assembly for trial. But these bodies did not mean to consume the greater part of their time in considering unimportant causes, and so threw very effective barriers against the stream of judicial business which would otherwise have flowed into them. These obstructions took the form of heavy damages to be paid by the appellant when the higher court affirmed the decision of the lower one. By a statute of 1643, which confirmed a law made the previous year, it was ordered that appellants from the Quarter Court to the assembly should pay treble damages when cast in their suits. But these regulations made the way to the Supreme Court too narrow, and it was deemed expedient, some years later, to lighten the burdens borne by appeals to the assembly, and

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[10] Robinson MS., 236.

[11] Hening, Statutes at Large, I, 272, 304, 345, 375, 519; ibid., II 65. Robinson MS., 235. Virginia Magazine of History and Biography, VIII, 395. Records of General Court, 1670-1676, 76, 166, 183, 189, 191.

the damages attached to them were reduced to fifty per cent of the original award of the court.[12]

It was not until near the end of the Commonwealth period that an attempt was made to limit appeals from the Quarter Court to the assembly so as to exclude causes in which small amounts were involved. The heavy damages with which appeals were weighted did not prevent "many litigous suites of inconsiderable valewes" from leaving the Quarter Court and going into the assembly. In this way other important business was crowded out of the legislature "to the hindrance of publique affairs." The assembly, therefore (1659), deemed it necessary to limit appeals to it from the governor and council to suits in which the amounts in controversy exceeded 2500 pounds of tobacco. But this discrimination against suits of minor importance proved inconvenient, and next year it was enacted that appeals should thereafter be allowed in all cases from the county courts (the court of Northampton excepted) to the Quarter Court and from there to the assembly.[13]

The assembly transacted its judicial business through a committee of justice composed of members of both houses of the legislature. Causes that were brought before the assembly for trial were referred to this committee, which investigated them and decided what action should be taken regarding them. The decisions of the committee were not binding until they had been confirmed by the whole assembly. In 1682, three-fourths of those who sat in this joint committee were Burgesses. This, of course, gave the lower house a preponderating influence in the committee and, consequently, a controlling voice in the determination of all

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[12] The assembly restricted its judicial authority still farther by ordering in 1647 that the decisions of the Quarter Court were to be final for all causes coming up to it by appeal from the county courts. However, this restriction was afterwards set aside. Hening, Statutes at Large, I, 272, 334, 345, 398, 541; II, 65, 66, 266.

[13] This exception against Northampton County was afterwards repealed. Hening, Statutes at Large, I, 519, 520, 541, 575; II, 66, 362, 397. Virginia Magazine of History and Biography, VIII, 395.

causes referred to the assembly for trial. As the Burgesses were chosen by the people, in practice, therefore, it resulted that the highest court of appeal in the colony was an elective body, directly responsible to the people.[14]

The character of the justice meted out by the assembly seems to have been in keeping with the spirit of the times. Apparently it was neither milder nor severer than that administered by the courts. The penalties inflicted for criminal offenses were similar to those prescribed by the Quarter and county courts. Fines were imposed and resort was had to the lash. Offenders were also punished by suspension from office and disqualification for places of profit or honor. The assembly, like the courts, sometimes tried to coerce transgressors into repentance by requiring them to ask forgiveness of the persons injured by them.[15]

Appeals to the assembly continued to be allowed until about 1682, when they were stopped by order of the King. At that time a dispute arose in the committee of justice between those of its members who were Burgesses and those that were councillors, the Burgesses contending that the

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[14] By the term "people," is not meant the whole adult male population, but only the voters. As a rule, the right to vote was allowed to all freemen before 1670 and to freeholders only after that time. But there were two exceptions to this rule: from 1655 to 1656 only "housekeepers" were allowed to vote, and during Bacon's rebellion this privilege was allowed to all freemen. Chandler, Hist. of Suffrage in Va., J. H. U. Studies, XIX, 279-283. Hartwell, Blair, and Chilton, Present State of Virgnia, 25, 26. Hening, II, 157.

[15] One case is reported (1662) which affords an instance of a disregard on the part of the assembly of the rules of evidence which would now be considered quite reprehensible. It seems that one Anne Price had been tried in the county court of Elizabeth City, and that a new hearing before the assembly had been granted. The committee of justice in their report on the case declared that there was not sufficient evidence to warrant a conviction according to law. Nevertheless, the assembly ordered the court of Elizabeth City to "rehear the cause and according as the presumptions of the offence shall appear determine some means of punishment" not exceeding two years of service. The reason given for this decision was that the assembly considered that an example ought to be made of the accused and feared that an acquittal might encourage some insolence. Hening, I, 157; II, 15, 33, 156-157, 162, 458-463. Sainsbury MSS., 1660-1676, 196, 197. Ibid., 1677-1679, 106. Randolph MSS., 252.

councillors, having already given their decisions in the General Court, should not again sit on the same cases in the committee of the assembly. It was very unfortunate that the legislature was divided at a time when the executive was anxious to enlarge its authority. Lord Culpeper, who was then governor of the colony, welcomed this opportunity to enhance his own power at the expense of the assembly. He, accordingly, reported the disagreement to England and procured an order abolishing appeals to the assembly.[16] The records that have been examined do not state whether this act discontinuing appeals to the assembly also deprived this body of its power to determine causes originally. But there is evidence of a negative character which goes to show that the assembly ceased to be a court of justice after this event. With the possible exception of one act of attainder, no mention has been found of the assembly's trying cases after this time. In an account of the judiciary given in Beverley's history of Virginia, published in 1705, all the courts of justice in the colony are alluded to; but nothing is said of the judicial powers of the assembly, which leads us to infer that it had no such powers at that time.[17] Indeed, it is not improbable that prior to 1682, the assembly had in practice limited its judicial activity to appellate causes; and in that case, the stoppage of appeals, of course, deprived it entirely of its privilege to act as a court of justice.

The assembly was loath to part with its judicial authority, and in 1691 wrote to the agent of the colony in England urging him to use his endeavors towards gaining the King's consent to a renewal of appeals.[18] This attempt to regain a lost privilege was apparently unsuccessful, and from this time on the judicial activity of the assembly seems to have been confined mainly to docking entails and granting per-

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[16] Hartwell, Blair, and Chilton, Present State of Virginia, 25, 26. Sainsbury MSS., 1679-1682, 151.

[17] Beverley, History of Virginia, Book IV, pp. 20-26.

[18] Sainsbury MSS., 1640-1691, 387.

missions to alienate entailed estates, if indeed even these may be termed judicial functions.[19]

The royal order that discontinued appeals to the assembly eliminated the only element of democracy that had lingered in the judiciary since the Restoration. Henceforth the people were to exercise no influence, except an indirect and moral one, on the decisions of the courts. It is true that prior to this time the people had had no voice (except in the Commonwealth period) either directly or indirectly in the choice of the judges of the county and General courts; but if an act of injustice were committed in the lower courts, it could be corrected by an appeal to the assembly. As the latter was the highest court of appeal in the colony, and could set aside the decisions of the other tribunals, it was natural that the courts would try to conform to the precedents set by the assembly in the determination of the causes brought before them. For this reason, the influence exerted on the judiciary by the assembly, was in all probability out of all proportion to the amount of judicial business transacted by it. Of the two branches of the legislature, the lower house, the representatives of the people, was much stronger numerically than the upper,[20] and, as we have already seen, took the leading part in the trial of appeals. Up until 1682, therefore, the Virginia judiciary was aristocratic at the bottom and democratic at the top; but the element of democracy introduced at the top must have found its way, as an influence, into all the branches of the judicial system. But now the only link that connected the judiciary with direct responsibility to the people was severed, and the judiciary was from this time on thoroughly aristocratic in all its branches.

This curtailment of the power of the assembly made it possible for the governor to exert an undue influence on the judges of the General Court in their administration of jus-

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[19] Hening, IV, 36, 50, 240, 307, 451-53, 534-37; V, 214-16, 277-84, 392-95.

[20] Hening, I, 288, 289.

tice. The General Court, which was composed of the governor and his council, was now the highest judicial authority in the colony.[21] The councillors were appointed by the King, and were in no sense responsible to the people. Besides it was to their interest to render such decisions as would be acceptable to the governor. There were a good many important offices at his disposal, and practically all of these were held by the members of the council. These places could easily be distributed in such a way as to reward his friends and punish his enemies. Therefore, dissent from the opinion of the governor might entail self-denial, while conformity with his views might mean reward.[22] But the power of the governor to influence judicial decisions could be curbed so long as appeals were allowed to the assembly. For if the governor by corrupt means should procure an unjust order from the General Court, it could be set aside by the assembly. But this check was removed when the judicial powers of the assembly were destroyed, and as a premium was put upon subservience to the wishes of the governor, it could hardly be expected that the Supreme Court would be entirely free from abuses.

According to an account of Virginia written about the end of the seventeenth century, the General Court fell into abuses immediately after appeals to the assembly were stopped. The authors of this account, Messrs. Hartwell, Blair, and Chilton, say that after appeals to the assembly were discontinued, the governor was usually able to get from the General Court such decisions as he desired, and that the people were, in consequence, sorely oppressed. But this book betrays strong prejudices and decided hostility to the governor, and, therefore, it is quite likely that what is said about the despotism of the governor is an exaggerated

[21] It is true that in important cases, appeals to the King were still allowed, but the inconvenience of prosecuting suits in England rendered this privilege of no great practical value.

[22] Hartwell, Blair, and Chilton, 22-24.

statement, to say the least.[23] But even if it is a correct representation of conditions as they were at that time, it does not follow that the General Court, from this time on, usually obeyed the dictates of the governor in its administration of justice. While it must be admitted that the stoppage of appeals to the assembly left unchecked a dangerous power in the hands of the governor, yet this power could not avail him much so long as a majority of the councillors were men of integrity and stamina. That the council was frequently, if not generally, composed principally of such men, we have every reason to believe. It cannot be said that their attitude towards the governor was, as a rule, one of tame acquiescence in the policies advocated by him; for we sometimes find them vigorously resisting the measures proposed by him.[24] It may, therefore, be safely inferred that the picture of the General Court that was drawn at the end of the seventeenth century was not a true likeness of this tribunal as it generally appeared in the eighteenth century.

Still, this does not alter the fact that there was always present in the judicial sysem a latent weakness which might develop into a dangerous abuse whenever the conditions were favorable. If a strong and unprincipled governor should at any time be joined with a weak or dishonest council, the General Court would be liable to develop symptoms of corruption. That the people suffered no greater injustice than they did is to be ascribed to the circumstance that this unfortunate union did not often take place, rather than to be attributed to any safeguards with which the Virginia constitution was provided.

APPEALS TO ENGLAND.

The assembly, even prior to 1682, was not the highest court to which the Virginians had access. The right to

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[23] Hartwell, Blair, and Chilton, 26. We know, however, from other sources that abuses crept into the General Court about this time, but it does not appear that they were in any way connected with the influence wielded by the governor over the court. See p. 56.

[24] See pp. 40, 60-62.

appeal to England in important cases was one of the privileges enjoyed by them from the earliest period. Problems of justice sometimes arose in the colony for which the home judiciary offered no satisfactory solution, and so from time to time the mother country was called upon to assist in the administration of justice in Virginia. Before the Company was deprived of its governmental rights, it sometimes took part in the administration of justice in the colony. The appeals to the Company were usually in the form of complaints made by the colonists against acts of alleged injustice on the part of the governor, or of petitions from persons living in England, who claimed to have been wronged in their possessions in Virginia. The Company could set aside a decision given in Virginia if it were unjust and had not been rendered in accordance with their general instructions. It also sometimes ordered the governor and council to inquire into the alleged grievances of petitioners and to right the wrongs complained of.[25]

It is hardly safe to make any generalization regarding the methods employed by the Company in the performance of its judicial duties, owing to the fact that not many trials are recorded in its proceedings. It seems, however, from the few cases that are given, that the complaints of petitioners were referred to the Council of the Company for a preliminary hearing or for final determination. One instance is given in which the whole Company, assembled in a great Quarter Court, was called upon to decide an important case which had been brought up by appeal from Virginia. The Council brought in a report favoring a reversal of the decision given in Virginia, which was adopted by the Company almost unanimously.[26]

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[25] Records of the Virginia Company, I, 48, 129; II, 11, 29, 39, 45, 46, 145.

[26] This case is of interest not only because it gives us an insight into the methods employed by the Company in the transaction of its judicial business, but also because it shows what was, at that time, the Company's opinion regarding the constitutionality of the military rule of Dale and Argoll.

The Company had no authority to try criminals that escaped from Virginia and returned to England.[27] But if any persons that had been sent from Virginia for criminal offenses or had come away by stealth, should circulate slanderous reports about the colony with the intent to bring it into disrepute, or should show any insolence to the Council, any two of the Council (the treasurer to be one) could have such evil-doers apprehended and brought before them for examination. If it should be proved that they were guilty of these misdemeanors, these Councillors could require them to give security for their good behavior, or could send them back to Virginia for trial.[28] The power to punish the colonial governors for malfeasance in office was not one of the privileges granted to the Company. Removal from office was the greatest penalty that it could inflict for the misrule of these governors. In 1621, John Smith favored inserting in a new patent for which the Company was going to ask a clause empowering the Company to punish the Virginia governors for their acts of injustice. This proposal was objected to on the ground that it would cause the new patent to be defeated in Parliament.[29]

In 1624, the charter of the Company was annulled, and Virginia was brought under the authority of the crown.

The history of the case begins in October, 1618, when a certain settler was sentenced to death in Virginia by a court martial. Governor Argoll was persuaded by some of the court not to execute the death sentence, and the accused was released on condition that he would leave the colony never to return, and would never speak disparagingly of Lord De La Warr, Argoll, or the plantation. An appeal was taken from this decision to the Council and Company in England. The Council (of the Company) sent to Yeardley (who was then governor of the colony) and the Virginia council this appeal and Argoll's answer, together with a letter from the Company, and ordered them to investigate the case and report their findings back to England. Finally (1620), the whole question was brought before the Company assembled in a Quarter Court. The Company, in giving its decision, declared that a trial by court martial was illegal. Records of Virginia Company, I, 48; II, 29, 30, 39-44, 45.

[27] Ibid., II, 159.

[28] Sainsbury MSS., 1573-1618, 160, 161.

[29] Proceedings of the Virginia Company, I, 113.

The King, the same year, appointed fifty-five commissioners and turned over to them the general management of the colony.[30] This board was probably too large for the proper supervision of colonial affairs, and in 1634, a smaller one, composed of thirteen members, was entrusted with the governmental control of the English colonies. This committee of thirteen was given power to remove governors, appoint judges, and establish courts, and was instructed to "hear and determine all manner of complaints from the colonies."[31] It was one of several intermediary boards which in turn looked after the affairs of the colonies. The most important of these intermediary bodies was the Board of Trade, which was organized in 1696.[32]

After 1624, appeals to England were made to the King and the Privy Council; but appeals as well as petitions and complaints, were, in the seventeenth century at least, frequently, if not generally, referred to the intermediary boards, which examined them and advised the action that should be taken on them by the King and the Privy Council. Appeals to the Privy Council were allowed in both civil and criminal cases, and complaints were sometimes made by citizens of England against acts of alleged injustice which had not been inquired into by the colonial courts.[33] How-

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[30] Rymer, Foedera, XVII, 611-13.

[31] Sainsbury MSS., 1631-1637-8, 65.

[32] Brodhead, Documents Relating to the Colonial History of New York, Vol. III, Introduction, XIII-XIX.

[33] Va. Mag. of Hist. and Biography, XII, 12. William and Mary College Quarterly, IX, 98-100, 165. Hening, V, 292. Sainsbury MSS., 1624-1631, 230; ibid., 1631-1637, 54, 199; ibid., 1637-8-1649, 26, 27, 77, 82, 83; ibid., 1640-1691, 89, 292; ibid., 1660-1676, 138; ibid., 1677-1679, 86, 202; ibid., 1679-1682, 104, 155, 162, 188, 189, 213; ibid., 1682-1686, 221, 223; ibid., 1691-1697, 250.

It will be noticed that these references are mostly to the seventeenth century records. It was the custom for appeals to England to be tried by a committee of the Privy Council, known as the Lords of Appeals. Whether this committee in the eighteenth century really gave its own decisions or only confirmed the dicisions that had already been recommended by the intermediary board, I am unable to say; but it seems to have continued the old practice of requiring the opinion of the intermediary board on complaints coming before it from the colonies. Beverley, History of Va., Book IV, p. 21. Calendar Va. State Papers, I, 195.

ever, it seems that appeals to the Privy Council were not often allowed in criminal cases, as few of them are mentioned in the documents that have been examined. Beverley, the historian, whose work was published in 1705, said that he was not sure that appeals in criminal cases were ever allowed to the King and the Privy Council; but the records show that persons charged with penal offenses were sometimes sent to England for trial.[34] It was not intended that the intermediary boards should erect themselves into courts of justice for the trial of unimportant causes. They were to exercise only a general supervision over the administration of justice in the colonies. Besides, the best interests of the colonists demanded that disputes arising among themselves should be settled by the home judiciary, as suits could not be prosecuted in England except at considerable expense and inconvenience. But these natural restrictions were not the only limitations on appeals to the King. Before the end of the seventeenth century, appeals in civil cases had become limited to those suits in which the amounts involved exceeded three hundred pounds sterling.[35]

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[34] Beverley, History of Va., Book IV, Chap. VI, p. 21. Sainsbury MSS., 1706-1714, 380. McDonald Papers, II, 166.

[35] Chalmers, Political Annals, 356. Dinwiddie Papers, I, 383, 384. In 1682, the limit was one hundred instead of three hundred pounds sterling. Sainsbury MSS., 1679-1682, 151.

CHAPTER II.

The Superior Courts.

THE QUARTER OR GENERAL COURT.

Next to the assembly in the order of jurisdiction came the Quarter Court, which was afterwards known as the General Court. This tribunal was the successor of the council court, which administered justice in the colony during the first few years of its existence. As the local council and its president were the judges of the Council Court, so the governor and his council constituted the Quarter or General Court. An exact date for the origin of the Quarter Court cannot be given. We know, however, that the governor and his council performed judicial duties as early as 1619,[1] and it is not improbable that Lord De La Warr and the military rulers who succeeded him advised with their councils in the administration of justice.

Not only is it difficult to say just when the councillors began to share with the governor the responsibilities of meting out justice, but it is also equally difficult to determine the precise date at which their executive and judicial duties began to be performed in separate sessions. In Governor Wyatt's instructions, given in 1621, there is an intimation that the governor and his council sat at different times as a court of justice and as a council of state. In these same instructions, the governor and council are ordered to "appoint proper times for the administration of justice"[2] From this, therefore, it would seem that as early as 1621 the governor and his council, as a rule, discharged their judicial duties while sitting as a court of justice and agreed on their executive measures while sitting as a council of

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[1] Colonial Records of Virginia, 24, 28.
[2] Hening, I, 116, 117.

state. But if there was a line of cleavage separating the judicial from the other business transacted by the council, it could not, at first, have been a clearly defined one; for in the early proceedings of the council we find judicial, executive, and legislative measures all recorded together.[3] Nor can it be said that the executive and judicial sessions of the council were held at different times of the year. The councillors could not come together without considerable inconvenience owing to the distance at which they lived from each other,[4] and when they assembled, in all probability, they did not adjourn until they had despatched all the business of every kind that was before them. Certain days, or parts of days, were perhaps set apart for deciding suits and others for performing executive duties.

During the first years of which we have any record of them, the meetings of the council for the trial of causes were held at irregular intervals.[5] It was not many years, however, before a system of regular quarterly terms had been evolved. When that stage was reached by the court, the name Quarter Court could be properly used, and its development in the direction of independence of the executive was practically complete, or rather about as nearly complete as it was at any time during the colonial period. But we are unable to say just when the court arrived at this point in its development. A step towards quarter sessions was taken in 1621, when the council was ordered by the Company to assemble four times a year and remain in session one week each time. These meetings were to be devoted to "state affairs and law suits." This order came in response to a complaint made by Governor Yeardley to the effect that the councillors did not come together as often as the public interests demanded. The reasons assigned by him for this indifferent attendance were that they were few in

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[3] Robinson MSS., 54, 59, 60, 63, 66, 67, 70, 73.
[4] See page 35.
[5] Virginia Court Book, 1622-1626.

number, lived at considerable distances from each other and received no compensation for their services in the colony.[6] By 1626 the term Quarter Court had come into use, being applied to the quarterly meetings of the councillors. But meetings of the council were also held in the intervals between the quarter terms, and at these, as well as at the quarter sessions, judicial duties were performed. Just how long before the judicial sessions of the council were confined to the quarter terms, cannot be determined, but it was probably not later than 1642.[7] By 1632 the Quarter Court had gone far enough in its development to receive statutory recognition. At that time a law was passed providing that the " foure quarter corts shall be held at James City yearlie, as followeth, vizt., uppon the first day of September, the first day of December, the first of March, and the first day of June."[8]

After this changes were made from time to time in the dates at which the courts convened.[9] In 1659, the June court was abolished because it was found inconvenient to hold it at that time. The reason given for this inconvenience was that " the shipps are (were) then out of the country, time of payment past, and the crop then chiefly in hand." The sessions of the Quarter Court were by this change reduced to three a year.[10] The term *Quarter Court* had now become a misnomer, and in a few years that of *General Court* was substituted for it.[11] It was afterwards considered unnecessary for the court to convene as often as three times a year, and in 1684, the sessions were made semi-annual. From that time on the court met regularly in April and October.[12]

The act of 1632 made no provision regarding the length

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[6] Collingwood MSS., I, 236.
[7] Virginia Court Book, 1623-1626. Robinson MSS., 57, 62, 63, 65-67. Hening, I, 270. McDonald Papers, I, 377.
[8] Hening, I, 174.
[9] Ibid., I, 187, 270, 461, 524; II, 227; III, 289; V, 319, 320.
[10] Hening, I, 524.
[11] Ibid., II, 58.
[12] Hugh Jones, Present State of Virginia, 29. Dinwiddie Papers, I, 383. Hening, III, 10, 289; V, 319, 320; VI, 328.

of the terms of the court. In the instructions given by the King in 1639 to Governor Wyatt, the Quarter Courts were required to remain in session one week or longer if necessary.[13] About four years later, it was enacted by the assembly that the four courts (which at that time were appointed to be held in March, June, October, and November) should continue, the first and last for eighteen days each, and the second and third, for ten days each. There was also a provision requiring the assignment of a definite number of causes instituted by writs for each day of every term.[14] In imposing these minute regulations on the court, the assembly acted as if the amount of judicial business to be dispatched by the governor and council each year was a constant quantity which could be measured in advance with mathematical accuracy. After this the length of the terms was changed from time to time, but was finally fixed at twenty-four days exclusive of Sundays, though the court was not required to remain in session so long if it could clear its docket in a shorter time than that prescribed.[15]

It is not to be supposed that these inelastic regulations of the assembly could be closely fitted to the conditions with which the General Court had to deal. The assembly, of course, could not gauge beforehand the exact volume of the judicial business that would come before the court, and the attempts to limit it as to the number of causes it should try each day, or the number of days it should sit, must have been futile. We are not surprised, therefore, to find that during the periods for which we have a record of its proceedings, the General Court did not conform strictly to the statutory regulations regarding the times for meeting.[16]

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[13] Sainsbury MSS. 1637-1649, 44.
[14] Hening, I, 270, 271.
[15] Hening, III, 289; V, 319, 320; VI, 328. Webb's Justice, 106.
[16] During the years 1674 and 1675, the meetings of the General Court were held on the following dates: 1674—April 2, 3, 4, 6, 7, 8, 9; Sept. 22, 23, 24, 25, 26, 28, 29; Oct. 1, 2, 5, 8; Nov. 16, 17, 19, 20, 21. 1675—March 1, 3, 4, 5, 6; June 15, 16, 17, 18, 19; Oct. 4, 5, 6, 7, 8, 9, 11, 12.

At this time the statutes provided that three courts should be held

The General Court usually held its sessions at the capital of the colony, that is, at Jamestown during the seventeenth century, and at Williamsburg during the remainder of the colonial period.[17] In the early years there seems to have been no state-house in Virginia, and the business of government was transacted at the house of the governor. The governor was also put to great expense in entertaining councillors and Burgesses during the terms of the Quarter Court and the assembly, and he was authorized by the King to recoup himself by appropriating to his own use all the fines imposed by the court. But the incomes from the fines apparently fell far short of the outgo occasioned by the hospitality which was dispensed at public times. For we find Governor Harvey writing to England in a despairing tone saying that if some relief were not soon afforded him the expense of council meetings and assemblies would, as he phrased it, cause both his heart and his credit to break, and that he should be called the host, rather than the Governor of Virginia.[18] In 1639, Governor Wyatt was instructed by the King to have a state-house built,[19] but this order was either not carried out, or, if it was, the building erected was destroyed by fire. For in 1663, the sessions of the General Court and the assembly were being held in ale-houses. High rents had to be paid for the use of these places; and, besides, it was considered beneath the dignity of the colony

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every year. According to laws enacted in 1662 and 1666, the terms of these courts were to begin April 15, September 20, and November 20, unless those dates fell on Saturday or Sunday, in which case they were to begin the following Monday. The length of the first term was to be eighteen days, that of the other two, twelve days each. This contrast between the regularity found in the legal provisions and the irregularity found in the court practices, goes to show that the assembly did not succeed in its efforts to place the General Court in a strait-jacket. Records of the General Court, 1670-1676; see dates given above. Robinson MSS., 68-74. Records of York Co., 1633-1694, 20, 54, 101. Hening, II, 58, 59, 227.

[17] Records General Court, 1670-1676, 154. Robinson MSS., 51, 59, 69, 74. Hugh Jones, Present State of Virginia, 25. Hening, III, 200.

[18] MacDonald Papers, II, 23. Sainsbury MSS., 1631-1636, 35.

[19] Sainsbury MSS., 1637-8-1649, 46.

for its laws to be made and its justice administered in houses where drinks were vended. For these reasons, the assembly in this same year passed a law providing for the erection of a building in which the affairs of the colony could be conducted.[20] After Williamsburg became the colonial capital, a costly state-house was built, the finest, it is said, that could then be seen in the British posessions in North America. One side of the capitol was given over to the use of the General Court and its officers, and the other to the assembly and its officers.[21]

As we have already seen, the General Court was composed of the governor and his council. Councillors were appointed by the Company before its charter was annulled and after that time by the King on the recommendation of the intermediary boards. Vacancies in the council were usually filled in the following manner:—the governor would select such men as he deemed suitable for the office and would send in their names, together with an account of their qualifications, to the intermediary board;[22] when the list recommended had received the sanction of this board, it was passed on to the King, whose formal approval was necessary to make the appointments legal. Councillors were not chosen for any definite period, but were recommissioned whenever a new governor was sent to the colony or a new King came to the throne. The old councillors, however, were usually continued in office by the new commissions, and, in practice, therefore, it resulted that the judges of the General Court held office for life.[23]

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[20] Hening, I, 425; II, 204.

[21] Sainsbury MSS., 1625-1705, 74. Hening, III, 419, 421. Hugh Jones, Present State of Virginia, 25, 29. It took some time to complete the new capitol, and during the period of waiting the assembly, and probably the General Court, held their sessions in the College of William and Mary. Hening, III, 189, 197, 200, 204, 218, 224, 227, 419. Calendar of Virginia State Papers, I, 72, 73.

[22] These nominations were sometimes, if not generally, made with the advice and consent of the Council. Sainsbury MSS., 1637-1649, 40. Spottswood's Letters, I, 7.

[23] Sainsbury MSS., 1606-1740, 104; ibid., 1624-1631, 138; ibid., 1625-1705, 94, 118; ibid., 1625-1715, 373; ibid., 1631-1637, 183; ibid.,

By this method of appointment, the nominations made by the governor could not receive final confirmation until after a considerable period of time had elapsed. But it was important that the vacancies should not remain open during the period of waiting, and so the practice arose of allowing the governors to bridge over these intervals by making temporary appointments. Whenever the membership of the council was reduced by deaths or removals so as to be less than nine, the governor was to name as councillors as many prominent men as would be necessary to bring it back to that number. These temporary appointments became permanent after they had been confirmed by the King. The governor could also suspend councillors for just cause, but whenever he exercised this power, he had to report to England the reasons for his actions and support with proofs his charges against the excluded member.[24]

One would think that this power to suspend judges was liable to be abused by an unscrupulous governor. It would seem that by temporarily removing from the council those

1637-1649, 38, 40-42; ibid., 1679-1682, 125, 127, 135; ibid., 1691-1697, 176, 234; ibid., 1705-1707, 314, 524; ibid., 1706-1714, 334, 341. Va. Mag. of Hist. and Biog., II, 396. Proceedings of Va. Company, I, 76. Stith, Hist. of Va., Appendix, 32, 33. Randolph MS., 193, 200, 201, 406, 461-62, 482. De Jarnette Papers, II, 436, 535. Council Journal, 1721-1734, 32, 76, 91, 249, 252.

[24] Sainsbury MSS., 1640-1691, 318, 333, 396; ibid., 1682-3-1686, 28; ibid., 1686-1688, 30, 31; ibid., 1691-1697, 152; ibid., 1706-1714, 48; ibid., 1715-1720, 732, 788. Randolph MSS., 406. Calendar of Virginia State Papers, I, 1652-1681, 21. Spottswood's Letters, II, 54, 55. McDonald Papers, VI, 227.

According to accounts of Virginia written by Beverley and by Hartwell, Blair, and Chilton (published in 1705 and 1727, respectively), the power to suspend councillors was not conferred on the governors until after Bacon's Rebellion. As a reason for thus increasing the authority of the governor, it was contended that this power would enable him the better to put down an incipient rebellion. The rebellion of 1676, it was claimed, could have been nipped in the bud if Governor Berkeley had had the authority to suspend Bacon from the council. But instances are recorded in which councillors were suspended before Bacon's rebellion. Even Governor Berkeley himself exercised this power, for we find that in May, 1676, he issued a proclamation suspending Bacon from the council. Sainsbury MSS., 1624-1631, 111, 112, 216; ibid., 1660-1676, 244; ibid., 1677-1679, 19. Hartwell, Blair, and Chilton, 23, 56. Beverley, Hist. of Va., Book IV, Chap. I, p. 2.

members that opposed his schemes he might frequently procure unjust sentences from the court. But the council was in a position to restrain him from an arbitrary use of this power. The councillors were generally men of means and influence, for none but those who were possessed of considerable estates were eligible to this high office.[25] One of their number, usually the oldest in commission, succeeded temporarily to the governor's chair when it became vacant by the death or removal of the governor.[26] Many of them, therefore, must have had considerable influence with the governing authorities in England. An unjust removal was always liable to bring on a quarrel between the injured party and the governor, and in disputes of this kind the governor was not always sustained by the King.[27] Besides, the council, owing to the prominence of its members and their family connections with other prominent men, had great influence in the colony and was able to make its power felt in the government.[28] Nor were the councillors slow in asserting their rights. Their cavalier sentiments did not prevent their antagonizing the King's representative when they considered that their privileges had been infringed. Consequently, they often took an attitude of strenuous opposition to the measures proposed by the governor. Indeed, in the contests between the Virginia council and the King's representative, the history of the struggles of the ancient English kings with their barons was, in a small way, repeating itself. Sometimes these barons of Virginia and their allies carried their opposition to the governor to the point of procuring his dismissal.[29] We can, therefore, readily see

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[25] Sainsbury MSS., 1640-1691, 438; ibid., 1691-1697, 152; ibid., 1625-1715, 77. Spottswood's Letters, II, 39, 41, 55. McDonald Papers, VI, 26.

[26] Sainsbury MSS., 1624-1631, 166, 216; ibid., 1637-1649, 38; ibid., 1691-1697, 161; ibid., 1720-1730, 212. Randolph MSS., 413, 513.

[27] Sainsbury MSS., 1691-1697, 236. Hartwell, Blair, and Chilton, 36. Calendar of Virginia State Papers, I, 195.

[28] Sainsbury MSS., 1715-1720, 709.

[29] In the quarrel between Governor Harvey and his council, the opposition verged upon rebellion. This dispute seems to have arisen

that the governor, even though he were unscrupulous, would, as far as he could, avoid every occasion to arouse the opposition of his council and would be very chary in the exercise of his power to suspend judges of the General Court.

During the Commonwealth period the method of choosing councillors was different from that employed at other times. While the colony was under the rule of Cromwell, the members of the council were appointed by the Burgesses, the representatives of the people. As the governor was also elected by the lower house, the Quarter Court enjoyed complete independence of the mother country during this time.[80] The effect of this change was to give to the people, indirectly through the House of Burgesses, power over the Quarter Court. It was a step towards democracy. The reforms in Virginia which gave the people a stronger voice in their government was a faint echo of the Puritan Revolution. But this impress of democracy which was dimly

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out of a false conception on the part of the governor as to the relative powers of the chief executive officer and his cabinet, though Matthews, one of the opposing party, represents him as a tyrant who tried to lord it over the council. It is not unlikely that Harvey's support of the claims of the Maryland colony to Kent Island against those of Clayborne was also one of the causes of the rupture between him and his council. According to Matthews, Harvey claimed that the council had only the power to advise the governor, who could accept or reject its counsel as he saw fit. Harvey, on the other hand, declared that the council wanted to deprive him of his right to vote in the council except in case of a tie. There was no attorney-general in Virginia to decide the disputed question, and Harvey wrote to England for a legal opinion regarding the respective powers of the governor and council. The councillors believed their quarrel just, and, being supported by the Burgesses, deposed the governor and sent him to England to answer certain charges which they had brought againt him. The King, of course, did not countenance such an attack, though indirect, on his royal prerogative, and sent Harvey back to Virginia as governor, and summoned some of the councillors who lead the opposition to England to "answer an information at the King's suit" in the Court of Star Chamber. No record has been found of any sentence being pronounced against them by this court, but two of them were detained in England a long time and were thus put to great inconvenience. Sainsbury MSS., 1631-1637, 1, 2, 111-116, 122-124, 126-130, 207, 210; ibid., 1640-1691, 2.

[80] Hening, I, 371, 372, 408, 422, 431, 504, 515, 517, 531.

stamped on the Virginia judiciary was soon effaced by the royalist reaction. With the Restoration there came a return to the old régime, and from that time until our own Revolution the people took no part either directly or indirectly in the appointment of the judges of their most important court.

A full council was usually composed of twelve or thirteen members, though the number was sometimes greater and sometimes less than this. During the early years, there seems to have been no minimum limit below which the number could not be reduced by deaths and removals.[31] But later there was a provision that the governor was to keep the number up to nine by making temporary appointmets. The attendance of the judges at the meetings of the General Court was usually poor, considering their number, and during the periods for which we have records of its proceedings, the court was generally attended only by about one-half of the councillors.[32] But a certain number of judges

[31] Under the rule of Governor Pott, the number of councillors at one time (1630) fell to two, but this was an exceptional case. Sainsbury MSS., 1624-1631, 129, 223; ibid., 1677-1679, 102; ibid., 1705-1707, 314, 524. De Jarnette Papers, II, 436, 535. Winder MSS., I, 205. Randolph MSS., 193, 200, 201. Blair, Hartwell, and Chilton, 34, 35. Hening, II, 511. Beverley, Hist. of Va., Book IV, Chap. I, p. 5.

[32] The only records now extant of the proceedings of the General Court, except occasional notices, are the following: (1) A manuscript now in the Congressional Libary, known as the "Virginia Court Book." It covers the period from March, 1623, to 1630 (?), but only the first part of it is at present in a condition to be used. (2) The General Court Records (1670-1676) in the library of the Virginia Historical Society, Richmond. (3) The Robinson MSS. (1626-1670), also in the library of the Virginia Historical Society. These consist of notes made by Mr. Conway Robinson from the original records of the council, probably from the MSS. now in the Congressional Library. In addition to these there is given in one volume of the Ludwell MSS. (in the library of the Virginia Historical Society), a list of the cases tried in the General Court during a brief period (1724-1726).

From these records, I find that the average attendance of councillors at courts, not including the governor, who was usually present, was about six for the year beginning with May, 1624, and ending with May, 1625, and a little below six for the period extending from October, 1673, to March, 1676. Robinson MSS., 51-74. General Court Records, 1670-1676, 154-261. Virginia Court Book, 1623-1626, 20-95.

had to be present at every court before any case could be tried. No council could transact any business unless at least three of its members were present, and except on extraordinary occasions, no court could be held with a smaller quorum than five.[33] The failure on the part of the judges to attend the court sessions regularly was doubtless due mainly to the distance at which they lived from the seat of government and to the lack of travelling facilities.[34] In the early years the Quarter Court tried to coerce its judges into a better attendance by imposing fines on absentees, but apparently with little success.[35]

The councillors at first received no allowance for looking after the affairs of the colony, and, as we have seen, this was, according to Governor Yeardley, partly the cause of the poor attendance at the council meetings complained of by him.[36] The Company must have acted favorably on Yeardley's hint, for in 1625 we find the councillors receiving pay for their services.[37] A little later (1640) each one was granted exemption for himself and ten servants from all general taxes except ministers' dues and contributions for building churches or towns and for carrying on defensive wars.[38] To this privilege was afterwards added a salary of 250 pounds sterling, which was to be apportioned among the councillors according to their attendance at Quarter Courts and assemblies. By Bacon's laws the exemption from taxation was done away with, and one hundred pounds was added to the allowance that had hitherto been made to them. Other increases in salary were afterwards made, and

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[33] Sainsbury MSS., 1625-1715, 77. Winder MSS., I, 205. Randolph MSS., 406, 435, 489. Dinwiddie Papers, I, 383.

[34] Collingwood MSS., I, 236.

[35] On one occasion the court was anxious that all the judges should be present at the next session, as an important case would then come up for trial, and in order to insure a full attendance, it ordered that every one that should be absent without a lawful excuse, should pay a fine of £40. Robinson MSS., 76, 186.

[36] Proceedings of Virginia Company, I, 126.

[37] Virginia Court Book, 1623-1626, 77.

[38] McDonald Papers, I, 379. Hening, I, 228, 445, 279.

in 1755, the services of the councillors were rewarded with more than twelve hundred pounds a year.[39]

In addition to the salary, there were other emoluments that went with the place of councillor. The councillors had almost an entire monoply of the principal places of honor and profit in the colony. They usually commanded the militia of their respective counties with the rank of colonel.[40] According to Hartwell, Blair, and Chilton, another source of profit to the members of the council was the privilege—shared also by the governor and the auditor—of buying at a low price all the quit-rents due to the King, which were paid in tobacco. The whole colony was divided among them, each commissioner taking the county or counties most convenient to him.[41]

The governor presided over the General Court and passed sentence on convicted criminals.[42] Causes were decided by a majority vote of the judges present, and when the councillors were equally divided, the deciding vote was cast by the governor.[43] There were also certain judicial duties that the governor could perform out of court. He could remit fines and forfeitures and grant pardons for all offenses except wilful murder and treason. Persons convicted of these crimes could be pardoned only by the King, but could be reprieved by the governor.[44] But these, as well as other

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[39] Robinson MSS., 227, 228. Hening, I, 523; II, 32, 84, 85, 359, 391, 392; III, 348; V, 227. Sainsbury MSS., 1637-1649, 45; ibid., 1691-1697, 331. Dinwiddie Papers, I, 390. Beverley, Hist. and Present State of Va., Book IV, p. 6.

[40] Winder MSS., I, 206. Hartwell, Blair, and Chilton, 32, 33, 63.

[41] The quit-rents were an annual tax of one shilling on every fifty acres of land that had been patented. Hartwell, Blair, and Chilton, 33, 56, 57. Sainsbury MSS., 1691-1697, 342.

[42] Hartwell, Blair, and Chilton, 20, 21. General Court Records, 1670-1676, 53.

[43] Sainsbury MSS., 1624-1631, 134. Randolph MSS., 163, 207. McDonald Papers, I, 377. Spottswood's Letters, II, 14.

[44] It is true that Governor Pott pardoned wilful murder, but in doing so he exceeded his authority. In 1690 Governor Lord Howard was ordered not to remit fines above the amount of £10 without special permission from the King. Sainsbury MSS., 1624-1631, 216, 224, 225; ibid., 1640-1691, 320; ibid., 1682-1686, 3; ibid., 1720-1730,

judicial acts, seem usually to have been done with the advice of the council. Another power exercised by the governor was that of signing orders for the administration of estates and the execution of wills.[45] By an abuse of this privilege, Governor Howard was able to extort a tax from the people for his own private use. A high fee was charged every time the seal was affixed to letters of administration and probates of wills. He claimed that the fees complained of were charged in all the colonies and that the revenue accruing from them was one of the perquisites of his office. The tax was such a burden that the Virginians sent Philip Ludwell to England to make complaints against the governor, but he did not succeed in procuring his dismissal.[46]

The Quarter or General Court took cognizance of both civil and criminal causes, and its jurisdiction was both original and appellate. At first the governor and council decided causes of all kinds, but they were relieved of much of the judicial business of the colony after the county courts had grown into importance. It was some years, however, after the formation of the lower courts before we find any provisions restricting either the original or appellate jurisdiction of the Quarter Court with respect to suits of minor impor-

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347, 392, 418, 465. Dinwiddie Papers, I, 384, 385. Randolph MSS., 138, 408, 416, 464. Council Journal, 1721-1734, 220, 221, 251, 267, 280, 283, 341, 412, 413, 494, 495.

[45] Certificates for granting letters of administration were given both by the General Court and by the county courts. When an administrator or executor had obtained such a certificate from a court, it was presented to the governor, who thereupon signed an order empowering him to administer the estate mentioned in the certificate. For a while the justices of the county courts had the power to sign letters of administration. A law was passed in 1676, which was reenacted next year, authorizing any two justices of the quorum to sign probates and letters of administration. General Court Records, 1670-1676, 185, 213. Henrico County Court Records, 1737-1746, 15, 34, 135, 249, 359, 412; ibid., 1719-1724, 28, 88, 294, 335. Rappahannock County Court Records, 1686-1692, 15, 24, 74, 156, 230. Essex County Court Records, 1695-1699, 49, 95, 100, 122. Henrico County Court Records, 1677-1692, 16, 17. Blair, Hartwell, and Chilton, 47, 48. Hening, II, 359, 391. Beverley, Hist. of Va., Book IV, p. 29.

[46] Beverley, Book I, pp. 89-90. McDonald Papers, VII, 154, 155.

tance. But the judicial work to be performed could not be properly apportioned between the higher and lower tribunals without narrowing the jurisdiction of the former. So, before the middle of the century was reached, the original jurisdiction of the Quarter Court began to be restricted so as to exclude all unimportant civil causes. The laws imposing this limitation varied from time to time, but always provided that only suits involving certain amounts could originate in the higher court. The civil causes which these regulations allowed to be brought directly into the General Court were those in which the amounts involved equalled or exceeded ten, fifteen, sixteen, or twenty pounds sterling—these were the different limits at different times.[47]

When the monthly courts were first organized there were no restrictions on appeals from them to the Quarter Court, and any one who was not satisfied with the award of the monthly court could bring his case by appeal before the governor and council for a hearing.[48] It was not many years, however, before the appellate, like the original, jurisdiction of the Quarter Court began to be narrowed down to the more important cases. By a law of 1647, the appellate jurisdiction of the governor and council was limited to controversies involving amounts not less than sixteen hundred pounds of tobacco, or ten pounds sterling, but appeals from Northampton, a county east of Chesapeake Bay, were not to be allowed on account of its remoteness from James City, except in causes of double that amount.[49] But this restriction was found impracticable, and some years later it was repealed,

[47] Hening, I, 125, 346, 477; III, 143, 144, 289; V, 469; VI, 327. Dinwiddie Papers, I, 383. Beverley, Book VI, p. 24.

[48] Hening, I, 125.

[49] So far as I have been able to find, there was no law thus restricting appeals before 1647; but a limitation had existed in the practice of the courts for a few years prior to this time. In 1642, Governor Berkeley, in his commission to the justices of Lower Norfolk County, instructed them to allow no appeals to the governor and council for amounts not exceeding 600 pounds of tobacco or ten pounds sterling. Lower Norfolk County Records, 1637-1643, 160. Hening I, 345, 398, 520.

except that part of it that applied to Northampton county.[50] One of the reforms instituted by the legislaure of 1676 was the removal of this discrimination against the trans-Chesapeake counties.[51] In the eighteenth century appeals to the Quarter Court were again limited so as to exclude unimportant cases, and this restriction continued in force until the end of the colonial period.[52]

The appellate jurisdiction of the General Court was also limited in another way. The appellant always had to pay heavy damages when the governor and council affirmed the decision of the lower court. At first the law provided that all persons appealing from the monthly courts to the governor and council should pay double damages when cast in their suits.[53] But a proper administration of justice demanded that the principal tribunal should not be walled in too closely against suits originating in the lower courts, and so it was afterwards found necessary to lower the barriers by which they were kept out. By a statute of 1647, the burdens borne by appeals to the Quarter Court were reduced to fifty per cent additional damages.[54] But even this law left the General Court too much hampered in the exercise of its appellate jurisdiction, and before the end of the century, the damages on appeals had become fixed at fifteen per cent of the amount originally awarded by the lower court.[55]

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[50] Hening, I, 541; II, 66. Hartwell, Blair, and Chilton, 46. General Court Records, 1670-1676, 33, 71.

[51] Hening, II, 362, 397. The legislature that met in June, 1676, was under the influence of Bacon, and the laws passed by it are known as Bacon's Laws. All these were repealed the next year, but many of them were re-enacted. Hening, II, 341.

[52] Hening, III, 300; IV, 188; V, 481; VI, 339. Mercer, Va. Laws, 8, 9.

[53] Hening, I, 125.

[54] Ibid., I, 345.

[55] From this time on the damages to be paid by the defendant when an appeal was decided against him was fifteen per cent of the amount first awarded in all personal and mixed actions. In the early part of the eighteenth century, the damages in real actions were fixed at 2000 pounds of tobacco for every case appealed. During the last years of the colonial period, a difference as to the amount of damages charged was made between the appeals of the plaintiff and those of the defendant. The former had to pay fifty shillings, or 500 pounds of tobacco, whenever the appellate decision was against him. Hening, III, 143, 301, 514; V, 480; VI, 340. Mercer, Virginia Laws, 10.

There were never any separate chancery courts in Virginia during the colonial period, but both the General Court and the lower tribunals sat on chancery cases. If any one were wronged by a decision at common law, he could be granted a new hearing in chancery; but his cause would be tried by the same judges sitting as a court of chancery.[56] This was the usual practice, but when Lord Howard was governor an attempt was made to introduce a more imposing method of deciding chancery suits. It was his aim to establish an independent court for the trial of chancery cases, over which the governor was to preside as Lord Chancellor. The councillors sat with him, but were expected to give advice only, as the governor reserved to himself the sole power of rendering decisions. In order that this chancery court might appear the more independent of the General Court, the governor convened it, not in the state-house where the sessions of the latter were held, but in the dining-room of a private house. But this high court of chancery was short-lived. After Lord Howard ceased to be governor, the General Court resumed its old practice of deciding chancery causes.[57]

During the greater part of the seventeenth century, the General Court and the assembly were the only courts in the colony that could punish important criminal offenses, those affecting life or member.[58] The criminal jurisdiction of the Quarter Court also extended to minor offenses, though these were also cognizable in the county courts. Indeed, neither law nor custom recognized any sharp dividing line between the jurisdiction of the higher and lower tribunals in criminal cases. In the early records of the Quarter Court, we

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[56] Blair, Hartwell, and Chilton, 43. Ludwell Papers, Vol. III. Records of Henrico County, 1719-1724, 47, 109, 129, 148, 370; ibid., 1710-1714, 74, 252, 306. Mercer, Virginia Laws, 9, 156.

[57] Beverley, History of Va., Book I, pp. 90-91. Hartwell, Blair, and Chilton, 20. Sainsbury MSS., 1691-1697, 335.

[58] The county courts were for a while permitted to try important criminal cases, but they were deprived of this power in 1656. Hening, I, 397, 398.

meet with many of the same class of law-breakers that appear in the order-books of the county courts.[59]

In the Quarter Court, even at an early period, persons charged with grave offenses were tried by a petit jury after they had been indicted by a grand jury.[60] It could not be expected, however, that information of all the crimes committed in the colony would reach the grand jury without the aid of some intermediary agency. Besides, it was impossible for the sheriff that attended the General Court to make arrests in distant counties. Therefore, the judicial machinery of the counties had to be employed in bringing criminals before the governor and council for trial. Arrests for crimes were made by the sheriffs of the counties in which they were committed, and criminal offenses were first inquired into by the justices of the peace, who decided which cases should be tried by the county courts, and which ones should have a hearing before the governor and council.[61]

In the early years, certain offenses, chiefly breaches of the moral code, could also be brought before the governor and council by the churchwardens. These officers were to report all those who had been guilty during the year, of drunkenness, adultery, swearing, absence from church, Sabbath-breaking, and other sins of like character, as well as ministers who had failed to preach one sermon every Sunday, and "such maysters and mistresses as had been (shall be) delinquent in the catechising the youth and ignorant persons." But the practice of receiving presentments made by churchwardens seems to have been discontinued by the court before the middle of the seventeenth century.[62]

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[59] General Court Records, 1670-1676, 155, 156, 187, 211, 222. Records of Lower Norfolk County, 1637-1643, 2, 5, 15, 52, 62, 103, 177, 218. Records of Accomac County, 1640-1645, 49, 69, 88, 97, 168, 200. Robinson MS., 8, 11, 30, 76, 78. Records of Rappahannock County, 1686-1692, 55, 111, 114, 147, 158.

[60] Robinson MSS., 75, 76, 83. For an account of jury trials in the General Court and the oyer and terminer courts, see pp. 66-68.

[61] Records of Accomac County, 1632-1640, 43, 47; ibid., 1640-1645, 270. Hening, I, 304; III, 225, 389-391. Records of Rappahannock County, 1686-1692, 162, 163. See p. 96.

[62] Hening, I, 125, 155, 156, 180. Robinson MSS., 220.

The Virginia courts were governed in their decisions by the common law of England and by the Parliamentary statutes that were enacted before the colony was settled, but not by any that were enacted after that event except those that made mention of the plantations.[63] The first act of assembly that has been found in which the common law of England is recognized as being in force in Virginia was passed in 1662;[64] but in all probability the common law was to some extent observed by the courts during the entire colonial period with the exception of the time during which the colony was under military rule. One would naturally expect the early judges to decide cases according to the laws under which they had lived in England, in so far as they knew them, even if they were not required to do so. Besides, prior to 1662 orders were issued from England from time to time directing the authorities in Virginia to follow the laws of England, as far as was practicable, in their government of the colony. Such an instruction was given to the King's council of Virginia in 1606, and a similar provision is found in commissions to governors that were issued before 1662. As early as 1621, Governor Wyatt was instructed to "do justice after the form of the laws of England."[65] The benefit of the writ of *habeas corpus* was not formally extended to Virginia until 1710, when this privilege was brought over to the colonists by Lieutenant-Governor Spottswood.[66] But this privilege was enjoyed in Virginia before this formal recognition of it was made by the crown;

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[63] Byrd MSS., ed. 1866, II, 237. Records Lower Norfolk County, 1637-1643, 160. Accomac County Records, 1640-1645, 149.

In 1711, a woman was brought before the General Court for violating a penal law passed by Parliament in the twenty-first year of the reign of James I. The case was dismissed on the ground that the law did not apply to Virginia, as it was passed after the colony was settled and the plantations were not mentioned in it. Spottswood's Letters, II, 57, 58.

[64] Hening, II, 43.

[65] Brown, Genesis of the United States, 66. McDonald Papers, I, 376. Sainsbury MSS., 1637-1649, 44. Hening, I, 44.

[66] Spottswood's Letters, II, 13. Henrico County Court Records, 1710-1714, 28. Journal of the Assembly, 1697-1720, 36-37.

for a writ of *habeas corpus* was granted to Major Robert Beverley in 1682.[67]

While the General Court doubtless tried to conform its decisions to the laws of England, yet it was impossible to fit the judicial business of the colony into exactly the same mold into which that of the mother country had been cast. A certain amount of elasticity had to be given to the laws of England before they could be adapted to the differing conditions in Virginia.[68] Besides, a legal education was not a requisite qualification for membership in the council, and so cases must sometimes have arisen in which the judges did not know how to apply the common law. Then, too, during the greater part of the seventeenth century, the legal profession maintained with difficulty its existence in the face of the opposition which it encountered from the assembly, and, therefore, the judges for most of this time were without legal advice from professional attorneys as to the proper interpretation of laws and precedents.[69] The Virginia statutes did not, of course, cover all the offenses of which the court took cognizance, consequently, and especially in the early years, it had to rely mainly on its own originality in rendering decisions.

The Quarter Court did not believe in half measures when it came to dealing out punishment to those who had incurred its censure, and the severity of some of its early sentences leaves the impression that the spirit of Dale was at that time still lingering in the Virginia judiciary. Some of the inhuman penalties inflicted by the High Marshal are recorded in the early proceedings of the Quarter Court. Offenders

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[67] Hening, III, 547. Campbell says that his privilege had been denied the Virginians prior to this time. He probably overlooked the case cited above. Campbell, History of Virginia, 379.

[68] Hening, II, 43.

[69] See pp. 116-118. However, the court was not entirely without legal advice, for there was an attorney-general in the colony as early as 1643. Virginia Magazine of History and Biography, VIII, 70.

were made to lie neck and heels together,[70] or were made to stand in the pillory, sometimes with their ears nailed to it.[71] The death penalty usually took the form of hanging, but one case is mentioned in which the criminal was ordered to be drawn and hanged.[72] One way in which fornication had to be atoned for was for the sinner to do penance in church during divine worship by standing before the congregation wrapped in a white sheet.[73] Particularly severe was the punishment inflicted on those who spoke disrespectfully of the government authorities. That the early councillors were not inclined to tolerate seditious utterances on the part of the people and were not troubled with nice scruples regarding the freedom of speech, can be seen from the manner in which they disposed of the following case, which came before them in 1624. A man who had used abusive language in speaking about Governor Wyatt was arraigned before the council in the absence of the governor, who refrained from taking part in the proceedings. In punishing this insult to its president the court ordered that the tongue of the offender should be bored through with an awl, and that he should also "pass through a guard of forty men, should

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[70] One case is recorded in which the culprit had to lie in this position for twelve hours. Robinson MS., 65, 76.

[71] This ignominious punishment was not confined to servants and criminals of the baser sort, but those that were high in authority might be subjected to it. In 1624, we find the governor and council prescribing this penalty for their secretary, who had violated the oath of secrecy that had to be taken by all who attended the council meetings by giving the King copies of their proceedings. As a punishment for this betrayal of their secrets, the governor and council ordered that the secretary should stand in the pillory at James City with both his ears nailed to it and then have them cut off. The rigor of this sentence, however, was somewhat abated in the execution, and the offending clerk escaped by losing only a piece of one of his ears. Sainsbury MSS., 1624-1631, 112. Virginia Court Book, 1623-1626, May, 1624. Robinson MSS., 28, 61.

[72] Robinson MSS., 75, 76.

[73] The Quarter Court, as well as the county courts, sometimes employed original methods of punishment. On one occasion a woman was sentenced to be dragged at the stern of a boat to the *Margaret and John,* a vessel anchored in James River. Another woman was to be towed around the same vesel and then ducked three times. Robinson MSS., 30, 53, 62, 65.

(shall) be butted by every one of them, at the head of the troop kicked and footed out of the fort; that he shall be banished out of James City and the Plantation, that he shall not be capable of any priviledge or freedome of the country," &c.[74]

There were certain inherent weaknesses in the constitution of the General Court which were liable to breed abuse. Its close connection with the legislature and the executive was not favorable to an impartial administration of justice. The councillors, as members of the upper house of the assembly, took part in the enactment of the laws; as judges of the General Court they interpreted them; and as advisers of the governor assisted in the execution of them. Such a union of separate and distinct powers in one body of men deprived the judiciary of that independence which, according to modern views, is so essential to good government. Moreover, the executive and legislative duties of the councillors, together with those of the many offices held by them, must have consumed a good deal of their time and left them without sufficient leisure to acquire that legal knowledge which they needed in the discharge of their judicial duties.

There was also the danger that the councillors might in certain contingencies be brought into an injudicial frame of mind by the performance of their military duties. Immediately after Bacon's rebellion, this potential evil developed into an abuse in actual practice. Some of the councillors, if not most of them, were opposed to the insurrectionary movement led by Bacon, and one of them, Ludwell, took the

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[74] Robinson MSS., 28, 29. Virginia Court Book, 1623-1626, May, 1624.

In thus giving examples of penalties prescribed by the Quarter Court, no attempt is made to enumerate all the methods of punishment used by it. One other mode of correction employed by it might be mentioned; namely, that of binding offenders to service for certain lengths of time. The court in the early years could order a freeman to serve the colony for a term of years for violating certain regulations of the government. A runaway servant could be punished by lengthening his term of service and branding him with the letter "R." Robinson MSS., 11, 12, 76.

leading part in the war against the rebels.[75] After the rebellion was over, some of Bacon's followers were brought before the councillors, their enemies, for trial. The judges, or some of them at least, went into court with their war-spirit unabated, and were, therefore, not in a humor to deal fairly by their antagonists.[76]

And yet Bacon's followers would have fared much better than they did if all of them had been tried by the General Court, although its judges were their enemies. For if justice had been allowed to take its ordinary course, no death sentences would have been passed until after a jury had decided as to the guilt or innocence of the accused. But it was not the intention of the governor to allow juries to come between him and his revenge, and so he ordered the rebels to be tried by court martial without a jury.[77] By this means he was able to get many sentences of death against those who had taken part in the rebellion. According to the report of the King's commissioners, all who were tried by the court martial were sentenced to death and hanged, and so the accused were willing to accept any compromise rather than go to trial. When a person was brought before the court martial, he was asked whether he wished to be tried or to be fined at the discretion of the court without a trial, and the latter alternative was always preferred. A fine was then imposed upon him without the aid of a jury.[78] Berkeley's high-handed tyranny was not checked until the three commissioners appointed by the King to investigate conditions in the colony arrived in Virginia. On the arrival of these

[75] Neill, Virginia Carolorum, 360, 363, 364. Burk, History of Virginia, II, 180. General Court Records, 1670-1676, 247, 257.

[76] The commissioners sent over by the King to investigate conditions in Virginia reported that when they sat with the council on the trial of rebels, some of the loyalist party who sat with them were so unmindful of their position as judges that they railed at the prisoners from the bar as if they were the chief witnesses for the prosecution. Randolph MSS., 366. General Court Records, 1670-1676, 266, 267.

[77] Sainsbury MSS., 1676-1677, 118. Randolph MSS., 365. General Court Records, 1670-1676, 264-265.

[78] Randolph MSS., 366.

commissioners, trials by court martial ceased, and the General Court resumed its jurisdiction over criminal cases. After this no sentences of death were given against the rebels until after they had been indicted by a grand jury and tried by a petit jury.[79]

These acts of injustice committed against Bacon's followers were the greatest series of wrongs ever perpetrated in the name of the Virginia judiciary since the colony was freed from the military rule of Dale and Argoll. But the acquiescence of the court martial in the blood-thirsty demands of Berkeley is not to be taken as a proof that the governor's power was usually supreme in the administration of justice. Berkeley was, by a combination of unfortunate circumstances, raised to an eminence of power that the average governor never attained. The party of opposition had just been crushed, and was not able to make an effective protest against the arbitrary acts of the victor. Besides, many of the councillors were also opposed to the insurgent movement, and so there was in effect a union between the aristocracy and the King's representative against the conquered rebels. If the council, on this occasion, had stood out in manly opposition to the governor, as it frequently did at other times, this great stain on the ermine of Virginia would never have been made. We are glad to know, however, that the voice of protest was raised by the assembly against the atrocities practiced by the governor.[80]

Another flaw in the judicial system of Virginia was the entire exemption of the General Court from both direct and indirect responsibility to the people. As we have already seen, the people were not given a voice in the appointment or removal of councillors, and so to a greater extent than

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[79] Randolph MSS., 365. General Court Records, 1670-76, 266, 267. In justice to Governor Berkeley, it ought to be said that an apologist for him claims that the death sentences passed by the court martial were all given in the heat of the rebellion at a time when he had no secure place in which to confine prisoners and no safe guard to keep them. Ibid., 372.

[80] Randolph MSS., 366.

was proper, the judges were relieved of the fear that they would lose their places if they gave decisions that the people considered unjust. But the absence of this restraint on the court left a dangerous power in the hands of the judges, which they could employ towards the furtherance of their own private ends. There must ever have been before them the temptation to give unfair decisions in those suits in which they themselves or their friends were interested.[81] Nor were the councillors always strong enough to withstand this temptation. In the last quarter of the seventeenth century, the General Court fell into a practice by which each judge was practically exempted from liability to all actions except those that were brought with his own consent. This abuse was revealed to the Commissioners for Trade and Plantations by an investigation which came in response to complaints of certain English creditors made against the General Court for withholding justice from them. It was charged in these complaints that a debt due them in Virginia could not be collected owing to the failure of the General Court to decide suits brought against councillors.[82]

When the Commissioners inquired (1696) into the alleged grievances, it discovered, to its great astonishment, that the

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[81] It seems to have been the usual custom for a judge to leave the bench whenever a suit to which he or his relatives were parties came before the court for a hearing. But still it was to the interest of the judges to render a decision favorable to an absent colleague, as they might want him to return the favor when they were placed in the same situation. Spottswood's Letters, II, 60.

[82] However, these acts of injustice to foreigners did not of themselves mean necessarily that the court had fallen into extremely corrupt practices. The sense of public honor was not so high among the Virginians of the seventeenth century as it is at present. This is shown by the fact that during a considerable part of the seventeenth century the laws provided that the debts due to foreigners by Virginians, except those contracted for imported goods, were not recoverable in the Virginia courts. Nor was Virginia the only colony that held lax views regarding obligations to foreigners. For in 1731 we find British merchants making complaints against other English colonies, saying that debts could not be collected in them. We must, therefore, use the moral standards of the time in gauging the degree of corruption involved in this discrimination against foreigners. Hening, II, 189. Sainsbury MSS., 1606-1740, 108, 113, 115, 116; ibid., 1691-1697, 250.

General Court had a rule according to which an action could not be brought against any councillor without his consent. The practice of the court which had been in vogue for about sixteen years, was as follows:—When a suit was brought against a councillor, a notice of it was sent to him with the request that he appear before the court. If he failed to do so, the request was repeated, but no attachment was issued against his person or property to compel his attendance. By ignoring these notices, a councillor could postpone indefinitely the hearing of any suit against him. This indefinite postponement of cases was more unjust to the complainants than unfair decisions would have been because it deprived them of the privilege of appealing to the King. It was, therefore, left entirely optional with the councillors whether an action should ever be brought against them in the General Court.[83] This grievance, however, could be easily remedied, since all that was needed was a law providing that attachments be issued against the property of a councillor when he refused to appear in court to answer suits brought against him. Such a law was passed in 1705, and after this no mention of the abuse is found.[84]

It must not be inferred from this discussion of its weaknesses that the General Court was generally given to corrupt practices. In the documents that have been examined, only a few abuses are recorded, and this negative evidence goes far to show that the court usually gave the people a fair administration of justice.

COURTS OF OYER AND TERMINER.

After the sessions of the General Court were reduced to two a year, criminals were sometimes necessarily kept in prison six months before they could be tried. It was not long before the need for a more speedy administration of justice began to be felt, and this need led to the formation of a new criminal tribunal, the Court of Oyer and

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[83] Sainsbury MSS., 1691-1697, 258, 259, 288, 331.
[84] Hening, III, 291, 292.

Terminer. The permanent establishment of this new court dates from the first quarter of the eighteenth century, but before this time special courts of oyer and terminer were occasionally held in the colony. In the latter part of the seventeenth century we find that the King sometimes sent over special commissioners of oyer and terminer in which certain persons were named as judges for the trial of particular cases.[85] But the King's order for convening these

[85] Sainsbury MSS., 1686-1688, 12; ibid., 1691-1697, 260; ibid., 1715-1720, 698. Calendar of Virginia State Papers, I, 192.

One of the most interesting and important cases that were tried by special courts of oyer and terminer was that in which George Talbot, a prominent citizen of Maryland, was arraigned for killing Christopher Rousby, the King's collector of customs. The act was committed on board *The Quaker,* a revenue vessel, which at that time was lying in the harbor at the mouth of Patuxent Bay in Maryland. The captain of the vessel was unwilling to deliver Talbot up to the Maryland authorities, as he feared that they would not punish him as he deserved. He, therefore, sailed to Virginia with his captive and gave him over to Lord Howard, the governor. Lord Howard thought that his commission as vice-admiral gave him authority to punish offenses of this class, and so Talbot was confined in the jail of Gloucester County. The Maryland council wrote to Governor Howard asking him to send Talbot back to Maryland for trial, claiming that no other colony had jurisdiction in the case. At a meeting of the Virginia council, which was called to consider the matter, it was decided that all depositions should be sent to the King for his opinion as to whether Talbot should be tried in Virginia according to the rules of admiralty or be sent to Maryland to be tried according to common law. The Committee of Trade and Plantations at first recommended that Talbot be sent to England for trial, but afterwards decided that a special commission of oyer and terminer should be sent to the council of Virginia for his trial. The King also sent instructions to Lord Howard authorizing him to suspend the execution of the sentence against Talbot if he should be found guilty. But before this special court convened for his trial, Talbot escaped from the Gloucester jail and returned to Maryland. Fiske says that he was liberated by his wife, who one dark, wintry night sailed with two companions down the Chesapeake Bay and up York River until they came to Gloucester. Talbot was delivered from prison and taken back to his home in Maryland. The sheriff of Gloucester County and another prominent Virginian were sent to Maryland for the prisoner, but it is not stated whether they succeeded in bringing him back. At any rate, the case was put on trial in Virginia before the General Court acting under a special commission of oyer and terminer, and he was sentenced to death. The King commuted the sentence (1686) to five years banishment from the British dominions. Sainsbury MSS., 1682-1686, 134, 138, 142, 143, 146, 150, 162, 195, 209, 212; ibid., 1686-1688, 3, 12. Randolph MSS., 426, 427. Fiske, Old Virginia and Her Neighbors, II, 158.

courts was not often given, and therefore, they were not an effective remedy against the delays in criminal trials. In 1692, an attempt was made to shorten the long intervals that came between the courts at which criminals could be tried. We find an order bearing date of that year which authorized the governor to grant special commissions of oyer and terminer at any time during the sessions of the General Court or assembly for the trial of capital offenses which could not be reported to the General Court on the day usually set for the hearing of criminal cases.[86]

Naturally, the next step to be taken in the development of the oyer and terminer courts was to introduce into these supplemental courts regularity as to the times of meeting. This step was attempted in 1710 when Lieutenant-Governor Spottswood was instructed by the Queen to require courts of oyer and terminer to be held regularly twice a year. Soon after his arrival, the governor called together his council and made known to them this order of the Queen. The councillors considered the innovation unnecessary, and replied that, in their opinion, criminal trials were already adequately provided for. There was, however, no important reason why they should object to the change, and when the governor again advised with them soon afterwards, they agreed to the new plan and recommended that the assembly provide for the expenses for carrying it out. The time set for the first meeting of the court was in December, 1710.[87]

The lieutenant-governor had thus succeeded in establishing regular courts of oyer and terminer without arousing the dangerous opposition of his council. If he had been satisfied to step here, it would have fared much better with him than it did. If he had not tried to use the new courts as a means of enlarging his own powers, this expansion of the judiciary could have taken place without occasioning any dispute over the new acquisition. But, unfortunately for him, he claimed, and two years later exercised the right of

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[86] Calendar Virginia State Papers, I, 35, 36.
[87] Letters of Governor Spottswood, I, 8, 24.

naming in his commission of oyer and terminer persons other than councillors, which stirred up opposition against him in the council. The councillors regarded this as an attempt on the part of the governor to deprive them of their rights in the courts newly annexed to the judiciary. They did not, however, refuse to sit in the court of oyer and terminer the first time outsiders sat on the bench with them. Their reasons for yielding thus far in the beginning were that no criminal cases were tried at that particular court, and besides, they did not want their protest against the governor's action to take the form of a public affront. However, they asserted their right to act as sole judges in criminal trials, and the governor was soon convinced that they would not part with any of their judicial power without a struggle.[88]

The opposition of the council to this innovation led the governor to refer the question to the Lords of Trade for an opinion. The Lords of Trade decided that the governor did not have to confine himself entirely to councillors in choosing judges for the courts of oyer and terminer, unless such a limitation were imposed upon him by an act of the assembly.[89] Spottswood thought that his opponents would acquiesce in this decision, and in 1717 he named as judges of a court of oyer and terminer five councillors and four other prominent men. These outsiders were added, according to his own statement, to show the people that the power of the crown over the judiciary was the same in Virginia as it was in England. Some of the councillors were still unwilling to concede the governor's right to create judges in this way, and so refused to sit in this court.[90] Eight members of the council declared that they would not act as judges in these courts if any persons other than councillors were appointed to sit with them.[91] The dispute, therefore, continued open,

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[88] Byrd MSS., II, 199-202. Spottswood's Letters, II, 25-26.
[89] Sainsbury MSS., 1715-1720, 521, 522.
[90] Ibid., 637. Spottswood's Letters, II, 26, 259, 260.
[91] Sainsbury MSS., 1715-1720, 578.

and much bitterness of feeling was engendered before a final settlement was reached.

Prominent among the leaders of the opposition were Commissary Blair, Philip Ludwell, and William Byrd, all men of great influence in the colony. Byrd sent a remonstrance to the Lords Commissioners of Trade and Plantations, in which he brought forth able arguments to show that the governor could not go outside of the council in selecting judges. The innovation, he said, was a violation of the laws and chartered privileges of the colony. Besides, it gave the governor an undue influence over these courts, and, therefore, left the lives and fortunes of the people too much at his mercy. For the judges of the oyer and terminer courts were appointed, not for life or for a certain number of years, but for one term of the court. If the governor, therefore, wished to punish any one, he could at each term of the court appoint as judges such men as would vote for the sentence he desired.[92] Spottswood replied to these objections, and pointed out that there were precedents in favor of the practice inaugurated by him. The King, he said, had sometimes joined others with councillors in his special commissions of oyer and terminer, and in the slave courts justices of the peace gave the death sentence. He also declared that the judges whom he had appointed to sit with the councillors in these courts were as well qualified to try criminals as the councillors themselves.[93]

But before the governor sent in his reply to Byrd, the contest had reached a stage in which an important constitutional question was involved. In order that the mooted point might be settled once for all, the Lords of Trade appealed to the attorney-general of England for his opinion on them. The attorney-general decided that the governor had not infringed any legal provision by the exercise of the disputed power, but recommended that he be restrained from

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[92] Calendar of Va. State Papers, I, 190-193. Sainsbury MSS., 1715-1720, 578, 708.

[93] Sainsbury MSS., 1715-1720, 698-701.

convening these courts except on "extraordinary emergencies." In January, 1718, the Lords of Trade sent this opinion to the governor and intimated that he was expected to act in accordance with the recommendation coupled with it.[94]

The assembly now came forward to champion the cause of the council. In May, 1718, it sent a petition to the King asking that the councillors might be the sole judges of the courts of oyer and terminer, or that His Majesty would in some other way restrain this dangerous power of the governor. But the Lords of Trade refused to grant this request, and the council gave up its attempt to exclude outsiders from the bench of the oyer and terminer courts.[95]

In the settlement of the dispute neither the governor nor the council could claim a complete victory. The governor had gained his point in so far as his power to appoint other judges to sit with the councillors in the oyer and terminer courts had been upheld; but the Lords of Trade had to forego most of the fruits of the victory as they receded from their first position. According to the instructions first given to Spottswood, these courts were to be held regularly twice a year, but he was now advised to convene them only on very important occasions.[96] The failure of the council to obtain from the Board a theoretical recognition of their right to act as sole judges in the courts of oyer and terminer seems to have been only a nominal defeat. For in the first court of oyer and terminer that was held after the councillors yielded, no outsiders were appointed to sit with them as judges.[97] Then, too, the immediate successor of Spottswood, Hugh Drysdale, seems to have profited by Spottswood's experience and to have prudently abstained from antagonizing his council by exercising the disputed power.

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[94] Sainsbury MSS., 1715-1720, 669, 675, 676, 686.
[95] Ibid., 740, 770. Spottswood's Letters, II, 321.
[96] Sainsbury MSS., 1715-1720, 675, 676, 678. Randolph MSS., 498. Spottswood's Letters, I, 8.
[97] Spottswood's Letters, II, 321.

Before the end of the first year of his administration, the council had unanimously agreed that the courts of oyer and terminer should be regularly held according to the King's instructions.[98] Now we can hardly believe that those men who had contended so strenuously for their rights during Spottswood's administration [99] would now consent to the formation of a regular tribunal unless they felt assured that they would always be chosen as its sole judges. At any rate, there is no doubt that by the middle of the eighteenth century (1755), it was customary for the oyer and terminer courts to be composed exclusively of councillors.[100] We may, therefore, safely say that the councillors eventually won all that they were contending for, and that the victory of the governor and Lords of Trade was an empty one, which barely enabled them to come out of the contest with their dignity unimpaired.

The fact that the council was able to push its opposition to such a successful issue argues much for the influence wielded by it in the colony. The power possessed by the councillors at this particular period was greater than that usually enjoyed by them, and Spottswood ought to have seen that during his administration the time was most inopportune for a governor to measure lances with them. Seven of them, more than a majority, were related,[101] and it was, therefore, easy for them to combine against the crown representative. Besides, the family to which most of the councillors belonged had already procured the removal of two governors, which emboldened them against Spottswood and made them popular with the people.[102] On the other hand, Spottswood's power was weakened by the opposition which the assembly was waging against him.[103] The council's success in this

[98] Sainsbury MSS., 1720-1730, 74, 75.
[99] Spottswood's council was passed on to Drysdale with few, if any, changes in its personnel. Ibid., 1715-1720, 578, 593. Council Journal, 1721-1734, 3, 11, 16, 27, 32-34.
[100] Dinwiddie Papers, I, 384.
[101] Spottswood's Letters, II, 60.
[102] Sainsbury MSS., 1715-1720, 709.
[103] Ibid., 740. Southern Literary Mesenger, XVII, 590-592.

quarrel was also doubtless due, in large measure, to the able leadership of Commissary Blair and Colonel William Byrd.

This dispute was a struggle directly between the council and the King's representative, but indirectly a contest between the colonial government and the crown. The council was supported by the representatives of the people,[104] and the governor, by the Lords of Trade, for this board saw in the council's objections to the innovation only a desire to conserve its own authority at the expense of the King's power.[105]

It is difficult to determine what support the people gave the aristocracy in their brave struggle with the King's representative. It would seem that they were not indifferent to this increase of the governor's authority, as their representatives, the Burgesses, expressed their disapproval of it. But Spottswood says that the Burgesses at this time were much in disfavor with the people;[106] and if this be true, their address in support of the council cannot be taken as an expression of popular opinion. He also claimed that the people refused to concern themselves with the council's quarrel. According to his account, a paper was drawn up in the form of a grievance against the oyer and terminer courts, and was sent out to the counties to be signed by the citizens. But despite this attempt to work up sentiment against the governor's action, only two counties sent in grievances against these courts, and one of these remonstrances had only eighteen signatures and the other only eleven.[107]

It might at first thought appear that this protest of the councillors was only an expression of that factious spirit which they too often betrayed during this period.[108] But if the innovation attempted by the governor had been carried out without opposition, it would in all probability have materially altered the relation of the colony to the mother

[104] Sainsbury MSS., 1715-1720, 740.
[105] Ibid., 691.
[106] Ibid., 779.
[107] Ibid., 706. Spottswood's Letters, II, 276.
[108] Campbell, History of Virginia, 398.

country. The proposed change would have meant a transfer of a certain amount of power from the Virginia aristocracy to the King's representative, and through him to the King himself, and, therefore, the colony would to that extent have been deprived of its local autonomy. Besides, this transfer of power could not have been effected without giving the governor a dangerous influence over the judiciary. This new privilege of the executive was, as Colonel Byrd pointed out, liable to great abuse. It is true that Spottswood did not use the new courts as a means of procuring unjust sentences against his enemies, for he did not require any criminals to be tried in them who desired to wait for the regular sessions of the General Court.[109] But the opposition of the council was aimed not so much at Spottswood's policy as at the principle underlying that policy.[110] If no voice of protest had been raised at this time against executive aggression, the new power would have been confirmed to the King's representative by precedent. There would always have been present the danger that an able and unscrupulous governor would use his influence over the judiciary as a means of gratifying his private spite. The council, therefore, did the colony a great service by thus resisting this encroachment upon its privileges. It may be true that the councillors, as was charged by the Lords of Trade, made the fight to protect their own interests rather than to protect the rights of the people.[111] But their service to Virginia was none the less valuable because it was not performed entirely for altruistic reasons. For it seems that colonial Virginia owes the absence of this element of despotism from her constitution to the stand which the council at this time made against the governor's attempted aggression.

However, the strife over the oyer and terminer court ceased in a few years,[112] and the new tribunal became a per-

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[109] Sainsbury MSS., 1715-1720, 796.
[110] Ibid., 69. Spottswood's Letters, II, 26, 222.
[111] Sainsbury MSS., 1715-1720, 691.
[112] Spottswood's Letters, II, 341.

manent part of the Virginia judiciary. After the court had become established, its sessions were held twice a year, in June and December, and the intervals between the terms of the General Court were thus equally divided.[113]

In both the General Court and the oyer and terminer courts, important criminal offenses were tried by a petit jury after indictments had been made by the grand jury.[114]

It has already been shown that the right to be tried by a jury of their compeers was one of the privileges that the first settlers brought with them from England.[115] This right was called into exercise for the first time in 1607 in the trial of two suits for slander brought by John Smith and John Robinson against Edward Maria Wingfield, the first president of the local council.[116] Juries were several times called on to decide causes during the few years in which Virginia was under the first charter that was granted to the Company.[117] In Dale's scheme of military government there was no provision for juries, and they probably had no place in the martial courts that dealt out summary punishment to offenders. But after this military tyranny had given place to the régime of freedom inaugurated by Yeardley, the people began again to enjoy the right of trial by jury, and as early as 1625 we find the governor and council making use of this privilege.[118]

According to the usual custom the grand jury of the General Court was selected from the freeholders who happened to be at the capital while the court was in session.[119] For the

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[113] Virginia Gazette, Dec. 15, 1768; June 15, 1769. Webb, Virginia Justice, 107. Hugh Jones, Present State of Virginia, 29.

[114] Robinson MSS., 75, 76, 83. General Court Records, 1670-1676, 8, 20, 53, 154, 235. Hening, IV, 403; V, 543.

[115] See page 11.

[116] Wingfield's True Discourse, published in Arber's Works of Smith, LXXXIII. In Winsor's Narrative and Critical History of America (Vol. III, p. 146) it is erroneously stated that the first trial by jury in Virginia was in 1630, when ex-Govenor Pott was arraigned before the Quarter Court for cattle stealing.

[117] Arber, Works of Smith, 12, 13.

[118] Virginia Court Book, 1623-1626, August, 1623.

[119] Randolph MSS., 412. Hening, V, 524, 525. Mercer, Virginia Laws, 160. Webb, Virginia Justice, 198.

grand jury of the oyer and terminer court, the sheriffs of James City and York Counties [120] each had to summon twelve men to come before the court. A grand jury of not less than fifteen was to be sworn out of those that obeyed the summons.[121]

The petit jury in both courts was usually composed of twelve men, though in the early records of the General Court, panels of thirteen, fourteen, and twenty-four are mentioned.[122] The English custom of trying criminals by juries of the vicinage could not be followed by the General Court without great inconvenience and expense. But in 1662, a law was passed providing for the partial adoption of this practice by the General Court. According to this statute, every crime punishable by loss of life or member was to be tried by a jury of twelve men, six of whom were to be selected from bystanders and six were to be summoned from the vicinity in which the crime was committed.[123] This method of choosing jurors was employed by the General Court for nearly three-quarters of a century.[124]

When the court of oyer and terminer was established, criminals brought before it were tried by a jury of twelve men from the county in which the crime had been committed, according to the common law of England. In 1734, the practice in both courts was made uniform by a law which provided that twelve men of the vicinage should be summoned whenever an important criminal case was to be tried by either court. The places of those who were challenged or who failed to appear were to be filled with bystanders.[125] But this method was found inconvenient and expensive.

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[120] Williamsburg, the capital, was on the border of these two counties, being partly in both.

[121] Hening, IV, 403; V, 543. Mercer, Va. Laws, 160. Webb, Va. Justice, 199.

[122] Robinson MSS., 75. Hening, I, 145, 146.

[123] Hening, II, 63, 64.

[124] Hartwell, Blair, and Chilton, 47. Calendar Virginia State Papers, I, 8, 34, 35. Hening, IV, 404. Beverley, Book IV, p. 23.

[125] Hening, IV, 403, 404; V, 544. Mercer, Virginia Laws, 218. Webb, Virginia Justice, 199.

Besides, it was noticed that most of the sentences given for capital offenses were against those persons who had been convicted of crimes in Great Britain or Ireland before they were brought to Virginia. It was held that no advantage could come to such persons from being tried by a jury of the vicinage, as they were generally not known even in the county in which they lived. It was, therefore, enacted in 1738, that in trials for capital crimes, juries should be made up of bystanders in all cases in which the accused was still serving a term for a crime committed in Great Britain or Ireland.[126] Juries of bystanders were also usually employed by the General Court in the determination of civil causes and in the trial of minor criminal offenses.[127] The property qualification for jury service in the General Court and the courts of oyer and terminer was fixed by laws of the eighteenth century at one hundred pounds sterling.[128]

During the colonial period, the severity of the laws was mitigated by the custom of allowing the benefit of clergy to criminals. According to the ancient practice in England, those who were entitled to this privilege could claim it in all cases of petit treason and in most cases of capital felonies. Before Virginia was settled, English statutes had added certain other offenses to this list of exceptions. This raised the question as to whether the class of criminals thus excepted by Parliament were to be excluded from the benefit of clergy in Virginia. The opinion generally held was that clergy should not be allowed in Virginia in those cases in which it had been taken away by these English statutes; but as doubt might arise on this point, the assembly in 1732 reviewed the question and declared in favor of the commonly accepted view.

For a long time the benefit of clergy was not granted in

[126] Hening, V, 24, 25, 545. Mercer, Virginia Laws, 57, 58.
[127] Hening, III, 369; V, 525. Mercer, Virginia Laws, 217. Beverley, Book IV, p. 22. Hening, II, 73, 74. Hartwell, Blair, and Chilton, 47. Hammond, Leah, and Rachel, published in Force's Tracts, p. 16. General Court Records, 1670-1676, 150, 158.
[128] Hening, III, 176, 370; V, 525. Mercer, Va. Laws, 218, 219.

England to laymen under the rank of peers unless they could read, but in the fifth year of Queen Anne's reign a law was passed by Parliament which did away with this unjust discrimination against laymen. In 1732, the Virginia assembly, following this precedent, extended the benefit of clergy to negroes, Indians, and mulattoes, and ordered that the reading test should thereafter never be required of anyone who should claim this privilege.[129]

In the list of crimes which were placed without the benefit of clergy by the statutes were murder, burglary, burning of houses, horse stealing, and man-slaughter when committed by a negro, Indian or mulatto. Also if a negro, Indian, or mulatto was convicted of breaking into a house in the daytime and stealing as much as five (afterwards twenty) shillings, he was to be punished without benefit of clergy. Clergy was allowed to a criminal only once during his lifetime.[130]

When the court granted the benefit of clergy to an offender, it substituted burning in the hand for the death penalty.[131] According to Starke, the old English custom required that the letter "M" be branded in the hand of murderers and "T" in that of other felons. This imprint was burnt into the hand not merely to punish the criminal, but also to put a mark on him which would show that he had received the benefit of clergy and thus keep him from deceiving the court into granting the privilege a second time.[132] But in the eighteenth century branding seems to have been regarded as a mere act of form in Virginia, for it could be done with a cold iron.[133] When a person was

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[129] Hening, IV, 325, 326. Mercer, 54. One case is given in which the General Court of Virginia required reading before allowing clergy. General Court Records, 1670-1676, 53. Blackstone's Commentaries, IV, 296, 299.

[130] Hening, IV, 326. Webb, Virginia Justice, 82, 83. Starke, Virginia Justice, 87. Mercer, Virginia Laws, 54.

[131] Webb, Virginia Justice, 83. Virginia Gazette, Oct. 29, 1736; June 10, Oct. 28, 1737; May 12, Dec. 15, 1768; June 15, 1769.

[132] Starke, Va. Justice, 87. Blackstone, IV, 294.

[133] Virginia Gazette, Dec. 7, 1739. Starke, 88.

admitted to clergy, he forfeited all his goods, but when he was burnt in the hand, he was reinstated in the possession of his lands. By the act of branding, his credit was also restored, and his disability for acting as a witness was removed.[134] Indians, negroes, and mulattoes, who were given the benefit of clergy, besides being burnt in the hand, could be punished by whipping.[135]

Ecclesiastical and Admiralty Courts.

There was one independent ecclesiastical court in the colony, which was held by the Commissary of the Bishop of London, though it was not a court in the true sense of the term. The immoralities of the clergy were the only offenses of which it took cognizance and deprivation of, and suspension from, office were the only punishments which it could impose. From this court appeals could be taken to the Court of Delegates in England.[136] This was a narrower jurisdiction than that exercised by the ecclesiastical courts of England during the colonial period. The other spiritual causes which were cognizable in the English ecclesiastical courts were determined in Virginia by the regular common law courts.[137] In England matrimonial and testamentary causes were tried by the spiritual courts; while in Virginia, they were heard by the regular common law courts. As has already been shown, the General Court and the county courts examined wills and gave certificates thereon, and the governor signed the orders for executing them.[138] No record of absolute divorces has been found, and apparently they were not often given during the colonial period. However, divorces *a mensa et thoro* were granted by both the General Court and the county courts, and a marriage could be

[134] Starke, 91. Blackstone, IV, 300.

[135] Mercer, 54.

[136] Dinwiddie Papers, I, 384.

[137] Hartwell, Blair, and Chilton, 49; 50. Webb, Virginia Justice, 206. Blackstone, III, 87-97.

[138] See page 45. Blackstone, edited by Chitty, III, pp. 67-73. Beverley, History of Va., Book IV, p. 21.

annulled *ab initio* by the General Court if the contracting parties were within "the Levitical degrees prohibited by the laws of England."[139]

During the greater part of the seventeenth century, there was no need of a separate court of admiralty in Virginia. In a report sent to England in 1671, Governor Berkeley said that it had been twenty-eight years since a prize had been brought into the colony.[140] The few maritime causes that came up for a hearing were determined by the regular courts, which could employ juries to assist them in rendering decisions.[141] This method of trial must have been unfavorable to a strict enforcement of the navigation laws, for both judges and juries would naturally be disinclined to give severe sentences for violations of laws that they considered unjust to the colony. The theory that the courts dealt leniently with smugglers is supported by the fact that the home government at the end of the century felt called upon to establish a court of vice-admiralty in the colony. An order for erecting a court of admiralty in Virginia appears in the instructions given to Lord Howard in 1690.[142] But this order seems not to have been complied with by him, and it was renewed to Governor Andros in 1697. The council had already expressed its approval of the plan, and next year Andros established a court of vice-admiralty, whose

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[139] Calendar Virginia State Papers, 29. General Court Records, 1670-1676, 262. Robinson MSS., 16, 75. Elizabeth City County Court Records, 1684-1699, 235. Virginia Magazine of History and Biography, I, 40; VIII, 175. Hening, IV, 245-246.

According to the Rev. Hugh Jones, the ecclesiastical courts of Virginia were in his day very unpopular with the people and their very name was hateful to them. But it must be borne in mind that Hugh Jones's views were narrow and biased, and it is, therefore, not improbable that he construed the opposition of a certain faction of the clergy to the Commissary's reforms into a general discontent of the people with the practices of the spiritual courts. Hugh Jones, Present State of Virginia, 66.

[140] Chalmers, Political Annals, 325.

[141] Virginia Magazine of History and Biography, V, 38; XII, 189. Hening, I, 466, 467, 537, 538. General Court Records, 1670-1676, 8, 40, 41, 42, 253. Beverley, History of Va., Book IV, pp. 20, 21. Hartwell, Blair, and Chilton, 43.

[142] Sainsbury MSS., 1640-1691, 334.

territorial jurisdiction was to embrace Virginia and North Carolina.[143]

The establishment of the colonial courts of vice-admiralty was, in a sense, an extension of the jurisdiction of the High Court of Admiralty to the colonies.[144] At first the judge was appointed by the governor, but later the judge was commissioned by the High Court of Admiralty of Great Britain, and the other officers—the advocate, the marshal, and the register—were chosen by the governor.[145] The court took cognizance of violations of the trade and quarantine laws and other maritime causes, except that it did not have jurisdiction over offenses committed on the King's ships of war. Appeals from decisions given by this court could be made to the High Court of Admiralty in England or to the King in council.[146]

The governor took a prominent part in admiralty proceedings. He was vice-admiral of the colony, and had power to appoint masters of vessels and grant them commissions to execute martial law.[147] The courts of vice-admiralty were not convened at regular intervals but were called only when there were cases to be tried.[148] The court as constituted in 1736 was composed of not less than seven judges, one of whom was always either the governor, or the lieutenant-governor, or a councillor. Merchants, planters, factors and officers of ships were also eligible to a seat on the bench of this court.[149]

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[143] Sainsbury MSS., 1691-1697, 292, 315. Ibid., 1706-1714, 323. William and Mary College Quarterly, V, 129.

Just how long this court continued to hear maritime causes coming up from North Carolina, I am unable to say.

[144] Blackstone, III, 69.

[145] Dinwiddie Papers, I, 384. William and Mary College Quarterly, V, 129.

[146] Dinwiddie Papers, I, 384. Hening, III, 178; IV, 99-101; ibid., 1691-1697, 135, 137. Blackstone, ed. by Chitty, III, p. 54.

[147] Sainsbury MSS., 1625-1715, 55; ibid., 1640-1691, 334; ibid., 1705-1707, 58, 526. Dinwiddie Papers, I, 384. Beverley, Hist. of Va., Book IV, p. 4. Hartwell, Blair, and Chilton, 20.

[148] Dinwiddie Papers, I, 384. Blackstone, III, 68.

[149] Webb, Virginia Justice, 107, 249, 250. Virginia Gazette, Sept. 15, 1738.

The methods employed in dealing out punishment for piracy were not uniform. In 1687, the King appointed a special commissioner to supervise the trial of pirates in Virginia.[150] Ten years later the English method of inquiring into and punishing offenses committed at sea was adopted in the colony. According to a law enacted in 1699, all piracies, treasons, felonies and other crimes committed on the high seas, or in the bays, harbors or rivers under the jurisdiction of the admiral[151] were to be tried by a special court of oyer and terminer called for that purpose. The judge of the court of vice-admiraly and "such other substantial persons" as the governor should see fit were to be the judges of this court.[152] In the early part of the eighteenth century, commissioners were appointed by the Queen to try pirates in Virginia and North Carolina. According to Webb, whose work was published in 1736, it was the custom in his day for the commissioners appointed by the King, or some of them at least, to sit in the court of vice-admiralty, before which persons charged with piracy were brought for trial.[153]

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[150] Sainsbury MSS., 1686-1688, 88, 144; ibid., 1625-1715, 142.

[151] The term admiral was used here to designate the governor, who was vice-admiral of the colony.

[152] Hening, III, 178. Statutes of the Realm, 28, Henry VIII, C. 15. Hugh Jones, Present State of Virginia, 29.

[153] Webb, Virginia Justice, 107. Sainsbury MSS., 1705-1707, 30; ibid., 1715-1720, 779, 780.

CHAPTER III.

The Inferior Courts.

The Monthly or County Courts.—The most important inferior court was the one regularly held in each county. It was at first known as the monthly court, but it was afterwards given the English name of county court. The first monthly courts were established as early as 1624. At that time it was provided by an act of assembly that courts should be held every month in the corporations of Charles City and Elizabeth City.[1]

The creation of these courts was the necessary outcome of the rapid growth of the colony which began in 1619. When the cleared areas began to lengthen along the river and to encroach more and more on the wilderness, it became very inconvenient for those colonists living at a distance from James City to go there for the arbitration of their minor differences. The need of local adjudication in small matters naturally became felt first in the more remote settlements, and, as one would expect, the first two monthly courts were established on the eastern and western frontiers. The jurisdiction of the county courts was limited to petty cases coming up from the precincts immediately adjacent to them, and thus the judicial authority of the governor and council was, for a considerable part of the country, left unimpaired.

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[1] In an address made before the Virginia Bar Association in 1894, Judge Waller Staples said that monthly courts were first established in 1623. This statement is based on a law passed by the assembly in 1624; the mistake in the date arises, I presume, from an erroneous reading of "1623-4," which is given by Hening as the date of the act.

It is not improbable that these two courts were established as early as the year 1619, and that the act of 1624 was only a statutory recognition of what had already been accomplished in fact. Hening, I, 125. Proceedings Virginia State Bar Association, Vol. VII, 129. McDonald Papers, I, 137.

It was not long before the growth of the colony demanded an extension of this branch of the judiciary. By 1632, three other monthly courts had been created, one of which was located on the eastern side of the Chesapeake Bay.[2] In 1634, the colony was divided into eight shires, corresponding to the shires of England, in each of which a court was to be held every month.[3] Other counties were formed from time to time, and each one was given a local court as soon as it was organized. In 1658, there were sixteen counties in Virginia;[4] in 1671, twenty;[5] in 1699, twenty-two;[6] in 1714, twenty-five;[7] and by 1782, the number had increased to seventy-four.[8]

By the act of 1624, it was provided that the judges of the monthly courts should be "the commanders of the places and such others as the governor and council shall appoint by commission."[9] The judges were at first known as commissioners of the monthly courts, but were afterwards given the title of justice of the peace.[10] The office of justice of the peace was one of dignity, and was generally held by men of influence and ability.[11] Apparently few of the magistrates were learned in the law, and many of them probably had little general education.[12] But the causes determined by the

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[2] Hening, I, 168.
[3] Hening, I, 224.
[4] Ibid., 424-431.
[5] Ibid., II, 511, 512.
[6] Virginia Magazine of History and Biography, I, 230-236.
[7] Ibid., II, 3-15.
[8] Jefferson's Notes on Virginia, 116.
[9] Hening, I, 125.
[10] Hening, I, 132, 133; ibid., II, 70.
[11] Hening, II, 69. Council Journal, 1721-1734, 219. Spottswood's Letters, II, 193. Calendar Va. State Papers, I, 88.
[12] According to an interesting account written by Hartwell, Blair, and Chilton about the end of the seventeenth century, the justices of the peace in their day were less qualified for the duties of their office than were those chosen in the early years. The reason for this, they said, was that the first settlers, having been reared in England, had had better opportunities for acquiring a knowledge of the common law than the Virginians of a later period, who had been brought up in the colony where there were few educational advantages. Hartwell, Blair, and Chilton, 44.

county courts did not, as a rule, involve difficult points of law, and, therefore, the sound judgment and good common sense of the justices must in a large measure have compensated for their lack of legal knowledge.

The judges of the monthly courts were at first appointed by the governor and council.[13] In the beginning of the Commonwealth period, the Burgesses and the commissioners sent to Virginia by Parliament ordered that the commissioners of the county courts should be chosen by the House of Burgesses.[14] But this provision was repealed the next year (1653), when the governor and council were given power to appoint commissioners on the recommendation of the county courts.[15] In 1658, it was enacted that appointments so made should be confirmed by the assembly.[16] The method of selecting judges that was employed during the Commonwealth period did not go far towards bringing the county courts into responsibility to the people; for, with the exception of the first year, it gave the people little, if any, control over the appointment of their commissioners. The Puritan Revolution, therefore, did not go far towards democratizing the lower branch of the Virginia judiciary.

From the Restoration to the end of the colonial period, county justices were commissioned by the governors, though they were often, if not generally, appointed with the advice and consent of the council.[17] Justices were not chosen for any definite period of time, and it seems that their commissions could be renewed at the discretion of the governor. But most, if not all, of the old members were usually named

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[13] Hening, I, 125. Accomac County Court Records, 1632-1640, 9. Lower Norfolk County Records, 1637-1643, 159.

[14] Hening, I, 372.

[15] Ibid., 376, 402.

[16] Ibid., 480.

[17] Council Journal, 1721-1734, 219, 286. Essex County Court Records, 1683-1686, 153. Henrico County Court Records, 1677-1692, 1, 133, 134, 244; ibid, 1710-1714, 253. Warwick County Court Records, 1748-1762, 42, 155. Hening, II, 69, 70. Calendar Virginia State Papers, I, 16, 191. Sainsbury MSS., 1691-1697, 335. Spottswood's Letters, II, 193. Dinwiddie Papers, I, 383.

in the new commissions, and so the appointments were practically made for life.[18] It does not appear whether the practice of filling vacancies in the county commissions on the recommendation of the county courts was discontinued immediately after the Restoration, but if it was, it was afterwards revived. For in the later years we find the justices claiming and exercising the right of making nominations for vacancies in their respective courts.[19] This custom made the county courts self-perpetuating bodies, and rendered them practically independent of the executive.

The number of justices appointed for the county courts varied at different times and in different counties, but usually ranged from about eight to eighteen.[20] But the justices were

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[18] Henrico County Court Records, 1677-1692, 133, 244, 271, 373; ibid., 1737-1746, 374. Richmond County Court Records, 1692-1694, 102. Sainsbury MSS., 1625-1715, 65. Hartwell, Blair, and Chilton, 43. Rappahannock County Records, 1686-1692, 203, 207, 209, 211, 213, 218. Warwick County Records, 1748-1762, 38, 47, 49, 53, 57.

[19] Council Journal, 1721-1743, 43, 262, 311. Rappahannock County Court Records, 1686-1692, 190. Henrico County Court Records, 1737-1746, 339. Warwick County Records, 1748-1762, 42, 155.

We do not find any law compelling the governor to appoint the nominees of the county courts, but it was good policy for him to do so. For if he were to choose as new justices men who were not acceptable to the old ones, it would be liable to stir up opposition against him in the counties. That the justices were jealous of their power to nominate to vacancies is evident from the action taken by the court of Spottsylvania County in 1744 when this privilege was infringed by the governor. Three new justices were put in the commission of Spottsylvania County who had not been recommended by the court. Some of the old justices regarded this as an affront to them, and seven of them refused to sit on the bench. Calendar Virginia State Papers, I, 238.

[20] In one of the commissions granted in 1632, only five names are mentioned. In 1642, eleven commissioners were appointed for Accomac County, and eight were put in the commission given to Lower Norfolk County in the same year. In 1661 a law was passed by the assembly restricting the number to eight for each county. In 1699 the average number of justices for all the counties was about twelve; in 1714, a little more than fourteen. Hening, I, 169; II, 21. Accomac County Court Records, 1640-1645, 148. Lower Norfolk County Records, 1637-1643, 159. Sainsbury MSS., 1691-1697, 335. Mercer, Virginia Laws, 62. Henrico County Records, 1677-1692, 244, 332; ibid., 1719-1724, 6; ibid., 1710-1714, 253-309. Rappahannock County Records, 1686-1692, 211. Charles City County Records, 1758-1762, 246. Warwick County Records, 1748-1762, 57. Winder MSS., I, 203. Virginia Magazine of History and Biography, I, 230-236, 364-373; II, 3-15.

very irregular in their attendance at courts, and, as a rule, more than one-half of them were absent at every session.[21] The court could not convene for the transaction of business unless as many as four justices were present.[22] It sometimes happened that courts could not be held at the appointed times because there were not enough judges present to make a quorum. This caused considerable inconvenience to witnesses and parties to suits, especially if they lived at considerable distances from the county-seats. This irregularity in the meeting of the courts was complained of from time to time, and attempts were made to compel a more regular attendance of the judges. Laws were passed providing for fines to be imposed on all justices who should be absent from the court sessions without a good excuse. But despite these measures, the county courts continued to be poorly attended by the magistrates during the entire colonial period.[23]

Long before Virginia was settled, there had grown up in the county court system of England the practice of appoint-

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[21] The following facts regarding the average attendance of justices at courts have been gathered from the court records of the counties mentioned below. The average attendance for Lower Norfolk County from 1638 to 1640 was about five; for Accomac from 1640 to 1645, five; for York from 1672 to 1676, little more than five; for Rappahannock from 1686 to 1692, between four and five; for Henrico from 1738 to 1740, between four and five; for Charles City from 1761 to 1762, about five.

[22] Lower Norfolk County Records, 1637-1643, 159. Henrico Records, 1677-1692, 1, 244. Winder MS., I, 204. Sainsbury MSS., 1691-1697, 335.

When the monthly courts were first organized, three commissioners constituted a quorum. Hening, I, 133.

[23] It is probable that these provisions were not strictly enforced, as the fines for absences were to be imposed by the county courts. One would naturally expect the justices to deal leniently with their colleagues for staying away from the meetings of the courts when they, themselves, were often guilty of the same offense. It was doubtless this failure on the part of the county courts to punish delinquences in attendance that caused Governor Spottswood, in 1711, to order the sheriffs to report all excuses for absences to him. However, it does not appear whether Governor Spottswood's plan was a more effective remedy for the evil than were the measures adopted by the assembly. Hening, I, 350, 454; II, 70, 71. Henrico County Records, 1710-1714, 56, 57. Warwick County Records, 1748-1762, 86, 92. Winder MSS., II, 171.

ing certain justices of the peace to be of the quorum. By this was meant that no court could be legally held unless one of them was present. This custom probably owed its origin to the ignorance of the justices in matters of law. Judicial skill was not to be expected of every country squire; consequently, it was necessary to appoint certain ones "eminent for their skill and discretion" to be of the quorum and to order that no court should be held in which the salutary advice of at least one of them could not be felt.[24] Upon the organization of the monthly courts, this same practice was adopted in Virginia. Whenever a commission was given to the justices of a county, certain of them were mentioned by name as belonging to the quorum. One, at least, of the persons so designated had to be present at every court, else no causes could be tried. The number of the quorum varied from time to time, and in the different counties, and generally increased as the county courts grew in importance.[25]

Prior to 1643, the statutes ordered that the local courts should be held every month, and, therefore, they were called monthly courts. At this time it was enacted that they should meet once in two months, and the term county court was substituted for the old name.[26] By the end of the seventeenth century the custom of meeting monthly had been revived, and was kept up from that time until the end of the colonial period.[27]

The place where justice was administered was usually some conveniently located hamlet or village, which might be

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[24] Cooley's Blackstone, I, 349-350.

[25] Hening, I, 125, 133. Accomac County Records, 1640-1645, 148. Surry Records, 1645-1672, 359-360. Lower Norfolk County Records, 1637-1643, 159. Virginia Magazine of History and Biography, I, 230-236; II, 3-15. Henrico County Records, 1677-1692, 134.

[26] Hening, I, 272, 273, 462. Hammond, Leah and Rachel, 15, 16. Winder MSS., I, 204. Henrico Records, 1677-1692, 134; ibid., 1697-1704, 165, 301. Rappahannock Records, 1686-1692, 4-252.

[27] Hening, III, 504; V, 489. Henrico Records, 1710-1714, 38, 42, 80, 91, 92; ibid., 1719-1724, 23, 27, 33, 39; ibid., 1737-1746, 15, 22, 28, 34. Charles City County Records, 1758-1762, 87, 99, 103, 106, 115. Beverley, History of Va., Book IV, p. 24. Hartwell, Blair, and Chilton, 43. Mercer, Va. Laws, 62.

called the county-seat. In the early years, however, we find that in one or two of the counties, the sessions of the courts were frequently held at the houses of the commissioners. In such cases, the courts generally journeyed from the home of one commissioner to that of another, and thus all the magistrates shared equally the burden of entertaining their colleagues.[28] Sometimes when a county was divided by a large stream, two court-houses were erected, one on each side of the river, and the courts were held in both.[29]

The jurisdiction of the county courts extended to both civil and criminal cases.[30] Chancery causes were also cognizable in them, and the justices were required to take separate oaths as judges in chancery.[31] Once a year, at least, the justices held an orphans' court, which inquired into the management of the estates of orphans and bound out fatherless children who had no property. It was also the business of this court to see that the orphans who had been apprenticed were treated kindly and educated properly.[32] When the monthly courts were first established, their jurisdiction in civil cases was limited to suits involving amounts of not more than one hundred pounds of tobacco. But in a few years, the limit was raised, first to five and then to ten pounds sterling, and later, to sixteen pounds sterling, or sixteen hundred pounds of tobacco.[33] By the end of the cen-

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[28] York Records, 1633-1694, 2, 3, 8, 14, 67. Lower Norfolk County Records, 1637-1643, 63, 66, 68, 74, 78.

[29] Essex County Records, 1683-1686, 3, 10, 18, 33. Hening, I, 409.

[30] Accomac Records, 1640-1645, 168, 173, 200, 262. York Records, 1671-1694, 88, 125, 220, 221. Rappahannock Records, 1686-1692, 111, 114, 158. Beverley, History of Va., Book IV, p. 25. Winder MSS., I, 204. Mercer, Va. Laws, 64.

[31] Richmond County Records, 1692-1694, 14, 35, 86. Henrico County Records, 1710-1714, 74, 81, 252; ibid., 1737-1746, 84, 95, 140, 200. Charles City County Records, 1758-1762, 22, 201, 315. Hening, III, 509; V, 490.

[32] York County Records, 1633-1694, 67. Winder MSS., I, 204. Beverley, History of Va., Book IV, p. 25.

[33] Hening, I, 125, 168, 186, 224, 272, 346, 398. Accomac Records, 1640-1645, 148. Lower Norfolk County Records, 1637-1643, 159-160. The court of Northampton, a county east of Chesapeake Bay, could determine finally all causes involving amounts less than twenty pounds sterling, or 3200 pounds of tobacco. This exception

tury all these restrictions had been removed; and from that time on all civil causes except those of less value than twenty shillings could be determined by the county courts.[84]

But while the jurisdiction of the county courts was thus being broadened at the top, it was being narrowed at the bottom. It was found expedient to relieve them of many petty cases by allowing the commissioners to perform certain judicial acts out of court. So in 1643 it was provided by law that no suit for a debt under the amount of twenty shillings (afterwards twenty-five) should thereafter be heard in the county courts, but that every controversy of this kind should be decided by the magistrate living nearest the creditor. The magistrate was also authorized to commit to prison the litigant who would not comply with his award.[85] From this time until the end of the colonial period, causes involving amounts of not more than twenty-five shillings, or two hundred pounds of tobacco, were determinable by single justices.[86] The judicial authority of single justices was not confined to civil cases, but violations of certain penal laws could also be punished by them.[87] They were to hear complaints of ill-treatment made by servants against their masters, and if they considered the charges well-founded, were to summon the offending masters before the county court. Complaints of servants could also be made directly to the county courts by petition "without the formal process of an action." Furthermore, masters were not allowed to whip Christian white servants naked without an order from a jus-

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was made against this county because of its distance from James City and the difficulty with which appeals from its court could be prosecuted in the General Court. Hening, I, 346.

[84] Hening, III, 507-508; V, 491. Warwick Records, 1748-1762, 272. Blair, Hartwell, and Chilton, 43, 44. Webb, Virginia Justice, 107.

[85] Hening, I, 273. Hartwell, Blair, and Chilton, 43.

[86] Hening, V, 491. Hartwell, Blair, and Chilton, 43. Winder MSS., I, 204. Webb, Virginia Justice, 203. Mercer, Virginia Laws, 64.

For a few years, single justices could hear causes of the value of 350 pounds of tobacco. Hening, I, 435.

[87] Webb, Virginia Justice, 204.

tice.[38] By these provisions, servants were given easy access to the local judiciary, and the protection of the law was placed in easy reach of them. Appeals from the decisions of single justices were in certain causes allowed to the county courts, but the decisions of the county courts on such appeals were always final.[39] The authority of two justices acting together, one being of the quorum, was greater than that of single magistrates. Proclamations against outlying slaves and warrants for their arrest could be issued by them. They could suppress ordinaries during the intervals between court sessions if the keepers allowed unlawful gaming and drinking on the Sabbath day. By a statute of 1676 (re-enacted next year) any two justices of the quorum were given power to sign probates of wills, and letters of administration.[40]

At first, the criminal jurisdiction of the county courts was limited to petty causes, but it seems that later it was increased so as to include important criminal offenses. This enlargement of the jurisdiction of the local courts was made for the convenience of the people, but the local tribunals were unequal to the new responsibility. So in 1655, by an act of the legislature, this power was taken from them; and it was ordered that offenses "touching life or member" should thereafter be referred to the Quarter Court of the assembly, whichever of them should first be in session. The assembly realized that, in thus restricting the powers of the lower courts, it was departing from English precedent, and was, to that extent, causing their divergence from the line of development which had been followed by the county court system of the mother country. The reason given by the assembly for thus restricting the jurisdiction of the lower courts was that the juries generally empaneled in the sparsely settled counties of Virginia were less informed and

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[38] Hening, I, 255, 440; III, 448, 449; VI, 357, 358. Calendar Virginia State Papers, I, 99.

[39] Starke, Virginia Justice, 10.

[40] Hening, I, 435; II, 359, 391; III, 86, 397-398. Henrico County Records, 1677-1692, 16-17, 300-301.

less experienced in judicial matters than those in the English shires, and could not, therefore, with equal safety, be entrusted with the fate of criminals charged with high crimes. Thus the law-makers of Virginia realized in this case, as well as in many others, that a constitution which had been made for an old and highly developed society, could not be fitted to a new and rapidly growing state without some adaptation.[41] From this time until the Revolution, no offenses punishable by loss of life or member, unless they were committed by slaves, were cognizable in the county courts.[42] But the county courts could order the ears of slaves to be cut off as a punishment for hog-stealing,[43] and during the last century of the colonial period, the justices could try slaves charged with capital crimes.[44]

In the county courts, as well as in the General Court, decisions were reached by a majority vote of the judges present.[45] Petit juries were called on to decide matters of fact, and offenses were brought before the court by means of presentments and indictments made by the churchwardens and the grand jury.

The offenses which the churchwardens were required to present to the county courts were fornication, adultery, drunkenness, "abusive and blasphemous speaking, absence from church, Sabbath-breaking," and other like violations of the moral code.[46] But the duty of publicly accusing their

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[41] Hening, I, 397, 398, 476.

[42] Hening, III, 508; V, 491. Webb, Virginia Justice, 107.

[43] But this inhuman punishment was inflicted only for the second offense. Other persons, as well as slaves, were severely punished for hog-stealing. For a good many years, the laws provided that all persons found guilty of hog-stealing for the second time were to be required by the county courts to stand in the pillory two hours with their ears nailed to it, and at the end of that time to have their ears cut loose from the nails. Hening, II, 441; III, 179, 276, 277. Beverley, History of Virginia, Book IV, p. 25.

[44] See pp. 99-101.

[45] Hening, I, 125.

[46] Hening, I, 126, 156, 227. Accomac Records, 1632-1640, 123. Lower Norfolk County Records, 1637-1643, 85, 217, 220, 226.

In every parish, which was a subdivision of a county, there were two churchwardens and a vestry composed of twelve men. Usually

neighbors of disgraceful deeds must have been a hard one to perform, and so the thankless task was often shirked by them.[47] The churchwardens had power by law to make presentments during the entire colonial period, but in the latter part of it they seem not to have exercised this authority often.[48]

In 1645, the grand jury found its way into the county court, where it joined with the churchwardens in acting the rôle of public accuser. By a statute of this year, it was provided that grand juries should be empaneled at the mid-

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there were from two to four parishes in a county, though in some of the counties there was only one. The parish was not always bound by the limits of the county, but some of the parishes extended into two counties. The office of churchwarden seems to have been older in Virginia than that of vestryman, for we find mention of churchwardens as early as 1619, and we know that churchwardens were chosen in Accomac County before the vestry was appointed.

Vestrymen were elected differently at different times. The first vestry that is mentioned in the county court records was appointed by the commissioners of the monthly court, and as late as 1692, an old vestry was dissolved and a new one chosen by a county court. Vestrymen were also often elected, especially in the early years, by a majority of the householders of the parish. But in time there grew up the custom of allowing the vestries to fill their own vacancies, and so they became self-perpetuating bodies like the county courts. Every year the vestrymen elected two of their number to the office of churchwarden.

To the vestrymen and the churchwardens was entrusted the management of the affairs of the parish. They appointed ministers, kept the churches in repair, bound out orphan children, and laid the parish levy. Another important duty performed by the vestry was that of "processioning" lands. Every four years (at one time every year) they had to go around the lands of every person in the parish and mark out the bounds and renew the landmarks. This was a wise provision; for it must have prevented many disputes over boundaries which would otherwise have arisen, and thus have removed a very fruitful source of litigation. Hening I, 290, 291; II, 25, 44, 45; III, 325, 530. Henrico Parish Vestry Book, 1730-1773, 8, 12, 16, 20-26, 34, 35. Bristol Parish Vestry Book, 1720-1789, 3, 5, 7, 15, 18, 26. Colonial Records of Virginia, 27, 103, 104. Jefferson's Notes on Virginia, 116. Richmond County Records, 1692-1694, 56. Accomac Records, 1632-1640, 10, 39. Winder MSS., II, 163. Webb, Virginia Justice, 71. Robinson MSS., 235. Beverley, History of Virginia, Book IV, p. 28. Hugh Jones, Present State of Virginia, 63, 66. Warwick Records, 1748-1762, 78, 81, 342.

[47] Hening, I, 291, 310.

[48] Webb, Virginia Justice, 71. Mercer, Virginia Laws, 286. Beverley, Book IV, p. 28.

summer and March terms of the county courts "to receive all presentments and informations, and to enquire of the breach of all penal laws and other crimes and misdemeanors not touching life or member, to present the same to the court." In 1658, a law was passed providing that grand juries should be empaneled at every court. But the grand jury system did not prove as efficient in the detection of offenses as its advocates hoped it would, and the law was repealed the same year.[49]

But the repeal of this statute proved to be an unwise measure for it left the counties without adequate provision for the detection of offenses. In a year or so it was noticed that the laws were not being properly respected, and a renewal of the grand jury system in the counties was voted by the assembly. By an act of 1662, it was ordered that grand juries should thereafter be empaneled in all the counties, and that all breaches of the penal laws committed within their respective counties should be presented by them to the county courts at the April and December terms.[50] In fifteen years this statute had almost become a dead letter because it had not provided any penalty for non-compliance with its provisions. For this reason, a law was passed in 1677 which provided for a fine of two thousand pounds of tobacco to be imposed on every court that should fail to swear a grand jury once a year, and a fine of two hundred pounds of tobacco on every juror who should be absent from court without a lawful excuse.[51]

From this time until the end of the colonial period, the grand jury was a permanent part of the county court system. By the end of the seventeenth century, it had reached its complete development, and no material changes were made in it from that time until the Revolution. It was the custom during the eighteenth century for the sheriff to summon

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[49] Hening, I, 304, 463, 521.
[50] Ibid., II, 74.
[51] Ibid., II, 407, 408.

twenty-four[52] freeholders to be present at the May and November courts. Those that obeyed the summons constituted the grand jury, provided the number that attended was not less than fifteen. If enough jurors were absent to bring the number below fifteen, no jury was empaneled and the absentees were fined.[53]

By 1642 the practice of calling on petit juries to try causes had been introduced in the county courts.[54] A law was passed in that year which gave either party to a controversy pending in any court in the colony the right of having a jury summoned to sit in judgment on his case, provided it was important enough to be tried by a jury.[55] Litigants were not slow to avail themselves of this privilege, and almost immediately we meet with jury trials in the county courts.[56]

From this time on, the county courts referred important causes to juries for trial. The usual practice in the eighteenth century was for a jury of twelve men to be selected from the bystanders every day the court was in session, which was called on to decide all causes that should be tried by a jury.[57] According to the laws that were in force during this century, none but those who possessed property of the value of fifty pounds sterling could serve on juries in the county courts.[58] In the county court, as well as in the Gen-

[52] In the latter part of the seventeenth century, the number summoned was twelve. Each juror made an individual report of the offenses that had come within his knowledge. York Records, 1671-1694, 125. Henrico Records, 1677-1692, 32, 33. Elizabeth City County Records, 1684-1699, 4, 93.

[53] Richmond County Records, 1692-1694, 136, 137. Henrico Records, 1710-1714, 55, 110, 193, 273; ibid., 1737-1746, 5, 34, 39. Warwick Records, 1748-1762, 103, 184, 355. Charles City County Records, 1758-1762, 75, 115. Hening, III, 367-368; IV, 232.

[54] Juries are mentioned in the county court records before this time; but they were not empaneled to try causes but only to appraise estates and goods about which suits were pending in the courts. Accomac Records, 1632-1640, 17, 59.

[55] Hening, I, 273.

[56] Accomac Records, 1640-1645, 179, 188, 190, 204, 222.

[57] Hening, I, 474; II, 74; III, 369; V, 525. Essex County Records, 1683-1686, 1, 8, 32, 40, 60. Henrico Records, 1677-1692, 191. Rappahannock Records, 1686-1692, 214. Richmond County Records, 1692-1694, 91.

[58] Hening, III, 176, 370; V, 526.

eral Court, it was the practice in the early years for juries to be kept from food until after they had rendered their verdict.[59] A few instances are recorded in which juries of women were called on to decide questions of fact in cases in which women were charged with witchcraft or of concealing bastard children.[60]

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[59] Hening, I, 303; II, 74.

[60] Rappahannock Records, 1686-1692, 163. William and Mary College, Quarterly, Jan., 1893, pp. 126-128.

It is not to be inferred from this mention of witchcraft cases that such trials were frequent occurrences, for only a few cases have been found in which persons were charged with this crime.

The most noted witchcraft trial in Virginia history was that of Grace Sherwood. On the 7th of December, 1705, Grace Sherwood brought suit in the court of Princess Anne County against Luke Hill and his wife in action of trespass of assault and battery and recovered damages to the amount of twenty shillings. Soon after this, Luke Hill and his wife brought before the same court an accusation of witchcraft against Grace Sherwood. The court in February, 1706, ordered the sheriff to issue an attachment against the body of Grace Sherwood and to summon a jury of matrons for her trial. On the 7th of March the case came up for a hearing, and the jury of twelve women brought in the following verdict: "Wee of ye Jury have Serchth Grace Sherwood & have found Two things like titts with several Spotts." This report of the jury left the court in doubt as to what should be done, and Luke Hill sent in a petition to the council asking that Grace Sherwood be prosecuted before the General Court. This petition was referred to the attorney-general for his opinion, who said that the charge was too general to warrant a prosecution before the General Court. He also said that the case should be examined again by the court of Princess Anne, and if sufficient grounds were found for a trial by the General Court, the accused should be sent to the public jail at Williamsburg. He would then prosecute her before the General Court if an indictment against her were made by the grand jury. The case was again taken up in the Princess Anne court, and a jury of matrons was again summoned. But the court had some difficulty in getting a jury to serve, and the trial was delayed for a while. Finally on the 5th of July the court, with the consent of the accused, decided to appeal to the ordeal of water to determine her guilt or innocence. The sheriff was ordered to take her on the 10th of July out and duck her in deep water, but was to be very careful not to endanger her life. She swam when she was thrown into the water, and after she was brought out, a jury of women again examined her. The verdict brought in by these women was about the same as the one reported by the jury on the 7th of March. The sheriff was then ordered to kep her in jail until she could be tried again; but it is probable that all proceedings against her were dropped, as further mention of the case is not found in the records. William and Mary College Quarterly, IV, 18-20. Lower Norfolk County Antiquary, IV, 139-141; III, 34-38.

The justices of the county courts, like the judges of the General Court, were not always closely bound by laws in giving their decisions. The early commissioners sometimes invented penalties and fitted them to offenses without the guidance of any legal precedent. The unique way in which this was done argued more for the originality of the judges than for their knowledge of the law.[61]

There was no lack of variety in the punishments that the early justices inflicted on criminals. Fines were imposed, and often resort was had to the lash to induce offenders to repent of their misdeeds. As a rule, the number of stripes given did not exceed thirty-nine, but they were generally made on the bare back.[62] In the early records of Lower Norfolk County, three cases appear in which culprits were punished by receiving one hundred lashes on the bare shoulders.[63] One case is also given in the records of Essex County in which this punishment took a very severe form. The court, on a certain occasion, ordered the sheriff to give an offender one hundred and twenty lashes on the bare back.[64] However, law-breakers were seldom subjected to such harsh treatment, and it seems that, on the whole, the penal laws of Virginia as interpreted by the judiciary in the

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[61] See pp. 90-91. The following example of the originality of the justices in devising penalties is given in the Accomac Records, under date of September 8, 1634. A woman for calling another a prostitute was ordered to be drawn across a creek at the stern of a boat, unless she acknowledged her fault in church the next Sunday between the first and second lesson. Accomac County Records, 1632-1640, 20.

[62] In the records of York County, two instances are recorded in which offenders were ordered to be whipped until the blood came. York Records, 1671-1694, 138, 221. Accomac Records, 1632-1640, 20, 37, 47; ibid., 1640-1645, 49, 88, 200.

[63] In one of these cases the offense was a mutiny of slaves against an overseer in the absence of their master. In one of the other two cases, a woman had wrongfully charged a man with being the father of a bastard child born of his servant. In the other, a woman-servant had falsely accused her mistress of acts of unchastity. Lower Norfolk County Records, 1637-1643, 12, 14, 15, 16.

[64] Essex County Records, 1683-1686, 49.

These are the only examples of such undue severity that have been found though it is not claimed that no others are on record.

colonial period were not harsher than could be expected at that time.

The early commissioners did not rely solely on physical punishments for the correction of wrong-doing, but some of the penalties that they ordered must have appealed strongly to the self-esteem of those who had brought themselves under the censure of the court. Slanderers frequently were required to ask pardon of the injured parties in church or in open court, and were sometimes compelled to sit in the stocks on Sunday during divine service. Those who had abused their neighbors might also be subjected to the humiliation of lying neck and heels together at the church door.[65] Fornication and adultery were very much frowned upon by the county courts. In the early years, men and women who had committed these sins were sometimes whipped, and sometimes were compelled to acknowledge their fault in church before the whole congregation. A few instances are recorded in which women who had erred from the path of virtue or had slandered their neighbors were compelled to make public confession while standing on stools in the church, with white sheets wrapped around them and white wands in their hands.[66] Transgressors did not always go through this terrible ordeal without demurring. In Lower Norfolk County we find a woman refusing to do penance properly, and even going so far as to cut her sheet. But the court would brook no disobedience to its orders, and obstinacy on the part of the criminal only increased the severity of the original sentence. In the same county a woman was sentenced by the court to ask forgiveness in church for having slandered one of her neighbors. Having refused to comply with this order, she was summoned before the court to answer for her contempt. She did not obey this summons, and the commissioners, in her absence, voted an order which

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[65] Accomac Records, 1632-1640, 59, 112, 145, 151; ibid., 1640-1645, 49, 88, 200.

[66] Accomac Records, 1632-1640, 123, 145. Lower Norfolk County Records, 1637-1643, 219, 226. Accomac Records, 1640-1645, 200.

showed that they were not in a mood to tolerate further obstinacy on her part. The decree was as follows: "The sheriff shall take her to the house of a commissioner and there she shall receive twenty lashes; she is then to be taken to church the next Sabbath to make confession according to the former order of the court. If she refuses, she is to be taken to a commissioner and to be given thirty lashes, and again given opportunity to do penance in church. If she still refuses to obey the order of court, she is then to receive fifty lashes. If she continues in her contempt, she is to receive fifty lashes, and thereafter fifty every Monday until she performs her penance."[67]

The oldest county court proceedings that are now extant are those of Accomac, which date from 1632. These records are particularly interesting because of the unique methods employed by the commissioners in their administration of justice in the first half of the seventeenth century. These early commissioners seemed often to consult the dictates of expediency in rendering their decisions, and frequently prescribed such punishments as would wring from crime an income to the community. Indeed, from the penalties that they attached to certain offenses, one would think that the judges inclined to the belief that the wickedness of man should be harnessed and made to do service in the cause of righteousness. A few cases are recorded in which wrong-doers were required to build a pair of stocks and dedicate them to the county by sitting in them during divine worship, and in 1638 a man who had been guilty of the sin of fornication was ordered to build a ferry-boat for the use of the people.[68] We also find a court in 1634 ordering a man, for abusing another, to "daub the church as soon as the roof can be repaired."[69] On another occasion, disobedience to a country regulation regarding the carrying of

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[67] Lower Norfolk County Records, 1637-1643, 121, 137.

[68] Accomac Records, 1632-1640, 28, 69, 123. Lower Norfolk County Records, 1637-1643, 13.

[69] Accomac Records, 1632-1640, 16.

arms was punished by requiring the offenders to repair to the church the following Saturday and pull up all the weeds growing in the churchyard and the paths leading to it.[70]

Some of these unusual modes of punishment, ducking and pillorying for example, were employed by the courts in the later, as well as in the earlier, part of the colonial period. By laws passed late in the eighteenth century, it was provided that ducking-stools, stocks and pillories should be erected in every county.

For the punishment of breaches of the penal laws committed by servants, a special arrangement had to be made, as they could not pay the fines imposed on them by the court. Additions of time to their terms of service were sometimes made, and in the eighteenth century, it was the custom for the court to allow servants to bind themselves out to a term of service to any one who would pay their fines. But if they could not get any one to assume their fines, they had to undergo corporal punishment and receive twenty-five stripes for every 500 pounds of tobacco of the fine.[71]

The justices had many duties to perform in addition to those of trying causes. They ordered the opening of new roads and saw that surveyors appointed by them kept the highways open and cleared.[72] The levy of the county was apportioned by them, and the lists of tithables were sometimes taken either by themselves or by officers chosen by them for that purpose.[73] The justices also licensed taverns

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[70] Accomac Records, 1640-1645, 88.

[71] Hening, III, 267, 268; V, 507, 508. Webb, Virginia Justice, 106, 291. Essex Records, 1683-1686, 5; ibid., 1695-1699, 59. Virginia Gazette, August 19, 1737. Robinson MSS., 53. Rappahannock County Records, 1686-1692, 55, 147.

[72] Hening, II, 103; VI, 65. Essex County Records, 1683-1686, 97. Rappahannock Records, 1686-1692, 16, 46, 163, 212. Henrico Records, 1737-1746, 64, 147, 168, 231.

[73] Hening, II, 357. Henrico Records, 1677-1692, 186, 288, 403. Essex Records, 1695-1699, 40, 86, 87. Elizabeth City County Records, 1684-1699, 98, 172. Beverley, History of Virginia, Book IV, pp. 19-20. According to one of Bacon's Laws, representatives of the people were to assist the justices in laying the county levy.

and regulated the prices at which drinks could be sold.[74] Another important duty of the court was to issue certificates for land grants. Every "adventurer" who brought over emigrants to Virginia was entitled to fifty acres of land for every person transported. These grants were made by the governor upon certificates given by the county courts stating the number of persons the claimant had landed.[75]

The county courts were also required to hear complaints and to examine claims. Once before every session of the assembly, a court was held for these purposes, public notice of it having been given beforehand. All claims for dues from the general government were examined, and the just ones were certified to and sent on to the assembly with the recommendation that they be allowed. If the people had any grievances against the government, they were at liberty to bring them before this court to be likewise sent on to the assembly.[76] During a considerable part of the seventeenth century, the county courts had the power to make or to assist in making the by-laws of their respective counties.[77]

We see, therefore, that in the county government there were no well-defined limits separating the judiciary from the

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[74] Hening, II, 19; III, 396, 397; VI, 71-73. Elizabeth City County Records, 1684-1699, 236. Henrico Records, 1737-1746, 25, 68, 102, 133, 210, 308. Webb, Virginia Justice, 108.

[75] Accomac Records, 1640-1645, 43, 96. Lower Norfolk County Records, 1637-1643, 5, 80, 125. Henrico Records, 1710-1714, 2, 12. Rappahannock Records, 1686-1692, 5, 60, 85, 151.

[76] Hening, II, 405, 421; III, 43, 44; VII, 528; VIII, 316. Essex Records, 1683-1686, 14, 15, 18. Hartwell, Blair, and Chilton, 39.

[77] This power began to be exercised at an early date, and in 1662, it was recognized by law. Some years later representatives of the people met with the justices and took part in making the by-laws for the counties. By an order of the Committee of Trade and Plantations given in 1683 all laws empowering the county courts to make by-laws were to be repealed; but the governor was instructed to allow the assembly to pass a law providing that by-laws be made by the counties or parishes with the consent of the governor and council. Whether such a law was passed does not appear, but it is certain that in a few years (1691), the county courts had been deprived of the power to make by-laws for the counties. Accomac Records, 1640-1645, 88, 89. William and Mary College Quarterly, II, 58, 59. Hening, II, 35, 171, 172, 357, 441. Virginia Magazine of History and Biography, VIII, 186. Sainsbury MSS., 1682-1686, 51.

legislature and the executive. Nor were the lines that divided the county courts from the other branches of the colonial government sharply drawn. The Burgesses chosen by the counties were very often justices of the peace, and so the county courts and the assembly were kept in close relation with each other.[78] During a part of the seventeenth century, the county courts were in like manner connected with the General Court. Councillors were not ineligible to the office of justice of the peace, and by a law of 1624, they were empowered to sit in the court of any county, even if they were not in the commission, and were authorized to hold a court on occasions of emergency in the absence of the quorum.[79] The interdependence thus established between the higher and lower tribunals must have been a great advantage to the latter, for it not only gave the inexperienced justices the benefit of the advice of a councillor, but it also enabled the decisions of the Quarter and county courts to be rendered with something like uniformity. But there was one objection to allowing the councillors this privilege. It permitted the Quarter Court to assist in giving decisions, the responsibility for which had to be borne by the county courts. For this reason a provision was put in one of Bacon's laws, passed in 1676, forbidding councillors to vote with the justices in the county courts.[80]

In the records that have been examined no mention is made of any great abuses in the practice of the county courts, and on the whole, justice seems to have beeen administered fairly by them. And yet there were certain defects in the county court system which were unfavorable to

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[78] Lower Norfolk County Records, 1637-1643, 16, 17, 36, 189. Accomac Records, 1640-1645, 115, 118, 217, 343. Henrico Records, 1677-1692, 133, 228, 244, 403; ibid., 1710-1714, 39, 115, 202, 266; ibid., 1737-1746, 128. Elizabeth City County Records, 1684-1699, 12, 244. Essex Records, 1695-1699, 33, 40, 86, 87.

In 1714, seventy per cent of the Burgesses were justices. Virginia Magazine of History and Biography, II, 3-15.

[79] Hening, I, 224. Lower Norfolk County Records, 1637-1643, 160. Accomac Records, 1640-1645, 149.

[80] Hening, II, 358.

good government in the counties. As the people had no voice, either direct or indirect, in the selection of justices, public opinion was probably not as effective in restraining the judges from unfair decisions as it should have been. Besides, the custom of filling vacancies in the court on the nomination of the justices made the court a self-perpetuating body. The justices would naturally be inclined to give the vacant places on the bench to their friends and relatives, and so it was easy for a few families to get and keep a monopoly of the government in each county.

But despite these defects, the county court system was well adapted to the conditions that obtained in Virginia in colonial times. From the experience gained from the performance of their judicial and administrative duties, the justices learnt much of the art of government, and were thus qualified for taking part in the organization of the commonwealth government when Virginia severed her relations with Great Britain. The fact that Virginia had a numerous class of men who had already known the responsibilities of governing, no doubt, accounts, in large measure, for the absence of radicalism in the constitutional changes made in 1776. To the opportunities for political training afforded by the county courts and the other governmental agencies of the colony, Virginia was also largely indebted for the number and prominence of her leaders in the struggles for independence.

The county courts were not only a training-school for statesmen, but were also incidentally an agency for the education of the people. "Court-day was a holiday for all the country-side, especially in the fall and spring. From all directions came in the people on horseback, in wagons, and afoot. On the court-house green assembled, in indiscriminate confusion, people of all classes, the hunter from the backwoods, the owner of a few acres, the grand proprietor, and the grinning, needless negro. Old debts were settled, and new ones made; there were auctions, transfers of property, and, if election times were near, stump-speak-

ing."[81] These public gatherings brought the people in contact with each other, and gave the ignorant an opportunity to learn from the more enlightened. The education that comes from association with people is a kind that is particularly needed in a society in which the inhabitants are isolated from each other; and, therefore, the educational advantages afforded by the monthly meetings at the county seats atoned to some extent for the lack of adequate opportunities for school education in colonial Virginia.

Circuit Courts.—As the General Court was held only at the capital, appeals from the counties could not be prosecuted in it without considerable delay and inconvenience. So there arose the need for an appellate court to act as intermediary between the higher and lower tribunals. The assembly realized this, and soon after the Restoration, attempted to remedy this defect in the Virginia judiciary by the formation of a new court. In 1662 a law was passed providing for the establishment of circuit courts, which were to be held once a year in every county. The colony was divided into circuits, and to each was assigned the governor and one councillor or two councillors. During the month of August, these judges of the General Court were to hold courts in every county of their respective circuits on the days regularly appointed for the county courts.

Whenever a circuit court was held in a county, all appeals that had been allowed since the preceding March by the regular courts of that county were to be brought before it for trial. Appeals from the county courts that were allowed from October to December were to be tried by the General Court. The reason why appeals were to be taken to the General Court during these months and not during the spring and summer, was that the sessions of the General Court were held oftener in winter than in summer. The decisions of the circuit court were not final but could be appealed from to the assembly or the General Court. When-

[81] Ingle, Virginia Local Institutions, J. H. U. Studies, III, 90. Hugh Jones, Present State of Virginia, 49.

ever the judges of a circuit court were the governor and one councillor, appeals from it were to be allowed to the assembly; but when the itinerant judges were two councillors, appeals from their decisions were to be tried by the General Court.[82] But this new tribunal was short-lived, for the law which brought it into being was repealed in December of this same year. The circuit courts were discontinued because of the great expense incurred in holding them.[83]

Courts of Examination.—In the early years, before the special courts of examination had grown up, all persons who were charged with any violations of the penal laws, except those who were punished by loss of life or member, were brought before the county courts for examination. These causes were determined by the county courts, except those which the justices saw fit to refer to the governor and council, which were sent on to the Quarter Court for trial.[84] It seems, however, that important criminal offenses in the early years were not given a preliminary hearing in the county courts before they were brought before the Quarter Court for trial. But before the end of the seventeenth century there had grown up a well-defined system for the examination of prisoners in the counties.[85] Whenever a justice issued a warrant for the arrest of a criminal charged with an offense which, in his opinion, was not cognizable in the county court, he ordered the sheriff to summon his fellow magistrates together in a special court of examination, which was held within ten days after the issuance of the warrant. The offender and his witnesses were brought before this court and examined, and if he was found innocent of the charge brought against him he was discharged. If, however, the evidence gave grounds

[82] Hening, II, 64, 65.
[83] Ibid., II, 179.
[84] Ibid., I, 304. Accomac Records, 1632-1640, 43, 47; ibid., 1640-1645, 270.
[85] We do not find a law recognizing the existence of courts of examination until 1704, but we know that such a court had been established in Rappahannock County as early as 1690. Rappahannock Records, 1686-1692, 163. Hening, III, 225.

for a trial the case was sent to the next grand jury court of the county, provided it was matter of which the county court took cognizance. But if it proved to be a case over which the county court had no jurisdiction, it was sent up to the General Court for determination. Whenever a cause was referred to the General Court, the prisoner was turned over to the custody of the sheriff to be taken at once to the public jail at the capital, unless the offense was a bailable one, in which case he was given twenty days in which to find bail.[86] This method of examining criminals was employed from the last decade of the seventeenth century to the end of the colonial period. By means of these special courts criminal cases were all sifted, and only those in which there was some chance of conviction were passed on to the General Court. In this way criminal offenses were disposed of with less expense than they would have been if all of them had been tried directly by the General Court.

Slave Courts.—A good deal of special legislation for the punishment of slaves is found in the colonial laws. When a runaway slave was caught, he was taken from one constable to another until he was brought back to his owner. Each constable who took part in conveying the fugitive back to his master whipped him before turning him over to the next constable. If it was not known to whom the fugitive belonged, he was confined in the county jail and a notice of his capture was posted on the court-house door. At the end of two months, if he was not claimed by his owner, he was sent to the public jail at Williamsburg and was kept in the custody of the sheriff there until his master was found. In the Virginia Gazette were published notices of all such fugitives, in which minute descriptions of their personal appearance were given.[87] Two justices, one being of the quorum,

[86] Hening, III, 389-391; V, 541, 542. Webb, Virginia Justice, 109-115. Starke, Virginia Justice, 114-120. Henrico Records, 1719-1724, 137, 138; ibid., 1737-1746, 87, 166, 252, 253.

[87] Hening, III, 456-457; IV, 168-169; V, 552-554; VI, 363-365. Virginia Gazette, June 3, 1737; July 7 and September 29, 1768; December 7, 1769.

could issue proclamations against outlying slaves, ordering them to return to their masters. These orders were to be read every Sunday twice in succession in every church in the county immediately after divine service. After this announcement had once been made any outlying slave who failed to obey it could be killed by any one without fear of punishment.[88] Besides, the county courts for some years had the power to punish incorrigible and runaway slaves by castration. But by 1769 the assembly had come to realize that this penalty was "revolting to the principles of humanity" and was "often disproportionate to the offense." By a law passed in this year, the county courts were deprived of the power to order the castration of outlying slaves and were limited in the use of this punishment to attempts at rape made by negroes against white women.[89] As has already been shown,[90] there was no law extending the benefit of clergy to slaves until 1732, and even after that time, this privilege was not allowed in all cases in which it could be claimed by freemen. There was also some discrimination against slaves in the punishments prescribed by the laws for penal offenses.[91]

The testimony of Indians, negroes, and mulattoes, bond and free, was allowed in the trial of slaves for capital crimes. For a while persons of that description who professed Christianity and "could give some account of the principles of the Christian religion," served as witnesses in the cases regularly tried by the General Court. But their testimony was very unreliable and was rejected by some juries while it was admitted by others. Just decisions could not be reached so long as they were based on such untrustworthy evidence, and so in 1732 it was enacted by the assembly that no negro, Indian, or mulatto, bond or free, should thereafter be al-

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[88] Hening, III, 460; VI, 110.

[89] Hening, III, 460, 461; IV, 132; VIII, 358.

[90] See page 69.

[91] Ballagh, History of Slavery in Virginia, 85-88. Hening, VI, 106.

lowed to bear witness in court except in the trial of slaves charged with capital offenses. After this kind of testimony was excluded, it frequently happened the persons so discriminated against were relieved from paying their just debts because they could not be proved in court. Therefore, it became necessary to modify the rule against negro and Indian testimony, and in 1744 it was provided by law that free Christian negroes, Indians, and mulattoes should be allowed to bear witness for or against any negro, Indian, or mulatto, free or slave, in any court in the colony in both civil and criminal cases.[92]

Prior to 1692, there were no special courts for the trial of slaves charged with capital crimes. Like freemen who were accused of the same offenses, they were never sentenced to death except at Jamestown and only after they had been given a trial by jury. Not only was this method of trial expensive, but it also prevented a speedy administration of justice. But the punishment of negroes for capital offenses had to be inflicted without delay if it was to be most effective in deterring other slaves from crime. For these reasons a special court of oyer and terminer for the trial of slaves was created in 1692 by an act of assembly. This law provided that the sheriff of a county should notify the governor whenever he had arrested a slave for a capital crime. Upon receipt of this notice, the governor was to issue a special commission of oyer and terminer to such persons of the county as he should deem fit, and the persons so named—who were, as a rule, justices of the peace—were to meet at once in a court at the county seat. The prisoner was to be brought before this court and tried without the aid of a jury.

Other laws were passed from time to time which reaffirmed and enlarged the provisions of this act. By a statute of 1705 masters were to be allowed to appear in defense of their slaves "as to matters of fact, but not as to

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[92] Hening, IV, 127, 327; V, 244, 245: VI, 106. Henrico County Records, 1737-1746, 254, 285.

technicalities of procedure," and were to be indemnified for the loss of their slaves whenever they were executed by order of the court. This indemnity was an inducement to the people to report the crimes of their slaves to the authorities. When the law was revised in 1723, it was provided that the testimony of negroes, Indians, or mulattoes, bond or free, when supported by "pregnant circumstances or the testimony of one or more credible witnesses," should be accepted by the court as sufficient evidence for conviction or acquittal. If a non-Christian negro, Indian, or mulatto should give false testimony he was to be severely punished. His ears were to be nailed to the pillory one hour each and were to be cut loose from the nails, after which he was to receive thirty-nine lashes "on his bare back, well-laid on." In 1748, unanimity of the judges present was required for conviction; but by a law of 1772, sentences could be voted by any four of the justices, being a majority of those present.

But even this method of trying slaves was attended with some inconvenience, for the commissions of oyer and terminer given by the governor for every court could not be sent to the counties without considerable trouble and expense. Besides, the time limit of these commissions was sometimes reached before sentences had been given by the courts. These objections were met by a law passed in 1765, which provided that the justices should be given a standing commission of oyer and terminer empowering them to try all criminal offenses committed by slaves in their respective counties. Whenever a warrant was issued for the arrest of a slave charged with a capital crime, the justices of the county were summoned by the sheriff to meet at once in a special court. Any four or more of the justices who obeyed this summons were to constitute a court, before which the prisoner was arraigned for trial. Sentences were given as before without the assistance of a jury.

Clergy was allowed by the slave courts for those offenses to which it had been extended by law. For crimes without

the benefit of clergy, hanging was the usual punishment,[93] though occasionally the death penalty came in a more barbarous form. One instance has been found in which a slave was burnt for murder,[94] and another is given in which the heads and quarters of some negroes who had been hanged were set up in the county as a warning to their fellow-slaves.[95] The sentences given by the court were executed without delay. In Henrico county in the early part of the eighteenth century slaves convicted by this court seem usually to have been hanged on the first Friday after their trial, and two cases are recorded in which only two days elapsed between the trial of a slave and his execution.[96] By such a speedy administration of justice the criminal was deprived of the opportunity of seeking a pardon from the governor, and, in 1748, it was provided by law that death sentences against slaves should never be executed except in cases of conspiracy, rebellion, or insurrection until after ten days had elapsed.[97]

The prohibition of trials by jury in the slave courts was not an unjust discrimination against the slaves. On the contrary, it was an advantage to the slave that he was tried by the justices and not by a jury, especially during the period when convictions could not be made except by a unanimous vote of the judges present. For the justices were better qualified than an average jury to decide causes, and were less liable to give unjust sentences.[98]

Courts of Hustings.—In 1705, Governor Nott was in-

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[93] Hening, III, 102, 103, 269-270; IV, 126-128; VI, 104-108; VIII, 137, 138, 522, 523. Calendar Virginia State Papers, I, 194. Henrico Records, 1710-1714, 225, 308; ibid., 1719-1724, 39, 43, 75, 159; ibid., 1737-1746, 254, 284, 415. Warwick Records, 1748-1762, 128, 129, 299, 300. Charles City County Records, 1758-1762, 221, 222, 245. Ballagh, History of Slavery in Virginia, 82, 83. Dinwiddie Papers, I, 384.

[94] Virginia Gazette, February 18, 1737.

[95] Virginia Magazine of History and Biography, I, 329, 330.

[96] Henrico Records, 1719-1724, 39, 159, 547; ibid., 1737-1746, 284-285.

[97] Starke, Virginia Justice, 272. Hening, VI, 106.

[98] Ballagh, History of Slavery in Virginia, 85.

structed by the Queen to recommend to the assembly the enactment of a law which would bring about the establishment of towns in Virginia. In obedience to this order, the assembly in 1705 passed a law, which was to take effect three years later, designating certain places as ports, from which all exports from the colony were to be sent, and into which all imports were to be received.[99] It was thought that the monopoly of the colony's foreign commerce thus given to these shipping points would cause towns to grow up around them, and by this same act a detailed scheme of government was mapped out for these towns.[100] The assembly seemed to think that towns could be legislated into being despite the fact that economic conditions in Virginia were unfavorable to city life. To planters who lived on the navigable rivers with wharfs at their doors, the law requiring them to take their tobacco miles away to load it at a would-be-town seemed a useless and oppressive measure.[101] It was not long before the folly of this act of paternalism had become plainly apparent to the Lords of Trade, as no attempt was made to settle these towns.[102] They recommended that the Queen repeal the law, and in 1710 Governor Spottswood issued a proclamation declaring it null and void.[103]

While the assembly and the Lords of Trade failed in their attempt to impose city life on rural Virginia, commerce and trade did select a few places for towns. The first of the towns to grow into such importance as to require a court of Hustings was Williamsburg, the capital. In 1722, Williamsburg received a charter from the King which constituted it a city and gave it a separate government. The management of the affairs of the city was entrusted to a mayor, recorder, six aldermen and twelve councilmen. The King

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[99] Other abortive attempts to establish towns were made by the assembly prior to this time. Hening, I, 362, 397. Ingle, Local Institutions of Virginia, J. H. U. Studies, III, 101-103.

[100] Hening, III, 404-419.

[101] Byrd MSS., II, 162-165.

[102] Sainsbury MSS., 1706-1714, 215.

[103] Henrico Records, 1710-1714, 17.

appointed the first mayor, recorder, and aldermen, who were to elect twelve councilmen to hold office during good behavior. Every year at the feast of St. Andrew the mayor, aldermen, and councilmen were to meet and select one of the aldermen to be mayor for the ensuing year. Whenever vacancies occurred in the board of aldermen by the death or resignation of any of its members, they were to be filled from the common council by the mayor, recorder, aldermen, and common council. When a vacancy occurred in the common council, the mayor, recorder, aldermen, and common council chose some freeholder to fill it. The government of the town was thus placed in the hands of officers in the election of whom the people had no voice at all.

The mayor, recorder (who was to be learned in the law), and the six aldermen were the judges of the Court of Hustings, and were also justices of the peace in Williamsburg. But no alderman was to sit in the Court of Hustings of Williamsburg, unless he was also commissioned a justice of the peace in some county. The mayor, recorder, and aldermen performed legislative, administrative, and judicial duties; and so in Williamsburg, as well as in the counties, the judiciary was closely connected with the other branches of the local government. The meetings of the Hustings Court were to be held monthly.[104] The court was at first limited in its jurisdiction to those causes in which the amounts involved did not exceed twenty pounds sterling, or 4000 pounds of tobacco, and appeals were allowed to the General Court. The jurisdiction of the court was enlarged from time to time, and in 1736 it was provided by an act of assembly that the court of Hustings of Williamsburg was to "have jurisdiction and hold plea of all actions, personal and mixt, and attachments, whereof any county court within this colony, by law, have or can take cognizance." This court also decided chancery causes, and examined crimi-

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[104] Charter of Williamsburg, published in the William and Mary College Quarterly, X, 84-91.

nals that were sent from Williamsburg to the General Court and oyer and terminer courts for trial, but it seems not to have had authority to try slaves charged with capital offenses.[105]

In 1736, Norfolk was granted a charter which contained about the same provisions as the one given to Williamsburg in 1722. The governmental machinery provided for by this charter was almost an exact replica of that of Williamsburg, except that in Norfolk the number of aldermen was to be eight instead of six, and the number of councilmen, sixteen instead of twelve. In Norfolk, as in Williamsburg, the mayor, recorder, and aldermen constituted the Court of Hustings, which was at first to take cognizance only of those causes in which the amounts involved did not exceed twenty pounds sterling, or 4000 pounds of tobacco. The jurisdiction of the Norfolk court was extended by subsequent statutes, and during the last years of the colonial period the courts of Norfolk and Williamsburg exercised the same jurisdiction. These were the only cities in which corporation courts were organized before the Revolution.[106]

Coroners' Courts.—Coroners were appointed by the governor, and justices of the peace were usually, though not always, selected for the office. In 1702 the number of coroners in the different counties varied from one to four. These offices had ministerial, as well as judicial duties to perform. When a sheriff was personally interested in a suit or was for any other reason disqualified from serving the county court, the process could be directed to one of the coroners and could be executed by him. But the main duty of the coroners was to hold inquests over the bodies of persons who had met with violent deaths. Whenever

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[105] Hening, IV, 542; V, 204-207; VIII, 401-402. Webb, Virginia Justice, 105, 108.

[106] Charter of Norfolk, published in Local Institutions of Virginia, appendix, by Ingle, J. H. U. Studies, 3d series. Hening, IV, 541, 542; VI, 261-265; VIII, 153, 154. Virginia Gazette, November 19, 1736

the occasion for an inquest arose a coroner would order the constable of his precinct to summon twenty-four freeholders to the coroner's court. From this number a jury of twelve was chosen to view the body and make a report as to the cause of the death. Witnesses were summoned if necessary, and a few instances are recorded in which resort was had to the ordeal of touch to decide the guilt or innocence of persons accused of murder. In 1656, a jury of inquest was sworn in Northampton County to examine the body of a man supposed to have been murdered. This jury gave the following verdict: "Have reviewed the body of Paul Rynnuse, late of this county dec'd, and have caused Mr. Wm. Custis (the person questioned) to touch the face and stroke of the said Paul Rynuse (which he very willingly did). But no sign did appear unto us of question in law."[107]

Military Courts.—The militia of the colony included all the able-bodied men between the ages of sixteen, eighteen, or twenty, and sixty (these were the different limits at different times), except certain classes of persons who were exempted from militia duty by law. In 1721, the militiamen constituted about one-sixth of the entire white population of the colony. The militia of every county was organized into a regiment, which was commanded by a colonel or an inferior officer. It was necessary for the militia officers to call their men together frequently for the purpose of drilling them. Each captain was to hold what was called a private muster for the members of his company four times a year, or oftener if the commander of the regiment required it. In addition to these private musters, a general muster was held in each county usually once or twice a

[107] Webb, Virginia Justice, 97-104, 296. Starke, Virginia Justice, 106-113. Henrico Records, 1677-1692, 146, 191; ibid., 1737-1746, 334. Surry County Records, 1645-1672, 278. Virginia Magazine of History and Biography, I, 364-373. Virginia Magazine of History and Biography, V, 40.

In the trial of Grace Sherwood for witchcraft (see p. 87), the ordeal was appealed to by a county court.

year, at which all the militiamen of the county were to be present.[108]

These musters could not be conducted properly unless the officers were given power to punish their men for insubordination, absence from the drills, and other delinquencies. Accordingly, it was provided that whenever a militiaman should refuse to obey an order of an officer at a muster, the ranking officer present could punish the offender by imposing a fine on him or by ordering him to be bound neck and heels together for a few minutes. If he repeated the offense, he was to be tried by the captains and field-officers present, who by a majority vote could send him to prison for a term not exceeding ten days. At all the musters, general as well as private, the captains were to keep a record of the offenses and delinquencies in attendance and equipment of all the men of their respective companies, and were to report the same to the court martial. The court martial was convened once a year at the county seat on the day following that of the general muster. In this military court sat a majority or all of the captains and field-officers of the county. The court inquired into the ages and capabilities of all those on the muster list, and decided which ones should be dropped on the grounds of old age or physical disability. It also inquired into the absences and other delinquencies reported by the captains and imposed fines for the same.[109]

Apparently there never were any regular parish courts in colonial times, though there is an intimation in the records of Accomac that the vestry of that county in the early years had judicial powers in cases involving certain violations of the moral code.[110] In 1656, a court was established for

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[108] In 1674 general musters appear to have been held oftener than twice a year. General Court Records, 1670-1676, 197.

[109] Sainsbury MSS., 1720-1730, 30. Winder MSS., I, 206. Hening, II, 246, 247; III, 335-342; IV, 118-124; V, 16-21; VI, 530-536; VII, 93-99, 536-538.

[110] The Accomac County court decreed in one case that "all who have been freemen since 1634 and have not contributed towards the

Bristol, an outlying parish of Henrico and Charles City counties; but the judges of this court were not the vestrymen, but were the commissioners living in the parish. The jurisdiction of the court was the same as that of the county courts, but in all cases appeals were to be allowed to Charles City and Henrico county courts.[111]

When Lord Culpeper and others were granted the territory known as the Northern Neck,[112] which lies between the Rappahannock and Potomac Rivers, they were given power to establish courts-baron and courts-leet and to hold frank-pledge of all the inhabitants. The court-leet was to have jurisdiction over all the tenants and other inhabitants of the hundred in which it was held, except those that had received land grants from the governor and council prior to 1669. The jurisdiction of the court-baron was to be limited to causes involving amounts not exceeding forty shillings in value and appeals were to be allowed to the Quarter Court.[113] However, it is more than probable that this bit of feudalism never, in actual practice, found a place in the Virginia judiciary, for no mention has been found of any attempt to carry out these instructions.

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charges of the church officers' business shall be liable to stand to the judgment of the vestry." At another time (1641) the vestry ordered a servant to stand in a white sheet in church for the sin of fornication, but this decree was set aside by the court. Accomac Records, 1632-1640, 53; ibid., 1640-1645, 97.

[111] By a special provision a similar court was to be established in 1679 for a frontier settlement to be made by Captain Lawrence Smith and Colonel William Byrd. Hening, I, 424; II, 450-451.

[112] The grant was first made in 1649, and was renewed in 1669.

[113] Sainsbury MSS., 1640-1691, 189-193.

CHAPTER IV.

Court Officials and Lawyers.

By the year 1634, when the shires were organized, the development of the colony had gone far enough to necessitate the appointment of sheriffs for the counties.[1] Before that time, the duties of the sheriffalty were, as we have seen, performed mainly by the provost marshal, though the commander of the hundred also sometimes executed the orders of the governor.[2] As late as 1633, we find the provost marshal making arrests, warning the court, imprisoning offenders, and inflicting on them such punishments as ducking, tying them by the heels, and setting them in the stocks. The fee which he received for the performance of each of these duties was set by the assembly. He was also entrusted with the care of prisoners, and had to provide them with "diet and lodging." For this he received a compensation which was paid by the prisoners themselves, and the amount of which was determined by agreement with them.[3]

It seems that the monthly courts at first elected sheriffs,[4] but soon it became the custom for the governor and council to appoint them on the recommendation of the county commissioners. Vacancies were temporarily filled by the commissioners.[5] According to a later practice, the office devolved on the justices in rotation. The oldest justice in the commission first served a term of one year, and then all

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[1] Hening, I, 224. Accomac Records, 1632-1640, 17.

[2] Virginia Court Book, 1623-1626, July 12. Robinson MSS., 58. Hening, I, 176, 201, 220. Colonial Records of Virginia, 20. Accomac Records, 1632-1640, 6, 8, 10, 16, 20.

[3] Robinson MSS., 58. Hening, I, 176, 177, 201, 220.

[4] Accomac Records, 1632-1640, 18.

[5] Robinson MSS., 168. Lower Norfolk County Records, 1637-1643, 220. Accomac Records, 1640-1645, 73, 74, 357. Hening, I, 259, 392, 442, 471.

the others followed in succession.[6] However, the old method of selecting sheriffs was afterwards revived, and from the end of the seventeenth century to the Revolution, sheriffs were appointed by the governor.[7] During the greater part of the eighteenth century, it was the custom for the court of each county every year to recommend three of its justices as suitable persons for the sheriffalty, one of whom the governor would appoint sheriff for a term of one year. The first of the three justices was often, if not usually, selected by the governor, and so the power of choosing sheriffs was by this custom practically placed in the hands of the county courts.[8] The sheriff did not sit as a judge in the county court, but he became a justice again after his term had expired.[9] Sheriffs were appointed for only one year; but during a considerable part of the colonial period, their commissions could be renewed by the governor for a second term.[10]

According to an account of Virginia written at the end of the seventeenth century, the place of sheriff was a lucrative one and was much sought after.[11] But by the end of the first decade of the next century the tobacco currency had fallen so low that it had become difficult to get suitable persons to accept the sheriffalty. This refusal on the part of the justices to serve when appointed sheriff led the as-

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[6] Hening, II, 21, 78, 353. York County Records, 1671-1694, 26.

[7] These appointments were sometimes, and probably generally, made with the advice of the council. Council Journal, 1721-1734, 285, 286, 289, 331, 332.

[8] Hartwell, Blair, and Chilton, 27, 28. Calendar Virginia State Papers, I, 98, 99, 198. Hening, III, 246, 247; V, 515, 516. Webb, Virginia Justice, 299. Starke, Virginia Justice, 325. Henrico Records, 1710-1714, 55, 79, 123, 154, 230; ibid., 1719-1724, 244, 264, 322; ibid., 1737-1746, 297, 312. Warwick Records, 1748-1762, 11, 25, 137, 179.

[9] Webb, Virginia Justice, 293.

[10] Hening, I, 259, 442; II, 247; III, 246, 247; V, 515, 516; VII, 644. Robinson MSS., 451. Va. Mag. Hist. and Biog., II, 387, 388.

[11] Hartwell, Blair, and Chilton, 27, 28.

sembly to pass a law in 1710 which imposed a heavy fine on any one who should refuse the office when elected to it.[12]

Sheriffs in Virginia performed many of the same duties that they did in England, but they did not have power to hold courts as in the mother country. They executed the orders and sentences of the courts and the assembly, made arrests, summoned jurors and others to court. They also sometimes took the lists of tithables and usually collected the taxes.[13] In the early years sheriffs were wont to attend public meetings for the purpose of making arrests and serving warrants. The fear of meeting this officer caused many people to absent themselves from musters and from church on Sundays. This falling off of the attendance at these places not only affected the spiritual welfare of the people, but also hindered the transaction of public and private business. The assembly realized that this obstacle in the way of public meeting should be removed, and so in 1658 enacted that no warrants should thereafter be served on any one on the Sabbath or on muster days.[14] By subsequent statutes it was provided that no arrests except for felony, riots, and suspicion of treason, were to be made on Sundays, certain holidays, and muster and election days, and that no persons except residents of the town were to be arrested in James City during the period beginning five days before and ending five days after the meetings of the General Court and the assembly. Witnesses were also granted exemption from arrests except at the King's suit while attending the county or other courts and also while coming to and returning from the same. Councillors and sheriffs were privileged from arrest for debt and trespass while attending and going to and returning from the General Court and council meetings.[15]

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[12] Spottswood's Letters, I, 56. Council Journal, 1721-1734, 54. Hening, III, 500, 501; IV, 84. Webb, Virginia Justice, 299.

[13] Hening, I, 333, 452, 465; II, 19, 83, 412; III, 264; VI, 247, 523, 566; VIII, 181. Winder MSS., I, 203, 204. Hartwell, Blair, and Chilton, 51. Webb, Virginia Justice, 293-295, 303. Chitty's Blackstone, I, pp. 252-254. Beverley, History of Virginia, Book IV, p. 13.

[14] Hening, I, 457.

[15] Hening, II, 86, 213, 502, 503. Webb, Virginia Justice, 15. Starke, Virginia Justice, 15.

In each county there was a jail, in which were detained offenders who had been sentenced to imprisonment by the county court and those criminals who were waiting to be sent to the public jail at Jamestown or Williamsburg. During the first part of the colonial period, criminals who were to be tried by the Quarter Court or the assembly were kept in the county jails while awaiting their trials. On the first day of every term of the Quarter Court or the assembly the sheriff of each county delivered the criminals that were in his custody to the sheriff of James City, who brought them before the governor and council or the assembly for trial.[16] But by the beginning of the eighteenth century (1705), it had become the custom to send criminals charged with offenses cognizable in the superior courts to the public jail at Williamsburg immediately after they had been given a preliminary hearing before the courts of examination in the counties.[17] Prisoners for debt, as well as criminals, were confined in the public jail at the capital. In 1724, there were two public prisons at Williamsburg; one for debtors, and another for criminals.[18] By a law of 1746 both classes of prisoners were to be kept in the same building, but one part of the prison was to be occupied by debtors and the other by criminals.[19]

The keeper of the prison in each county was the sheriff, who had to answer for all escapes due to his own negligence, but the commissioners were held responsible for those that were permitted by the insecurity of the prison-houses. Owing to the poverty of the counties, they did not in the early years have strong jails, and escapes from them were frequently made. The responsibility for these bore heavily on the sheriffs and commissioners, and the assembly declared, in a law passed in 1647 and re-enacted in 1658 and 1662, that any prison that was as strong as an average Vir-

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[16] Hening, I, 264, 265, 398, 444.
[17] Hening, III, 390.
[18] Hugh Jones, Present State of Virginia, 30.
[19] Hening, VI, 135.

ginia house, and from which an escape could not be effected without breaking through some part of the building, should be deemed sufficiently secure. Persons breaking out of such a house on being retaken were to be adjudged felons, and the sheriffs and commissioners were not to be answerable for jail-breakings in such cases.[20] Prison rules were in one respect more humane than they are at present. The prisoners were not all shut off from the advantages of fresh air and exercise, but most of them were allowed to walk about during the daytime within a certain area around the jail. The limits within which prisoners were allowed their freedom were marked out by the justices, and by an act of 1765 were to include an area of not less than five nor more than ten acres. All prisoners except those charged with felony or treason[21] who would give bond not to escape were allowed the freedom of the prison grounds. But if any one abused this privilege by going outside of the prescribed limits, he was deprived of this liberty. The leniency of these regulations enabled some of the prisoners to reduce the punishment of confinement almost to a minimum. Many persons sent to jail for debt took houses within the prison limits, and thus lived at home while serving out their terms of imprisonment. But the assembly did not intend that debtors should get off with a nominal punishment, and so in 1661 passed a law by which persons living within the limits of a prison were not to be allowed to lodge in their own houses or be permitted to walk over the grounds, but were to be kept in close confinement.[22]

The laws providing for the payment of prison fees varied from time to time. It was often required that the prisoner himself pay the cost of his maintenance while in prison. By laws enacted in 1711 and 1748, it was provided that prisoners

[20] Accomac Records, 1640-1645, 108, 201, 264, 270. Hening, I, 265, 340, 341, 452, 460; II, 77.

[21] By a law passed in 1662 this exception was also made against persons under execution for debt. Hening, II, 77.

[22] Hening, I, 341; II, 19, 77; III, 15, 268; VIII, 119, 120. Warwick County Court Records, 1748-1762, 208, 340.

for debt were to have an allowance from the assembly if they were not able to pay their prison fees. Other statutes of this century placed upon creditors the burden of defraying the charges incurred in keeping insolvent debtors in prison.[23]

In colonial times, as well as at the present, the constables shared with the sheriff in the performance of the executive duties of the counties. We cannot say exactly when constables were first appointed, but we know that by 1637 the office had become an established part of the governmental machinery of the counties.[24] Constables were usually appointed by the county courts, though the first ones were chosen by the assembly.[25] Every county was divided into precincts, in each of which a constable was elected every year by the county court. Any person elected constable could be forced to accept the office, though he could be relieved from serving at the end of one year.[26] Many of the duties performed by the constable were the same as those discharged by the same officer in England, and were about the same as those that have engaged his successors in Virginia up to the present time.

Not only did he have to execute orders and decrees of the courts and the assembly, but he was also a conservator of the peace and had to arrest all those who were guilty of riotous and disorderly conduct. He was enjoined to "keep a watchful eye over the drinking and victualling houses and such persons as unlawfully frequent" such places. On him also devolved the duty of seeing that each farmer planted as many acres in corn as the law required, and did not allow suckers to grow after his tobacco had been cut.[27]

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[23] Hening, I, 285, 449; IV, 27, 490; VI, 136; VIII, 527-529. Accomac Records, 1632-1640, 129; ibid., 1640-1645, 264.

[24] Accomac Records, 1632-1640, 69.

[25] Winder MSS., I, 129. York Records, 1671-1694, 72, 186, 235, 257. Essex Records, 1683-1686, 86. Elizabeth City County Records, 1684-1699, 18, 119. Henrico Records, 1710-1714, 42, 240; ibid., 1737-1746, 160, 191. Beverley, History of Virginia, Book IV, pp. 9, 14.

[26] Webb, Virginia Justice, 93.

[27] Accomac Records, 1640-1645, 82. Warwick Records, 1748-1762, 317. Webb, Virginia Justice, 90-95. Starke, Virginia Justice, 103-104. Hening, I, 246, 344. Chitty's Blackstone, I, pp. 264-265.

Constables took the leading part in the hue and cry. Whenever a robbery or murder was committed, the person robbed or any one else who was present could go to the nearest constable and "require him to raise the hue and cry to pursue the offender." Upon receiving such notice, the constable was to call on all the men of his precinct to assist him in his search for the felon. If they failed to find him in that precinct, the constable was to notify the constable of the next precint, and he the next, and so on until the offender "was apprehended or pursued to the seaside." The hue and cry could be raised by a constable without an order from a magistrate, but it was usually not done without a warrant from a justice.[28] The hue and cry could also be raised to pursue runaway slaves and servants.[29]

Another important office was that of clerk of the county court. County clerks were usually appointed by the secretary of state, and were regarded as his deputies. The appointments were not made for any definite period, but were revocable at the pleasure of the secretary.[30] This patronage not only extended the influence of the secretary throughout the colony, but also proved a source of considerable revenue to him, as it was the custom for all the clerks to pay him a fee every year. In 1700 these fees annually amounted to 36,200 pounds of tobacco.[31] In 1718, a bill was offered in the assembly providing that the power of appointing and removing clerks should be taken from the secretary and given to the justices of the peace. The reasons given by the advocates of the measure for the proposed changed in the

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[28] Webb, Virginia Justice, 181. Starke, Virginia Justice, 206, 207.

[29] Hening, I, 483; II, 299.

[30] In one of Bacon's laws it was provided that county clerks should be elected by the county courts. From the Accomac and Henrico court records we find that clerks were occasionally commissioned by the governor. But these exceptions to the usual method of choosing clerks seem not to have remained in force very long. Hening, II, 355. Accomac Records, 1640-1645, 146. Henrico Records, 1719-1724, 58; ibid., 1710-1714, 201; ibid., 1737-1746, 191. Sainsbury MSS., 1705-1707, 394, 408.

[31] Sainsbury, 1720-1730, 268. Va. Mag. of Hist. and Biog., VIII, 184.

method of choosing county clerks was that these clerks were often elected Burgesses, and as long as they held office at the pleasure of the secretary, an appointee of the king, the assembly would be too much under the influence of the governor. Governor Spottswood rightly considered the bill an attack on the King's prerogative, and declared his intention of vetoing it if it passed the assembly. The measure, therefore, failed, and county clerks continued to be appointed as before.[32]

The General Court and the oyer and terminer courts were served by the sheriffs of the county or counties in which the capital was located. According to Hartwell, Blair, and Chilton, the secretary of state was nominally the clerk of the General Court, and drew the salary that went with the place; but the duties of the office were performed by a deputy, who was styled clerk of the General Court, with the assistance of one or more under clerks. The place of secretary was one of the oldest and most important offices in the colony, and, as we have just seen, was considered of sufficient dignity to be filled by a direct commission from the King. In the office of the secretary, were kept the proceedings of the General Court and also a record of all probates and administrations, certificates of birth, marriage licenses, and the fines imposed by the county courts.[33]

Prior to 1662, there was not a notary public in Virginia. Owing to the lack of such an officer to attest oaths, statements sworn to in Virginia were not given the credit in foreign countries to which they were entitled. For this reason the assembly in 1662 appointed one notary public for the colony, and some years later authorized him to choose deputies throughout the colony.[34]

Lawyers are seldom alluded to in the early county court records,[35] though frequent mention is made of attorneys.

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[32] Spottswood's Letters, II, 279.
[33] Beverley, History of Virginia, Book IV, pp. 10-11. Hartwell, Blair, and Chilton, 48-51.
[34] Hening, II, 136, 316, 456, 457.
[35] York Records, 1633-1694, 11.

But these attorneys were not always lawyers. A person living in one county and owning property in another frequently appointed an attorney to represent him in the county in which his property was situated. These powers of attorney, as well as notices of the termination of the legal agency created by them, were recorded in the proceedings of the county courts.[36] Though the lawyers in the earliest years were few in number, yet by 1643 they had become important enough to call forth special legislation for their profession. In this year it was provided by an act of assembly that lawyers should not be allowed to practice in any court until after they had been licensed in the Quarter Court. They were also restricted in their charges to twenty pounds of tobacco for every cause pleaded in the monthly courts and to fifty pounds for every one in the Quarter Court. Besides no case could be refused by any lawyer unless he had already been employed on the other side.[37] Within two years the assembly repented of having allowed lawyers this small amount of liberty, and it passed a law prohibiting attorneys from practicing in the courts for money. The reason given by the assembly for this action was that suits had been unnecessarily multiplied by the "unskillfullness and covetousness of attorneys."[38] The exclusion of lawyers from the courts must have worked a hardship on those parties to suits who were intellectually inferior to their opponents, and it soon became necessary to modify this statute. A less stringent law against attorneys was passed two years later, though by it compensation was still denied professional lawyers. By this act it was provided that whenever a court perceived that a litigant would suffer injustice because of his inability to cope with his opponent, the court was either to open the cause itself or else "appoint some fitt man out of

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[36] Accomac Records, 1632-1640, 57, 161, 162. York Records, 1633-1694, 118, 151, 185, 202. Essex Records, 1683-1686, 60. Henrico Records, 1677-1692, 160, 167.

[37] This act did not apply to special attorneys or those that had letters of procuration from England. Hening, I, 275, 276.

[38] Ibid., I, 302.

the people to plead the cause, and allow him satisfaction requisite."[39] By 1656, the assembly had come to realize the inconvenience attendant upon the administration of justice without the assistance of lawyers, and this time voted a repeal of all the laws against "mercenary attorneys."[40] But professional attorneys were given only a short lease of life by this act of repeal. In 1658, it was enacted that any one receiving pay for pleading in any case in any court in the colony should be fined 5000 pounds of tobacco. Every one that pleaded as an attorney for another had to take an oath that he would take no compensation either directly or indirectly for his services. At this time the question was raised by the governor and council whether this law was not a violation of Magna Charta. But the Burgesses saw nothing in the measure that was contrary to the principles of that document, and it became a law despite the doubt as to its constitutionality.[41] The courts must have gotten along badly without the assistance of paid attorneys; for in 1680 the assembly again passed a law which recognized the right of lawyers to charge for their services. This same statute also provided that no attorney-at-law should plead in any court until after he had been licensed by the governor. The reason given by the assembly for imposing this restriction on the practice of the law was that the courts had been annoyed by ignorant and impertinent persons pleading in the interest of their friends. These volunteer attorneys sometimes pleaded for parties to suits without being asked to do so by them, and often did injury to the causes advocated by them.[42] The law of 1680 was soon afterwards repealed, but professional attorneys had been again admitted to the courts by 1718. During the eighteenth century we find no statutes forbidding lawyers to receive compensation for their services, but the fees charged by them continued to be restricted

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[39] Hening, I, 349.
[40] Hening, I, 419.
[41] Hening, I, 482, 483, 495, 496.
[42] Hening, II, 478, 479.

by the assembly. By the laws of 1680 and 1718, lawyers' fees were fixed at fifty shillings, or 500 pounds of tobacco, for every cause pleaded in the General Court and fifteen shillings, or 150 pounds of tobacco, for every one in the county courts.[43]

It is not easy to explain this opposition of the assembly to the legal profession. Mr. John B. Minor thought that it had its origin in the jealousy between the aristocracy of birth represented by the assembly and the aristocracy of merit represented by the lawyers.[44] It is more probable that this unfriendly attitude of the ruling class towards the legal fraternity was caused by the lack of ability and character of the early lawyers. Attorneys' fees, even when allowed to be charged, were fixed so low by law that little encouragement was given to men of ability to qualify themselves properly for the profession. It is not unlikely, therefore, that during the greater part of the seventeenth century the attempts at pleading made by many of the lawyers were a hindrance to the proper administration of justice, and if so, the prejudice of the assembly against "mercenary attorneys" was not without foundation. This feeling of hostility to lawyers still finds its counterpart in the present-day belief of many people, especially in the backward districts, that the duties of the legal profession are incompatible with high moral rectitude.

While professional lawyers were not excluded from the courts by the laws passed in the eighteenth century, yet the courts were, for a considerable part of this century, closed to those would-be lawyers who had not been properly licensed. It has just been shown that the statutes of 1643 and 1680 provided for the licensing of attorneys by the governor or Quarter Court. Similar provisions are found in laws enacted in the eighteenth century. According to a law

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[43] Hening, II, 479, 498; IV, 59; VI, 371-372. Sainsbury MSS., 1640-1691, 215, 324. Randolph MSS., 444. Mercer, Virginia Laws, 19, 20. Beverley, History of Virginia, Book IV, p. 24.

[44] Minor's Institutes, 1st ed., Vol. IV, Part 1, pp. 163-168.

passed in 1732, the governor and council were to receive all applications for licenses to practice in the inferior courts, and were to refer them to such persons, learned in the law, as they should see fit to select, who were to examine the candidates and report to the governor and council as to their qualifications. Upon the receipt of this report, the governor and council were to license such of the candidates as had proved themselves qualified to enter upon the profession and were to reject the others. The governor and council could also, for just cause, suspend any lawyer from practicing in the inferior courts. If a practitioner in an inferior court should at any time be neglectful of his duty, he was to pay all the damage occasioned by such neglect. But the provisions of this act did not extend to lawyers practicing in the General Court or to "any counsellor or barrister at law whatsoever."[45] This law was repealed in 1742, but another was passed in 1745, which contained about the same provision for the licensing of attorneys except that it required the governor and council to select only councillors as examiners of applicants for licenses.[46]

It does not appear whether the government ever entirely recovered from its early prejudice against professional attorneys; but from an order made by the court of Augusta County in 1746, it would seem that the justices of that region were still of the belief that the conduct of lawyers in court sometimes became a nuisance. The following order was made by the court in February of that year: "That any attorney interrupting another at the bar, or speaking when he is not employed, forfeit five shillings."[47] Apparently, the General Court also regarded the much-speaking of the lawyers as a nuisance, as the assembly felt called upon to pass a law in 1748 forbidding more than two lawyers on a side to plead in the General Court except in cases of life and death.[48]

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[45] Hening, IV, 360-362.
[46] Ibid., V, 171, 345; VI, 140-143, 371-372.
[47] Virginia Historical Register, Vol. II, No. I, p. 15.
[48] Hening, VI, 143.

During the first years of the colony's history, there was no attorney-general in Virginia to give legal advice to the Quarter Court. But the governor and council could send to England for an opinion if a cause came before them involving a question of law which they felt incapable of deciding.[49] The first attorney-general mentioned in the records was Richard Lee, who was appointed in 1643.[50] It is not stated from whom Lee received his appointment; but the later attorneys-general were appointed by the governor, and sometimes with the consent of the King.[51] Prior to 1703, the attorney-general was not required to live at the capital, but in that year the salary of the office was raised from forty to one hundred pounds sterling, and its incumbent was required to take up his residence in Williamsburg.[52] The attorney-general had to prosecute criminals before the General Court and the oyer and terminer courts, and to give his advice to these courts whenever it was needed.[53]

In 1711, it was found necessary to appoint prosecuting attorneys for the counties.[54] At that time breaches of the penal laws were prosecuted in the counties by those persons who had reported them to the courts, and informers were given one-half of all the fines imposed for offenses reported by them. It sometimes happened that the informer would compound with the accused for his half of the fines and would then stop the prosecution. This would cause the case to be thrown out of court, and, so the crown would fail to

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[49] Sainsbury MSS., 1618-1624, 109-110.

[50] Va. Mag. of Hist. and Biog., VIII, 70.

[51] Sainsbury MSS., 1625-1705, 66, 77; ibid., 1691-1697, 331; ibid., 1706-1714, 449. Virginia Gazette, Nov. 18, 1737.

[52] The salary did not continue so high until the end of the period; in 1755 it was only seventy pounds sterling. Sainsbury, 1625-1705, 30, 59, 61, 66, 77. Dinwiddie Papers, I, 390.

[53] Calendar Virginia State Papers, I, 94, 100, 161. General Court Records, 1670-1676, 116. Randolph MSS., 432. MSS. in Va. Histor. Soc., 23, 24. Webb, Virginia Justice, 113.

[54] But before this time, as early as 1665, we find mention of a prosecuting attorney for Accomac County. This officer was perhaps a prosecuting attorney specially appointed for Accomac County because of its isolation and distance from Williamsburg. Neill, Virginia Carolorum, 315.

receive its half of the fine. There was need, therefore, of a better method of prosecuting offenders in the counties, and Governor Spottswood, following a recommendation of the attorney-general, issued a proclamation appointing prosecuting attorneys for the counties.[55] These new officers came to stay, and from this time on we find them performing their duties in the county courts. They were deputies of the attorney-general and had to prosecute offenders in the county courts as the attorney-general did in the General Court and oyer and terminer courts. They were also required to see that all the fines imposed by the county courts were reported to the secretary's office to be recorded.

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[55] Hening, IV, 545, 546.
[56] Henrico Records, 1710-1714, 193; ibid., 1719-1724, 337; ibid., 1737-1746, 360. Warwick Records, 1748-1762, 162, 324, 373.

CONCLUSIONS.

From the facts presented in this study, the following conclusions may be drawn:

(1) The judiciary was in all its branches closely allied to the other departments of the government. Prior to 1682, the legislature was the highest court of appeal in the colony, and it was closely connected with both the superior and inferior courts during the entire colonial period. The judges of the General Court constituted the upper house of the assembly, and the justices of the county courts were often elected to seats in the lower house. Besides, the judges of the General Court, as members of the governor's council, performed executive duties for the colony at large, and the justices of the county courts performed administrative duties in their respective counties.

(2) The authority of the judiciary was subordinate to that of the legislature. No law enacted by the assembly could be declared unconstitutional and set aside by the courts.

(3) The judiciary was aristocratic in its organization, and from 1682 to the Revolution the people had no voice, either direct or indirect, in the choice of their judges. Even prior to 1682, the assembly was the only court in which the judges were elected directly by the people. During the Commonwealth period, the judges of the General Court were chosen by the representatives of the people, and for a short while during this period justices of the county courts were appointed with the consent of the assembly. But with these exceptions, the colonial judiciary was thoroughly aristocratic in all its branches.

(4) The position of judge in both the superior and inferior courts was one of honor and dignity, and was usually held by men of ability. The judges of the General Court

were very influential in the colony, and were often able to curb the power of the governor. Their opposition to the King's representative probably contributed much towards keeping the colony from falling into a state of close dependence upon the crown. It is also not improbable that out of this opposition to the governor there grew up that spirit of resistance to the crown which both the aristocracy and the people showed in the Revolutionary period.

(5) The courts were bound in their decisions by the common law of England, the Parliamentary statutes passed prior to 1607, and by the statutes enacted by the Virginia Assembly. But a legal education was not a requisite qualification for judges, and apparently many, if not most, of the judges both of the superior and inferior courts, came to the bench without special legal training. Therefore, in arriving at decisions, they frequently had to rely, especially in the early years, on their own judgment for guidance more than on law and precedents.

(6) Each county had a court which met at regular intervals and the justices of the peace exercised certain judicial powers out of court. As these magistrates lived in different parts of the county, justice was thus brought almost to the doors of the people. In the documents that have been examined very few complaints against the inferior courts are recorded, and it seems that these tribunals as a rule administered justice fairly and impartially.

(7) There were certain latent weaknesses in the constitution of the General Court which occasionally gave rise to abuses in actual practice. But as only a few cases of such abuses have been found, it may safely be inferred that justice was as a rule fairly administered by the superior, as well as the inferior, courts.

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A STUDY IN AMERICAN DIPLOMATIC HISTORY

1815-1819

BY

JESSE S. REEVES, Ph. D.

ALBERT SHAW LECTURER ON DIPLOMATIC HISTORY, 1905-6

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CONTENTS

CHAPTER PAGE

I. Introductory ... 9
II. The Napoleonic Exiles in America ... 22
III. The Society for the Cultivation of the Vine and Olive ... 34
IV. The Napoleonic Confederation ... 44
V. Monroe's Inquiry ... 63
VI. Champ d'Asile ... 80
VII. Conclusion ... 93
Appendix ... 114

PREFATORY NOTE

This study of the Napoleonic Exiles in America centers about the unfortunate colonial enterprise called Champ d'Asile on the banks of the Trinity River in Texas. That undertaking had in itself no great historical importance, but the circumstances surrounding it throw, it is believed, a not uninteresting light upon the diplomatic situation after the downfall of Napoleon. The part of the narrative which relates to the "Napoleonic Confederation" was read at the meeting of the American Historical Association, in 1904, at Chicago.

The writer takes this opportunity of expressing his obligations to Messrs. Andrew H. Allen and Pendleton King, of the Department of State, Washington, for permission to make use of manuscripts in their care. The Monroe Papers, formerly in the Bureau of Rolls and Library, Department of State, are now deposited in the Library of Congress. The writer also desires to thank Charles Francis Adams, Esq., for transcripts of certain letters of John Quincy Adams.

RICHMOND, INDIANA, June 1, 1905.

THE
NAPOLEONIC EXILES IN AMERICA
A STUDY IN AMERICAN DIPLOMATIC HISTORY
1815-1819

CHAPTER I.

Introductory.

In the third part of the triology called "Les Célibataires," known variously as "Un Ménage de Garçon" and as "La Rambouilleuse," Balzac has developed perhaps with more art than logic the character of Philippe Bridau. The novelist prefaced his work with a dedication to Charles Nodier in which he characterized "Un Ménage de Garçon" as a book in which "the finger of God, so often called chance, takes the place of human justice." The relentless course of the unhappy story left but little to chance. Philippe Bridau, the central male figure, appears first as a young and restless soldier of the Empire, then after Waterloo as a blustering and selfish ne'er-do-well, who taxed his mother's devotion and his brother's generosity to support the shams of a worthless existence. As the Napoleonic soldier grows older, the ne'er-do-well develops into the crafty scoundrel. Such a sudden and unaccounted-for metamorphosis as this has been characterized as a *tour de force* which a second-rate novelist might employ, but from which the true artist should abstain.[1]

The discussion of the change in the character of Philippe Bridau is a matter of literary criticism which is beside the purpose here. When the Napoleonic wars were over, Philippe Bridau, like many of his compatriots, lounged about

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[1] George Saintsbury in his introduction to The Bachelor's Establishment.

Paris, boasted of his military exploits under the Great Emporer, and sponged a living from his mother's narrow means. Work as a civilian the soldier would not, nor would he serve a foreign power, for "a Frenchman was too proud of his own to lead any foreign columns; besides, Napoleon might come back again." Bridau is, of course, but an individual created in fiction to impersonate an historical type.

What to do with the imperial officers was a problem which the idea of Champ d'Asile was designed to solve. Balzac laid bare the sordid motives which aimed at the removal from Paris of the remnant of the Old Guard. It was a gigantic fraud, he said, in which those who paraded a sympathy for the devoted followers of the prisoner of Saint Helena and embezzled the funds raised in behalf of the old soldiers, joined hands with the partisans of the restored Bourbons in "sending away the glorious remnant of the French Army." According to the novelist, the idea of the occupation of Texas by the soldiers of the Imperial army was no doubt a splendid one, "but it was the men who were found wanting rather than the conditions, since Texas is now (1843) a republican state of great promise. The experiment made under the Restoration proved emphatically that the interests of the Liberals were purely selfish and in no sense national, aiming at power and nothing else. Neither the material, the place, the idea, nor the good-will was lacking, only the money and the support of that hypocritical (Liberal) party."

In these few words Balzac sketched the purposes and results of the plan of founding the last French colony within what is now the territory of the United States, an attempt no more successful though less tragic in its outcome than that first French colony in America, which Ribaut and Laudonnière founded and Menendez erased. Doubtless the French novelist has given correctly the contemporary Parisian opinion concerning the plan of Champ d'Asile. Granted that its patrons were insincere, and that probably the funds raised to assist the undertaking were misused and embezzled, yet, in

contradiction to the view of Balzac, it may be said that suitable conditions were lacking, as well as appropriate men.

America, which meant freedom from the working of the political vengeance of the Restoration, was the natural goal of the proscribed soldiers of the Empire. Thither it had been thought the great Emperor himself would find an asylum after the disaster of Waterloo and the second abdication of June 22, 1815. Just how far Napoleon developed a mere wish into a settled determination to go to America is by no means clear. Lord Rosebery has commented upon the positive physical degeneration which showed itself in Bonaparte after his return from Elba. "The Napoleon who returned in March, 1815, was very different from the Napoleon who had left in April, 1814."[2] "Everything," said Lamartine, "during the period of the Hundred Days was marked with symptoms of decay and blindness, except his march on Paris, the most intrepid and the most personal of all his campaigns."[3] After the final struggle, "he retreats to Malmaison, where he is practically a prisoner. He will not move; he will not give an order; he sits reading novels. He will arrange neither for resistance nor for flight. He is induced to offer his services as general to the provisional government. The reply he receives is a direction to leave the country. He obeys without a word and leaves in a quarter of an hour."[4]

Even before his abdication the Emperor spoke of America as a final retreat where he could live with dignity. The day after that event he talked with Lavallette, and the latter records that the Emperor turned the discourse on the retreat he ought to choose, and spoke of the United States. "I rejected the idea without reflection and with a degree of vehemence that surprised him. 'Why not America?' he asked. I answered 'Because Moreau retired there.' He heard it without any apparent ill-humor, but I have no doubt

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[2] Rosebery, Napoleon, the Last Phase.
[3] Lamartine, History of the Restoration, Book 30, section 1.
[4] Napoleon, the Last Phase, 123.

that it must have made an unfavorable impression upon his mind. I strongly urged his choosing England for his asylum."[5] Afterwards, at Malmaison, Napoleon again discussed his plans for leaving France. "For the past three days he had solicited the provisional government to place a frigate at his disposal, with which he might proceed to America. It had been promised him; he was even pressed to set off, but he wanted to be the bearer of an order to the captain to convey him to the United States, but that order did not arrive. We all felt that the delay of a single hour might put his freedom in jeopardy."[6]

By the 29th of June the agent of the provisional government, General Becker, arrived at Malmaison to escort Napoleon to the coast. Fouché, who had tricked the Emperor at every turn, now officially directed Napoleon's movements, and his sincerity of purpose in announcing that Napoleon would be taken to the United States in a French frigate may be questioned if not denied. The resolutions of the Commission of Government, signed by Fouché, under date of June 26, directed that while two frigates should be prepared at Rochefort to convey "Napoleon Bonaparte" to the United States, "the frigates should not leave Rochefort until the safe arrival of the passports." The intention of the provisional government, therefore, is not to be judged by the offer of the ships, but by its failure to furnish passports. Las Cases (no good authority, to be sure) said that these were promised, but if such a promise were made at all, it meant nothing, and its fulfillment depended not upon Fouché but upon the allies.[7] A second order from Fouché to General Becker directed that Napoleon should leave for Rochefort at once, there to embark upon the frigate without waiting for the passports.[8]

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[5] Bourrienne, Memoirs (Eng. Trans.), IV, 226.

[6] Lavallette, Memoirs (Eng. Trans.), II, 197.

[7] Las Cases, Memorial of St. Helena, I, pp. 15-26.

[8] Rose (Napoleon, II, 476) is of the opinion that the Provisional Government acted honestly toward Napoleon.

Napoleon left Malmaison June 29 and was at Rochefort July 3. Rosebery says that it seems clear that, had the Emperor acted with promptitude, he had reasonable chances of escaping to America, but at Rochefort he showed the same indecision, the same unconsciousness of the value of every moment, as at Malmaison, just after his abdication.[9] This conclusion is open to question, for the strong blockade of English cruisers patrolling the coast forbade any attempt at escape unless by means of disguises and stratagem, though Captain Maitland, of the Bellerophon, admitted that the best chance of escape was by attempting to run the blockade in one of the French frigates. Such an admission after the fact, when Napoleon was safe in English hands, proves nothing more than that the possibility of eluding the British was slight indeed. Many ruses were discussed while Napoleon awaited his passports at Rochefort from July 3 to July 8, and at the Isle d'Aix until July 15, when he embarked upon the Bellerophon. On the 10th, Las Cases visited the British cruisers for the purpose of ascertaining if the passes to proceed to the United States promised them by the Provisional Government had been received. "The answer was that they had not, but that the matter would be instantly referred to the commander-in-chief. Having stated the supposition of the Emperor's setting sail under flag of truce, it was replied that they would be attacked. We then spoke of his passage in a neutral ship and were told in reply that all neutrals would be strictly examined and perhaps carried into an English port; but we were recommended to proceed to England and it was asserted that in that country we should have no ill-usage to fear." On the 11th, upon the same authority, "all the outlets were blockaded by English ships of war, and the Emperor seemed extremely uncertain as to what plan he should pursue. Neutral vessels and *chasse-marées*, manned by young naval officers, were suggested for his conveyance;

[9] Rosebery, Napoleon, the Last Phase.

propositions also continued to be made from the interior." The next day Napoleon left the frigates "in consequence of the commandant's having refused to sail, whether from weakness of character, or owing to his having received fresh orders from the provisional government, is not known. Many were of the opinion that the attempt might be made with some probability of success, but it must be allowed that the winds still continued unfavorable." [10]

To all the plans proposed by which he might evade his enemies Napoleon remained indifferent and apathetic until the 13th, when, after a visit from his brother Joseph, who was then at Rochefort with a passport issued in the name of Bouchard (said to have been obtained by Jackson, the American chargé at Paris [10a]), Napoleon was, Las Cases says, "on the point of embarking in one of the *chasse-marées;* two sailed having on board a part of his luggage and several of his attendants," but as before, Napoleon refused to adopt any plan of escape whereby disguise was necessary. That such was beneath the dignity of the Emperor is sufficient reason for this but as contributing to this attitude must be added the break-down of his physical energy and his belief that something might be gained by trusting to the generosity of the British. [11]

Among the many accounts of Napoleon's plans for escape was one in which the name of Stephen Girard appears. Ac-

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[10] Las Cases, I, pp. 15-26.

[10a] Henry Jackson, secretary of legation, acted as chargé from the departure of Wm. H. Crawford in April, 1815, until the arrival of Albert Gallatin in July, 1816.

[11] Rose (Napoleon, II, 466) combatting the assertion that Napoleon was physically broken down during the Waterloo campaign, upon the ground that if such were the case the battle of Waterloo would deserve little notice, collects evidence to prove that there had been no radical change in Napoleon's health after his return from Elba. The array of evidence seems conclusive, although from its professed purpose it has the appearance of a bit of special pleading. While Rose admits that it is not easy to gauge Napoleon's feelings after the second abdication, it is asserted that he was certainly not a prey to torpor and to dumb despair. "His brain still clutched eagerly at public affairs as if unable to realize that they had slipped beyond his control." II, 476.

cording to the story which was widely circulated in the newspapers, a Colonel King, of Somerset county, Maryland, sent a ship to La Rochelle to bring Napoleon to America. The Emperor was to have been brought to Accomac county, Virginia, and Girard was believed to have selected a country place for him there. The story doubtless began in idle gossip, but it grew into a tradition that upon the report that Napoleon had escaped to Virginia, Colonel King ordered out the local militia, of which he was commander, to march to the Virginia line, some fifteen miles distant, there to greet the distinguished guest.

Napoleon's idea of seeking an asylum in America was soon communicated to the other members of his family. From the Chateau de Neuilly, whither he had retired after the abdication, Lucien wrote to his sister Pauline, June 26, 1815: "You will have known of the recent disaster to the Emperor, who has just abdicated in favor of his son. He will depart for the United States of America, where all of us will join him. I shall try to join my family at Rome in order to conduct them to America."[12] Similarly, Cardinal Fesch wrote to Pauline: "Lucien left the day before yesterday for London in order to obtain passports for the rest of his family. Joseph will await his passports as did Jerome. . . . . I foresee that the United States will be our final destination, but I think that you should remain in Italy."[13]

Joseph alone succeeded in obtaining passports permitting him to leave France. He followed Napoleon to the coast and urged his brother to use them, feeling certain that owing to the strong physical resemblance between them, the younger would be mistaken for the elder brother. The plan received as little consideration by Napoleon as did all the rest.

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[12] Jung, Lucien Bonaparte et ses Mémoires, III, 360.

[13] Ibid., 361. Jung states that it was Lucien's intention to join his brother at Rochefort and to embark with him to the United States.

Adolph Mailliard, a son of the Louis Mailliard who was Joseph's secretary, has given a report of the last interview between Napoleon and Joseph, based upon a narrative which he claimed to have heard more than once not only from the lips of his father, but from Joseph Bonaparte as well. Before Napoleon finally embarked in the Bellerophon, Joseph visited him to make his farewells. He found the Emperor in bed, ill and mentally depressed. Joseph offered him his quarters in the brig Commerce. "I will take your place," said Joseph, "and will appear to be ill in your room for two or three days. No one will know anything of your departure until you are far away. I shall run no risk and you will never again have so good an opportunity. Everything is ready." Napoleon was much affected, but refused the offer. Upon leaving the Emperor, Joseph said: "To-night I shall send you a messenger in whom I have perfect confidence. Give him your final answer." About midnight he sent Louis Mailliard, who was received by the Emperor alone. Napoleon first asked about the details of the undertaking and then said: "Everything is well arranged. You will succeed without difficulty. Say to King Joseph that I have considered his proposition thoroughly. I cannot accept it, for it would be a flight. I cannot leave my brave officers who are so devoted to me. My brother may leave, but in my position I cannot do so. Tell him to leave at once. He will arrive safely." [14]

Joseph remained at Rochefort until the Emperor had surrendered himself to Captain Maitland, of the Bellerophon, thereby "throwing himself upon the generosity of the British nation." General Lallemand, who had exhausted every plan for Napoleon's escape, asked that he might share his exile. This was refused. For two years thereafter Lallemand wandered about the world until, as will be seen

[14] Bertin, Joseph Bonaparte en Amérique, 44. The story may have been built upon Montholon's account, long after the event. Neither Gourgaud nor Bertrand mentions the incident. See Rose, Napoleon, II, 479. It seems that quarters in the "Commerce" were not engaged until after Napoleon had left upon the Bellerophon.

later, he rallied about himself the soldiers of the Old Guard who had fled to America.

For several days after the Bellerophon had sailed, Joseph remained at Rochefort while he made arrangements for his departure for the United States. An American brig of two hundred tons, the Commerce, of Charleston, South Carolina, Captain Misservey, lay at Bordeaux about to return home in ballast. This vessel was chartered for eighteen thousand francs and its captain was ordered to drop down the Gironde to Royan, there to take on board provisions and a small party formerly connected with the Imperial Court. On the 24th of July, Joseph and those of his suite who had obtained passports boarded the Commerce without interference from the Bourbon officials in command at Royan. On the 25th the Commerce sailed. Before the day was over, the vessel was overhauled by the British man-of-war Bacchus. After a short interview with Captain Misservey, the British officers left without noticing the passengers, of whose identity all seemed to be ignorant. The Bacchus signalled the brig to proceed, but the next day the frigate Endymion stopped the Commerce. This time the British officers made an examination with enough care as to cause alarm among the passengers. The ex-king of Spain kept his cabin, apparently much distressed with seasickness, while the British officers examined the passports. As all the papers appeared to be in good form, the Commerce was again permitted to continue on her way. The French shores and the British cruisers guarding the coast left behind, the Commerce made straight for New York. There it dropped anchor August 28, and Joseph Bonaparte, formerly king of Spain, and now calling himself Count de Survilliers, was safe from the hands of the restored Bourbons.[15] The ease with which he made his escape from France leads to the belief that little effort was made to intercept him by the allies.

[15] Narrative of James Caret in Bertin, 12.

It did not take long for the news to spread over New York that Joseph Bonaparte had succeeded in making his escape from France and was to become a resident of the United States. The reception given him was entirely hospitable and Henry Clay, who had just returned from Europe as one of the peace commissioners, was the first American of distinction who greeted him soon after his arrival.[16]

What attitude should the Count de Survilliers adopt towards the people and the government of the United States? Not a few Americans held to the opinion so universal on the other side of the Atlantic that any member of the Bonaparte family was an enemy to peace and a constant menace to the welfare of the country in which he happened to be. The more general view was the more truly American. America had always been a refuge for all who sought to escape from the tyranny and oppression of the Old World, and why should it not be for the elder brother of Napoleon, a man believed to be pacific by nature and only dangerous as a willing instrument in the Emperor's hands?

No doubt the Count de Survilliers was disposed, in so far as human nature permitted, calmly to submit to the decrees of fate, and, accepting the downfall of Napoleon as an accomplished fact, to settle down as a private gentleman in America. Some difficulty at once arose, however, from his conception of the duties of an unofficial member of American society.

After a rest of a few days in New York, the Count set out for Washington, accompanied by Commodore Lewis, to whom he had disclosed his identity, with the avowed purpose of meeting President Madison.[17] With what for that time and place was a large retinue, the party arrived in Baltimore September 14 and left the same day for Washington. It was perhaps fortunate for all concerned that the President and most of his Cabinet were absent from the

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[16] Bertin, 8. Niles's Register, 1815, IX, 44.
[17] Dallas to Madison, September 11, 1815, Dallas's Dallas, 447.

capital, for learning this, the Count turned back at Ellicott's Mills, on the highway between Baltimore and Washington, and returned by way of York and Lancaster, Pennsylvania, to New York.

Soon after the Count de Survilliers appeared in New York, President Madison had been informed of his determination to visit Washington and to seek an interview, at which time, though he would be introduced under the title of Count de Survilliers, he hoped to be received as Joseph Bonaparte.[18] Madison, who was then at his country seat, Montpelier, wrote to Monroe dwelling upon the manifest impropriety of such a proceeding, involving him in a clandestine transaction. To prevent this, steps were taken to divert the party from its purpose should it arrive at the capital. Madison directed Attorney-General Rush, who was then at Washington, to see that no application should be made for presentation to him.[19] "The anxiety," wrote Madison to Monroe, "of Joseph Bonaparte to be incog. for the present at least makes it the more extraordinary that he should undertake a journey which could not fail to excite curiosity and multiply the chances of discovery. Commodore Lewis has doubtless been misled into his inconsiderate agency by a benevolent sympathy; but he ought at least to have obtained a previous sanction to it from some quarter or other." [20]

Rush, who succeeded in shunting the unwelcome party from Washington, laid the entire blame of the affair upon the Commodore, "whose honor," Madison had said, "Joseph Bonaparte had inferred from his military symbols" when they first met in New York. Lewis gave as a reason for the change in route that not until they reached Ellicott's Mills had they learned with certainty that the President and the heads of departments were absent from Washington.

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[18] Madison to Monroe, September 12, 1815, MS. Monroe Papers, Library of Congress; Madison to Dallas, September 15, 1815, Dallas's Dallas, 445.

[19] Madison to Rush, September 15, 1815, Dallas's Dallas, 445.

[20] Madison to Monroe, September 12, 1815, MS. Monroe Papers, Library of Congress.

"These excuses," Rush informed Madison,[21] "must all originate with himself and be the price of his own indiscretion. From me he had no hint to make them." The Attorney-General, sharing the popular suspicion of every motive of the Bonapartes, hinted at a possible political intrigue behind the apparent plans of the Count de Survilliers. "The measure in which Lewis embarked," he declared to the President, "was abrupt and indecorous in a very high degree, and I confess it will sometimes cross my suspicions that it may have been propelled by other machinery than the ostensible, and that, too, without the ostensible agents themselves having been fully or rightly aware of it. It is not possible that such a personage would have been a week in New York without fixing the eye and perhaps engaging the reflections of more principal men than those who figured as his avowed patrons. But of this I have no right to do more than think."

Referring to the rumor that the Count might proceed to Montpelier, in case he failed to see Madison at Washington, Rush continued: "To have come, at any time, to the seat of your public residence with the ulterior view of a personal visit, without a previous sanction through the usual channels, might have been thought not entirely respectful if prudent. But so to invade the sanctity of your domestic retreat, really, sir, looks to me, independent of all other siderations, as scarcely less than an outrage. . . . I remember that when Talleyrand was in Philadelphia, as ex-bishop of Autun, General Washington declined being visited by him, although he made known a wish to wait on him." It is probable that Joseph Bonaparte knew that Madison and his Cabinet were unwilling to receive him, for he made no further attempt to see the President, but returned to New York.[22]

Early in 1816 the Count de Survilliers leased the Bingham estate on the Schuylkill, known as Lansdowne, and resided

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[21] Rush to Madison, September 17, 1815, MS. Monroe Papers, Library of Congress; see also, Bertin, op. cit., 10.
[22] Rush to Madison, September 17, 1815.

there for about a year, but as Lansdowne was too near Philadelphia and lacked seclusion, a change of residence was found to be desirable. Point Breeze, a farm of about two hundred acres, near Bordentown, New Jersey, belonging to the Sayre estate, was purchased during the summer of 1816 and there Joseph Bonaparte made his home until 1832, when he returned to Europe. Successive purchases of adjoining land enlarged Point Breeze to a place of more than eighteen hundred acres. Upon it the ex-king of Spain lived as a gentleman farmer. During the sixteen years of his sojourn in New Jersey his home was a center of generous hospitality for all the French exiles. Especially during the first part of his term of residence there Point Breeze was a veritable *bureau de bienfaisance* for the refugees of the Napoleonic régime.[23]

[23] Joseph Bonaparte's life in America is fully described by M. Georges Bertin, Joseph Bonaparte en Amérique, Paris, 1893; see also The Bonaparte Park, by E. M. Woodward, Trenton, N. J., 1879; "Bordentown and the Bonapartes," by J. B. Gilder in Scribner's Monthly, Volume 21; The Napoleon Dynasty, by "The Berkeley Men," N. Y., 1856.

CHAPTER II.

The Napoleonic Exiles in America.

The fortunes of the officers, who had declared for Napoleon on his return from Elba and fought for him until the final disaster, fell into the hands of Fouché, whose double dealing led to the belief that Napoleon might escape to America. Thanks to that inborn trait which his character invariably showed, Fouché openly condemned the active sympathizers with the Second Empire and secretly assisted them to escape. The presence of the Napoleonic exiles in America, whether for good or ill, may be credited to the sinuous policy of the despised Duke of Otranto.

It is said that Louis XVIII had already determined upon the dismissal of Fouché when he ordered him, as minister of police, to prepare lists of proscription. Thus Fouché was made to bear the odium attaching to the policy of political revenge. These lists, as first submitted to the king and council, contained about one hundred names: "one part was chosen by the public clamor, the other by chance. In this first choice Fouché had not shown any personal weakness: all of his accomplices of the Hundred Days, Bonapartists, Orleanists, ministers, colleagues, representatives of his policy, equals, and subordinates, generals, marshals, agents of his police, and executors of his orders were comprised in it. He had sacrificed himself liberally; there was lacking his own name only."[1]

For days the names upon the list were balloted upon. Now this, now that name was struck out. The list was reduced to eighty names, then to fifty-nine. When the king

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[1] Lamartine, History of the Restoration, Book 30, section 40.

and council decided that a name should remain, Fouché, perhaps with the king's acquiescence, warned some, saw others, provided passports and money, until it was only the "most obstinate or the most foolhardy who fell subsequently into the hands of the police." [2]

After most of those whose names yet remained upon the list had been assisted in making their escape, Louis proclaimed the ordinance of proscription dated July 24, 1815. "Desirous of conciliating the interests of our subjects, the dignity of our crown, and the tranquility of Europe, we order, first, that the generals and officers who have betrayed the king before the 23rd of March, or who have attacked France and the government by force of arms, and those, who by violence have possessed themselves of power, shall be seized and brought before competent courts-martial in their respective divisions, viz., Ney, Labédoyere, Lallemand senior, Lallemand junior, Drouet d'Erlon, Lefebvre-Desnouëttes, Ameil, Brayer, Gilly, Mouton-Duvernet, Grouchy, Clausel, Laborde, Debéille, Bertrand, Drouot, Cambronne, Lavallette, and Rovigo." [3] The second article of the same ordinance ordered thirty-nine individuals to quit Paris within three days and to remain in the country under the surveillance of Fouché until the chambers should either expel them from France or else order them to appear for trial. Among the number were Vandamme, Réal, Dirot, Cluis, and Garnier de Saintes. These lists were thereupon declared closed with the names designated. "They can never be extended to others for any cause or pretext whatever, otherwise than in the forms and according to the constitutional laws from which deviation is made only in this special case." [4]

Among those thus proscribed, as has been seen, was Marshal Grouchy, who with his two sons, Colonels Alphonse and Victor Grouchy, arrived in Baltimore in January, 1816, all of them under assumed names. The animadversions

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[2] Ibid.
[3] Ibid., Book 30, section 41.
[4] Ibid.

upon Grouchy's actions at Waterloo, which Gourgaud soon published in London, were echoed by many of Napoleon's officers who congregated in and about Philadelphia. Grouchy was blamed for the disaster, an opinion in which Napoleon concurred, for according to him, it was largely due to the imbecility of Grouchy that Waterloo was lost.[5] While in America Grouchy wrote a reply to Gourgaud and published it in Philadelphia.[6] A copy of the Marshal's defense was sent to Jefferson, to whom he had previously forwarded a letter of introduction from Lafayette.

The sage of Monticello, on account of his long residence in France, his numerous friendships there, and his universally known sympathy with French ideas, was naturally a character of the highest interest and attraction to the French emigrants. In the fall of 1817 Grouchy started on a pilgrimage to Monticello. He went as far south as Wilmington, Delaware, where he was the guest of the Duponts. His plan of an excursion into Virginia was given up on account of the illness of one of his sons, and he wrote to Jefferson from Wilmington how much he regretted not being able to take this trip which he had been promising himself ever since his arrival in America. He determined, however, to make the journey in the following spring. Then, as he wrote, he would tell Jefferson "how much I congratulate myself on dwelling in your interesting country; how proud I am, and how thankful for the honorable hospitality which has been bestowed upon me here, and that if anything can lessen the bitterness with which a distant exile overwhelms me, and the state of servitude and degradation of my native land, it is to see yours, happy, powerful, free, and respected, and all through institutions founded upon the very same principles

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[5] Though apparently Joseph Bonaparte bore Grouchy no ill-will. See Wilson's Life and Letters of Fitz-Greene Halleck, 519.

[6] Observations sur la relation de la Campagne de 1815 par le General Gourgaud, pp. 67, Philadelphia, 1818. Grouchy also published a small pamphlet in 1820 from Philadelphia: Doutes sur l'authenticité des mémoires historiques attribuées à Napoléon.

for the establishment of which I have so often needlessly shed my blood."[7]

Writing from Monticello, Jefferson replied: "Your name has been too well known in the history of the times, and your merit too much acknowledged by all, not to promise me great pleasure in making your personal acquaintance. If, too, the trouble of such a journey could be compensated by anything which the country between us could offer to your curiosity, it would save me the regret which I could not fail to feel were I to suppose myself the whole object of the journey. In this last case I would certainly think myself sufficiently honored by the written expressions of respect just now received, and should postpone the pleasure of receiving them personally to the unreasonable trouble which such an object would impose on you. As you flatter me with taking the journey in the spring, I am in hopes the face of our country at that season will still better reward the labor of the undertaking."[8]

The arrival of one after another of the Bonapartist following aroused no little feeling of alarm in the heart of Hyde de Neuville, the representative at Washington of the restored Bourbon dynasty.[9] What with the American colonies of Spain in serious revolt, the persistent rumors of attempts to rescue Napoleon from the rock of St. Helena, and the crowd of Napoleonic officers "recruiting, scattering money, and organizing secret expeditions," all these things formed a welter of suspicion in De Neuville's mind that the United States was to be the base of operations by which South

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[7] Grouchy to Jefferson, October 20, 1817, MS. Jefferson Papers, Bureau of Rolls and Library, Department of State. The powder-mill of the Du Ponts' at Brandywine exploded March 19, 1818, killing thirty persons and wounding ten. Marshal Grouchy and his two sons were present and aided in attempting to save the Du Pont residence.

[8] Jefferson to Grouchy, November 2, 1817, MS. Jefferson Papers, Department of State.

[9] De Neuville had been in the United States in 1806 and lived for a time at New Brunswick, New Jersey, where General Moreau visited him. Mémoires et Souvenirs du Baron Hyde de Neuville.

America would be severed from Spain with Napoleon, liberated from St. Helena, as its emperor. "As to South America," he wrote to the Duc de Richelieu, January 10, 1817, "I persist in thinking that only one man, Bonaparte, could operate there a great revolution. It appears that Joseph has been persuaded to dream of being King of the Indies."[10] Every attention paid the Napoleonic emigrants became to him a matter of serious concern upon which he fully reported to his chief. At a Fourth of July celebration at Baltimore in 1816, the postmaster of that city referred in hardly complimentary terms to the restored Bourbon government. De Neuville promptly called upon Monroe with the request that the postmaster be dismissed from his post and made to apologize for the insult to his master. Monroe refused to consider the matter upon the ground that the United States had no authority to limit the unofficial utterances of its servants, and that they were at liberty to discuss matters of foreign politics.[11]

Shortly after this occurrence, De Neuville's susceptibilities were again wounded by some remarks made at a public dinner at New York, at which Grouchy was referred to as "Marshal Grouchy." Such a title, said De Neuville, was an offense to his government. Acting upon his report of the affair, the French minister of foreign affairs asked Gallatin, then at Paris as the American envoy, for the removal of Skinner, the Baltimore postmaster, as a reparation sufficiently satisfactory to France. Gallatin could not make De Richelieu believe that no affront had been intended by the United States. The functions of the French consul at Baltimore were suspended as a retaliation. "No public agent," De Richelieu said to Gallatin, "could be maintained in a town where His Majesty had been so publicly insulted." Lest this method of retaliation might not have the desired effect,

[10] Mémoires et Souvenirs, II, 267.
[11] Monroe to Gallatin, September 10, 1816, MS. Archives, Bureau of Indexes and Archives, Department of State. See Wharton's International Law Digest, section 389.

Gallatin was further informed that by the refusal to dismiss Skinner, the government of Louis XVIII would be disposed to be slow about taking any steps looking toward the payment of the spoliation claims.[12]

Among the officers of Napoleon's army who had arrived in the United States and upon whom the Bourbon representative kept a close eye were the brothers Lallemand. The elder, Charles Francois Antoine Lallemand, was born at Metz about 1774 and entered military service in 1792. Serving through the campaigns of the Revolution, he became Junot's aide-de-camp in Egypt. After the disastrous San Domingo expedition in 1802 he was back again in the Napoleonic army, and after Jena became a colonel. In 1811 he appears as a general of brigade and as such he served continuously until the abdication of Fontainebleau. Before the Hundred Days he quickly accepted service under the restored monarchy as commander of the Department of l'Aisne, and just as quickly began to conspire against the existing government. With his younger brother, Henri Dominique Lallemand, and General Lefebvre-Desnouëttes, he formed a plot to seize the arsenal of La Fère. The scheme failed and the brothers were arrested with their co-conspirator and imprisoned. Napoleon's entry into Paris after his return from Elba set them at liberty and they at once entered with zeal into the service of the Emperor. At Waterloo the elder Lallemand showed unusual courage as commander of the chasseurs of the guard. He was in the last army and followed it beyond the Loire. The younger Lallemand commanded the artillery of the guard at Waterloo, having previously received the rank of general of division. After the second abdication, the elder, denied the privilege of following Napoleon into exile, was taken by the British to Malta and finally liberated. From Malta he roamed over eastern Europe and unsuccessfully offered his services to Russia, Turkey, and Egypt. The younger brother managed

[12] Gallatin to Monroe, November 21, 1816, and January 30, 1817, Gallatin's Works, II, 9, 22.

to escape from France under an assumed name, going first to London and thence to the United States, where Charles finally met him. Both had been condemned to death *in absentia* by a *conseil de guerre* in August, 1815, as the instigators of the conspiracy of La Fère. None of Napoleon's officers showed him greater devotion than did the elder of the Lallemands. O'Meara records the Emperor's estimate of him: "On my return from Elba he declared in my favor at a moment of the greatest peril to himself. He has a great deal of resolution and is capable as an organizer. There are few men who can better conduct a hazardous enterprise. *Il a le feu sacré.*"[18]

Lefebvre-Desnouëttes, who had risen from a sub-lieutenancy to the rank of general of division at the time of the abdication of Fontainebleau, accepted service under the restoration only to pronounce in favor of Napoleon on the return from Elba. Upon the discovery of the La Fère plot, he fled to the headquarters of Rigaud, commanding the division of Seine-et-Marne, where he awaited Napoleon's arrival. At Waterloo, where as lieutenant-general he commanded the lancers and *chasseurs à cheval,* he is said to have fought with the "rage of desperation." The restored Bourbon government condemned him to death, and, following the example of Joseph Bonaparte, he fled to America.

Closely associated with Lefebvre-Desnouëttes was General Rigaud, who had sheltered him just before the Hundred Days. This general, who had served from the beginning of the Napoleonic wars, first as commander of the 28th Dragoons and afterwards as general of brigade, appears before the Hundred Days as a general of division. Upon Napoleon's return he abandoned the restored government and commanded the French troops at Chalons, where he was taken prisoner and carried to Frankfort. Escaping thence to America, he reappears in 1817 as one of the company of Napoleon's officers who had escaped the penalties of a death sentence.

[18] Damas-Hinard, Dictionnaire-Napoléon, 2me édition, 297.

These four, the brothers Lallemand, Lefebvre-Desnouëttes, and Rigaud, at once became the leading spirits among the exiles. Associated with them were General Bertrand Clausel, Count of the Empire and Marshal of France, General Vandamme, who commanded the Third Corps during the Hundred Days; Count Réal, the historiographer of the Republic and prefect of police under Napoleon, together with Colonels Galabert, Schultz, Combes, Jordan (an aide-de-camp of the Emperor's), Latapie, Vorster, Douarche, Charrasin, Taillade, Défourni, and many others of less rank. Several of them appeared upon the lists of those proscribed by Fouché. Others had left France fearing the vengeance of the Bourbon restoration known as the "White Terror."

Lafayette acted as the means of introduction of another exile in addition to Grouchy, whose tastes were more like those of the Sage of Monticello than were the Marshal's. Joseph Lakanal was originally a priest and a professor in Ariège in the Pyrenees. In 1792 he became a member of the National Convention and in the next year his name appears as one who not only voted for the death of Louis XVI but consistently followed the plans of the Revolution in doing all he could to blot out all traces of the old régime. In matters of education he continued to have a prominent place and was the author of the law establishing primary and central schools all over France. From 1795 to 1797 he was a member of the Council of Five Hundred. Opposed to the *coup d'état* of the 18th Brumaire, he was removed from his office as one of the executive commissaires of the government, and retired to a professorship in the École Centrale at Paris to be called in 1804, having again gained the support of Napoleon, to the stewardship of the Lycée Bonaparte. On the organization of the Institut National, afterwards the Institut de France, Lakanal was the first member to be elected, and with the Abbé Siéyès drew up the regulations of that body. In 1809 he was made inspector-general of weights and measures and aided in extending the use of the metric system, which had been made compulsory by the law

of 1801. At the second restoration he was proscribed as a regicide, and early in 1816 came to the United States.

Knowing Jefferson's interest in everything scientific, especially when coming from a French source, Lafayette gave Lakanal a cordial letter of introduction to Jefferson, in which he said, writing in English: "The bearer of these lines is Mr. Lakanal, Member of the French Institute, Officer of the University and Inspector-general of the new Metrical System, who abandons those functions and a handsome treatment to become a settler in the State of Kentucky. He has for several years been in the Representative Assemblies of France, and is going to seek in the U. S. Liberty, Security, and Happiness. I cannot procure for him a greater gratification than by introducing him to you, and I know you will find a pleasure in favouring him with your advices and recommendations for the part of the Country where he means to settle himself and family." [14] Thouin, of the Jardin du Roi, with whom Jefferson kept up a correspondence upon agricultural and horticultural subjects, also gave Lakanal a note to Jefferson: "Permit me to present to you one of our learned *confrères,* M. Lakanal, member of the department of history and ancient literature of our Institute, a man to be recommended by his morality as well as by his learning, to whom our scientific institutions owe many debts. He leaves our old Europe, in which civilization seems to be retrograding, to settle, with several of his friends, in young America, which is called to such high destinies, and where society already offers to its happy citizens, liberty, tranquility and good fortune." [15]

Lakanal left France with enough money to buy a farm on which to settle with his family and several companions. It was Lafayette's hope, as has been seen, that Lakanal would seek Jefferson's advice before he settled on his estate in this

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[14] Lafayette to Jefferson, October 28, 1815, MS. Jefferson Papers, Department of State.

[15] Thouin to Jefferson, October 18, 1815, MS. Jefferson Papers, Department of State.

country. It appears, however, that he did not present his letters of introduction, but soon after his arrival in the United States went to Gallatin county, Kentucky, on the Ohio river, nearly opposite the French settlement at Vevay, Indiana.[16] Having settled on this farm, which he may have bargained for prior to leaving France, he wrote to Jefferson, June 1, 1816, enclosing the letters from Lafayette and Thouin. That a learned member of the French Institute should settle down in the wilds of Kentucky was strange enough, but his plan of diverting himself from the tedium of his wilderness home was almost ludicrous.

His letter to Jefferson was as follows:[17]

"Your Excellency:—I have the honor to address you a letter which I had hoped to have the inestimable benefit of presenting to you personally; but events over which I have had no control have changed my plans. Here I am upon the banks of the Ohio, upon an estate which I have just purchased: Gallatin County, in the vicinity of the French colony of Vevay. In this pleasant retreat I shall divide my time between the cultivation of my lands and that of letters. I purpose writing the history of the United States, for which I have been collecting materials for the past ten years. The spectacle of a free people supporting with obedience the salutary yoke of law will lessen the grief which I feel in being exiled from my country. She would be happy if your pacific genius had guided her destinies. The ambition of a single man has brought the enraged nations upon us. My country, prostrate, but struck by the wisdom of your administration, wishes for such as you of the new world to raise herself from her ruins. I hope that in writing your history and that of your predecessors, more or less illustrious, the picture will prove the painter and that, sustained by the

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[16] No deed to Lakanal appears of record in Gallatin county, Kentucky.

[17] Lakanal to Jefferson, June 1, 1816, MS. Madison Papers, Department of State. In the Calendar of the Correspondence of James Madison, issued as a Bulletin of the Bureau of Rolls and Library, Department of State, this letter appears as from Lakanal to Madison.

beauty of my subject rather than by my own ability, I shall be able to say with a poet of antiquity, at the close of my work, 'Exegi monumentum aëre perennius.'

"Deign, your Excellency, to receive the tender and respectful homage of your very humble and very obedient servant, "Lakanal,

of the Institute of France and of the Legion of Honor.

"Gallatin Contry (sic) par Vevay, Indian-contry (sic), June 1, 1816."

Jefferson, whose mental endowment did not include a keen sense of humor, gravely wrote in reply the following very characteristic letter:[18]

"Monticello, July 30. 16

"Sir:—

"Your favor of June 1, with the letters it covered, was received a few days ago only; and had your worth been less known, the testimony of my friend Lafayette would have been a sufficient passport to my esteem and services. The affliction of such a change of scene as that of Paris for the banks of the Ohio, I can well conceive. But the wise man is at home everywhere, and the mind of the philosopher never wants occupation. I weep indeed for your country, because, altho' it has sinned much (for we impute of necessity to a whole nation the wrongs of which it permits an individual to make it the instrument), yet its sufferings are beyond its sins and their excesses are now become crimes in those committing them. We revolt against them the more too, when we see a nation equally guilty wielding the scourge, instead of writhing under its infliction at the same stake. But this cannot last. There is a day of judgment for that nation, and of resurrection for yours. My greatest fear is of premature efforts. It is an affliction the less for you, that you now see them from a safe shore; for to remain amidst sufferings which we cannot succour is useless pain.

[18] Jefferson to Lakanal, July 30, 1816, MS. Jefferson Papers, Department of State.

"I am happy that in your retirement the subject to which you propose to avert your mind is an interesting one to us. We have not as yet a good history of our country, since its regenerated government. Marshall's is a mere party diatribe, and Botta's only as good as could have been expected from such a distance. I fear your distance from the depositories of authentic materials will give you trouble. It may, perhaps, oblige you at times to travel in quest of them. Should your researches bring you into this section of the country and anything here be worth your notice, we shall be glad to receive you as a guest at Monticello and to communicate freely anything possessed here. With every wish for your happiness in the new situation in which you are placed, I salute you with perfect esteem and respect.

"Thos. Jefferson.

"M. Lakanal of the Institute of France and Legion of Honor."

We may suspect that there was something slightly disingeneous in the reference by Lakanal to Napoleon as one "whose ambition had brought upon France the enraged nations of Europe," for Lakanal had received his highest honors from the hands of the Emperor from 1804 to the restoration of the Bourbons. His reference to the pacific genius of Jefferson shows that he knew what Jefferson's ideas were concerning Napoleon. But Jefferson, never losing an opportunity to express an opinion on the relations between Great Britain and France, replied in the same tone. Subsequent events showed that Lakanal was at a still later date in sympathy with the Bonapartist idea, when with Napoleon banished to Saint Helena, most Americans considered his régime to be a closed chapter in French history.

CHAPTER III.

The Society for the Cultivation of the Vine and Olive.

The fears which Madison and his cabinet showed on the arrival of Joseph Bonaparte in America were soon replaced in the public mind by expressions of sympathy for the victims of the Bourbon restoration. The era of good feeling, which began towards the close of Madison's administration was plainly not confined to political life. A deeply grounded optimism pervaded all branches of thought, political, religious, and social. To grant aid to the Napoleonic exiles, whom fancy depicted as tired of strife and eager to win an honest livelihood under the peaceful system of the new world, was but one of the many evidences that Americans generally were conscious of the isolation of their country from the sources of foreign discord. Full of a benevolent sympathy, they were ready to succor those whom the wars of Europe had ruined and exiled. The cordial greeting of Clay to the ex-king of Spain was thus only a manifestation of the same feeling of Americans toward the unfortunate, which was afterwards shown in expressions of good will to struggling Greece and to revolted Spanish America. Clay but voiced the sentiment of the people.

Disliked as Napoleon was by many Americans on account of his attitude towards the United States in the first decade of the century, that feeling was now more than counterbalanced by disgust at the reactionary policy of Bourbon France. Many of the exiles were unquestionably in impoverished circumstances, and in order to help them, as well as to insure their becoming permanent settlers in the United States, a scheme was devised by which, upon the organization of the exiles into an agricultural society, they might

receive a large grant of land from the government in a part of the country having a climate as nearly as possible like that of southern France. Upon this grant they might enter into the cultivation of the vine and olive, two branches of agricultural activity which needed encouragement, or rather a start, for the cultivation of the olive had not as yet been attempted.

The company was organized in the fall of 1816 at Philadelphia and at first it was thought that it would be able to undertake a settlement without the assistance of the government. The month of December, 1816, was spent in prospecting for a suitable location for the colony. A number went from Philadelphia west to Pittsburg and thence down the Ohio in search of a favorable situation, but nothing met their fancy. They were advised while in Kentucky to make a settlement on the Tombigbee in the Mississippi Territory, and to petition Congress for a grant in the tract recently acquired by treaty from the Creek Indians.

Through the exertions of Colonel Nicholas Simon Parmentier, the secretary of the company, the refugees succeeded in obtaining a grant from Congress of four contiguous townships, each six miles square, for the cultivation of the vine and olive. The terms of the grant were very liberal; indeed, the land was almost a gift. According to the law which passed Congress, March 3, 1817,[1] the Secretary of the Treasury was authorized to contract for the sale of the four townships at the rate of two dollars per acre with an agent to be named and duly authorized by the French society, the whole to be paid for within fourteen years. The stipulations on the part of the government were that there should be at least one settler for each half section, two hundred and eighty-eight in all, and that no one member should hold more than six hundred and forty acres. The final grants giving clear title could be obtained only by furnishing proof that actual settlement had been made and that the settler had

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[1] Statutes at Large, III, 374.

fulfilled certain conditions named by the Secretary of the Treasury. One condition to which the emigrants strenuously objected was that the title to the whole property should be given the agent only upon the fulfillment of the contract by each settler. They desired, and with some show of justice, that titles should be granted in severalty to each upon proof given that the other conditions were complied with. Had this been conceded, the history of the settlement on the Tombigbee might have been different. Crawford's condition was devised to prevent speculation in the lands, but it had no such effect.[2]

The headquarters of the society were at Philadelphia and there the shares were subscribed for and the allotments made. The required number of applicants was soon received and the organization of the society perfected. General Charles Lallemand was elected president, a Mr. Martin second vice-president, and Nicholas S. Parmentier secretary. William Lee, formerly American consul at Bordeaux and afterwards second auditor of the Treasury, was originally chosen as first vice-president, but he afterwards vacated in favor of Charles Villars, who was the general agent of the company. The title of the organization was the French Agricultural and Manufacturing Society, but it was known variously as the Society for the Cultivation of the Vine and Olive, the French Emigrant Association, and the Tombigbee Association. Among the names which appear in the first list of shareholders were Marshal Grouchy and his sons, Generals Charles and Henri Lallemand, Clausel, and Lefebvre-Desnouëttes, together with Colonels Galabert, Schultz, Combe, Jordan, Vorster, Douarche, Charrasin, Taillade, and Défourni. Lakanal was also one of the shareholders, and

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[2] Crawford to Meigs, November 10, 1817, American State Papers, Public Lands, III, 387; Message of President Monroe, March 16, 1818; Richardson's Messages, II, 30, giving information in compliance with Senate resolution of December 31, 1817, as to proceedings under the act of March 3, 1817. Crawford to Monroe, February 19, 1818, stated that allotments to three hundred and fifty immigrants had been approved by the President.

although not upon the list, Count Réal and General Vandamme were interested in the movement.[8]

Before the filing of the petition to Congress, the society, through its officers, applied to Jefferson for a plan of government for the projected settlement. In a letter written from Philadelphia in January, 1817, Martin and Parmentier asked Jefferson to trace for them "the basis of a social pact for the local regulations" of the society. Jefferson declined to do so, and writing to William Lee, he gave his reasons therefor. "No one," he wrote, "can be more sensible than I am of the honor of their confidence in me, so flatteringly manifested in this resolution; and certainly no one can feel stronger dispositions than myself to be useful to them, as well in return for this great mark of respect, as from feelings for the situation of strangers, forced by the misfortunes of their native country to seek another by adoption, so distant, and so different from that in all its circumstances. I commiserate the hardships they have to encounter, and equally applaud the resolution with which they meet them, as well as the principles proposed for their government. That their emigration may be for the happiness of their descendants, I can but believe; but from the knowledge I have of the country they have left, and its state of social intercourse and comfort, their own personal happiness will undergo severe trial. The laws however which are to effect this must flow from their own habits, their own feelings, and the resources of their own minds. No stranger to these could possibly propose regulations adapted to them. Every people have their own particular habits, ways of thinking, manners, etc., which have grown up with them from their infancy, are become a part of their nature, and to which the regulations which are to make them happy must be accommodated. No member of a foreign country can have a sufficient sympathy with these. The institutions of Lycurgus, for example, would not have suited Athens, nor those of Solon Lacedaemon. The

[8] American State Papers, Public Lands, III, 396.

organizations of Locke were impracticable for Carolina, and those of Rousseau and Mably for Poland.

"Turning inwardly on myself from these eminent illustrations of the truth of my observations, I feel all the presumption it would manifest should I undertake to do what this respectable society is alone qualified to do suitably for itself. There are some preliminary questions too which are particularly for their own consideration. Is it proposed that this shall be a separate state? Or a county of a state? Or a mere voluntary association, as those of the Quakers, Dunkars, Menonists? A separate state it cannot be, because from the tract it asks, it would not be of more than 20 miles square, and in establishing new states, regard is had to a certain degree of equality in size. If it is to be a county of a state, it cannot be governed by its own laws, but must be subject to those of the state of which it is a part. If merely a voluntary association, the submission of its members will be merely voluntary also; as no act of coercion would be permitted by the general law. These considerations must control the society, and themselves alone can modify their own intentions and wishes to them. With this apology for declining a task to which I am so unequal, I pray them to be assured of my sincere wishes for their success and happiness."[4]

Although, as has been said, many of the shareholders were dissatisfied with the conditions imposed by Secretary Crawford, the society decided to occupy the grant and to make a settlement. The first installment of about one hundred and fifty left Philadelphia in December, 1817, but the greater number of the shareholders did not follow for some months. Chartering a schooner, the McDonough, a large body of the emigrants sailed from Philadelphia late in the following April. They took with them an assortment of vines and olive plants, which they had promised to cultivate on the lands given them by the government.

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[4] Jefferson to William Lee, January 1, 1817. MS. Jefferson Papers, Department of State.

The McDonough reached the entrance of Mobile Bay in safety, but when opposite Point Bowyer a heavy gale arose, driving the schooner on shore. Help arrived from Fort Bowyer and all the passengers and cargo were saved. At Mobile, whence the company proceeded, they were tendered a public dinner and welcomed to Alabama. A government barge was placed at their disposal, and with the cargo on board it ascended the Tombigbee River to Fort Stoddart. In July the emigrants were at a place called White Bluffs, and there they decided to lay out a town. A name had been selected for the new city by Count Réal and the streets of "Demopolis" were surveyed and log cabins erected before the settlers knew whether or not the side of the "City of the People" was within the government grant. When the government surveyors arrived, they found that Demopolis was outside the limits of the grant. Demopolis was thereupon deserted and the settlers moved inland, where they laid out a new town, calling it Aigleville. The original town site was finally sold by the government to an American company for fifty-two dollars per acre and is now a town of about two thousand inhabitants in the northern part of Marengo county, Alabama. Both the name of the town and that of the county preserve the recollection of the settlement made by the soldiers of Napoleon.[5]

That these French colonists should begin their settlement by trying to establish a town throws an interesting light upon the ideas they had in regard to an agricultural colony. True to their traditions their interests centered around the town. Unlike the Anglo-Saxon pioneer, who looked first to the clearing of the land and was willing to bear the discomforts of isolation whilst making a place for himself in the wilderness, the French turned their attention first of all to the organization of a town that their social proclivities might

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[5] "The Bonapartists in Alabama," by Anne Bozeman Lyon in the Gulf States Historical Magazine, March, 1903. Pickett, History of Alabama, II, 386-399. "The French Grant in Alabama," by Gaius Whitfield, Jr., in Ala. Hist. Soc. Trans. Volume IV.

have a common center. In the location of Aigleville they were as unlucky as in the selection of a site for Demopolis, for, like the earlier choice, the second settlement was outside the confines of the government grant.

According to the terms of the law making the grant, the Secretary of the Treasury entered into a contract with the society, stipulating the methods of allotment and the plan by which the lands were to be cultivated. This contract was not signed until January, 1819, by which time many of the shareholders had left Alabama and forfeited their claims. The contract provided that the legal number of settlements should be made within three years. Within fourteen years ten acres in each one hundred and sixty were to be cleared and under cultivation. One acre in each quarter section was to be planted in vines within seven years. The same length of time was given in which to plant five hundred olive trees, unless "it be proven to the President that olives cannot be grown." The settlements and allotments already made were confirmed. Other French emigrants might be admitted upon the same conditions, but actual settlement was made in all cases an indispensable condition.[6]

The idea was not new, that French officers, many of them

[6] American State Papers, Public Lands, III, 396, 435, 537. A resolution of the Senate of April 17, 1820, referred to the Secretary of the Treasury the memorial of John M. Chapron, which asked that the terms of the original grant be so changed that each settler might have a good title independent of the others. Crawford reported, April 18, 1820, that he still believed such a change inexpedient, as the "principal object of the grant was not that a small number of tracts of land should be cultivated in vines and olives, but that the whole tract should be settled by persons understanding the culture of those plants." Charles Villars asked, December 12, 1821, that the law be modified, reporting that there were then eighty-one actual planters, 327 persons all told, with 1100 acres in full cultivation, including 10,000 vines, and that the company had spent from first to last about $160,000. "In spite of our enemies," he said, "we have done more work than could reasonably be expected, considering the many losses we have sustained, to repair to the spot and after the beginning of our settlements the want of communication in a rough and hardly explored country, the greatest part of which has been overflowed nine months of the year and the sickness which has visited us and deprives yet many families of their lands."

of noble birth, should attempt an agricultural colony in the wilderness of America. Every precedent, however, beginning with that of Ribaut in Florida, was one of failure. It could not be otherwise; to beat swords into ploughshares was possible of accomplishment by a citizen militia, but not by professional soldiers used to command and to the order of a military system. "Actual settlement" as farmers in the wilds of Alabama was not merely a visionary enterprise on the part of many of the old generals. Success in the undertaking was no less than a physical impossibility. The veterans of the greatest series of campaigns which modern Europe had ever seen were not the philosophers who could, as Jefferson wrote to Lakanal, "be at home everywhere," clearing stumps and tending grapevines, thousands of miles away from the center of all their interests.

The more important members of the company quickly realized the hopelessness of the undertaking and the impossibility of living as simple farmers on small tracts of land. Only one of them made any extensive settlement, and that was General Lefebvre-Desnouëttes, the comrade of the Lallemands in the conspiracy of La Fère. He was by far the wealthiest of the settlers on the Tombigbee and frequently received money from Europe with which to improve his estate. His holding of about five hundred acres was the best in the colony, and in addition to a good-sized house in which he lived, he built a log cabin which he called his "sanctuary." Here, according to tradition, he had a large bronze statue of Napoleon. Around the base of the figure were the swords and pistols which the general had taken in battle and around the walls were draped the colors of the Emperor.

Other men who had some note as actors in the events of French history from the Revolution to Waterloo were for a time in and about the Tombigbee settlement. Péniers, a member of the Convention which had voted for the death of Louis XVI, had a small place just outside the government tract. In the crowd of exiles which gathered about Aigleville were Colonel Nicholas Raoul, who had accompanied

Napoleon to Elba, and Colonel Cluis, an aide to Marshal Lefebvre. Péniers was afterwards appointed a sub-agent to the Seminoles and went to Florida, where he died in 1823. Raoul took up the more peaceful career of a ferryman, and in this capacity he ran a ferryboat at French Creek, near Demopolis. Tiring of this life, he finally went to Mexico and is last heard of as an officer in the revolutionist army. Cluis became a tavern keeper at Greensboro, Alabama, where he died.[7]

Clausel and Henri Lallemand made settlements through their lessees only. The other officers, the Grouchys, Charles Lallemand, Galabert, Jordan, Défourni and the rest, were reported to the government as having made " no performance," and their claims lapsed.[8] Lakanal's name was similarly reported, for though he had given up his Kentucky retreat, he made no settlement in the grant of the company. The association, after various petitions to the government to have the terms of the contract changed, finally disbanded and the colonists were scattered.

The history of the French settlers on the Tombigbee is but one record of misfortune. So many mistakes had been made in surveying the government grant that no one was sure of his title, even if the stipulations as to the cultivation and clearing of the lands were adhered to. Efforts to cultivate vines resulted only in failure. When they were finally made to grow at all, the grapes were poor and yielded a miserable quality of wine, and the fruit matured during the heat of summer. The cultivation of the olive was also a signal failure. In the face of all these discouragements several settlers continued to occupy their small tracts and to eke out a precarious existence in the wilderness. Those who could do so abandoned their holdings and sought homes in Mobile. There they formed a small circle which tradition says was of unusual cultivation and refinement.

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[7] Pickett, op. cit., *passim.;* Lyon and Whitfield, op. cit.
[8] Public Lands, III, 396.

Before the summer of 1818 was over, Philadelphia was again the center of attraction for many of the members of the association. Joseph Bonaparte was the magnet which drew the Bonapartist following thither. Upon his financial assistance they could rely when in need and it was a source of charity of which some of them were not slow to take advantage.

Charles Lallemand, in writing to his brother Henri, said: "I have more ambition than can be gratified by the colony upon the Tombigbee."[9] It is certain that he had little sympathy with the bucolic purposes of the society for the cultivation of the vine and olive. While, as has been said, he was a shareholder in the company, it is doubtful if he ever visited the Tombigbee, for while the settlers were considering a place for a settlement, Lallemand was in New Orleans purchasing supplies for his own colony in Texas.

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[9] Lyon, op. cit.

CHAPTER IV.

The Napoleonic Confederation.

In one way only could the dreams of the restoration of Napoleon cease, and that was by the death of the prisoner of Saint Helena. So long as he remained alive his former adherents, who had been driven out of France by the edicts of the Restoration, continued to plan schemes for the rescue of the Emperor. Each month showed that the Bourbons were more secure on the throne of France and the utter impossibility of winning back that country to a Napoleonic régime even if the head of the family were liberated. Those of the Old Guard who were in America talked of and planned for Napoleon's escape. With him were bound up all their hopes. No scheme was too absurd to be gravely discussed by his old followers, if only it concerned the rescue of their chief or the restoration of the fortunes of his family.

As has been said, Joseph, alone of Napoleon's brothers, succeeded in making his escape to the United States. Lucien had intended joining Napoleon at Rochefort, but he and his family were so closely watched that escape was impossible. He remained under the suspicious eyes of the European powers and continually excited their fears until Napoleon's death. While at Rome in 1817 under the protection of the Pope, Lucien was reported to be in constant communication with America, and fearing that a new Bonapartist intrigue was on foot, the French ambassador wrote to the Papal secretary of state, asking that a closer watch be kept upon Lucien and his family because " his remarks, opinions, and schemes left no doubt as to his intentions." Lucien continually denied that he was engaged in any plan whatever for the political restoration of his family, and very probably

his connection with any such intrigue went no further than the mere knowledge that such schemes existed.[1]

It was otherwise with Joseph, the Count de Survilliers. He was surrounded by a crowd of Napoleon's old generals. The very freedom of the United States gave these exiles full opportunity for the discussion of every plan for the escape of Napoleon and the rehabilitation of his fortunes. That the Emperor was alive was a sufficient inspiration to them for intrigue, even if the schemes when developed showed only the madness of desperation. Europe could not then be the scene of another return. The only field for such effort was to be America.

The Count de Survilliers was a very different personage from Joseph, King of Spain and the Indies. The American dominions of Spain, as they were in the time of the Bonaparte king, had changed greatly in the three years since the battle of Vittoria. The very fact that the throne of the mother country had been made the plaything of Napoleon gave additional force to the growth of revolutionary ideas in Spanish America. On this account and thanks also to the reactionary policy of the *Camarilla,* Spanish power was openly defied from the La Plata to the Isthmus. At the time of the Bonapartist occupation of the throne of Spain, the sympathizers with Napoleon's policy, or *Josefinos,* as they were called, had no following in the Spanish colonies in America.

Each colony saw the organization of juntas to govern in the name of the displaced Ferdinand VII. By these means the colonies got an idea of the weakness of the mother country, imbibed some notions of self-government, and even experienced some of the benefits of having a government on this side of the Atlantic. The very loyalty of the juntas served in the end to nourish the disloyalty of all the Spanish-American provinces. In Mexico revolutionary ideas had at that time a little less currency owing to the policy of the

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[1] Jung, Lucien Bonaparte et ses Mémoires, III, 372, 399.

viceroy, Apodaca, one of the most energetic of Spanish officials. He had so prudently managed the affairs of the viceroyalty that less discontent appeared there than in the other dominions of the king of Spain. Apodaca's four years of power represented a period of comparative quiet.

Shortly after the usurpation of the Spanish throne by the Bonapartes, Portugal, refusing to join in the continental system, was occupied by the French army under Junot. The royal family thereupon fled over-sea to Brazil. Why should not Joseph Bonaparte, the king of Spain and the Indies, driven from his throne in Europe, set up his standard in the new world, there to reign until an opportunity offered to return to Europe? The idea was quixotic, perhaps mad, but there is no doubt that such a plan existed, even if the ex-king himself cannot be shown to have given it his active support and sympathy.

The idea of the establishment of Joseph Bonaparte on the throne of Mexico as King of Spain and the Indies seemed to Americans so absurd whenever it was discussed, that the editor of Niles's Register did not hesitate to denounce as "manufactured" a letter in his own columns, written from London in July, 1816, about the time the Count de Survilliers was negotiating for the purchase of Point Breeze, at Bordentown, New Jersey. The correspondent declared that a conspiracy was under way to place the Count upon the throne of Mexico and that the body of generals, who had followed him to America, were willing to unite their means with the defeated insurgents in Mexico "to drive the Spaniards from their colonies, and to establish a mighty empire on the shores of the Pacific." Joseph Bonaparte, it was said, though unambitious, had been powerfully worked upon by the arguments of the exiled French officers, who were "uneasy at the state of inaction to which they had been reduced." "Nothing now prevented their immediate engagement in this enterprise but the refusal, on the part of the government of the United States, to undertake any ostensible co-operation." This statement was so ridiculous that it was difficult to take any

part of the letter seriously, and the editor seemed to be justified in scoffing at the whole story. The correspondent's source of information he declared to be from America.[2]

For some time after the publication of the sensational article in Niles's Register, there was no apparent reason for believing that the United States was to be made the base of any Napoleonic enterprise. Jung says, in his memoirs of Lucien Bonaparte, that in July, 1817, a schooner, the Aile, left Philadelphia under the command of a Captain Huibet for the purpose of bringing Lucien with his family and some of his friends to America. "The schooner reached Malta but was unable to reach Civita Vecchia." In lieu of positive evidence this expedition, if it had such an object as the one given by Jung, cannot be said to have had a political end. Jung's account may be included among his many statements which have their inspiration in his hostility to the Bonapartist cause.[3] Similarly he connects the ill-fated attempt of Xavier Mina against the viceroy of Mexico in 1817 as undertaken in aid of the fortunes of Joseph Bonaparte, the ex-king of Spain. Nothing has been found to support this statement. The younger Mina had always been opposed to the Bonapartes in Spain, though his uncle, General Espos y Mina, told Joseph Bonaparte that had Napoleon agreed to remove the French troops from Spain in 1812, he would have been willing to recognize Joseph as the rightful occupant of the Spanish throne.[4] That the Mina expedition occurred at the time when such a conspiracy was said to have been on foot, and when, as will be seen later, Lallemand was organizing his Texan colony of Champ d'Asile, near the scene of Mina's defeat, is probably nothing more than a coincidence.

There was one man in the United States who had reason to fear the consequences of the presence of a member of the Bonaparte family in America, and that, as has been said,

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[2] Niles's Register, XI, 60.
[3] Jung, III, 380.
[4] Du Casse, Mémoires du Roi Joseph, X, 240.

was Hyde de Neuville, the minister from the Bourbon Louis XVIII, resident at Washington. De Neuville had a close watch kept upon the movements of the Count de Survilliers and took careful note of his relations with the body of Napoleonic officers who congregated at Philadelphia and at Bordentown. While at Philadelphia, late in August, 1817, he came into possession of some letters which had been sent to the Count de Survilliers and intercepted in all probability by one of the minister's agents. De Neuville, upon reading them, left post-haste for Washington to interview Rush, who was acting as secretary of state, and to lay the papers before him for presentation to the President.[5] In a note to Rush he stated that some very important papers had fallen into his hands, the authority of which could not be doubted. Their purpose was sufficiently clear to raise his fears that a conspiracy had been developed involving the security of his French master and the peace of the United States. His first note did not explain what the papers were, but that the plan disclosed by them was as dangerous as could be. Before deciding that the plan as outlined in the papers was merely the delirium of a madman, he desired to settle the question of the genuineness of the documents. "I can," he wrote, "in no event neglect any measure of precaution and as the affair particularly interests the federal government" he brought it to its notice unofficially that an exhaustive examination of the papers might be made. While if genuine, as he believed the papers were, the project presented danger, the conspirator who was the author of them was no less a madman.[6]

Soon afterwards De Neuville brought the documents to

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[5] Hyde de Neuville, Mémoires et Souvenirs, II, 321.

[6] Hyde de Neuville to the Secretary of State, Philadelphia, August 30, 1817, MS. John Quincy Adams Papers; same to the same, September 7, 1817, MS. Archives, Bureau of Indexes and Archives, Department of State; Memoirs of John Quincy Adams, IV, 9; Hyde de Neuville to the Duc de Richelieu, August 31, 1817, Mémoires et Souvenirs, II, 319. Rush was acting secretary until September 22, 1817, when John Quincy Adams took the oath of office.

John Quincy Adams, who had taken charge of the Department of State, and together they made an examination of them. The package which was wrapped in four covers, was addressed "*A Monsieur le Comte de Survilliers, pour lui seul,*" and sealed with the insignia of the Convention, the liberty-cap on the head of a pike; surrounding the device were the words "Lakanal, Deputy to the National Convention." Within the packet were six documents, each in a bold handwriting, plainly without disguise, and signed by the same hand. De Neuville had no doubt whatever that they were the work of the one whose seal enclosed the packet, and the Secretary of State, on examining and comparing them with other letters of Lakanal, concurred in De Neuville's opinion that they were undoubtedly genuine.

After consultation with Adams, the French minister addressed the following official note to the department, September 12:

"Sir,

"Circumstances of a very extraordinary nature have caused several documents to fall into my hands which announce the existence in America of an association organized under the name of the Napoleonean Confederacy. From these papers, which I have already had the honor to communicate to you, it results that a very considerable levy of men is on the eve of taking place in some of the Western States or Territories.

"The apparent object of this conspiracy is the conquest of a Spanish province; but the real one is only known to the leaders; according to their own report, it is to cause Joseph Bonaparte to be proclaimed in Mexico, King of Spain and the Indies.

"An enterprise of this nature appeared to me, at first view, so improbable, that I considered these papers as forged and designedly placed in such a way as to come under my view, although they were brought to me under the seal of secrecy by persons worthy of entire confidence.

"In a case of such moment, involving so deeply the interests of the Federal Government, the peace of both hemispheres, and the honor of my country thus committed in a foreign land, by Frenchmen whom it has been necessary to exile and even to repulse from their native country, but the greater part of whom are not forever ejected from its bosom, it was my duty to precipitate nothing, to hazard nothing, and above all to neglect nothing which could well establish the authenticity of this culpable and even mad correspondence; for how is it possible that certain individuals should believe that Spaniards, who originally placed themselves in a state of insurrection only to escape the yoke of Napoleon, would now consent to accept a Bonaparte for master, and that citizens of the United States would take up arms to conquer a throne for him?

"It is very painful for me, Sir, to be under the necessity of unfolding an intrigue which might possibly implicate subjects of His Majesty the King my Master; but I still cherish the hope that among the Frenchmen whose names have been used on this occasion, there are several who, having been for some time desirous of putting themselves under the protection of the government of their own country, will not have connected themselves with a project so directly opposed to the object they have in view; that others have only been misled for a moment, and that, finally, all the odium and madness of the Napoleonean Confederation will fall on some individuals, without country, without remorse, who in 1817 have audacity to employ their criminal seal of 1793, and thus proclaim the fatal part they bore in our most deplorable misfortunes. Are these men ignorant that they inhabit the land of liberty and not that of anarchy? Do they not know that there is not a single good American who is not struck with horror at the crimes which these disastrous times recall to our memory?

"My first verifications, as well as those which you since had the goodness to make jointly with me, no longer leaving any doubt of the authenticity of the papers which have been

delivered to me, I have the honor to request you, Sir, to make the President of the United States acquainted with this event.

" The papers to be submitted to him consist of a letter of four pages, headed ULTIMATUM. This letter is wholly written as you yourself ascertained, in the hand of the said Lakanal, formerly a member of the Convention, and who, by the documents annexed to my letter, appears now to be invested with the character of Principal Commissioner near the Executive Committee.—2. Of a REPORT, forming twenty-three pages, likewise in the handwriting of Mr. Lakanal.—3. A PETITION of the same Lakanal,—by which Joseph Bonaparte is requested to exercise, from the moment, his rights of sovereignty, to grant commissions, distribute crosses, ribbands, to create counties, marquisates &c., &c., and above all to confer on the petitioner ' a Spanish distinction ' as ' this new mark of your gracious favor will give me,' adds he, ' a degree of political importance, in the eyes of your Mexican subjects, which I venture to assure Your Majesty will promote Your Majesty's best interests.'—4. A vocabulary of the wandering Indians in the neighborhood of Mexico, towards Santa Fe.—5. A list of the Indian Tribes inhabiting northern Louisiana, etc.—6. An enigmatical vocabulary composed of forty-two columns or alphabets, with a Latin word corresponding with each letter. This vocabulary is followed by a key, beginning thus, ' In using this vocabulary the Latin word may be written, although that language be not understood, and the following use is to be made of it.' The key concludes with this article of the rules: ' Every partial correspondence should be headed with this word, " Oratio," a prayer, because it will appear merely to be an extract, whether in express terms, or in others equivalent, of the Lord's Prayer, and because this innocent stratagem may have its effect upon the minds of the Spaniards, who are generally attentive to all religious forms.'—7. Of four covers which enclosed the packet.

" Such, Sir, are the documents composing this correspond-

ence. My first duty was to give an account of this event to my government; my next was to come and confer upon the subject of it with the Federal Government which will doubtless see in the zeal of my conduct a new proof of the frank and loyal friendship of my Sovereign.

"Allow me, Sir, to request you to have the goodness to inform me, as soon as possible, of the measures which the President will have judged proper to prescribe, that I may communicate them without delay to His Majesty, the King my Master, who, I doubt not, will be most happy to learn that a plot threatening to disturb the tranquility of this country, and become a subject of alarm and discord to both continents, has been stifled at its birth by the wisdom and firmness of the Federal Government.

"I request you, Sir, to be pleased to tender my profound respects to the President, and to accept the renewed assurances of my highest consideration.

"The Minister of France, G. Hyde de Neuville.
Washington, September 12, 1817."[7]

De Neuville enclosed with this note certified copies of the papers referred to, with the exception of the "enigmatical vocabulary," which is not on file.

The "Ultimatum" is as follows: "Sire!

"I am charged to lay before Your Majesty the annexed documents, and to request that Your Majesty will be pleased to examine them in order in which they are presented.

"I was invited to repair to Your Majesty for the purpose of making this important communication; but, being on the eve of setting out on a long and fatiguing journey, it became necessary for me to husband both my strength and my funds.

"I was unwilling however to trust this important dispatch to the mail, as that conveyance would not have offered the certainty of an inviolable secrecy.

"The person who has undertaken to deliver these papers,

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[7] De Neuville to John Quincy Adams, September 17, 1817, MS. Archives, Bureau of Indexes and Archives, Department of State. The translation was made in the department at the time.

to the contents of which he is an utter stranger, is not personally known to me, but he is to those who merit my entire confidence.

"Throughout the whole of this important enterprise I have had no other merit, Sire, than that of conducting myself in these countries as a man of honor, and of rendering useful to Your Majesty's service, the tender and profound veneration felt for Your August Dynasty; I have already on several occasions entertained Your Majesty on these general dispositions of the minds and feelings of the people of these countries.

"Deign, Sire, to transmit to me your orders, as speedily as it may please Your Majesty; as Your Majesty will be sensible of all the danger attending the smallest delay.

"I repeat to Your Majesty that the common profession of our political faith is and always will be: 'The King has nothing to do in this affair; it is our unbounded devotion to His Illustrious Dynasty, which prompts us to act; we are consistant in our principles; we wish for free states only, and legitimate princes in the just acceptation which Reason gives to these words. The King neither will, nor can, surrender his rights; but he expects everything from the goodness of his cause and the attachment of the brave Spaniards, seconded by all the friends of the cause of nations, arrayed against Power imposed by Force.'

"I await Your Majesty's answer with extreme impatience.

"I have the honor to be, Sire, Your Majesty's Most Humble, Most Obedient and Most Faithful Servant and Subject,

Lakanal."[8]

The personal petition of Lakanal follows. This is indeed the delirium of a madman and it is difficult to see what the learned Lakanal meant in some of his phrases.

"Sire:

"Deign to cast your eyes on this petition, which is of a

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[8] Original, certified copy and official translation, MS. Archives, Department of State.

personal nature, although closely connected with the great enterprise. Some preliminary observations, though brief, are rendered indispensible.

"If, in the tenth century, Capet usurped the crown of the weak Louis V, this outrage, notorious and well-authenticated, cannot be obligatory upon the nation which was degraded and oppressed by it.

"To say, in the nineteenth century, that nations composed of a numerous, enlightened and brave population, are the patrimony of a few families destitute of courage and understanding, is a folly undeserving of any answer dictated by common-sense.

"A general and just outcry has been raised against negro-slavery,—but shall not white men be free? And shall not the world ring with cries against cannibalism, when the inevitable period arrives when nations, roused by indignation, shall break with fury their chains on their oppressors heads?

"Our villagers, our very children, now-a-days, know that men are born free; that populous nations are the sovereigns, and that the only legitimate Kings are the Kings of their free choice.

"Two ages of darkness, the diplomatic quackery of the cabinets of Europe, the juggling of the priesthood, will never prevail against these immutable truths.

"Sire, Your Majesty alone reigns lawfully over the Spains and the Indies; and if the decree of fate remove you forever from a throne lawfully acquired, it would not be less the just patrimony of your children.

"The imbecile Bourbons know all this as well as we do, and this terrifying idea affrights them even in the recesses of their usurped palaces. Millions of bayonets were necessary to remove the Illustrious Dynasty of Your Majesty from the throne, and millions of bayonets are wanted to keep the stupid Bourbons there.

"Will Your Majesty be pleased to allow me to address you a question?

"Why do you not continue to exercise the acts of sovereignty?

"Although far distant from a throne which he had never filled, Louis, the imposed and the impostor, did for the space of twenty years grant pensions, distribute brevets, crosses and ribbands, create counties, marquisates, &c. &c.

"In the position in which I am placed by the momentous interests of Your Majesty, I respectfully request of you to confer upon me a Spanish distinction, which may affiliate me in some sort with that nation, with which I have been greatly conversant from my childhood, at the foot of the Pyreneean Mountains, having been born in the ancient County of Foix, now the Department of the Ariège, where a part of my family still resides.

"This new mark of your gracious favor will give me a degree of political importance in the eyes of your Mexican subjects, which, I venture to assure you, will promote Your Majesty's best interests.

"My irrevocable resolution is to make known that Your Majesty has taken no part in this great affair, and that you expect everything from the goodness of your cause, and from the good-will of the Spanish Nation.

"I have the honor to be, Sire, Your Majesty's Most Humble, Most Obedient, and Most Faithful Servant and Subject,

Lakanal."[9]

The report is somewhat more lucid, especially when it asks the "King" to grant 65,000 francs in aid of the enterprise:

"REPORT addressed to His Majesty, the King of Spain and the Indies, by his Faithful Subjects, the Citizens composing the Napoleonean Confederation.

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[9] Original, certified copy and official translation, MS. Archives, Department of State.

"Sire:—

"In the course of the profound reflections which we have made upon the momentous subject which occupies us, and which constantly engages our thoughts, that on which we have dwelt the longest, as being the most easy to realize, has been to repair to the spot with some evidence of your goodness.

"We at first proceeded upon a small scale, because we only thought of acting with our individual means.

"Against the success of our enterprise, there were many numerous chances. However, we were devoted, the sacrifice was entire, we held nothing in reserve.

"By the progressive increase of information which sprang up on all sides, when we saw ourselves surrounded by a number of experienced associates, a project which was but indistinctly seen and was in some sort the spring of our first ideas, became a regular plan, well concerted in its ensemble and judiciously calculated in all its details.

"However, in organizing a sort of civic propaganda, we have only contemplated forming an enterprise perfectly civil; the accessories, such as uniforms, arms, tents, which seem to carry with them a certain military character, are only intended for our personal preservation.

"Nevertheless, on casting our eyes on the statement of the Indian tribes annexed to this report, the greater part of whom rove through the countries we must pass through, we have been aware of the necessity of being in a situation to resist them, in case these turbulent tribes should show marks of hostility.

"We have thought it equally important to anticipate any possible attack from a Spanish party, as the best means of subduing it.

"Finally, it has appeared advantageous to show ourselves with a respectable display of force, to secure the prompt success of the negotiation.

"In this state of things, our common deliberation has reached its highest maturity, and its results are invariably

fixed in the project of an arrêté, which we are about to submit to Your Majesty.

"We request Your Majesty to remark, that in the course of our successive propositions, there have been neither tergiversation nor retrograde steps.

"The frame of our project has merely been enlarged because we have looked in the face all the obstacles which were to be overcome; but all our steps toward the proposed object are, we hesitate not to say, so many points of a straight line.

"At the present moment, and under every possible supposition, our success is ascertained, or there is nothing certain on earth.

"The following is the definite project; the first dispatch which will follow it, will be dated from Mexico or near to the frontiers of that Kingdom.

"Article 1. The Napoleonean Confederation shall be extended to the effective number of nine hundred members, armed and equipped as flankers of the Independent Troops of Mexico.

"Article 2. With a view to combine secrecy with celerity in this operation, there shall be named immediately one hundred and fifty members, as Commissioners, who shall repair without delay to the different points of the states, of the Missouri Territory, of the Illinois Territory, of the District of Columbia, of the Michigan Territory, of Tennessee, Kentucky and Ohio, pointed out in the statement, which will be annexed to the present arrêté.

"Population of the above States and Territories:

Missouri Terr.	20,845	Michigan Terr. ..	4,762
Illinois Terr.	12,282	Tennessee Terr. ..	261,727
Mississippi Terr. ..	40,352	Kentucky	406,511
Dist. of Columbia..	24,023	Ohio (uncertain)	

"Article 4. Each Commissioner shall repair to the places, where are his relations, friends, acquaintances and connections and shall associate with him as many as five

individuals, known by their principles to be favorable to the nature of the undertaking, and shall endeavor to attach them still more strongly to it, by some small presents, benefits and by hopes founded upon future contingencies soon to be realized, according to the character and condition of the persons; he shall not unfold himself as to the ultimate object of the enterprise, and on all occasions, he shall employ economy and circumspection.

"Article 5. The period for the return of the Commissioners is irrevocably fixed and during their mission they shall inform the Executive Committee, day by day, and in cipher, of the progress of their operations, and point out to it the objects of armament and equipment, which cannot be procured upon the spot, in order that the Committee may take the most speedy means of obtaining them with the funds placed at its disposal.

"Article 6. There shall be immediately appointed a Commissioner to repair successively to Louisville, Natchez and, if necessary, to New Orleans to procure at the expense of the Confederation two field-pieces in fit order for service.

"Article 7. The statement of the new expenses to be incurred in the execution of the present arrêté is adopted as prepared by the Special Commissioner; in consequence the charges of equipment, armament and provisions remain fixed at the rate of 200 francs for each one of the seven hundred and fifty members, who are to be added to the Confederation; the total of the additional expense to be incurred is 150,000 francs. But several of the new members will be able to contribute personally, instead of being a burden to the common fund; others will be equipped at their expense; others will be enabled to make advances. From the views taken, which are considered exact, or at least satisfactory, it is estimated that only half of the new members will be chargeable to the Society; in consequence, the additional expense will be reduced to the sum of 65,000 francs.

"Article, the last. His Majesty, King Joseph, shall be humbly entreated to have that sum placed at the disposal of

his faithful subjects, the members composing the Napoleonean Confederation.

"A recipisse shall be addressed to the King signed by all the said members to establish their individual responsibility.

"Sire! Your Majesty will thus have formed a fund of 100,000 francs, if you will be pleased to receive favorably our last and definite resolutions.

"The certainty is thus afforded to Your Majesty of reconquering one of the first thrones in the universe, and of reëstablishing Your Illustrious Dynasty!

"The success of this new levy cannot be doubted by those, who, being sincerely devoted to the august cause of Your Majesty, have, in addition, the exact local information. Indeed, in the western states the agricultural laborers are almost wholly directed to the cultivation of Indian-corn, which should be planted before the end of May, not to be injured by the early frosts of the Autumn. This bread-food when carefully worked requires no further labor; its vegetative power triumphs over the rank herbage which a strong soil produces in abundance. Thus summer and autumn are seasons of rest for the western Americans; hunting, fishing, adventurous enterprises then occupy them exclusively.

"With zeal, some address, a central point with men known and esteemed, the success of the prompt levy which engages us cannot be uncertain; and we are entitled to assure Your Majesty, that this levy has never been, throughout all our deliberations, the subject of a doubt.

"The western American is discreet, reserved, impenetrable in matters of importance; we all have the most thorough conviction, that the secret will be religiously kept, as to the real object of the enterprise, if anything of it should transpire from incidental circumstances.

"Sire! We are about to act as if Your Majesty's answer were confirmative of our last resolutions. The essential part of the enterprise, that is to say, the personal part, will be ready to act when we shall receive the answer which we humbly request of Your Majesty.

"If Your Majesty do not approve of our last resolutions, we would act upon the more confined plan formerly submitted to you.

"We conclude by a consideration which appears to us of an immense weight:—

"If Your Majesty, as worthy of reigning as you are capable of viewing a crown in its just lights, and which is so much beneath your personal virtues, do not wish to engage in anything decisive as relates to Your Majesty, may you deign not to lose sight of the import and interests of your children, and of the people who look up to you as a second father!"

"Then," the copy concludes, "follow the signatures."[10] Who the signers of the Report were, it is impossible to determine, and indeed it is not absolutely certain that the signatures were actually appended to the original of the report in the intercepted packet.

The plan as disclosed in these intercepted papers was bold enough to excite the alarm of the French minister, and as the Secretary of State wrote to the President, "the representative of a Bourbon sovereign might fairly claim to be indulged in an extraordinary degree of solicitude with regard to any project in which the Buonaparte family are concerned."[11]

The amusing nature of these remarkable documents was quite lost upon De Neuville. He at once wrote the Duc de Richelieu that he had come into possession of these important papers almost by an act of Providence. That they were genuine, he had no doubt, and they undoubtedly disclosed an awful plot on the part of the French refugees. "The plan," he wrote, "is like that of Colonel Burr, the insurrection of the West, with the real but concealed object of making

[10] Original, certified copy and official translation, MS. Archives, Department of State.

[11] Adams to Monroe, September 27, 1817, MS. Monroe Papers, Library of Congress.

Joseph Bonaparte King of Mexico.[12] I have no doubt but that the President will at once take all necessary precautions to break up the scheme, for if this insurrection takes place and succeeds, there can be no doubt it will result in the separation of the Western States." De Neuville again expresses the fear that Napoleon might escape from St. Helena, and begs that strictest watch be kept upon that island, "*Où en serait-on si cet homme prodigieux arrivait au Mexique déjà conquis?*"[13]

Lakanal was known to be connected with the Tombigbee enterprise in which the exiled French officers had taken part. While Joseph Bonaparte had no active interest in the company, those nearest him were its projectors and leaders. It was probably that of the Tombigbee Company to which Lakanal refers as "the more confined plan formerly submitted" to him. From the documents themselves, it appeared that Lakanal had had personal interviews with the Count, and he was careful to add that the organization of "La Confédération Napoléonienne" had proceeded without the concurrence of his "Master." "The long and fatiguing journey" which Lakanal mentions in the "Ultimatum" is doubtless the projected one to the Tombigbee with the "Society for the Cultivation of the Vine and Olive."

The "Report" seems partly to be an account of what had already been done, and, according to Lakanal's statement, what was at first an organization without any political purpose, had taken when the report was prepared, a definite plan, "well concerted in its ensemble and judiciously calculated in all its details." This was to capture by force of arms the territory "on the frontier of Mexico towards Santa Fe," by means of a company of nine hundred, of which number a hundred and fifty had already been enrolled. Aided by citizens of the United States who were to be enlisted for the most part in the west, they were to aid the "Independent

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[12] De Neuville to De Richelieu, August 31, 1817, Mémoires et Souvenirs, II, 319.
[13] Ibid., II, 321.

Troops of Mexico" to overthrow the Spanish power there, and to place Joseph Bonaparte "upon his rightful throne."[14] Finally, as if the writer feared that Joseph Bonaparte would refuse his co-operation, even after the success of the enterprise was well assured, he was told that he surely ought not "to lose sight of the import and interests of his children," surely a strange argument, when in the "Petition" the same writer had asserted that "to say, in the nineteenth century, that nations composed of a numerous, enlightened and brave population, are the patrimony of a few families, is a folly undeserving of any answer dictated by common sense."

It was admitted that only one hundred and fifty of the required nine hundred members of the "Confederation" had been enrolled, and from "Article 2," of the "Report" it was probable that they constituted the body of "Commissioners." Each "Commissioner" was to associate with him five others to make up the required number. These were to go in unaware of the real object of the enterprise, being persuaded by "small presents, benefits and by hopes founded upon future contingencies, soon to be realized"! Such being, in brief, the intent of the enterprise, it remained to be seen what active measures had been initiated to establish the "Napoleonic Confederation of America."

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[14] J. Q. Adams, Memoirs, IV, 11, September 29, 1817. Crawford told Adams that "Mr. Clay did not believe in these levies of men in the Western States by French emigrants."

CHAPTER V.

MONROE'S INQUIRY.

Some days after his note of September 12, De Neuville requested an audience with the President to lay before him certain facts relative to the scheme as disclosed in the intercepted documents. This new information, he said in his note asking for an interview, confirmed what he had already learned, and its import was of a character which should immediately be brought to the attention of the President.[1] As to what these new developments were there is no record, but they were sufficiently interesting to cause Monroe to begin an investigation of the whole matter.

Associated with the Tombigbee Company was, as has been seen, William Lee, to whom Jefferson had written declining to draft a constitution for the projected colony. As Lee was on intimate terms with the French officers, Monroe applied to him to ascertain in just what the "Napoleonic Confederation" really consisted. Towards the end of September, Lee reported to the Secretary of State what he had been able to learn, and after giving the substance of it orally to the President, he sent him a copy of his report dated September 27, 1817.[2] From this report it appeared that the younger Lallemand had just returned from New Orleans, and while there he had sent a French officer of talents to Mexico to sound the patriots on the scheme of bringing the French exiles to their assistance. Returning to Philadelphia, the French officer reported the Mexican patriots to be eager for aid and that two of the most opulent and influential men in

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[1] De Neuville to the Secretary of State, September 18, 1817, MS. Archives, Department of State.

[2] William Lee to Monroe, September 27, 1817; Rush to Monroe, September 23 and 30, 1817, MS. Monroe Papers, Library of Congress; John Quincy Adams, Memoirs, IV, 11.

Mexico, Valencias and Cordovo ("if," wrote Lee, "I have their names correct"), "are ready with all their means, being proprietors of the largest mines, and having at their disposal ten thousand raw troops, who only wait for French officers to discipline them." Lee was certain that assistance was not confined to these Mexicans. He discovered that a mercantile house in Charleston, South Carolina, had offered "money and two brigs well armed. Some merchants in Philadelphia, among whom is a Mr. Curcier, some at New York, and two in Boston, Stackpole and Adams, are also connected in the enterprise." The two Lallemands and Colonel Galabert were at the head of the scheme, and Lee claimed that they had already engaged "eighty French officers and one thousand men." The elder Lallemand, he reported, intended going up the Red River with his officers and about four hundred men "there to form a *noyau* for collecting together all his forces."

Lee goes on to connect the Tombigbee Company with the Mexican scheme, and we learn why it was that so few of the allotments made to the French officers under the government grant were occupied. "They represent that though they have ample funds in Mexico for all their purposes, they are in want here of the means of putting their plans in execution. For the purpose of obtaining the means, they have been endeavoring to force upon the company formed for making a settlement on the Tombeeby, about an hundred officers as subscribers, for whole, half and quarter shares of the four townships granted by Congress to the French emigrants. These shares, when obtained, to be placed in the hands of certain merchants in Philadelphia, who are to advance them 50 or 60,000 dollars thereon, which, they calculate, will be sufficient to begin their expedition with, but in this they will be disappointed, for it appears that Mr. Villar, the President of the Tombeeby Society, having obtained some hints of their plans, communicated the same to Generals Clausel, Desnouettes, Vandamme, Grouchy, and Count Real, concerned in the association, who have taken measures to

prevent the mass of these officers from becoming subscribers to their company, as well as to shut out the possibility of those who have heretofore subscribed, of obtaining titles to their shares in these townships, without which no transfers can be made and of course no facilities obtained.

"All the French officers of distinction except the Lallemands disapprove of this project. Gen. Vandamme censured yesterday Genl. Lallemand and Colo. Galaber in so pointed a manner, before Mr. Villar and Colo. Taillorde (who were sent here by the Tombeeby Company to confer with Mr. Crawford) that a serious quarrel like to have ensued.

"It appears certain that Joseph B. has pointedly refused all aid and assistance to this and the like schemes;—that he has been solicited in every way and all means used, to induce him to patronize these adventurers without success, on which account they are liberal in their epithets against him."

Lee gained all his information, he says, from Colonel Galabert, and having the matter well in hand, denounced the whole scheme to the elder Lallemand in person. "I laid before him in as strong terms as I am master of, a picture of the mischiefs his projects were calculated to heap upon his countrymen and their friends in the U. States;—the pain it would cause to the administration, to find him sacrificing his reputation by violating our laws and that hospitality and protection they had afforded him. He promised me not to prosecute his plan of attacking Mexico until next winter, when he was well assured by some influential members of Congress something would be done by that body in favor of the Spanish patriots, declaring that all that he had hitherto done was under that expectation and a firm belief that this Government wished well to the revolution in Spanish America, and that his brother and himself had determined not to engage in anything of this nature if disagreeable to them." Lee took the general's statement with a grain of salt, saying to Monroe, "this declaration I do not now credit." In order to ascertain the opinion of the other officers, Lee then interviewed General Vandamme, Colonel

Taillade, and Mr. Villars, who, he was assured, were not interested in the scheme. Lee stated to them that "if they would not find means to put a stop to these doings, they would all partake of the disgrace, and that all the friends of proscribed and persecuted Frenchmen would have to support the mortification of seeing them placed with this Government and people in that situation their enemies desired and were continually laboring to produce. I was happy to find they agreed with me and felt perfectly the force of my observations. Genl. Vandamme in taking leave of me this morning said that he would on his return to Philadelphia probe this affair to the bottom, that he would himself denounce it to the Government before he would suffer the last asylum offered to himself and countrymen to be endangered by the conduct of a set of boys, fools and madmen."

In January, 1818, Lee saw Galabert go into Onis's house. Adams records in his diary under date of January 23, 1818,[8] "at the office W. Lee came and told me that he had demanded of Galabert an explanation of his going into Onis's and received a very imperfect one. He had written from Philadelphia to Onis telling him that if he could be furnished with the means of coming here he could make communications which would be useful to him. Upon which he (Onis) sent him a hundred dollar bill. He had therefore come and made his communication but would not tell Lee what it was. He said he had asked of Onis a passport to Mexico which Onis had not given him but took it into consideration and told him to call again. But Galabert had received a letter from Joseph Bonaparte urging him not to enter into the wild and extravagent projects of these French fugitives and offering him the means of settling himself in Pennsylvania. Lee says that he saved Galabert's life at Bordeaux but that the intriguing ways of a Frenchman are past finding out."

Three days before this interview, Adams received another report from Lee which suggested that the plans of the

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[8] John Quincy Adams, Memoirs, IV, 48.

Lallemands had been changed since he had made his former report. Lee wrote:

"It appears the Generals L'Allemand are seriously engaged in an expedition destined for some part of Spanish America.

"They are purchasing arms and ammunition in New York.

"They have agents in Louisiana and the Mississippi enlisting frenchmen and others.

"They have agents in St. Domingo Martinique & Guadeloupe engaging in the first all the whites they can find and encouraging in the two last deserters from the Royal Army which they expect to succeed in to a considerable extent from their standing & character with the french military.

"They have it is said engaged in the U States about three hundred men.

"Aury's forces it is said is to join them and I am told they have acted from the beginning with them.

"They are going to the Danish Island of St Thomas where a rendezvous is established it is said under the indulgence of the Governor of the Island who served as Colonel with Genl L'Allemand and is much attached to him.

"They calculated on about 1500 men besides officers—with this force they are to leave St Thomas for some port in the Gulf of Darien to cross the Isthmus for Panama there embark for Guayaquil & throw themselves into the mountains of Quito in the Province of Peru where there are no troops to oppose them and where they mean to make a stand. They expect to conquer that province and intend to organize it in such a manner as to afford protection to all who chuse to join their standard.

"Another expedition is talked of at the head of which is to be placed the Count of Galvez son of the Count of Galvez who was proclaimed King of Mexico in the insurrection of 1787.

"But it appears there are so many difficulties in the way of this second expedition that the chiefs have not much con-

fidence in their success in organizing it for the present—It is represented that the Count de Galvez is much beloved in Mexico & that he has only to present himself to cause a complete revolution there where his agents are busily employed.

" He is endeavouring to form a small expedition to operate under the protection of Lallemand's but that general's views of occupancy are so remote from Mexico that he does not encourage it.

" All this information comes from a person connected with the Count of Galvez and is thought to be correct for which reason it is communicated to the Secretary of State." [4]

Before leaving Philadelphia to acquaint the government with the nature of the Lakanal papers, De Neuville informed Onis, the Spanish minister, of what had been discovered, and that the plot was directed against the Mexican possessions of the King of Spain. Onis wrote immediately to the Secretary, asking that Joseph Bonaparte (whom he believed to be the promoter of the enterprise) and " the other adventurers who have taken shelter in this country," be obliged to keep themselves within the bounds prescribed by justice and the general interest of all nations." [5] The United States, he hoped, would not violate its neutrality with the powers of Europe. The excitable nature of Onis had easily been worked upon, and Adams did not consider it necessary to accede to his request so long as there was absolutely no evidence, beyond Lakanal's statement that he had had certain conversations with Bonaparte, to show that the ex-King knew aught of the scheme. There is indeed, from the very same papers of Lakanal, evidence to show that as these docu-

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[4] Lee to Adams, January 20, 1818, MS. John Quincy Adams Papers. This letter is not signed but is endorsed in Adams's hand: "Lee, W. 20. Jan. 1818. Lallemand's." Cf. Schouler's History of the United States, III, 29.

[5] Onis to Adams, September 6, 1817, MS. Archives, Department of State. No answer appears to have been made to it. Adams believed that Onis was mixed up in Lallemand's scheme. Galabert's connection with Onis gave him reason for thinking so. Memoirs, IV, 48, 84, 100.

ments had been intercepted, the person to whom they were addressed was altogether unaware of the proceeding, and Lee's report showed that if Joseph Bonaparte did know of the scheme, he had denounced it so roundly as to excite the anger of the conspirators.

Adams drafted a reply to the note of De Neuville, of September 12, on the twenty-third of the same month and sent it the next day. It is not to be found in the files of the official correspondence, and it was probably afterwards withdrawn. De Neuville replied to it immediately and from this reply it appears that the Secretary's note outlined the policy of the government to be that so long as there was no evidence of any overt act on the part of the suspected conspirators other than those referred to in the intercepted papers, the government could take no steps in the matter. When any open manifestation should appear that the scheme was being put into execution, the government would see that the offenders were promptly apprehended. De Neuville desired that Lakanal be arrested for having written letters of so suspicious a character.

"I believe," De Neuville wrote, "that there could be no obstacle to a judicial inquiry, based upon documents as authentic as are those which I enclosed to you in my letter of the twelfth of this month." He maintained that on such evidence the government might cause the arrest "of that one of the conspirators, whose writings and signatures have been verified and recognized." He declared his motive for action to be the immediate interest of the United States in the subject, and hence, as he said, his aim was less to draw upon the guilty parties the just rigor of the law, than to put a stop to the whole nefarious undertaking. "It is not my place to examine the precise line which the institutions of this country draw between the intent and the overt act. But it seems to me that nothing could better establish the fact of an actual transgression and of criminal undertakings, than signed documents which leave no doubt as to the existence of this plan of an organized propaganda. . . . . with

an executive committee which acts, deliberates, appoints commissioners, and confesses already to have received from a pretended King of Spain and the Indies the necessary funds for the first expenses of the Confederation. It has been my opinion that circumstances as grave as these, and others connected with them, should be considered as the beginning of the execution of the plan, and would suffice at least to begin a judicial inquiry. I regret that this information cannot be had at present, as its probable result would be to disclose fully projects not only hostile to France but to all established governments." [6]

Adams's course was manifestly the only one. De Neuville could not prove that the Count De Survilliers had contributed to any political enterprise either in money or in encouragement. The only basis for an investigation was that given by the intercepted papers. These were only believed to be genuine, though indeed the Secretary did not conceal his belief that they had been written by the man whose signature appeared upon them. This, however, was merely a matter of opinion and could not be introduced in support of a legal inquiry. Adams advised the French minister to have the paper published, thus exposing the plan and bringing ridicule upon those supposedly connected with it. De Neuville agreed to this but hoped it would only supplement the judicial proceedings which he still desired.

The day following the reception of his note, De Neuville was called away from Washington. Before leaving, he asked for an interview with Adams to discuss the affairs under consideration. "We had a long conversation," wrote Adams in his diary, "of which, as well as of all others, it is henceforth impossible for me to keep any record. It gave me, however, some insight into his character. Mr. De Neuville's views changed so much in the course of our conference from what they had been by his letter of last evening,

[6] De Neuville to Adams, September 28, 1817, MS. Archives, Department of State.

as made it necessary to consult with Mr. Rush and to write to the President." [7]

This letter to Monroe supplies the account of the interview which Adams was unable to record in his diary. The Secretary of State received the French minister immediately upon the receipt of his note requesting an interview. "He recurred again to the idea of seizing upon the person and papers of the writer of the papers communicated by him; or, if that was impracticable, at least he urged the immediate publication of the documents, with an introductory commentary, descanting upon the wickedness and the absurdity of the conspiracy." De Neuville informed Adams that he had learned through his spies of the actual levy of men by the conspirators, and he knew, but could not disclose, the names of American citizens who had entered into the movement. "I observed," the Secretary continues, "that the fact of the levy of men, and of its motives, had been mentioned as his allegation and not as a positive fact, because this Government could not hold itself pleged to the reality of the facts nor to the authenticity of the papers." [8]

The Government could not authorize the publication of the papers as Lakanal would probably deny their authorship, and upon his denial a prosecution for libel might follow. De Neuville replied that he could not publish them on *his* authority as he had no evidence to prove the authenticity of the writings other than that based upon a comparison of the handwritings, nor would he "compromit the dignity of his own government by entering into a controversy" with Lakanal in the public prints. Adams advised the publication to be made with an introductory note stating that the papers had been transmitted by him to the Government, and that although they appeared to be genuine, the ideas they contained were so wicked and ridiculous that they might yet prove spurious. De Neuville agreed to Adams's

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[7] Adams's Memoirs, IV, 9.
[8] Adams to Monroe, September 27, 1817; same to the same, October 8, 1817, MS. Monroe Papers, Library of Congress.

suggestion, provided that the originals of the papers were deposited with some public officer for the free inspection of any one interested. The Secretary considered it advisable to refer this latter wish to the President and that the publication of the documents be suspended until his opinions could be learned. De Neuville consented to the delay, as he said the danger of the immediate success of the conspiracy was lessened, because he had "by his frigates and by other measures that he had taken, given them the alarm and put a check upon their progress."

Adams was of the opinion that the conspiracy had some foundation in fact, for he added in his letter to the President, "I think it necessary to suggest to you, that indications are coming in from various quarters, that projects are in agitation among some of the emigrants from Europe, to which it will be necessary for the Government to put a stop as soon as possible." The chief source of his information on the subject, it may be surmised, was William Lee, whose report to the President bears the same date as the Secretary's letter.

The President agreed that the originals of the papers be deposited for public inspection with some officer to be designated, and advised that Adams draft an editorial note to preface the publication of the documents, as the Secretary had suggested to De Neuville in their interview. Monroe outlined the plan of the article and October 3, Adams notified the President that the publication of the papers with his article would occur in a few days. The next day the draft of the editorial article was sent to the President who was then at Albemarle. In the note enclosing the draft the Secretary asked the President to name the officer with whom the documents were to be deposited, and suggested the French Consul at Philadelphia as a proper person.[9] The prefatory article which Adams prepared was as follows:

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[9] Adams to Monroe, October 21, 1817, MS. Monroe Papers, Library of Congress.

" The following documents cannot fail to attract the public attention. They consist of a letter from the French Minister to the Secretary of State and of his answer, with the translation of copies, transmitted to Mr. De Neuville with his letter, of several very extraordinary papers. Of their authenticity we express no opinion. The originals, apparently in the handwriting of the individual whose name is subscribed to the principal of them, are in the possession of the French Minister, and will be deposited in the hands of (————) for the inspection of any person who may be desirous of verifying them. The projects which they disclosed are of a nature to excite in no common degree the merriment as well as the indignation of our readers. That foreigners, scarcely landed on our shores, should imagine the possibility of enlisting large numbers of the hardy republicans of our Western States and Territories in the ultra-quixotism of invading a territory bordering upon their country, for the purpose of proclaiming a phantom King of Spain and the Indies, is a perversity of delirium, the turpitude of which is almost lost in its absurdity. If it be true that attempts are making to engage citizens of the states in projects like that which appears to be the ostensible object held out as the purpose of this Confederacy, it will be sufficient to warn them that the ostensible object itself is not less contrary to the laws than the supposed real object is to all their habits and feelings; nor may it be unreasonable to remind the foreigners who are now enjoying the hospitality which our country ever delights to extend to the unfortunate, that the least return which that country has a right to expect from them, is an inviolable respect for her laws." [10]

Monroe, after consulting with Rush and perhaps others of his cabinet, withheld his approval of Adams's article, and referred the matter to his Cabinet for discussion at one of its

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[10] This prefatory " editorial article " was enclosed in Adams's letter to Monroe of October 4, 1817. In Bulletin No. 2 of the Bureau of Rolls and Library, Department of State, it is erroneously calendared as a letter from De Neuville to Adams.

regular meetings.[11] The question was probably raised in the course of that meeting as to what right the French Minister had in addressing an official note to the Government of the United States when it was evident that France had no cause of complaint on account of the Government's conduct toward it; and that, at any rate, the matter concerned Spain rather than France. The Secretary of State was decidedly of the opinion that De Neuville had not exceeded his proper functions in his action, as he claimed his conduct proceeded from motives of friendship towards our Government, considering the United States to be more deeply interested in putting a stop to any such enterprise than France. Adams admitted feeling a delicacy in causing the publication of the papers on account of its probable bearing upon the situation and personal condition of Joseph Bonaparte. "I see nothing in the papers," he wrote to Monroe, October 8, "though Mr. De Neuville thinks he does, that tends to prove *his* being accessory to any part of the project, and it seems hardly equitable that *he* should be made responsible before the public for any schemes by which madmen or desperadoes use his name without his knowledge or consent." The allied governments of Europe continued to refuse Lucien Bonaparte passports to enable him to go to America, and Adams felt a slight suspicion that the whole scheme might have been concocted for the very purpose of creating an alarm against the Bonapartes. He was unwilling, however, to extend this suspicion to De Neuville, but, he maintained, "if the papers purporting to be signed by Lakanal are genuine, the question still remains, whose cause they were intended to serve, and by what real motive they were dictated?"[12] The publication of the documents might serve to elucidate the whole matter.

As De Neuville had agreed that, as far as the interests of

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[11] Monroe's Memoranda, October, 1817; Hamilton's "Writings of James Monroe," VI, 32.

[12] Adams to Monroe, October 8, 1817, MS. Monroe Papers, Library of Congress.

France were concerned, there was no immediate necessity of publication, justice to the probably innocent cause of the whole affair demanded that he be not drawn into it unless the active zeal of his partisans should make such a course necessary. Since Lee had made his report there had been no new developments in the affair. The Tombigbee Company was preparing to enter upon its grant, and there was no doubt that many of its members considered it a serious undertaking, whatever designs the more prominent ones might have. General Lallemand came to Washington as the president of the Company and asked for an introduction to the Secretary of State. Adams refused it. Lallemand then went to the Department, introduced himself, and was granted an interview. On presenting himself he denied having any connection with any project contrary to the laws of the United States. Though possessed with an ardent love of liberty and a warm sympathy for the South Americans, he had persistently refused, he told Adams, to join MacGregor's Florida expedition, and other such enterprises, in which he had been invited to take part.[13] As to his connection with Napoleon, he declared that he had never been the partisan of any man, but of his country. If he was an object of suspicion to the Government of the United States, he would go elsewhere, for he was determined to preserve his personal independence.

Adams informed him that he need have no fear of being an object of the slightest uneasiness to the Government, but that information had been coming from various quarters of a scheme for putting Joseph Bonaparte at the head of the movement in aid of the Mexican insurgents. Adams then told Lallemand that his name had been connected with this affair, so plainly contrary to the laws of the United

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[13] Lallemand's letter to Gregor MacGregor, dated "Falls of the Schuylkill, July 5, 1817," declining an invitation from MacGregor to join his Florida expedition, together with a letter from the brothers Lallemand, written from Philadelphia, October 3, 1817, to William Lee in reference thereto. Both letters are among the John Quincy Adams papers.

States. There was a feeling of uneasiness, the Secretary said, on account of the decisive action which must be taken by the Government if the French exiles so abused the hospitality of this country. Lallemand admitted being aware of the fears of the French and Spanish ministers, but, he declared, they were caused by the projected settlement of the exiles on the Tombigbee. He had heard of some pretended letters from Lakanal to Joseph Bonaparte, but the Count de Survilliers had refused to receive them. His refusal, Lallemand said, was the cause of their being intercepted. He denied knowing Lakanal, "had never seen him, knew nothing, whether he had written the letters, whether they were forgeries or what they were. But it would be hard if the Count Survilliers should be held responsible for letters written to him, which he had refused to receive." The Secretary makes no commentary in his diary on the truth of Lallemand's statements, but he was influenced enough by the interview again to discuss the matter with the President.[14]

The next day after the interview, De Neuville was informed that the President had deemed it proper to suspend the publication of the documents.[15] De Neuville was absent from the capital at the time but on his return Adams reviewed the whole affair with him and explained that no levies of men had taken place. He thereupon withdrew his note of September 24, in answer to De Neuville's of the 12th. In its place Adams wrote, December 5, that "whatever absurd projects may have been in the contemplation of one or more individuals, nothing is to be dreaded from them to the peace of the United States and the due observance of the laws."[16]

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[14] Adams's Memoirs, IV, 18-20, November 10, 1817: "General Lallemand and Mr. Villars have been chosen directors of the French Tombigbee settlement, and now Lallemand, who is outlawed, and under sentence of death in France, has applied to be presented to the President."

[15] Adams to De Neuville, November 10, 1817, MS. Archives, Department of State.

[16] Same to the same, December 5, 1817, MS. Archives, Department of State.

Replying to this note, De Neuville wrote, "I will inform my court, Monsieur, of the motives which determined the President to suspend the publication of the documents enclosed in my letter of September 12 last. This publication becomes after all very indifferent, if, after the measures taken, it ceases to be a necessary means of thwarting the scheme. . . . . I will not close without fulfilling a duty which the dignity of both our governments and a feeling of delicacy, which you will appreciate, impose upon me. In my preceding letters relative to this matter, I have mentioned the verification of the signatures and of the handwriting." If it appeared impossible to give this verification a legal character, the authenticity of the documents could never be called in question, and on that account, as he wrote the Secretary, he placed in his hands, "or in the archives of the Federal Government, the originals of the two principal papers (the Ultimatum and the Report) mentioned in my letter of September 12. . . . . This frank diplomacy will doubtless appear to you, Monsieur, as it does to me, the simplest and safest way, between two governments whose interests, when well calculated, can never be disunited." [17] The "petition" was enclosed with the other documents, and the whole bound up among the archives of the Department of State. The delivery of the originals showed that De Neuville considered the incident as closed. Monroe, however, still had some doubts of the intentions of the Lallemands and the other French officers at the head of the Tombigbee Company.

Nicholas Biddle, one of Monroe's closest friends, was in Washington in January, 1818,[18] and the President asked him to keep an eye upon the movements of the Lallemands when he returned to Philadelphia. It had been rumored that the brothers had been employed by Onis to aid the Royalist cause in Mexico and South America. Charles Lallemand

[17] De Neuville to Adams, December 13, 1817, MS. Archives, Department of State.
[18] Adams's Memoirs, IV, 36.

had told John Quincy Adams in their interview some months before, that overtures had been made him to join the Royalist forces, but that he had laughed in the face of the officer who had made him the offer.[19] Biddle wrote Monroe February 7, 1818, that he did not believe the Lallemands were in the employ of the Spanish Minister, but that while Onis knew their plans, they had been betrayed to him.[20]

Some time afterwards Biddle wrote to the President, "You recollect our conversation about the Lallemands and the speculations as to their designs. From what I can learn, the two brothers sailed from New York with two or three officers, forming a staff, for Mobile or New Orleans. About the same time, a vessel left Philadelphia with nearly one hundred and fifty persons, chiefly Frenchmen, who had been disciplined and prepared by the Lallemands and were to join them. It was said that other vessels from other ports would also unite with them at some point, most probably in the Gulf of Mexico. The funds for the expedition were raised almost entirely by the sale of the lands given to the officers and men in Alibama; which were sold at $1 or $1.50 per acre chiefly to French people here. This fact is very decisive as to their not going to cultivate vines, and it is equally certain that they are destined against some of the possessions of Spain in South America.

"The Spanish minister, it is thought, might have induced the abandonment of the expedition by paying $12,000, to repay the expenses of it incurred before sailing. He would not however bid so high. Instead of buying off the party, he bought only the secret of their destination. This has, I presume, been conveyed long since to the local authorities in South America, so that the scheme will probably end in the ruin of these people, unless they are warned by the fate of Mina, and abandon their project." [21]

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[19] Ibid., IV, 19.

[20] Biddle to Monroe, February 25, 1818, MS. Monroe Papers, Library of Congress.

[21] Same to the same, March 5, 1818, MS. Monroe Papers, Library of Congress.

Several points brought out by this letter tended to confirm the President's fears that the conspiracy as outlined in the Lakanal documents had not been abandoned. Lakanal had said that there was already enrolled a company of one hundred and fifty, the body of "Commissioners" who were already acquainted with the designs of the ringleaders. Lee reported that many members of the company intended selling out their interests in the projected settlement in order to raise money in aid of the Mexican venture. Biddle ascertained that this had been done and that the officers among the French emigrants were to proceed against some of the possessions of Spain. Monroe wrote to Biddle on the receipt of his account of the plans of the Lallemands, suggesting that what appeared to be an expedition against the Spanish Colonies, might in reality be one undertaken at the instance of Onis, to be directed against the United States. What the President suspected as an enterprise against the United States cannot be determined, for the letter is not among the Monroe papers in the State Department at Washington. Monroe may have feared a recurrence of the Amelia Island and Galveston episodes within the territory, the cession of which to the United States from Spain was then under discussion.

Replying to Monroe's letter, Biddle wrote, March 5, that he was certain the Lallemands had undertaken nothing under the direction of Onis, though there had been some intriguing between them and the Spanish Minister. Biddle thought the Lallemands were at that time somewhere in the Gulf of Mexico, possibly in the West Indies, waiting "to hear from Mr. Onis whether he will even yet give them money to engage their services for the Royalists, or go on in favor of the Patriots. This conjecture which I have some reason to believe, I mention for yourself particularly and exclusively." [22]

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[22] Same to the same, March 5, 1818.

CHAPTER VI.

CHAMP D'ASILE.

The month of December, 1817, was a busy time among the French exiles at Philadelphia. The settlers of the Tombigbee company collected there and sailed for Mobile Bay as previously described. Charles Lallemand was still the president of the company but he did not accompany those of his compatriots who were eager to change their military activities for those of agriculturists. Doubtless the general, for whose talents for organization Napoleon had expressed high regard, was more interested in another expedition which followed the Tombigbee colonists from Philadelphia within a few days. This second expedition was under the leadership of General Rigaud, who had chartered the schooner Huntress. A cargo was taken on board which could hardly have been of much value in a community so entirely peaceful as the one which the Tombigbee society proposed to establish. One who sailed under Rigaud reported that the contents of the schooner seemed fitted rather for a mercenary raid than for the settlement of an agricultural colony, as it comprised in addition to six field pieces, six hundred muskets, four hundred sabres and twelve thousand pounds of powder, "bought partly with the voluntary contributions of their own and partly with a donation of the king, Joseph Bonaparte." [1]

Just when General Charles Lallemand left Philadelphia

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[1] "Adventures of a French Captain at present a Planter in Texas, formerly a Refugee of Camp Asylum," by "Just Girard," translated from the French by the Lady Blanche Murphy, Cincinnati, O., Benziger Bros., n. d. While this narrative is partly fictitious and partly made up from other accounts, much of it is founded on fact. No name of Just Girard appeared on the roster of Champ d'Asile given by Hartmann et Millard, Le Texas, ou Notice Historique sur Champ d'Asile, Paris, June, 1819.

does not appear. In March, 1818, he was in New Orleans, having left a large body of his followers near by, in order to purchase supplies for his expedition.[2] Rigaud and his company in the Huntress went south from Philadelphia and passing around the Tortugas, were in the vicinity of New Orleans by the middle of January. Among the passengers were Rigaud's daughter and the wives of several of the colonists. Near the mouth of the Mississippi the schooner was approached by a vessel bearing the Spanish flag. When the Huntress was boarded by an officer from it, Rigaud learned that the visitor was an "independent corsair" belonging to Lafitte, whose headquarters had been shifted from Barataria to Galveston. There seemed to be no cause for any hostile demonstration on the part of Lafitte's captain, and after an exchange of courtesies both sailed for the coast of Texas.[3]

When Rigaud and his associates reached Galveston Lafitte not only welcomed them warmly, but assisted them to make a temporary camp upon the island. This first installment of the colonists remained at Galveston for more than a month. While they waited for their general-in chief, who was still in New Orleans purchasing supplies, the members of Rigaud's party had an opportunity of becoming acquainted with Lafitte and his pirates. One of the party characterized

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[2] J. Q. Adams, Memoirs, IV, 64. De Neuville called upon Adams March 18 to talk about the expedition of Lallemand, "who he says, has arrived at New Orleans and of their associates who have landed at Galveston. He says Onis has protested to him upon his honor that he knows nothing of them or their project. I told him he might rely upon it that Onis did know something of them. He said that as they were Frenchmen and most of them might return to France if they chose, it would be equally displeasing to his Government whether their projects were against Spain or the United States." See ibid., IV, 38-4. Bagot, the British minister, also expressed to Adams his anxiety over Lallemand's expedition, fearing that a Bonaparte was connected with it, in which case "of course his Government would consider it as deserving high attention."

[3] Hartmann et Millard, Le Texas; Le Champ d'Asile au Texas, ou Notice curieuse et intéressante, par C—— D——, Paris, 1820; Le Champ d'Asile, Tableau topographique et historique du Texas (publié au profit des Refugiés) par L. F. L'H(eritier) (de l'Ain, l'un des Auteurs des Fastes de la Gloire), Paris, 1819.

Lafitte's crowd at Galveston as "freebooters gathered from among all the nations of the earth and determined to put into practice the traditions of the buccanneers of old. They gave themselves up to the most shameless debauchery and disgusting immorality and only their chief, by his extraordinary strength and indomitable resolution, had the slightest control over their wild and savage natures. Thanks to him the pirates became harmless neighbors to the exiles, with whom they often exchanged marks of political sympathy, crying amicably, 'Long live liberty.'"[4]

Early in March General Charles Lallemand arrived with the greater part of the exiles. The company under Rigaud had grown tired of the delay upon the barren sand-spit in the bay, where there was no trace of cultivation, and they hailed Lallemand's arrival with delight. "Songs of glory were sung. We drank to our fatherland, to our friends who remained there, to our own good-fortune, to the success of our enterprise and the prosperity of the colony of which we were the founders."[5]

A week after the arrival of Lallemand, the united company, numbering in all about four hundred, left Galveston for the place on the Trinity River which Lallemand had chosen as the site of the colony. It was a strangely assorted lot, this company of colonists. They were for the most part, of course, the French exiles and soldiers of fortune recruited at Philadelphia. The roster showed that Spaniards, Mexicans, Americans, and Poles joined with the French in the establishment of the colony on the Trinity. Lallemand had collected in addition to his compatriots freebooters from MacGregor's colony on Amelia Island and pirates who had served under Aury and Lafitte.

The "Pirate of the Gulf" loaned Lallemand twenty-four boats and in these, with the guns, ammunitions and supplies, the company left Galveston. No sooner had they embarked

[4] Girard, 61.
[5] Hartmann et Millard, 28.

to cross the bay than their troubles began. A violent storm scattered the boats and night fell upon the unlucky voyagers scattered over the bay. The next morning found several of the boats at the appointed rendez-vous. Others had turned back to Galveston. In one boat, five out of six colonists were drowned, among whom was Colonel Vorster. This disaster so early in the history of the colony was an unhappy augury of things to come.

For three days the company battled with storm and tide, until Lallemand and Rigaud decided to divide the party and go overland to the chosen site, about thirty miles from the Gulf up the Trinity River. Colonel Charrassin, who employed some Indian guides, was detailed to bring up the food-supplies, ordnance and ammunition.

The journey overland under Lallemand was as disastrous as the crossing of the bay, for the party was soon lost in the forest. Not enough provisions were taken along and in a few days the company was so famished that many began to hunt for edible plants and fruits in the forest through which they passed. A vegetable resembling lettuce attracted attention, and without stopping to find out what it was, a hundred ate voraciously of the unknown but attractive looking plant. " Scarcely had they eaten than the deadly nature of it was seen. It was a violent poison. A half-hour after this fatal repast, every one who had tasted it lay stretched upon the ground in awful agony. Generals Lallemand and Rigaud and Mann, the surgeon, had fortunately enough prudence not to eat the deadly herb though they were nearly overcome with hunger. No one could help the unfortunate sufferers because all the medicines had been left behind with the boats." But, as the ingenuous Hartmann says, " A good genius was sent from Heaven to drag our friends from death." An Indian suddenly appeared, and was surprised to see the men in such a state. He was shown the plant which had caused the trouble ; " he raised his eyes and hands to Heaven, gave a sorrowful cry, disappeared suddenly and then reappeared with some herbs which he had gathered." A

strong decoction of the Indian's antidote quickly revived the company, and with blessings upon their benefactor the column moved on to the Trinity.[6]

On the sixth day after leaving the boats, Lallemand and his followers reached the site of the chosen camp. It was on the bank of the Trinity at the edge of " an immense uninhabited plain, several leagues in extent and surrounded by a belt of woods down to the river. A fruitful soil, an abundance of tropical plants and flowers, a river as wide as the Seine, but full of alligators, a sky as pure and a climate as temperate as that of Naples,—such were the advantages of the place we had chosen and which is now christened Champ d'Asile."[7]

Having had provisions but for two days and after the deadly experience of foraging in the wilds of Texas, the colonists arrived half-famished and worn out. The flotilla with the provisions preceded the land party and was waiting for the general-in-chief to give directions for the establishment of the colony.

The first business after the colonists had been divided into companies was to plan the fortifications, in which to place the pieces of artillery which had been brought up the river with great trouble. " Every one worked with a will," Hartmann says, " the generals with the rest. The hours of work were from four to seven mornings and evenings; between these hours of work one labored on his own habitation or else cultivated his garden. The forts were raised as if by magic in a very short space of time. They were of an amazing solidity. All the principles of art were observed and the fortifications of the celebrated Vauban could have been no better."[8]

The fortifications and block houses completed, the colonists began to clear small plots of ground for garden purposes. Hartmann notices but two agricultural experiments. The

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[6] Ibid., 33.
[7] Girard, 62.
[8] Hartmann et Millard, 41.

melon vines grew enormously and tobacco, he felt sure, would have succeeded had the colonists remained long enough for it to come to maturity.

"The greatest harmony and order prevailed in the colony," again records Hartmann; "we followed the civil and military laws of France." Another member of the colony asserted that nothing was allowed to become a law until every one had an opportunity to deliberate and to express his views upon it. The plans which Lallemand had developed were set forth in his manifesto which is dated "Champ d'Asile, Texas, May 11th, 1818." This document is in spirit not unlike the "Ultimatum" of Lakanal.

"Gathered together by a series of similar misfortunes," the manifesto proceeds, "which at first drove us from our homes and then scattered us abroad in various lands, we have now resolved to seek an asylum where we can remember our misfortunes in order to profit by them. We see before us a vast extent of territory, at present uninhabited by civilized mankind and the extreme limits of which are in the possession of Indian tribes, who, caring for nothing but the chase, leave these broad acres uncultivated. Strong in adversity, we claim the first right given by God to man, that of settling in this country, clearing it and using the produce which nature never refuses to the patient laborer.

"We attack no one and harbor no warlike intentions. We ask peace and friendship from all those who surround us and we shall be grateful for the slightest token of their goodwill. We shall respect the laws, religion, and customs of our civilized neighbors. We shall equally respect the independence and customs of the Indian tribes, whom we engage not to molest in their hunts or in any other exercise peculiar to them. We shall establish neighborly relations with all such as shall approach us and we hope to meet them in trade. Our behavior will be peaceful, active, and industrious. We shall do our utmost to make ourselves useful and to render good for good.

"But if it shall appear that our settlement is not respected

and if persecution follows us even in the wilds in which we have taken refuge, no reasonable man will then find fault with us for resisting. We shall be ready to devote ourselves to the defense of our settlement. Our resolve is taken beforehand. We are armed, as the necessity of our position requires us to be, and as men in similar situations have always been. The land we have come to reclaim will either witness our success or our death. We wish to live here honorably and in freedom, or to find a grave which the justice of man will hereafter decree to be that of heroes. We have the right, however, to expect a more happy result and our first care will be to deserve general approbation by laying down the principles by which we mean to live.

"We shall call the new settlement 'Champ d'Asile.' This name, while it will remind us of our misfortunes, will also express the necessity which we have of providing for the future, of establishing new homes, in a word, of creating a new Fatherland. The colony, which will be purely agricultural and commercial in principle, will be military solely for its own protection. It will be divided into three companies each under a chief, who will keep the names of those forming his company. A general register compiled from the three partial ones will be kept at the central depot of the colony. The companies will be gathered into one place the better to avoid attacks from without and to live peacefully under the eye of authority. A code of laws will be drawn up securing personal liberty, the securing of property, the repression of injuries, and the maintenance of peace among the well-disposed, while it will frustrate the designs of the evil."[9]

The colony, with General Charles Lallemand as commander-in-chief and General Rigaud, second in command,

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[9] Niles's Register, 1818. The roster of Champ d'Asile in Hartmann et Millard (pp. 51-57), included three women, one of whom was a daughter of General Rigaud. See Bertin, Joseph Bonaparte en Amérique, 235, quoting from an anonymous pamphlet published in Paris, n. d., "Le Général Antoine Rigaud, 1758-1820."

was thus divided into three companies or "cohorts." The first was commanded by Colonel Douarche, the second by Colonel Charrassin, the third by Colonel Défourni.

Lallemand's manifesto was sent to the United States and Niles printed it in full as a remarkable production. In Paris, however, it was received with great enthusiasm. La Minerve, the organ of the liberals, published Lallemand's document and wished the plan success. This journal, which as Lamartine said, was conducted by writers who had served the cause of despotism under the Empire and could not bear the thought of perishing with it, printed moving apotheoses of the soldier-laborers in America weeping over the loss of their country. "May liberty and happiness grow together in Champ d'Asile. May virtue, the constant companion of temperance and courage, preserve the colony from the strivings of ambition and the poisonous breath of tyranny."[10]

A public subscription was opened in aid of the colonists of Champ d'Asile and La Minerve made a daily report of additional subscriptions. The bank of MM. Gros-Davillier et cie., Boulevard Poissonnière, No. 15, was designated as the depositary of the fund, and the correspondents of Davillier at Charleston, South Carolina, were called upon to make distribution of the sum collected either in aid of the establishment on the Trinity or to assist the individual colonists. The subscription was kept open for nearly a year and by July the first, 1819, it amounted to a little less than one hundred thousand francs.

Several pamphlets were printed describing the plan of the colony and the situation of the adventurers, some of which passed through more than one edition. The receipts from the sales of these were to be added to the fund in the hands of Davillier. Béranger, who wrote for La Minerve, composed a song in honor of the colony, and this

[10] La Minerve, 1818, Liv. XXXV, quoted in Le Champ d'Asile, L. F. L'H., 150-158.

set to music enjoyed a good deal of popularity in the cafés. But what became of the fund no one knows. It is certain that none of it reached Lallemand while he was at Champ d'Asile, for the colony was destroyed and its members scattered long before the subscription was closed. Perhaps a small part was received by the colonists after they had returned to New Orleans, but even this is extremely doubtful. Balzac doubtless voiced the popular idea in regard to the actions of the Parisian sympathizers with Champ d'Asile when he called it a disastrous hoax.

The camp was under the severest military discipline. After the work on the forts was completed, regular military drills occupied several hours of each day. These were to the old soldiers a relaxation from the unusual toil of digging in the gardens. At night a watch was kept and the colonists gathered about the great fire and discussed their former campaigns when the grand army of Napoleon was in its glory. "Sometimes General Lallemand would join the circle and entertain the veterans gathered under his sway with some scraps of his last conversations with the Emperor. Often under the influence of the general's eager talk, his hearers would indulge in the wildest dreams and imagine the most impossible combinations. At such times the settlement of Texas seemed far enough from their thoughts. They were eager to serve under the Mexican flag and to help that country throw off the Spanish yoke, after which they could easily persuade the Mexicans to give them a fast sailor with which to storm the island of Saint Helena, carry off the Emperor in triumph, and crown him Emperor of Mexico."[11]

It remained for a Bonaparte emperor of France to erect an empire in Mexico, long after these dreamers in Texas were all in their graves, an empire built upon ideas which were as hopeless as were the vagaries of the exiled adherents of the greater Napoleon.

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[11] Girard, 72.

While the colonists were building their fortifications on the banks of the Trinity and perfecting the organization of their cohorts, one of the members thus reported to a compatriot who had returned to France:[12]

"Champ d'Asile, July 12, 1818.

" . . . . You have doubtless, my dear Colonel, put aside the plans which we formed during those evenings which we passed together at Burlington before a 'declined majesty' (*auprès d'une majesté déchue*), those plans which were laughed at by Clausel and Lefebvre-Desnouëttes as well as by Doctor Thornton, the chief of the Patent Office at Washington, that old independent who was always entertaining us with a fury of waging war and a mania for making constitutions for all the insurgents on earth.[13] Well, that project which the ex-king himself regarded as chimerical we have just put into execution.

"The new colony has been founded and the members of it assembled at Galveston. I have not the honor of being one of the founders, so far as title goes; I gave my place to Rigaud who knew better than I about the resources of the country and was therefore more desirable. We have been under the greatest obligations to M. de Villeray, governor of Louisiana and to Major Ripley, the commander of the troops. They have given us many proofs of their good-will, M. de Villeray especially. He took poor Humbert home with him, for Humbert was at New Orleans in a most

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[12] Le Champ d'Asile, L. F. L'H., 195.

[13] Dr. Wm. Thornton was one of the architects of the Capitol and superintendent of the Patent Office from 1802 until his death in 1827. He was an ardent sympathizer with the Spanish-American insurgents and his enthusiasm over MacGregor's plan for seizing the Floridas put him into disfavor with Monroe. J. Q. Adams, Memoirs, IV, 53-55. Thornton had written articles in the newspapers (National Intelligencer, Jan. 7, 1818, signed, "A Columbian"), and had talked with Rush and Bagot, the British minister, in favor of MacGregor's schemes. Adams told Monroe that Thornton desired a personal interview in order to set himself straight. "The President said he would not see him, nor have any conversation with him upon anything unless it were patents and very little upon them." The papers of Dr. Thornton have recently been acquired by the Library of Congress.

miserable state. . . . . . . The two brothers Lafitte, those sailors who avow such an implacable hatred of England, have given us marks of the most touching interest. They are the ones who, with the privateer, Piré de Nantes and Captain Leri[14] (who has shown himself so formidable of late to the Spanish), have agreed to bring out at their own expense the Frenchmen whom G. . . is to recruit for the colony. They have brought us recently three hundred San Domingo colonists who, in order to join us, have left Charleston where they have been for the past twenty years. . . . We have the merchant Labatut (with whom you and Lefebvre-Desnouëttes lodged) and M. T. . . . . r to thank for the name "Champ d'Asile" for our colony on the banks of the Trinity. General H. . . . . ot,[15] who once dreamed of being one of us, advised that our organization should have a more pretentious name, but his opinion did not prevail. We thought it best to be modest.". . . .

The words of Lallemand's manifesto, that the colonists would succeed or die in the attempt, were brave enough, but events soon proved that even this intrepid general considered discretion to be the better part of valor.

"We ought to have believed," said the confiding Hartmann, "that being at peace with the aborigines of the vicinity, we should have nothing to fear from Europeans, who like ourselves and without any better title to the soil dwelt in those countries. But what was our error! We soon learned that the Spanish garrisons at San Antonio and at La Bahia, aided by several Indian tribes, allies of the Spanish, were marching against us with the intention of attacking us, or of forcing us to evacuate Champ d'Asile, Galveston, and the province of Texas. Although we were few in numbers we were used to battle and to count our enemies after we had overcome them. Our first resolution was to await the Spaniards with a firm stand and to punish them for their rashness. But reflection silenced the first

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[14] L'Aury?
[15] Humbert? or Hulot?

impulse of courage and resolution. Our general told us that our provisions were running low, that after having defeated the company which was advancing, others would come who would invest the camp and force us to surrender or to die of hunger. The wise and prudent course was to evacuate Champ d'Asile and to retreat to Galveston, the only place where we could easily procure food." [16]

Another one of the colonists said that Lallemand was informed of the hostile intentions of the Spanish by some friendly Indians. " The report was circulated about the camp that the Spanish detachment consisted of twelve hundred cavalry and several pieces of ordnance. It was rapidly nearing us. We had only two hundred men capable of bearing arms, the rest (one half of the whole number which had assembled at Galveston) were sick or disabled. Notwithstanding this disparity of numbers we determined to repulse the foe, to fight them gallantly or die like Frenchmen, as General Lallemand pithily expressed it." [17] The leader of this Spanish invading army, the size of which appeared greater the farther it remained from the French, was doubtless aware of that excellent rule of strategy which is that the enemy is as much scared as its opponent. He encamped his troops a goodly distance from Champ d'Asile and there remained. " The Spanish general," Girard continues, " whether prevented by secret orders from taking the initiative or determined to draw a cordon round us, merely encamped his troops within three days march of our camp and waited until disease and discouragement should undermine our not very formidable body. This manoeuvre could not but be successful in the long run and the Spanish general soon reaped its consequences. Meanwhile no help came from Europe or the United States and we could not fight an enemy that seemed determined not to attack. We were obliged to beat a retreat, which we accomplished in good order, experiencing no molestation at the hands of the Spanish or remon-

[16] Hartmann et Millard, 72.
[17] Girard, 84.

strances from the Indians, who with supreme indifference witnessed the departure of their great chief, General Lallemand. All of us coincided in the advice of our general, who had given us so many evidences of his wisdom and prudence. We carried our provisions, ammunition and baggage on board the boats which lay at anchor in the Trinity. Then we bade adieu to our dwellings, to Champ d'Asile, which we were forced to leave even before we had time to establish our penates in it. We raised our anchors and the currents of the Trinity soon brought us to Galveston Bay. Our retreat was made in the finest order, without confusion, without accident, save only the death by drowning of a single negro." [18]

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[18] Hartmann et Millard, 74.

CHAPTER VII.

Conclusion.

From the position of Champ d'Asile, situated in Texas, which was claimed both by Spain and the United States until the treaty of 1819, it aroused the suspicions of the officials of both countries. Upon setting out on his expedition, Lallemand had printed an address which he claimed to have sent to Ferdinand VII, king of Spain. In this he stated that he and his followers desired to settle in the Spanish province of Texas, that they had no hostile intentions against Spain, that they would obey the laws and give no cause for offense.

"It is the intention of the French refugees in America to establish themselves in the province of Texas," he said. "As official proclamations have invited colonists of every class and country to settle in the Spanish-American provinces, His Catholic Majesty will, no doubt, view with pleasure the formation of a colony in a land, which, while now a desert, only awaits industrious colonists to become one of the most beautiful and fertile countries of the earth. The members composing this colony are altogether disposed to recognize the Spanish Government, to be loyal to it, to help bear its burdens and to pay taxes proportionately to its revenues. They ask, however, that they may be governed by their own laws, not obeying the Spanish governor, but creating their own military system. If the Court of Spain acquiesces in their demands, it can count upon their services and their fidelity. But if not, they will make use of the law which nature gives to every one, that of cultivating the wilderness. This right no one can dispute. Their pretensions in this matter are as well-founded as were those of Europeans at the time of the conquest. While the con-

querors came but to possess themselves of a free land by force, the French come only to cultivate the wilderness. They are, therefore, determined, whatever may happen, to establish themselves in Texas." [1]

It is extremely doubtful, however, if this impertinent document was ever sent. There is no evidence that the Spanish minister at Washington knew anything of it. Perhaps Lallemand's intention in publishing the paper was to free himself from the suspicion that he was organizing an expedition, military in character, which appeared to have an invasion of Texas as its object.

Those who were trying to arouse public sentiment in Paris in aid of the subscription for Champ d'Asile found no difficulty in manufacturing any statements thought to be necessary for the furtherance of the plan. While they admitted that the possession of Texas was in dispute between the United States and Spain, they did not hesitate to praise the United States for its generous actions in behalf of the French refugees, not only in granting them lands on the Tombigbee but also in guaranteeing the stability of the colony of the Trinity.

" The Congress of the United States," the Parisians were told, " has not only encouraged the formation of the new colony, but has given it an unequivocal proof of its good-will so as to bear witness to the entirely honorable motives which led the French officers to dispose of the lands granted them on the Mobile. It has hastened to make a formal declaration and has passed an act of formal renunciation in their favor. By this act the republic, exercising its right of ownership, has by deed of gift made over in perpetuity to the French refugees the entire territory of Texas. The integrity and inviolability of the territory will be under the protection of the military forces of the United States, which will recognize and adopt the colonists as allies and give them assistance in case of attack. But the republic of the United States

[1] Le Champ d'Asile, L. F. L'H., 18.

does not limit itself by the declaration called forth by the silence of the cabinet of Madrid; it has permitted our compatriots to give themselves laws, to govern themselves, to elect their own officials, to choose their own flag, and to form themselves into a state and nation. In order to make them the more independent, the United States merely separated the colonists from its own government much as it had previously separated itself from its metropolis. It has merely reserved the right to protect and to defend the colony."[2]

"The silence of the Court at Madrid" was but a part of the imaginative exercise of the editors of La Minerve. The condition of affairs in Spain after the invasion by Napoleon's army led the United States to refuse to recognize any Spanish government as one *de facto*. In 1809 the Supreme Central Junta, acting in the name of the deposed Ferdinand VII, sent Don Luis de Onis as minister to the United States. He was not received because his commission was issued by a mere provisional government.[3] While the crown of Spain was in dispute, therefore, the United States preferred to

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[2] Ibid., 21.

[3] Onis's opinion of the sentiment of Madison's administration toward himself and the Spanish Junta is well illustrated by his letter to the Spanish Captain-General of Caracas, Feb. 2, 1810 (American State Papers, Foreign Relations, III, 404): "The administration of this Government, having put the stamp upon the servile meanness and adulation in which they stand in relation to their oracle, Bonaparte, the day before yesterday, by their direction, Mr. Eppes, the son-in-law of the former President, Jefferson, made a proposition that a minister should be immediately sent to Joseph Bonaparte at Madrid. This was supported in the committee in which the House then was, by Mr. Cutts, who is the brother-in-law of President Madison. There were various debates, there were howlings in the tribunals, there were sarcasms against the Supreme Central Junta, and many trifling observations from one party and the other, among which mention was made of the arrival of a minister from the Supreme Junta, and of this Government's wisely having refused to receive him; and at length, a vote was taken, from which it resulted that for the present, no minister was to be sent to Joseph. . . . . If your excellency should not be informed of the mode of thinking of the present administration, this will show the little hope there is of obtaining anything favorable from it but by energy, by force and by chastisement. . . . ."

remain neutral. After the battle of Waterloo, with the Bourbons restored to the throne of Spain, the administration had no reason to delay receiving the minister from Spain. During the six years of his residence in the United States, Onis was engaged in writing voluminous letters to the Secretary of State, none of which was answered. He then appealed to the newspapers, protesting against the violations of neutrality of which he claimed the United States was guilty in permitting ships to be equipped in American ports to war against Spanish commerce.

In the spring of 1817 a Scotch adventurer, Gregor MacGregor, styling himself "Brigadier of the Armies of the United Provinces of New Granada and Venezuela and General-in-chief of the Armies of the Two Floridas, commissioned by the Supreme Directors of Mexico and South America," landed at Amelia Island with a small force and demanded the surrender of Fernandina. Frightened more by MacGregor's pretensions than by his show of force, the Spanish commandant capitulated, turning over all his arms and ammunition. MacGregor then planned an expedition against Saint Augustine and left Amelia Island for Nassau to procure reinforcements and supplies.[4]

While MacGregor was outfitting at Baltimore for his raid on Amelia Island, another adventurer, this time a Frenchman named Louis Aury, had set up the revolutionary flag of Mexico at Galveston. Aury, who had escaped from Carthagena when the revolutionists surrendered to the Spanish fleet, went first to Port-au-Prince. Denied shelter there he gathered an ill-assorted company of Frenchmen, Americans, Mexicans, mulattoes, and remnants of the old Baratarian pirate-crew. With these he established a so-

[4] MacMaster's History, IV, 434; Annals of Congress, volume 32, page 1814; Adams's Memoirs, IV, *passim,* MS. Archives, Bureau of Indexes and Archives, Department of State, including blank letters of marque issued by MacGregor. For an account of a later adventure of MacGregor, see "An Account of the late Expedition against the Isthmus of Darien, under the command of Sir Gregor MacGregor. . . . ," by W. D. Weatherhead, London, 1821.

called government at Galveston, raised the flag of Mexico and, styling himself commodore of the Mexican Republic, proceeded to issue commissions to various "privateers." These scattered over the Gulf and caused much damage not only to vessels flying the Spanish flag, but to those of other nations including the United States. New Orleans, as the nearest neutral port, became a market for the rich cargoes of the vessels condemned as lawful prizes by Aury at Galveston. At one time during the summer of 1817, six of Aury's ships, all armed, congregated quite unmolested, at New Orleans. Five more, commissioned by Bolivar and flying the flag of Venezuela, lay in the same port. The collector of New Orleans asked that a naval force be sent to drive Aury and his followers from the Texan coast as there was no evidence that the revolutionary government of Mexico had any connection with the establishments, which were in fact piratical.[5]

Aury remained at Galveston but a short time and before any United States forces reached him, he had transferred his forces to Matagorda. Finding the more southerly port not to his liking, and perhaps afraid of the Spanish garrisons nearby, Aury again shifted his headquarters, this time to Amelia Island, there to join forces with MacGregor. When he arrived, the Scotch adventurer was absent in search of assistance. MacGregor's green-cross flag of "Independent Florida" was lowered. Aury raised his own standard and declared Amelia Island a part of the Republic of Mexico.

The island of Galveston had too many advantages of situation with reference to New Orleans on the one side and the Spanish possessions on the other to allow it to remain long unoccupied. As a center from which slaves might be

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[5] American State Papers, Foreign Relations, IV, 183-202, 450, 463, 478; Annals of Congress, volume 32, pages 1523, 1785-1814, 1898-1943; MacMaster, IV, 435; Adams's Memoirs, IV, *passim*. Aury, or L'Aury, was originally a French sailmaker, then a sailor, and lived until 1813 in San Domingo, when he joined the revolutionists of New Granada as a lieutenant in their navy. Adams's Memoirs, IV, 75.

smuggled across to the settled portions of Louisiana, its value was undoubted. Within a few weeks after Aury had evacuated the island, Lafitte, the old pirate of Barataria, who had gained a pardon for his previous misdeeds by his loyalty during the recent war, was in possession with his fleet of vessels euphemistically styled "independent corsairs." It was indeed but a re-establishment of the Barataria band, somewhat further removed from the reach of justice.

Such was the condition of affairs when Congress met in December 1817. Monroe called attention to Amelia Island and Galveston. The first was, he said, within territory which was the subject of negotiation with Spain, "as an indemnity for losses by spoliation or in exchange for territory of equal value westward of the Mississippi, a fact well known to the world." The Galveston enterprise, he said, was marked by all the objectionable features which characterized the other, and more particularly by the equipment of privateers and by smuggling. "These establishments, if ever sanctioned by any authority whatever, which is not believed, have abused their trust and forfeited all claim for consideration. A just regard for the rights and interests of the United States requires that they be suppressed and orders have accordingly been issued to that effect. The imperious considerations which produced this measure will be explained to the parties whom it may in any degree concern."[6]

The one most concerned in the matter was, of course, the Spanish minister. Upon the publication of Monroe's message Onis asked for an explanation of the attitude of the United States toward the so-called piratical establishments. So far as Monroe's message referred to Amelia Island, Onis reminded Adams that he had called attention to MacGregor's movements and had asked that he be prohibited from fitting out his expedition in the United States. In

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[6] Monroe's Message; Richardson's Messages, II, 13.

reference to Galveston, it was not, nor had it ever been, a part of Louisiana. Spanish authority should accordingly be respected there. He further claimed that the Royalist troops had driven the freebooters out of Matagorda and Galveston. Neither of these places, he said, had since been attacked or infested by banditti; "moreover, if by the occupation of Galveston the United States has sustained injuries, it is notorious that Spain has suffered greater by the facilities afforded to the pirates in capturing Spanish vessels, carrying them into Galveston and there selling them to the citizens of this Union; that from this magazine of plunder they conveyed Spanish property to New Orleans and other parts of the United States in American vessels, as is well known to you, Sir, and to all the world."[7]

Amelia Island ceased to be a matter of dispute, for when, towards the end of December, 1817, Commodore Henley in the ship John Adams arrived off Fernandina and demanded possession, Aury made no opposition. While surprised at such aggressive measures towards a nation like Mexico, with which the United States was at peace, Aury declared that he had "too much respect and esteem for the people of the United States to carry matters to extremities."[8] Lafitte remained at Galveston, as has been seen, and his establishment there continued to flourish.

Onis's activities were again directed to the discussion of the boundary question. Soon after his reception as minister he had sent a note to Monroe, then secretary of state, in which he proposed an adjustment of all existing differences between the two countries, but demanding as a condition precedent to any discussion of matters in dispute the immediate withdrawal of the United States from West Florida, a part of which the United States had occupied

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[7] Onis to John Quincy Adams, December 6, 1817, American State Papers, Foreign Relations, IV, 450.

[8] Aury to Henley, December 22, 1817, Annals of Congress, volume 32, page 1805.

under Madison's proclamation of 1810.[9] Monroe informed Onis that the United States might in the same spirit demand the withdrawal of Spain from the territories east of the Rio Grande, to which the United States considered its right established by well-known facts and the fair interpretation of treaties. So long as it was the intention of Spain to make the title to West Florida a subject of amicable negotiation why, Monroe asked, should not such a negotiation be carried on while the United States occupied it as well as if Spain were in possession?[10] Onis's answer to this query began the almost interminable discussion of the limits of the Louisiana purchase to the south and west which was finally concluded by the execution of the treaty of 1819. During the three years of the negotiation West Florida remained under American control, while in the country east of the Rio Grande what authority any nation exercised was nominally at least, exercised by Spain.

Growing tired of a negotiation which seemed to consist only of arguments for and against the various limits claimed by the parties to the discussion, Adams offered to close the matter by proposing that Spain cede all her claims to the territory east of the Mississippi and that the Colorado should be the boundary on the west. The American claim to the Rio Grande was thus seen to be dropped as a *sine qua non.*[11] Onis declined Adams's proposition on the ground that the United States asked Spain to cede territories not only to the east but also to the west of Louisiana without any adequate compensation, but he suggested as a counter proposition that the dividing line between Louisiana and the Spanish possessions on the west be established in one of the branches of the Mississippi, either that of La Fourche or the Atchafalaya, Spain giving up West Florida. As an alternative he proposed that the *uti possidetis* of 1763 be

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[9] Onis to Monroe, December 30, 1815, American State Papers, Foreign Relations, IV, 422.
[10] Monroe to Onis, January 19, 1816, ibid., 424.
[11] Adams to Onis, January 16, 1818, ibid., 463.

made a basis, the line to be at the Arroyo Hondo, that is, east of the Sabine. Finally claiming to have misunderstood what river was meant by the Colorado, the Spanish minister postponed further negotiations until he had more explicit instructions from Madrid.[12]

So far, therefore, as the settlement of the boundary question was concerned, both Spain and the United States were in about the same position in which they had been prior to the rupture of diplomatic relations in 1808. The position of the United States, however, had been weakened so far as concerned the territory to the east of the Rio Grande by the offer of Adams to fix the boundary at the Colorado, as well as by the terms of Wilkinson's "Neutral Ground Treaty" of 1806. While Onis was waiting for instructions as to Adams's offer, Lallemand's company landed at Galveston and proceeded to make a settlement on the Trinity. The island of Galveston was thus within territory which both Spain and the United States claimed though neither exercised actual authority over it.

The Spanish minister did not complain to Adams of the landing of the Napoleonic refugees at Galveston. It was against the apparent violation of the recently enacted neutrality law that he protested, basing his complaint upon the same ground as he did many former protests against the arming and equipping of vessels in American ports by the Spanish-American revolutionists. The French adventurers, he said, were receiving at Galveston a considerable number of recruits and large supplies of military stores from the ports of New Orleans, Charleston, and Savannah. Seeing in Lallemand's expedition the development of the plan to put Joseph Bonaparte on the throne of Mexico, Onis remonstrated to Adams against the enrollment of men to go to Galveston.

[12] Onis to Adams, January 24, 1818, ibid., 464; Wilkinson's "Neutral Ground Treaty," or, properly, armistice of 1806, placed the boundary at the Aroyo Hondo, while Spanish authority was not to extend east of the Sabine. See McCaleb's "The Aaron Burr Conspiracy," *passim.*

"Convinced, however, as I am," Onis wrote to Adams, "that nothing is more remote from the intentions of the President than to tolerate hostile expeditions within the territories of the republic directed against powers with which it is in a state of profound peace, I cannot for a moment doubt that His Excellency will take into his most serious consideration what is due the demand now made by me in the name of my sovereign, that Joseph Bonaparte, the Generals Lallemand and other Frenchmen now residing in this country, be compelled to keep themselves within the bounds prescribed by the hospitality and generosity with which they have been received, and prevented from continuing to organize expeditions for the purpose of invading the territory of His Catholic Majesty and disturbing the peace enjoyed by his subjects."[13]

Shortly after writing this note to Adams, Onis called to take leave as he was about to take up his residence for the summer at Bristol, Pennsylvania. He referred during his call to his note concerning the French settlement at Galveston. "I told him," Adams records in his diary, "that he knew more about it than we did; that we might perhaps send troops to break up the establishment and the possession of the place as being within our territory, but that he had objected to such a measure heretofore. He said he thought such measures unnecessary, and they certainly would be so now, as the Viceroy of Mexico wrote him that he had eighty thousand men under his command. Upon which I laughed heartily. 'You laugh,' said Onis, 'at my saying the Viceroy has eighty thousand men.' 'No,' said I, 'but I was thinking how easily the Viceroy with that army will dispose of a hundred and fifty Frenchmen under Lallemand.' 'But,' said Onis, 'there are two thousand of them.' 'My word for it,' said I, 'not two hundred.' 'Well,' said he, 'as for

[13] Onis to Adams, May 7, 1818, American State Papers, Foreign Relations, IV, 494.

the Viceroy's eighty thousand men, I do not vouch for them, but so, I assure you, he writes to me.' "[14]

Although Onis's note was not answered, Monroe's administration proceeded at once to interfere with the occupation of any part of Texas by the French under Lallemand.[15] Within a few weeks after Onis's note was received, Adams sent George Graham, who had been chief clerk and acting secretary of war during the last two years of Madison's administration, to Galveston for the purpose of finding out exactly what Lallemand's expedition amounted to. Adams's letter of instructions dated June 2, 1818, was as follows:

" The landing at Galveston, of a number of adventurers, understood to be chiefly Frenchmen, and partly consisting of those to whom lands had been granted on the Tombigbee, the uncertainty and obscurity in which their objects are involved, the character of the expedition, and its military array, accompanied by the disavowal of hostile intentions against any country, and by the pretense of a purpose to form a settlement merely agricultural, the mystery with which the whole transaction has been surrounded, and the false colors which it has assumed, have suggested to the President the expediency of obtaining by the means of a confidential person upon the spot such further information, as it may be useful to the public interest that he should possess, and of observing such precautions, as may be necessary to prevent an encroachment upon the rights of the United States.

" It is known that projects of a wild and extravagant character contemplating the invasion of Mexico, for the purposes of co-operation with the revolutionary party there were entertained, by some individuals among the French Refugees, thro' the greatest part of last year. Altho' the Govt. rec'd from various sources information of the projects, they had never acquired a maturity upon which it appeared probable

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[14] Adams's Memoirs, IV, 100.

[15] The matter was discussed in cabinet meeting, May 13. Adams's Memoirs, IV, 97.

that the attempt would be made to carry them into execution. Their ostensible objects constantly varied; but they were all marked by features of absurdity and of desperation. In the first the name of Joseph Bonaparte was implicated, tho' without positive proof that he had personally lent himself to it; and afterwards altho' two Notes of remonstrances against them, have been rec'd at this Dept. from the Spanish Minister Onis, yet more than one indication has reached us that the expedition was ultimately concerted with him, and was executed with his consent if not with his sanction. This concert in which it can scarcely be doubted that the object of each party was to dupe the other, has however according to all probability been the immediate occasion of the occupation by these persons of Galveston.

"The President wishes you to proceed with all convenient speed, to this place; unless, as is not improbable, you should in the progress of the journey learn that they have abandoned, or been driven from it. Should they have removed to Matagorda, or any other place North of the Rio Bravo, and within the territory claimed by the Ud. Ss., you will repair thither, without however exposing yourself to be captured by any Spanish military force. When arrived, you will in a suitable manner make known to the chief or leader of the expedition, your authority from the Govt. of the U. S.; and express the surprise with which the President has seen possession thus taken without authority from the U. S. of a place within their territorial limits, and upon which no lawful settlement can be made without their sanction. You will call upon him explicitly to avow, under what national authority they profess to act, and take care that due warning be given to the whole body, that the place is within the U. S., who will suffer no permanent settlement to be made there, under any authority other than their own.

"At the same time you will endeavor to ascertain the precise and real object of the expedition; the numbers of the persons already there; the sources from which they have derived the means of defraying the expenses of their under-

taking; and those from which they expect future aid and support. You will notice especially any thing which may tend decisively to ascertain whether any part of their funds are supplied by Joseph Bonaparte, or by Mr. Onis, or by both; and whether they have had intercourse with the Vice-Roy of Mexico. Your own judgment may suggest other objects of enquiry, upon which information may be desirable, and which you will report to this Dept. as you may find convenient occasion. It is supposed your return may be expected in the course of three or four months. Your reasonable expenses, together with a compensation of five dollars a day, will be allowed, from the day of your departure to that of your return." [16]

At Galveston the American agent, or "Commissioner" as Hartmann called him,[17] met the colonists of Champ d'Asile, weakened by the unusual conditions of their wilderness camp and having little of the appearance of a formidable military expedition dangerous to the United States or to Spain. The "Napoleonic Confederation" of Lakanal, "judiciously calculated in all its details," which had so alarmed De Neuville, and the trio of military "cohorts," of which Lallemand boasted in his manifesto, turned out to be a sorry handful of weary and destitute foreigners, more to be pitied than feared. Graham had nothing to do. After a consultation with Lallemand, the two left for New Orleans. The chief of the expedition announced that his departure was for the purpose of soliciting aid in New Orleans, and he promised to bring food and provisions to his comrades, who were to wait in Galveston until he returned.

Graham was back in Washington in November, 1818, and gave Adams a verbal account of his mission. The diary records that the agent had a sort of negotiation with Lallemand and Lafitte from which it appeared that Lallemand's case was desperate. "Graham's transactions with Lafitte,

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[16] Adams to Graham, June 2, 1818, MS. Archives, Department of State.

[17] Hartmann et Millard, Le Texas, 81.

as related by himself, did not tally exactly with my ideas of right and they were altogether unauthorized. He says Lafitte told him that he had commissions for his privateers from the Mexican Congress, but that they were like Aury's commissions, and he (Graham) advised him to take a commission from Buenos Ayres, and gave him a letter to De Forrest at New York, to assist him in obtaining one, and that Lafitte took his advice and immediately despatched a man to New York for that purpose. Now, I should not be surprised if we should hear more of this hereafter, and not in a very pleasant manner. But it is all of Graham's own head, and, in my opinion, not much to the credit of his wisdom. He is for taking immediate possession of Galveston and so am I; and he has persuaded the President that we have offered Spain too much in consenting to take the Sabine for the boundary at the Gulf of Mexico. He thinks we should go to the Brazos de Dios. The President wrote me a note suggesting a wish that I should send Onis as soon as possible as answer to his last letter, and, as he had rejected the western boundary offered as our ultimatum, the United States must no longer be bound by it."[18]

The departure from Galveston of Lallemand and his staff aroused the suspicion that he might be abandoning his followers and that he did not mean to return. Rigaud now assumed the command of the refugees, who still preserved an organization having a semblance of military order and discipline. While Rigaud was held in great personal esteem, the departure of Lallemand took away from the refugees their last hope. Discipline was at an end. "Every one thought only of his own personal safety and to ward off hunger."[19]

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[18] Adams's Memoirs, IV, 175. No written report upon Graham's mission can be found in the State Department archives.

[19] Hartmann et Millard, Le Texas, 82. After the death of Joseph Bonaparte in 1844, memories of the Lallemand expedition were revived. C. J. Ingersoll printed in part Adams's letter to Graham in Niles's Register for January 4, 1845, with some prefatory remarks in which he said that while Joseph Bonaparte gave money to the

From now on these colonists from Champ d'Asile led a most miserable existence. The few who had money bought provisions from the pirates at exorbitant prices. Those who had none were forced to barter their clothes and ammunition for bread. Each day their situation became more desperate, and had it not been for Lafitte, who aided them with food as he had aided Lallemand with money before that general left for New Orleans, some of the company who were absolutely destitute must have died from hunger. And now came word from the Spanish authorities that they must quit Galveston as they had done Champ d'Asile. "We refused," said Hartmann, "and told the Spanish emissary that the general-in-chief was absent and that we could not leave without his orders. When Lallemand returned we would treat with him. After that the emissary departed and we heard nothing more of the matter." [20]

The elements did what the Spanish had neglected to do. In September, 1818, a furious storm broke over the island of Galveston. A flood like that of 1900, which devastated the modern city of Galveston, engulfed the low lying island and swept all before it. After a fearful windstorm which rose suddenly in the night, the waters of the Gulf rushed in, the waves broke with fury over the sandspit and inundated the town. The camp and huts were submerged to a depth of four feet. The next morning showed the town of Galveston in ruins. Walls were tumbled down, and but six houses on the island, one of which was occupied by Lafitte, were left intact.

Hunger and thirst tortured the wretched beings for two days. Lafitte's squadron, two brigs, three schooners and a felucca, which had been riding at anchor in the bay, was scattered and lost. All the cisterns had been filled with salt water and there was no way to bring fresh water from the

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Lallemands, he refused to have anything to do with the scheme for putting him on the throne of Mexico. Bertin, Joseph Bonaparte en Amérique, 222.

[20] Hartmann et Millard, 84.

mainland. In the debris was finally found a small boat. Volunteers rowed across the bay, fresh water was procured and with what little provisions remained, the company rested and discussed plans for leaving the island.

They surely had reason for wanting to be away from Galveston and Texas. "Some wished to join the independents (Lafitte's pirates), others wanted to go to New Orleans and other cities of the United States, but France was the longed-for goal of most of us." To leave Galveston, however, was immediately necessary. To remain was to die of hunger and misery, so a large part of the refugees crossed to the mainland and proceeded to New Orleans on foot. After weeks of hardship these weary soldiers straggled into New Orleans, there at last to hear a warm welcome in their own tongue.[21]

Those who remained behind, Rigaud and his daughter among the number, again had Lafitte to thank for his assistance. Some time after the storm one of the pirate's ships brought a Spanish prize, the schooner San Antonio from Campeachy, into Galveston harbor. This schooner Lafitte placed at the disposal of the refugees. "After having put aboard all the provisions which Lafitte could spare, we sailed with a Spanish captain and ten sailors whom he had freed. Unfortunately, we were beaten about by contrary winds and our provisions were about exhausted. Not until after twenty days did we see the Balize and the mouth of the Mississippi. We ascended the river and finally joined our unhappy comrades who had preceded us to New Orleans." Lallemand had left and his associates of Champ d'Asile, most of them without money or anything but the tattered clothes upon their backs, found merciful aid at the hands of the Creoles of New Orleans. *"Bons Créoles!"* wrote Hartmann, *"les refugiés du Texas n'oublieront jamais que vous futes pour eux que des frères, plus que des amis!"* [22]

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[21] Ibid., 85-101.
[22] Ibid., 107.

From New Orleans most of the refugees finally returned to France. A few, aided by Lefebvre-Desnouëttes, may have gone to the Tombigbee, there to join the unsuccessful colony in which that general continued to take an interest. The experiment of the French agricultural society was an expensive one for him and he saw his private fortune of twenty-five thousand dollars sunk in it without any return. By the will of his former master, who died at Saint Helena while Lefebvre-Desnouëttes was still faithfully assisting in the plans of the Tombigbee company, he received a bequest of one hundred thousand francs. Upon hearing of this final mark of appreciation from the great Napoleon, the old general left the wilds of Alabama and proceeded to Europe. When off the coast of Ireland, the ship Albion in which he had sailed, foundered in a storm and sank with all its passengers.

The fortunes of the brothers Lallemand after the disaster of Champ d'Asile were very diverse. The younger married a niece of the rich Stephen Girard before the company for Champ d'Asile left Philadelphia. At the wedding were present Charles Lallemand, the Count de Survilliers, Marshall Grouchy and General Vandamme.[23] There was reason enough therefore, for Henri Lallemand not joining the expedition of which his brother was the head. The younger Lallemand was, however, in New Orleans during the year 1818, for he published at that place a treatise upon artillery which had some vogue in its day. He afterwards returned to Philadelphia and settled down at Bordentown as a neighbor of Joseph Bonaparte and died in 1823.

Charles Lallemand returned to Europe and fought with the liberals in Spain. He was taken prisoner and appears next in Belgium, where he lived for a time in great poverty. Next he is heard of as having a school in the United States. Such an occupation, it may be believed, was foreign enough to his tastes, and the Revolution of 1830 gave him the oppor-

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[23] Niles's Register, XIII, 166.

tunity of changing for a more agreeable activity. He no longer had reason to fear the sentence of death which had been passed upon him in 1815. He went to Paris and carried with him a letter to Lafayette from Joseph Bonaparte, with whom he was still on friendly terms. By Napoleon's will he had been left one hundred thousand francs. Lallemand took his seat in 1832 as a member of the French Council of peers. Later he was made military commander of Corsica. Thus Lallemand, ever faithful to Napoleon's interests, at last received his reward and had the military command of the island where his great leader was born. The commander-in-chief of the company of Champ d'Asile died at Paris in 1839.

General Rigaud was also a beneficiary to the extent of a hundred thousand francs under the will of Napoleon, who called him "Martyr de la Gloire," but the old soldier died before he knew of his good fortune. He remained at New Orleans and died there in 1820.

Most of the other more distinguished French officers, who assembled at Philadelphia after Waterloo, at last returned to their native land and many of them appeared again in civil and military life, both before and after the Revolution of 1830. Before the end of the year 1817, Clausel and Grouchy had announced to Hyde de Neuville that they wished to return to France and serve the restored government. Clausel was amnestied in 1820 and seven years later was named as deputy by the liberal electors of Rethel.

Of the fate of the humbler members of Lallemand's Champ d'Asile it is less easy to speak. Some, like Hartmann and Millard, returned to France, thanks to their Creole friends in New Orleans. Others joined Lafitte and served in his "independent corsairs." Still others went south to Mexico and joined the revolutionists. The company was scattered to the four winds of heaven.

Lakanal's history of the United States was not completed. He never returned to his retreat in Kentucky, but after the dissolution of the Tombigbee company settled in New Or-

leans. He was not enrolled among the adventurers of Champ d'Asile, but returning to a more congenial occupation, became president of the College of Orleans at New Orleans. This position he retained but a short time. The University of Orleans was the first institution for higher education which had been founded since the cession of Louisiana from France. A few years after its founding, in 1805, it struggled on with but few pupils. By the time Lakanal was placed in charge, in 1824 or 1825, the original plan of a university had been abandoned and, aided by lotteries and the revenues from licensed gambling houses, it was hoped that the institution might prosper under the more restricted plan of a college. But Lakanal's appointment seems to have given great offense to the people of New Orleans, probably owing to the fact that he was, as Hyde de Neuville had said, an apostate priest. After a few months of service he gave up his position and moved to Mobile Bay. There he lived until 1837 and then returned to France. Some of his family, however, remained in New Orleans and continued to live there. After Lakanal resigned the presidency of Orleans College, the institution rapidly declined and soon ceased to exist.[24]

At Paris Lakanal was once more in an atmosphere to his liking. He resumed his position in the Institut de France and became its dean. During his last years he was engaged in the preparation of a narrative of his life in America during twenty-two years. Strangely enough, the manuscript disappeared at the time of his death in 1845, and has never been recovered. Perhaps in it was an account of his connection with the Napoleonic Confederation of 1817.

With the passage of the neutrality act of 1818, the ports of the United States ceased in large measure to be used for the fitting out of privateers against Spain. The treaty of 1819, ratified in 1821, ceding East and West Florida to the

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[24] History of Higher Education in Louisiana, from Gayarré; King, New Orleans, the Place and the People, 185.

United States and leaving Texas to Spain, put an end to enterprises such as MacGregor and Aury had at Amelia Island, Lafitte at Galveston, and Lallemand on the Trinity.[25]

A few years only after Spain had been confirmed in her title to Texas, she lost it again to Mexico. Champ d'Asile as a colonial institution was forgotten. The genius of Balzac has kept the memory of it alive in connection with the character of Philippe Bridau. In prose we read of the unfortunate dupes who sought in the wilderness of Texas a chance to build again upon the shattered glory of the great Napoleon.

LE CHAMP D'ASILE.

Un chef de bannis courageux,
  Implorant un lointain asile,
A des sauvages ombrageux
  Disait: "L'Europe nous exile.
Heureux enfants de ces forêts,
  De nos maux apprenez l'histoire;
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire.

"Elle épouvante encor les rois,
  Et nous bannit des humbles chaumes
D'où, sortis pour venger nos droits,
  Nous avons dompté vingt royaumes.
Nous courions conquérir la Paix
  Qui fuyait devant la Victoire.
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire.

"Dans l'Inde, Albion a tremblé
  Quand de nos soldats intrépides
Les chants d'allegresse ont troublé
  Les vieux échos des Pyramides.
Les siècles pour tant de hauts faits
  N'auront point assez de mémoire,
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire.

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[25] Recognition of the South American republics followed closely after the ratification of the Florida treaty. Delay in the recognition of these republics by the United States was caused by Spain's dilatory conduct in ratifying the treaty. See Paxson, The Independence of the South American Republics.

"Un homme enfin de nos rangs,
  Il dit: 'Je suis le dieu du monde.'
L'on voit soudain les rois errants
  Conjurer sa foudre qui gronde,
De loin saluant son palais.
  A ce dieu seul ils semblaient croire.
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire.

"Mais il tombe; et nous, vieux soldats
  Qui suivions un compagnon d'armes,
Nous voguons jusqu'en vos climats,
  Pleurant la patrie et ses charmes.
Qu'elle se relève à jamais
  Du grand naufrage de la Loire!
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire."

Il se tait. Un sauvage alors
  Répond: "Dieu calme les orages.
Guerriers! Partagez nos trésors,
  Ces champs, ces fleuves, ces ombrages.
Gravons sur l'arbre de la Paix
  Ces mots d'un fils de la Victoire:
Sauvages, nous sommes Français;
  Prenez pitié de nôtre gloire."

Le Champ d'Asile est consacré;
  Elevez-vous, cité nouvelle!
Soyez-nous un port assuré
  Contre la Fortune infidèle,
Peut-être aussi des plus hauts faits
  Nos fils vous racontant l'histoire,
Vous diront: Nous sommes Français;
  Prenez pitié de nôtre gloire.[26]

In such wise the romantic Béranger, in his lines written in aid of the subscription, idealized the project and won it from the rugged path of history into the more alluring field of poetry. And there we may leave it.

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[26] Oeuvres de Béranger, edition of 1837, II, 16.

APPENDIX.

THE PROPOSED CESSION OF TEXAS AND THE FLORIDAS BY JOSEPH, KING OF SPAIN AND THE INDIES, 1811.[1]

"It was the Spanish ulcer which ruined me," confessed Napoleon at Saint Helena. His determination to overthrow the Bourbons in Spain, made during the summer of 1806 while on the march to Jena, was not executed until Junot had occupied Portugal, more than a year thereafter.[2] Joseph Bonaparte was a factor in the Spanish program neither from choice nor from inclination. When he was taken from the throne of Naples for that of Spain his personal wishes were not regarded by the Emperor. All during the time from 1808 to 1813, while the imperial army was attempting to hold Spain, the Bonaparte king was a puppet. Letters from Napoleon to Joseph during this period are filled with fault-finding. Napoleon complained that Joseph was slow, indiscreet, and timid. After Vittoria, Napoleon wrote to Cambacérès that all the follies in Spain were due to the mistaken confidence shown the king, who not only did not know how to command, but did not know his own value enough to leave the military command alone.[3] Thus Joseph was made the scapegoat for the failure of a mistaken policy. The course of events elsewhere in Europe determined the history of the attempted conquest of the Peninsula. The occupation of Spain and the invasion of Russia were the result of that insane ambition which Friedland and Tilsit did much to nourish.

Joseph, taken unwillingly from Naples, seems from the first to have felt the impossibility of his position as king of

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[1] The original documents cited in this Appendix are in the custody of the Bureau of Rolls and Library, Department of State, Washington.

[2] Rose, Napoleon, II, 137, 139.

[3] Quoted by Rose, II, 287.

Spain. He was, he said, king only by the force of Napoleon's arms.[4] That such was his position he was made to feel more keenly when Spain was divided into military provinces under the absolute control of the Emperor, the commander of each province being virtually independent of the king. Soon after the decree of division was made, Joseph wrote to Queen Julie that "if the Emperor wishes to disgust me with Spain, I wish for nothing but to retire immediately. I am satisfied with having twice tried the experiment of being a king; I do not wish to continue it."[5] This was followed by a protest to the Emperor against the policy of diverting the Spanish revenues, especially those of Andalusia, to the support of the army. If he was to be deprived of this income, he said, he had nothing further to do but to throw up the game. No longer a free agent, his every deed spied upon, distrusted by Napoleon and his generals in Spain, Joseph was further harassed by lack of money. If the revenues of Andalusia were to be taken from him, he would then be virtually a prisoner at Madrid, which city afforded him but eight hundred thousand francs a month, while the expenses of the court were never less than four millions. Placed in such a humiliating, hopeless, and dishonorable position, he begged that he be allowed to return to France, to find in obscurity a peace of which the throne had robbed him without giving anything in exchange. "The step which I take is involuntary. I send to your majesty M. Almenara, who has been my minister of finance since the death of M. de Cabarrus, and who knows the wretched details of his own office and of those of the other ministers, so as to enable your majesty to act with full knowledge."[6]

The American legation at Paris was entrusted to Jonathan Russell in September, 1810, after the departure of General

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[4] Mémoires du Roi Joseph, February 19, 1809.

[5] Ibid., April 12, 1809.

[6] Ibid., August 8, 1810. The following spring Joseph went to Paris and tendered to Napoleon his resignation of the crown. Napoleon ordered him back to Madrid. Rose, II, 194.

Armstrong, who took home with him the promise of Cadore that the Berlin and Milan decrees would be revoked, as to the United States, on the first of November following.[7] Upon that day Russell asked if the decrees had been repealed. No answer was made to the question and the matter dragged until the following summer.[8] Madison acted as if the promise to revoke was in fact a revocation. Russell was transferred to London in July, 1811, and Joel Barlow sent to Paris as minister. This appointment, which Madison hoped would save his administration, had been made some months previously, but Madison was unwilling to send a minister to France until he had more exact knowledge that the decrees had been revoked. Sérurier, the French minister at Washington, who had frequently urged Madison to send Barlow to his post, now gave what the President deemed satisfactory assurances of the revocation. Barlow arrived at Paris September 19, 1811.

While Russell was waiting for some act on the part of Napoleon which would be in line with Cadore's promise to Armstrong, the Marquis of Almenara, who had been sent by Joseph to Paris to acquaint the Emperor with the desperate state of affairs at Madrid, approached the American chargé with a plan by which the financial necessities of his master might be relieved. By the treaty of 1803 the limits of Louisiana were left undefined. The terms of the Bourbon abdication, arranged by Godoy and Napoleon, stipulated that the dominions of Spain should be kept intact. The cession of Louisiana was a sufficient precedent that good faith was not to stand in the way of pressing military or financial needs. Almenara proposed that if certain grants were made in the

[7] Cadore to Armstrong, July 15, August 5, September 7, and September 12, 1810; Armstrong to Cadore, August 20 and September 7, 1810. American State Papers, Foreign Relations, III, 386-388, 400.

[8] McMaster, III, 360-368, 406-411. The decree revoking the earlier decrees as to the United States, bearing date of April 28, 1811, was unquestionably manufactured a year later. H. Adams, History, VI, 254-263. American State Papers, Foreign Relations, III, 613-614. War with Great Britain was declared June 18, 1812.

interest of Joseph, a new treaty would be negotiated in which the limits of Louisiana would be set forth so as to include both Texas and the Floridas.[9] Russell transmitted Almenara's proposition together with the draft of a convention based thereon to Madison, who declined giving any consideration to it. Barlow had read Russell's letter upon the subject before leaving for Paris and was therefore aware of Madison's opinion of a transaction which would involve the recognition of the Bonapartist rule in Spain. Almenara's plan, amended so as to avoid any appearance of fraud, was proposed to Barlow, who thereupon wrote to Madison strongly advising him to adopt it and thereby acquire Louisiana and the Floridas. Madison again refused. Soon afterwards the war with Great Britain began, and Madison had other matters to look after.

During nearly all of the year 1812 Barlow was beguiled by Maret, Duc de Bassano, with the hope of a treaty. In March the American minister wrote to Monroe that he hoped soon to find Bassano ready to negotiate. A month later he confessed that he was again disappointed. "This is dull work," he said, "hard to begin and difficult to pursue."[10] Napoleon's invasion of Russia intervened. Borodino was fought September 7, and Moscow entered a week later. At about the time when Napoleon determined to retreat from Russia,[11] Bassano asked Barlow to come to Wilna to reopen negotiations. Barlow accepted the invitation and left Paris October 26.[12] The journey from Paris was one of three weeks' duration over roads ruined and through lands desolated by the march of the Grand Army. Barlow waited at Wilna hoping that if Napoleon retreated thither, there would be a chance of saving the treaty. By the fourth of December

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[9] Madison's proclamation taking possession of West Florida was dated October 27, 1810. American State Papers, Foreign Relations, III, 397.

[10] American State Papers, Foreign Relations, III, 520.

[11] Rose, Napoleon, II, 239. Bassano to Barlow, Wilna, October 11, 1812. American State Papers, For. Rel., III, 604.

[12] Todd, Life and Letters of Joel Barlow, 270.

news came of the disaster at the Beresina and of the flight of Napoleon. It was no time for what to the Emperor was such a diplomatic trifle as a treaty with the United States. Barlow left the day before Napoleon reached Wilna and turned back towards Paris. The journey was one of frightful hardship, quite beyond the strength of a man so advanced in years. Taken ill on the road, he was compelled to halt at Zarnowitch, a small town near Cracow. The illness proved fatal and Barlow died December 24, a martyr to the Russian campaign of Napoleon.[13]

In Spain Joseph's position became more and more perilous. By the battle of Vittoria, June 22, 1813, the French cause was irretrievably lost. In December, Napoleon wrote to Joseph: "France is invaded, all Europe is in arms against France, and above all, against me. You are no longer king of Spain. I do not want Spain either to keep or to give away."[14]

The following letters, hitherto unpublished, give an account of the attempt made to give Texas and the Floridas to the United States in return for grants of land. These grants were to be sold and the proceeds used to bolster up the throne of Joseph Bonaparte in Spain. It is to be remembered in connection with these letters that Napoleon, as early as December 13, 1810, just before Russell broached the subject to Madison, expressed his willingness to see not only the Floridas belong to the United States, but also South America independent of Spain.[15] Shortly before the arrival of Barlow at Paris, Napoleon instructed the Duc de Bassano that the United States might easily acquire the Floridas on account of the poverty-stricken condition of Spain. "Though I do not take it ill that America should seize the Floridas, I can in

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[13] For an account of Barlow's last days, see Todd, Life and Letters of Joel Barlow, 270-287; Henry Adams, History, VI, 245-267.

[14] Mémoires du Roi Joseph, December, 1813.

[15] Napoleon to Champagny (Cadore), December 13, 1810, Correspondance de Napoléon, XXI, 316, quoted by Henry Adams, History, V, 383.

no way interfere, since these countries do not belong to me."[16]

I. RUSSELL TO MADISON.[17]

Paris 2nd January 1811.

Sir

The inclosed is a sketch of a treaty and convention which, after much conversation between the Marquis of Almanara his agents and myself, was drawn up and contains in my opinion the most favourable terms on which can be obtained an extinguishment of the title claimed by the actual king of Spain to the whole of the territory therein mentioned. The Marquis of Almanara appeared in this business to act from a conviction that this territory was beyond the reach of his master and that it was no longer in his power to maintain its dependence on the Spanish throne. Pride and perhaps poverty forbid him however to abandon it without a valuable consideration and the end of his conferences with me was evidently to ascertain what in my opinion was the *maximum* which the United States would be willing in existing circumstances to allow for it. On my part I endeavored to depreciate its value—and the title which King Joseph could give to it. From the first I adhered to two leading principles,—viz., that the right of the United States to the territory between the Pérdido and the Sabine should not be called in question and that for the cession of Florida to the eastward of the Perdido an equivalent should be found in the vacant lands of the territory thus ceded and in the vacant lands of the disputed territory laying between the Sabine and the Rio Bravo. This basis being settled the quantity and location of the land to be reserved by the King of Spain formed the principal subject to be discussed. The result of this discussion will appear in the place of the convention herein inclosed.

I have reason to believe that the Marquis of Almanara proceeded in this business with the knowledge of the Emperor. In the course of it I was sorry however to perceive the agency of two men whose established character for extensive speculation might render suspicious the fairest negociation. These two men were David Parish and Daniel Parker,—the reputation of the first I believe to be unblemished but it is said the second has sometimes made those sacrifices to interest which honest men avoid. This man had the indis-

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[16] Napoleon to Maret, Duc de Bassano, August 28, 1811, Correspondance de Napoléon, XXII, 448, quoted by Henry Adams, History, V, 408.

[17] MS. Madison Papers, Bureau of Rolls and Library, Department of State.

cretion to observe to me one day that he expected a handsome share in the transaction and looking at me significantly "I intend" says he "that all my friends who aid in the operation shall be provided for" I felt too well his meaning but passed coldly to another part of the subject. I endeavoured to appear to disregard it. I am however to this moment puzzled to decide whether the Marquis of Almanara originated at this time the discussion and sought these men for agents to raise funds out of the reserved lands,—or whether they originated it and brought him forward merely to aid in their purposes of speculation. To decide this however cannot be important as far as it does not affect the terms of the bargain. I satisfied myself that the twenty-five millions of acres were to be converted into money for the Spanish Government but that the seven millions were to be used as a *bonus* for Alamanara and his coadjuters in court in obtaining the ratification of the treaty and for the gentlemen above mentioned. The loan was partly also to be distributed in this way and partly to be appropriated to surveying the land. I have no doubt that *two millions* of dollars *down* would procure all the title which King Joseph can give to the Floridas and run our boundary line from the mouth of the Bravo to the mouth of the Cumberland.

It does not become me to give an opinion upon the propriety of treating with him and thereby recognizing him as King of Spain and in doing so provoke perhaps hostilities with the Regency and its allies but I have felt it my duty to lay before you either directly or indirectly all that I may learn or in which I may be concerned while I am charged with the affairs of the American legation here. In my conversations with the Marquis of Almanara I distinctly and repeatedly declared to him that I was without the shadow of authority to treat for the Floridas or any other territory and that whatever I might agree to would not even be entitled to the notice much less to the sanction of my government. On his part also he avowed that he was without authority but he said that he would take the project of the treaty and convention to Madrid and lay it before his King. He left here a few weeks since and we have already learned of his arrival at Valadolid.

I should have written on this subject by the Commodore Rogers but I feared, should she fall into the hands of the English, that the discovery of my conversation with Almanara might lead to unpleasant consequences. I do not address myself to the Secretary of State as I do [not care] to give what I have done an official character—but I communicate it to you only, knowing it to be my duty to reveal

every circumstance of my conduct and hoping, if I be guilty of any indiscretion, that I shall be judged with indulgence.

I am sir with the highest respect

Your faithful and obt servant

Jona Russell

N. B. I ought to have said to you that the Marquis of Almanara is Minister of Interior to King Joseph

II. Convention between the United States of America and the King of Spain.[18]

The President of the United States of America and his Most Catholic Majesty the King of Spain in consequence of the treaty which has been this day signed between A. B. charged with the affairs of the American Legation near the Government of France on the part of the United States and by C. D. on the part of his Most Catholic Majesty the King of Spain and desiring to regulate definitively every thing that has relation to that treaty have agreed to the following articles—

1st His Most Catholic Majesty the King of Spain having granted E. F. ——— his heirs and assigns seven millions of acres of land with the right to locate six millions, five hundred thousand acres thereof in any place between the River del Norte or Bravo, and the river Sabine and the remaining five hundred thousand acres thereof in any part of the Floridas east of the River Perdido saving and excepting the island of Amelia.

And his Majesty having in like manner made a further grant to the same E. F. ——— to his heirs and assigns of twenty five millions of acres of lands with the right to locate the whole thereof in any place or places between the rivers del Norte and the Sabine not to the north of 34° of north latitude, provided, that no location in virtue of either of these grants shall be made of a less quantity than five thousand acres or on lands already improved or lawfully located,—the United States promise and agree to ratify and confirm said grants and to issue their warrants within six months after the ratification of this Convention by the United States and as much sooner as possible—to the said E. F. ——— or to his assigns for the complete location thereof—each warrant to be for five thousand acres of land and for the grant of seven millions of acres to be num-

[18] Enclosed with Russell's letter to Madison of January 2, 1811, no date, MS. Madison Papers. This project is not in Russell's writing, but in a foreign hand.

bered from 1 to 5,000 and each of these warrants shall give to the holder thereof a right to the five thousand acres mentioned therein and be transferred from one holder to another by indorsement without guaranty—

2d The expense of surveying the land to be located under either of the grants aforesaid shall be borne and defrayed by the grantee or his assigns. And the return of the Surveyor shall be transmitted to the Secretary of the Treasury of the United States under whose inspection a lottery shall be drawn to determine the location of each warrant and immediately thereafter the Government of the United States shall issue patents in the usual form to be applied to their correspondent numbers as determined by the lottery aforesaid.

3. The United States agree to loan to the said E. F. ——— one million of Dollars in a stock bearing an interest of *six per cent per annum* to be paid half yearly at the treasury of the United States, the said stock to be issued immediately by the United States, and to be redeemable in fifteen years thereafter, the amount of this loan and the interest thereon to be reimbursed to the United States from the first sales of any part of the tract of land which may be located under the grant of twenty five million of acres, it being distinctly understood that for the payment of this stock with the interest that may grow due thereon, in manner and form aforesaid, one half of the warrants, or the patents for which they may be exchanged, shall remain in the possession of the Secretary of the Treasury of the United States until the whole of the said payment be fully made and completed. Provided nevertheless that nothing herein contained shall be construed to render the said grantee personally liable for the payment of any part of this loan or the interest that may grow due thereon.

4 It is mutually agreed between the contracting parties that the United States shall have full right and authority to grant and locate after the expiration of two years from the issuing of the warrants above described any vacant lands in East Florida that shall not have been previously located under the grants of seven millions of acres above named and also full right and authority to grant and locate lands between the rivers del Norte and Sabine after the expiration of five years from the issuing of the warrants aforesaid which shall not have been previously located under either of the grants mentioned in this Convention. It being fully understood and agreed that nothing contained in this Convention shall be construed to impair the right of the United States to grant and locate, immediately after its ratification, any lands laying between the rivers del Norte and Sabine to the North of the 34 of north latitude.

III. Projet of a Treaty of Limits.[19]

The President &c.

Whereas &c.

Art. 1. It is settled and agreed that the line dividing the Spanish Territories in South America from the Territory of the United States, shall begin at the mouth of the Rio del Norte in the Gulph of Mexico, and proceed by right bank of said river to the mouth of the Rio Pecos in lat. 30° 8′ north as laid down in the chart of Humboldt, thence due north to the fortieth degree of north lat., thence in a straight course to the most southerly source of the Missouri, thence in a straight course to the most southerly source of the river Columbia and thence following the left bank of said river to the Pacific Ocean in 46° north latitude. 2. All the territory laying north of this line or between it and the Atlantic Ocean and bounded South by the Gulph of Mexico and the straights of Florida to be possessed and enjoyed forever in full sovereignty by the United States, with all its rights and appurtenances, whether the said territory has been before the date hereof ceded to the United States or not,—or whether it has been supposed heretofore to have been included in the limits of Louisiana and East and West Florida or not—the King of Spain hereby solemnly renouncing in favor of the United States all right and title both of domain and sovereignty to every part and parcel of said territory.

Art. 3. As rights and appurtenances of the territory above described are to be considered all the islands adjacent thereto or belonging either to Louisiana, the Floridas or any other district of said territory, as well as all public lots and squares, vacant lands and all public buildings, fortifications, barracks and other edifices which are not private property. The archives, papers and documents relative to the domain and sovereignty of said territory or any part thereof, which have not already come to the United States in execution of their treaty of the 30th April 1803 with France, shall be delivered by the officers of Spain in whose hands they remain, to any agent or agents whom the President of the United States may appoint to receive them.

Art. 4th. The United States shall have a right immediately after the ratification of this treaty to take full complete possession of every part and portion of said territory of which they are not already possessed and all the military posts now commanded by the officers of Spain within said territory shall be surrendered and delivered over to any officer or officers whom the President of the United States may authorize to receive them.

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[19] Enclosure B. in Russell's letter of January 2, 1811.

Art. 5. All grants of land made within the territory aforesaid by the Government of Spain or in its name or under colour of its authority since the treaty concluded between France and Spain at St. Ildephonso on the first of October 1800 shall and are hereby declared to be null and void, and the lands described in such grants shall belong in full property to the United States, the same as if such grants had never been made whether the districts in which such land lays was supposed to be ceded by the said treaty of St. Ildephonso or not. Save and except such grants of land only as are specified in the Convention of this date entered into by the contracting parties.

Art. 6. The inhabitants of the territory above described shall be entitled to the benefit of all the provisions contained in the 3d Article of the treaty concluded at Paris between the United States and the French Republic whether they dwell within the limits of the territory supposed to be ceded by that treaty or not.

Art. 7. The particular Convention signed this day by the contracting parties respectively having relation to certain grants of land made by Spain and excepted in the 5th article of the present treaty and also to a loan to the grantees of that land, is approved and to have its execution in the same manner as if it had been inserted in the present treaty and it shall be ratified in the same form and at the same time so that the one shall not be ratified without the other.

Art. 8. The present treaty shall be ratified and approved by his Catholic Majesty and the President of the United States and the ratifications shall be exchanged in good and due form in the space of six months from this day, or sooner if possible.

IV. Madison to Russell, July 24, 1811.[21]

Washington, July 24, 1811.

Sir—

I have rec'd your letter of Jany 2 with the sketch of a convention arranged between you and the Marquis Almanara. The purity of your views is attested by the guarded manner of your proceeding, as well as by the explanations in your letter. But it is proper you should be apprized, that such a transaction would be deemed inadmissible on different grounds, were it without the feature given to it by the individual agencies and interests so justly denounced by you.

For information on other subjects which it may be interesting to you to receive I refer you to the communications of the Secretary of State.

Accept, Sir, my respects and friendly wishes.

J. M.

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[21] MS. Madison Papers, Department of State. Endorsed by Madison: "Russell Jonathan. Copd."

V. Barlow to Madison.[22]

Paris 19 Dec 1811.

Private

Dear Sir

As an additional apology for detaining the Frigate as well as for believing that an answer somewhat satisfactory is to be given to my note of the 10th Novr. I ought perhaps to state to you more fully than I have done in my official letter what past at the diplomatic audience to which I there alluded. It was on the 1st of Decr. the anniversary of the coronation. The Court was uncommonly brilliant and the emperor very affable.

In passing around the circle, when he came to me he said with a smile *"Eh bien Monsieur vous saurez donc tenir contre les Anglais."* —alluding as I suppose to the affair of Rodgers then recently published.[23] *"Sire nous saurous faire respecter notre pavillon."* Then after finishing the circle he cut across and came back to me in a marked manner and raising his voice to be heard by hundreds he said *"Monsieur vous avez presenté une note interressante au duc de Bassano, on va y repondre incessament et d'une maniere satisfaisante*[24] *et j'éspere que la frégate restera pour cette reponse." "Sire elle ne reste que pour cela."*

In the evening there was a drawing room, in which he singled me out again and said some flattering things, but not on public affairs. As it cannot be on my own account, but on that of the Government, it is proper I should notice to you that he and all the grand dignitaries of the empire have taken pains to signalize their attentions to me in a manner they have rarely done to a foreign minister, and never to an American.

The points that I expect will be conceded are—1st a diminution of duties on our produce to take place not all at once but gradually. 2d. The right of transit thro' France into the interior of Europe for all our produce without any duties in France but what may suffice for the expences of bureaux.—3d. a revocation or modification of the system of special licences.—4th. releasing the vessels and cargoes not sold, and an arrangement for paying damages for those already disposed of.[25] This last article perhaps connected with an explanation of the treaty of St. Ildefonso, both by the Spanish and

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[22] MS. Madison Papers, Department of State.

[23] The encounter of the "President" and the "Little Belt."

[24] Barlow's note was answered December 27, but in a manner by no means satisfactory.

[25] Barlow's expectations were of course not realized. H. Adams, History, VI, 245-258.

French Governments, relative to the boundaries of Louisiana, so as to comprehend all that we desire eastward and westward and northward.—More of this probably in a private letter by the Frigate. I give no encouragement to the idea.

A war with Russia seems to be resolved upon notwithstanding the peace signed between her and Turkey. Preparations are great and probably serious on both sides.

With great respect and attachment

Yr obt St

J. Barlow.

VI. Barlow to Madison.[26]

Paris 30 Dec 1811

Private

Dear Sir

In my private letter to you of the 19th I took the liberty to intimate that I might address you by the frigate on the subject of connecting the indemnities due to our citizens with a convention of boundaries of Louisiana.

I have had many hints on this subject both from Spanish and French authority. I have always discouraged the idea by a declaration as general and vague as might be, that I am not instructed by my government, and therefore can say nothing that shall draw to any sort of consequence.

I thought it not prudent to make any specific exception to any part of the proposition, such as the right of the party ceding, the value of the proposed cession or the conditions on which it might be made. Thus reserving the power of being consistent with myself in case any circumstances should induce propositions that in your opinion ought to preclude such exceptions.

Here is a Spanish agent of rank who has formerly been minister at home and ambassador in France, and who now enjoys the confidence of both governments. He is charged with full powers by King Joseph to negotiate and conclude a convention of boundaries with the French or American authorities on terms, as he thinks, so advantageous to the U. S. that their government cannot refuse them.

In repeated conversations with this person I have collected the substance of the convention that he and the French government will probably agree to. Indeed, he would have proposed them before now had he supposed they would be accepted, or even discussed. I did not let him know that I should reduce them to writing or propose

[26] MS. Madison Papers, Department of State.

them to you in any shape. I have however put them on paper as precisely as I can methodize the ideas, and I now take the liberty to lay them before you with some observations that have occurred to me as worthy your attention.

I assume as a general principle that it now becomes more than ever important to the peace and interest of the U States that the limits of Louisiana should be fixt and acknowledged by all parties concerned. The present appears the most favorable moment to do this, for reasons which will apply more or less to each of those parties.

1st *Spain.* King Joseph is in want of money, and the sum he will get out of the six millions of dollars [acres?] the first grant mentioned in the project, is represented as a great object to him at this moment.

It cannot be long before a change will take place in his situation. He will either cease to be King of Spain by the effect of a union of that country to France; or his power as King of Spain will become more consolidated, when a million or two of dollars will be of less consequence to him; or, remaining K of S while Mexico shall be acknowledged independent, he will have no legal power to establish the limits in question.

He is now to all intents and purposes of public law the legitimate King of Spain, acknowledged by every power of Europe except England, and she is at war with him. The treaty of St. Ildefonso is well known to have been left defective as to the limits of the territory therein ceded. It requires explanation. J[o]seph, as King of Spain, is the only power that can (in concert with France) explain that treaty and define those limits. And no other power or people has a right to complain, provided their acknowledged rights are not thereby invaded.

Spain as a power, whoever is her King owes the citizens of the U S considerable indemnities for captured property. This is a certain way, a legal way and the only way in which such indemnities can be had. It will be well viewed in Spain and in the U S; and the terms thus obtained by our citizens will be so much recovered as if from the bottom of the sea: for it would be folly to expect payment in any other way. The change of dynasty in Spain since the debts were contracted would be a sufficient pretext for refusing payment, if a constant refusal for ten or fifteen years preceding that change had not already reduced the claimants to a desperate silence.

2d *France.* This being the only power with which we contracted for Louisiana it is to the emperor alone that we can look for an explanation of its limits. By the convention of 1803 we receive

that territory from France with such limits as she receives it from Spain. And the emperor in the convention of boundaries now proposed explains the former convention with the same authority with which he made it. This he offers to do now, but there is no probability that he will do it at a later period, because he will not have the same inducement. It is well known that he now has the double motive of paying his own debts to our citizens and relieving his brother Joseph from pecuniary embarrassments. Without these motives he probably would not have listened to the project now brought forward. He owes our citizens a considerable sum, probably from four to six millions of dollars. Whatever may be his means he certainly has not the intention of paying them in any other way. We know how difficult it is to draw money from his coffers at any rate for the best acknowledged debts when not so circumstanced that a refusal to pay would immediately clog his military operations. And in a case like this, when he can risk nothing but the animadversions of a few Diplomatic notes and the censure of American newspapers, he will feel such a perfect impunity in refusing to pay by any direct drain upon his treasury, that he will probably never think of it.

Indeed I am assured of this, not only from his conduct in common cases, but by the private declaration of his intentions, as I am told, in this particular case.

3d *England.* The government of England expressed in a formal manner its acquiescence in our purchase of Louisiana. And it cannot pretend that the party who had the right to cede had not the right to fix the limits of the cession.

By your message to Congress of the 5th November it seems that England is interfering with your operations in one of the Floridas. What this interference may be I know not, for I have seen no other document but that message. She probably does this on the ground that such territory was not included in the cession. But when she sees that the same powers that made the cession acknowledge that such territory was included therein, then that pretext at least is removed; and if after that she persists in meddling with this affair it must be on other grounds than those of obtaining justice for a pretended ally, and she may be opposed by other arguments.

4th *Mexico* including the provinces between that and Louisiana. These provinces have never yet formed an organized power capable of declaring a national will. It has all along been contended by us, and never contradicted by them, that our western limit was the Rio Bravo. But whether we own the country or not, the *Mexicans* certainly do not own it.

According to the received doctrines of public law and colonization the government of Spain was the only power that had the right

to form and declare the limits of provinces in that region. Spain had a right to buy and sell these provinces as well as fix their limits. Spain had before bought Louisiana. She has lately sold Louisiana and she now declares what Louisiana is.

But the provinces now in insurrection to the west of the Bravo, to say the most of their rights, have no rights beyond their own limits, neither is it the interest of Mexico to extend her boundary farther to the east. If any power or people in those territories are to be consulted it is that which I am going next to mention.

5th *The people living in the ceded lands.* We find that the people of Louisiana living on the Mississippi and in West Florida have acquiesced and rejoiced in becoming part of us and belonging to the U States. There is every reason to believe that those of East Florida and those of Texas &c. partake of the same sentiments. But these dispositions may change in a short time after they shall have formed other connections and other habits, incompatible with the union now proposed.

This is the moment of revolutionary ideas in all those colonies. It is therefore the most proper moment, to settle them down in habits and attachments that may be permanent.

It is remarkable that the whole business of Louisiana has been hitherto conducted without shedding a drop of blood. It has done honor to our government as well as to the people in question. But the limits being yet unsettled there must, at no distant day, be a a breaking up somewhere; and it would be more convenient, more safe and probably more peaceful to have it done now, before the lands are much peopled, and before local interests and habits become inforced by local power.

6th *The United States* Their object is to live in peace with all the world, and to cultivate those natural advantages which ought to secure their greatest happiness as a nation. For this purpose they should be sufficiently populous and powerful to be able to feel that they can at all times do justice, as well as command it, without any other effort than that of founding a national will. It is only in habits of justice, that those of peace can be established, and the best security for both in the case now in question is to settle those great frontier discussions before they shall appear to be great, and while all the other parties concerned are more willing or more complying than they ever can be hereafter; especially before some of them shall case to have the right, and we ourselves cease to have the power.

7th *Your administration.* Excuse me, my dear sir, if I reckon this among the parties concerned. A desire to render your administration popular is a sentiment of patriotism, and not merely of friendship and attachment to you; and the expression of this desire

is not flattery it is not a profession of love to you but to the country. You were called to administer the Government at a time when there existed a great moral struggle betwen republican principles and their opposite. The contest is of awful magnitude, and is not yet decided.

Its decision depends greatly on your success; and I have accustomed myself to regard the triumph of your administration as identified in some measure with that of our constitution.

This you may think is taking a strong hold of the subject, and I cannot but perceive a great cause of congratulation and triumph in the indemnities to so many of our citizens as are involved in the proposed arrangement; especially do I perceive it in the peaceable acquisition of so great an additional territory and fixing the limits of several thousand miles of our most contested frontier, and this cheaper than was ever expected and of much greater extent. Indeed I cannot foresee any probable time when, or principle on which, the western and northwestern boundary of that country will be settled, if not terminated now.

On the whole you are doubtless more familiar with the subject than I am, and know better, how these terms compare with what you have before offered and what you have tried to obtain. I have understood that the sum you offered was far greater, and the limits you demanded were far less. In fact you here give nothing[.] You allow the party to retain six millions of acres out of the two hundred millions he gives you beyond what you were willing before to consider as your limits.

I recollect the paper you showed me last summer containing the proposition submitted by Mr. Russell. The present one differs from that, as well as I recollect it, in a variety of respects. 1st it takes in a much greater territory than that did, even four degrees of latitude from the middle of the continent to the south sea. 2d. It indemnifies your citizens, and a very clamorous class of them, to the amount of forty two millions of Francs. 3d. It admits grants of land upon you to a less amount by twelve millions of acres; his proposal being, if I remember right, *thirty-two* millions, this *twenty* millions. 4th The state of Europe is different from what it was a year ago, and admits more readily the legality of Joseph's power. 5th the most striking difference perhaps is in the *manner* of the transaction. That had the appearance of a *new grant* in which the right of the grantor might be scrutinized; this is nothing but an explanation of an old grant; an explanation by the only power on earth, that can now explain it, and a grant that all the world knows was left unexplained, has need of explanation, and must and will lead to disputes, probably to war, if left much longer unexplained.

My duty seems to require that I should state to you one fact, at least what I believe to be a fact, that in this transaction there is no corruption or underhand dealing in contemplation. The Spanish Agent has no under agents. He assures me in the most solemn manner that King Joseph is in great distress for money for his domestic expences, and that he will really receive every dollar that can be raised out of the six millions of acres. And that the loan is to enable him to live till he can get the land surveyed and in a state to settle for his sole account.

This agent will doubtless be well paid; but farther than that I believe the negotiation proposed is just what it purports to be. Should you think proper to pursue this business under any modifications that would not greatly change the substance, I should not despair of obtaining them.

You will judge of the propriety of giving me as speedy an answer as may be, as I expect this agent will not long delay to make his proposition in form, or if not, his master may forbid anything further to be said about it.

With great respect and

Attachment yr. obt. sert.

J. Barlow.

Enclosed with Barlow's letter to Madison were the following memoranda:[27]

"Spain acknowledges that the boundaries of the country ceded to France under the general name of Louisiana by the treaty of St. Ildefonso was not clearly defined in that treaty. And as doubts have arisen and disputes may hereafter arise with respect to the precise boundaries intended, she now declares as a supplimentary article to said treaty that the country therein ceded to France is bounded as follows.—

First beginning at the mouth of the Rio Bravo sometimes called rio del Norte in the Gulph of Mexico and running eastward and southward with the coast of North America bordering said Gulph till it joins the Atlantic Ocean, thence Northward with the coast of North America bordering said ocean to the mouth of the river St. Marys which now forms the boundary of the State of Georgia, comprehending all Islands both of said ocean and said Gulph within three leagues of said coast of North America in the extent above mentioned. Next beginning at the mouth of the said rio Bravo and

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[27] MS. Madison Papers, Department of State. Endorsed in pencil "Barlow J. 1811." The paper is not in Barlow's hand.

running up the same in the middle of its channel till it intersects the 30th degree of north latitude, thence on a due north line to the completion of the 42d degree of North Latitude, thence on a due west line to the Pacific Ocean. The navigation of the Rio Bravo from the Gulph to the 30th degree will be declared equally free for the inhabitants on each side of said River, and the other limits of Louisiana are declared to extend so as to comprehend in the cession thereof all the territories, by whatever local names they may have been called, that on the day of the signature of said Treaty of Saint Ildefonso belonged to the Spanish Monarchy in the continent of North America to the northward and eastward of the lines and limits above described.

All grants of land made by the Spanish government either before or after the date of said Treaty of St. Ildefonso that now remain unsurveyed and unlocated are declared to be null and void except one grant of six millions of acres made on the day of to A. B. his heirs and assigns in fee simple, and another grant of fourteen millions of acres to said A. B. and by him transferred to the Register of the Treasury of the U States in trust as hereinafter mentioned; which two grants shall be valid, and the intention thereof executed on the following conditions:

The grant of six millions of acres is to be laid out, a half a million thereof in east Florida, and the other five millions and a half between the Rio Bravo, and the river Sabine, both at the choice of A. B. to be surveyed at the expense of A. B. and the warrants for the location of the lots are to issue from the Treasury of the U States to be signed by the Register.

The grant of fourteen Millions is to be placed on any vacant land between the Mississippi and the Bravo and South of the 33d degree of latitude within the limits of Louisiana as above at the choice of the Secretary of the Treasury of the U States, to be surveyed at the expense of said A. B. in lots of five thousand acres each.

This latter grant is appropriated to the indemnification of the American citizens for the spoliations committed on their property contrary to the laws of nations in Spain and France, to be more particularly designated in the convention.

It is conjectured that these spoliations may amount to forty-two millions of Francs, that is twelve millions in Spain and thirty millions in France. The lands being surveyed in tracts of five thousand acres and the warrants signed by the Register ready to be delivered at the Treasury, are considered as worth three francs an acre, and are to be received at that rate in full payment for the spoliations by the claimants.

The United States are to make a loan to the said A. B. of one

million of dollars in a stock bearing interest at six per cent. per annum payable quarterly in Washington the principal redeemable in ten years. . . . For the security of the repayment of this money, as well interest as principal, the warrants for the six Millions of acres granted to A. B. shall remain in the Treasury of the U. States to be given out by the Register only as fast as the repayment of the loan is effected, and that only in the ratio or the rate of forty cents an acre. So that a warrant for five thousand acres can be given out only on the repayment of two thousand dollars, plus the interest that will have accrued thereon.—At which rate the warrants for only two millions and a half of acres, out of the six millions, will be delivered when the whole loan is reimbursed, at which time all the remainder of said warrants shall be given up.

And to insure the faithful performance of that part of the contract which regards the survey of the fourteen millions of acres,—one fifth of the loan, or two hundred thousand dollars shall remain in the Treasury, and the lands shall be surveyed by the surveyors of the United States and paid by the Treasury out of the two hundred thousand dollars thus retained for that purpose, and in case that expence of survey should amount to more or less than the two hundred thousand dollars the difference can be adjusted by a clause in the convention.

No greater sum than forty two millions of francs shall be found due for the spoliations and paid for in this way. And a commission shall be established in Paris in the manner to be pointed out by the President, to apportion that sum, or as much thereof, as may be justly due, among the sufferers. The commission shall decide according to equity and the law of nations; and the rule for estimating the value to be paid for shall be the prime cost of ship and cargo.

But in case the American Government should prefer not to confirm the grant of fourteen millions of acres, but to keep that portion of the land to itself, it shall be at liberty so to do, provided it shall pay its own citizens to the full amount of what shall be found due not exceeding forty two millions of francs; and in that case the two hundred thousand dollars shall be retained as the just price of the survey, which the Government is at liberty to make or not; and the two hundred thousand dollars shall nevertheless be considered as a part of the loan to A. B. and repaid accordingly as above stated.

Madison answered Barlow's letter, February 29, 1812, as follows:

VII. Madison to Barlow.[28]

"I am concerned that the prospect of indemnity for the Rambouillet and other spoliations is so discouraging as to have led to the idea of seeking it thro' King Joseph. Were there no other objection than the effect on the public mind here, this would be an insuperable one. The gratification of the sufferers by the result, would be lost in the general feeling agst the measure. But Joseph is not yet *settled* on the Spanish Throne; when so, de facto, he will be *sovereign* neither de facto, nor de jure, of any Spanish part of this continent; the whole of which, if it had not on other accounts a right to separate from the peninsula, would derive it from the usurpation of Joseph. So evident is it that he can never be Kg of a Spanish province, either by conquest or consent, that the Independence of all of them, is avowedly favored by the policy which rules him. Nor would a purchase under Joseph, place us an inch nearer our object. He could give us neither right, nor possession; and we should be obliged to acquire the latter by means which a grant from him would be more likely to embarrass than promote. I hope therefore that the F. G.[29] will be brought to feel the obligation and the necessity of repairing the wrongs, the flagrant wrongs in question, either by payments from the treasury or negociable substitutes. Without one or other or some fair equivalent there can be neither cordiality nor confidence here; nor any restraint from self redress in any justifiable mode of effecting it; nor any formal Treaty on any subject. With justice on this subject, formal stipulations on others might be combinable. . . . .

"Be assured of my affectionate esteem.

James Madison."

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[28] MS. Madison Papers, Department of State, extract.
[29] French Government.

MUNICIPAL PROBLEMS IN MEDIÆVAL SWITZERLAND

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MUNICIPAL PROBLEMS IN MEDIÆVAL SWITZERLAND

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MUNICIPAL PROBLEMS IN MEDIÆVAL SWITZERLAND

By the end of the Middle Ages many European cities had become almost sovereign states. This was not their original condition but was the result of a process extending over long periods of time. Each municipality had its particular history and reached its goal by its own route, consequently none but the most general rules can be laid down for the growth of civic life in this period. No two places passed through exactly the same development. The conditions of their life history were as various as the feudal customs from which they sprang. The towns adapted their courses to their environment and from their original positions of feudal subserviency won for themselves various degrees of independence and self-government.

But, whether obtained by gift, or purchase, or by warfare, it is not the task of this paper to describe the earlier processes of municipal development, but rather to review the situation at the time when the goal of liberty had been reached. It is a matter of considerable interest to observe the conditions under which political and economic life were possible during a period when the destiny of the city was in the hands of its own governors. The task of government was not as complex as it is in a modern municipality, but the burden was by no means light, and the object of this study is to enumerate some of the problems which confronted the city authorities in certain typical towns.

In the first rank of importance stand the problems of political sovereignty. The city which owed no allegiance to a territorial overlord and had only a feeble attachment to the Empire, must lookout for itself in the contest of powers.

It must either prepare to defend itself or make alliances for mutual protection. Both of these measures were usually taken. The Rhine cities had their leagues for offense and defense which at times had the importance of great states. In Switzerland the chief cities were by this time either component parts of the Confederation or in alliance with it. Municipalities, therefore, entered into the borders of the higher state-craft and of diplomacy. The political horizon was larger than the circuit of the walls or the limits of the immediate district, and the problem of political existence itself was imposed upon the authorities. It does not follow from this that the governments necessarily rose to an unselfish standard of cosmopolitan statesmanship. We see at once that the authorities were at one moment engaged in the highest forms of state activity; and at the next in the most minute, if we may not call them the most trivial, details of community life. The first glance at the subject, therefore, shows that our modern conceptions of city administration under constitutional limitations must be laid aside for the time and that this earlier municipal activity must be studied in the light of its own day, and in the perspective of its own landscape.

The principal cities of German Switzerland serve as interesting subjects of study in this connection, because the superior authority, both of territorial lords and of the German Empire, were early neutralized and eventually removed. The cities continued to be in contact with these powers, but they met them as equals, not as subordinates. Even the remote and theoretical subserviency to the Holy Roman Empire was neglected and finally cast off, and the neighboring countries were either allies or enemies.

Nor was there in the Swiss Confederation itself any power which exerted a controlling authority over the cities included in it. The union called for a certain amount of common action and this was given in time of danger, but the Confederation was too feeble to enforce an ordinance for common government. The Swiss attained their political

independence by united effort but in spite of their constitution. There was no central power to enforce obedience, much less any federal law-making body to determine the form of municipal organization or to exert a control of its action.[1]

Zürich, Bern, and Basel, notably, became city states. The towns of those names were not only the chief places in their territories but each governed the territory itself, and the smaller communities within. The rural inhabitants were in an inferior position and the government residing within the walls spoke for the rest. Hence inwardly as well as outwardly the municipality was an independent organism and held a controlling position for which there is no modern parallel.

In diplomatic relations the Confederation held no monopoly. Each canton had the right to negotiate with foreign governments, and even to enter into separate treaties and capitulations. This was specially marked during the period when mercenary soldiers were most in demand. A few selections from the documents will show the importance and variety of the international correspondence of these small municipal states.

The cities of Basel and Freiburg, in 1365, entered into a defensive alliance agreeing to protect each other in case of war on either party.[2] In November of the same year these two take the city of Breisach into the agreement, and in December, the three together accept Neuenburg as a member of the company.[2a]

In 1405, the cities of Strassburg and Basel mutually agree to protect their respective liberties, rights, and customs. In a document of the same date they promise not to enter into

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[1] A brief statement of the federal situation is given in Chapter I of the author's study of "Switzerland at the Beginning of the Sixteenth Century," J. H. U. Studies XXII. A more comprehensive view in the introduction to his "Government in Switzerland," New York, 1900.

[2] Basel, Urkundenbuch IV, No. 295.

[2a] Basel, Urkundenbuch, IV, Nos. 296, 297.

any alliance with Austria during the continuation of their agreement.[3] This treaty was frequently renewed.

Not only alliances defensive and offensive were continually made and unmade, but the advantages of neutrality were also well understood. For instance take the following agreement on the part of one of the neighbors of Basel:

"I, Thüring von Ramstein, Freiherr zu Zwingen and Gilgenberg, make known to all men by this letter, that since the wise and discreet, the Burgomaster, council and people of Basel and their predecessors have always been true and good neighbors to me and all my predecessors, and if God so will shall ever remain so, therefore on account of mutual good friendship, I have entered into an agreement with the people of Basel and have promised . . . . . that whether the people of Basel during this time win in war or are conquered, in whatever way it falls out, I shall neither receive their enemies, nor aid, nor assist them neither secretly or openly in any wise whatsoever, but shall be quiet during the war, and toward both parties remain steadfast by my word and honor without deceit."[4]

Negotiations of larger scope are visible in the instructions of the council of Zürich to its delegates to the federal Diet, 29 June, 1413. . . . . . "we are unanimously agreed that when our delegates and those of the Confederation come together next Tuesday at Lucerne to make answer to the Roman King, the delegates whom we shall send on that day shall have full power to act and answer on behalf of our city in whatever the confederates act and answer."

"But in case they are not unanimous in this answer, that whatever the delegates of Bern and Solothurn answer and enact, they shall on our behalf answer and act with them."[5]

Negotiations of like character were opened again in 1415, beginning with the diet and then going directly to the king.

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[3] Basel, Urkundenbuch V, Nos. 331, 332.

[4] Basel, Urkundenbuch V, No. 333, March 17, 1405. No. 347, July 20, 1406, is a neutrality treaty with the Margrave Rudolf von Hochberg.

[5] Züricher Stadtbücher, II, 12.

The instructions for the embassy to King Sigismund in regard to his demand for help against Duke Frederick of Austria were passed by the council of Zürich, on April 3, 1415. The conditions under which they would lend aid included guaranty of their rights and privileges and that peace should not be made without their knowledge.

By the 11th of April, 1415, the embassy had returned and the council passed the following resolution. . . . "whereas we had sent the upright and wise Heinrich Meisen, Altburgomaster, Felix Maness, and Conrad Täscher, members of our council to our lord the king as an embassy to demand of the king the aforesaid act and articles, in order that if the act prevailed then we should promise him our assistance. As these our ambassadors have performed wisely and well all that we had commanded and moved according to our desires and have brought back the king's letter with his majesty's seal unbroken, [resolved] that we have promised our lord the king fair assistance and that we will give him fair assistance in this war against the Duke of Austria."[6]

In a treaty between Count Hans von Tierstein, Austrian governor of Ensisheim, and the cities of Basel, Freiburg in Breisgau, Colmar, and Breisach, July 16, 1450, the parties agree to the values to be accepted for the coins current in their territories.[7]

The cities of Basel, Bern, and Solothurn in 1441, entered into a treaty for mutual defense and provide for the peaceful settlement of disputes between their governments or between their citizens. The parties are not territorial princes, but "We, Arnold von Ratberg, knight, burgomaster, the council and citizens in common of the city of Basel, and we, the schultheiss, council and citizens in common of the cities of Bern in Uechtland and Solothurn."[8]

In 1449, the city of Basel entered into an arbitration treaty with the Duke of Austria. Just as any two nations

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[6] Züricher Stadtbücher, II, 22, 23.
[7] Basel, Urkundenbuch, VII, No. 276.
[8] Basel, Urkundenbuch, VII, No. 2.

of to-day might agree to submit their difficulties to a court of arbiters, so this territorial prince, and the mayor and council of a city become parties to what is practically an international agreement.[9]

In 1461, a treaty was concluded between various princes and cities, for resisting the encroachments of the Westphalian law courts. The powers included were Frederic, Pfalzgraf of the Rhine, duke of Bavaria, imperial arch-cupbearer and elector, Ruprecht, bishop of Strassburg, and landgrave of Alsace, Albrecht, archduke of Austria, etc., Charles, margrave of Baden, Conrad, lord of Busnang and Montal, Bartholomew, abbot of Murbach, Johann von Luppfen, landgrave of Stüllinger, etc., Jacob, count of Lichtenberg, and Louis his brother, William, lord of Rappoldstein and Hohenack, and finally, the Burgomaster and councils of Strassburg and Basel, Hagenau, Colmar, Schlettstadt, Wissenburg, Mülhausen, Kaiserberg, Ober-Ehenheim, Münster in St. Gregorienthal, Rossheim, Duringheim, Offenburg, Gengenbach, Zelle, Freiburg, Breisach, Neuenburg, and Endingen.[10]

In 1475, a treaty was entered into between Louis XI, of France, and the Confederates in which military assistance could be demanded of the Swiss. The stipulations were not as clear as they should have been, so the city of Bern passed an explanatory resolution, in which it took upon itself the responsibility for the proper fulfillment of the treaty.

" And if at any time the aforesaid Confederates upon the demand of the King, do not send the aforesaid number of 6000 men to his aid, we agree and promise to make this number complete and make ourselves responsible to the King therefor." [10a]

From these few instances alone it is apparent that the cities in question enjoyed the privileges of nations in certain phases of their government. But their sovereign rights and

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[9] Basel, Urkundenbuch, VII, No. 194.

[10] Basel, Urkundenbuch, VIII, No. 177.

[10a] Eidgenössische Abschiede II, 921. Oechsli, Quellenbuch I, 163.

duties had also their sovereign perils. If they might enter wars in behalf of the powers about them, they must also expect attack. This expectation was amply fulfilled during the period in review, and notwithstanding alliances with kings and adjacent commonwealths, the cities were obliged in the last resort to depend upon their own defenses. In fact, from the foundation of the towns to the beginning of their modern history, the first requisite of independent existence was adequate defense of the immediate circuit of habitation. At present, under large general governments, only a few towns at important strategic points are fortified. During the period under consideration every small center ot government must prepare for the worst.

The nature of that defense was a most important factor in mediæval municipal life. As everybody knows, the warfare of that day called for walls. Where natural cliffs were lacking, masonry was called in to provide barriers against hostile men and hostile artillery at close range. Hand to hand conflicts were anticipated in which the possession of a stone wall and a ditch was in question. As time went on the machinery of destruction grew more powerful and the masonry grew heavier. The municipal problem increased at the same pace.

A city wall, in the first place, called for an original outlay of a serious character, whatever the size of the town might be. In a small place the burden would fall on fewer and in large towns the circumference of the barricade would be greater. In earlier days the fortification of towns was sometimes assisted by the territorial lords. A market tax or the proceeds of other contributions would be devoted to the walls. Upon a foundation thus laid a town might maintain its fortifications a century or more by simply keeping them in repair, but in the later mediæval period it became necessary to enlarge and the enclosure of a greater space laid the burden of a new wall upon the citizens themselves. In all cases there was a continual outlay for maintenance, for the preservation of moats, and the prevention of decay.

Walls, therefore, became one of the fixed charges of a city financial budget, an element which no longer figures in the problems of municipalities. Specific instances may be cited to give a glimpse of the ways and means of maintenance.

The code of Zürich of 1304 devotes the fines for certain offenses to the use of the fortifications.[11] The Emperor Sigmund granted to the city of Basel in 1431 the right to lay taxes and excises on its citizens for the support of the "walls, moats, bridges, and other building operations."[12] This corresponds to the grants for "murage and pavage" made by English kings about this time, but before the close of the fifteenth century the Swiss towns were independent of such authorization to employ their own taxes.

The council must take oath never to give away the property of the city or to permit the walls to be injured. They must not permit strong houses to be built outside the walls lest they be used to command the gates.[13]

In the records of the city council of Zürich under date of 1423, is a settlement of a disputed title to a piece of property, and with it an order that the city wall which abutted on this property should be kept in repair by the owner without expense to the city.[14] This obligation was also laid upon the nuns of the cloister of Oetenbach when they moved to a situation inside the gates. Under what principle such a tax could be imposed is not explained, nor can it be readily determined how much or little of the wall was thus maintained.

The preservation of the moats and ditches demanded continual watchfulness in order to prevent them from being used as dumping places for all sorts of refuse. Penalties were imposed for disregard of this important matter.

There were also people who wished to have private doors in the wall for more convenient access to their properties

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[11] Richtebrief der Burger von Zürich, I, 35, IV, 10.
[12] Urkundenbuch, Basel, Bd. VI, 285.
[13] Richtebrief, II, 23, 24; III, 43, 44; Rechtsquellen, Bern, I, 75.
[14] Züricher Stadtbücher, II, 337.

outside. In Zürich this privilege was granted to one or two persons on condition that they close up the door with masonry when notified by the city authorities.[15]

One can safely imagine the variety of business imposed on a city council in keeping up this portion of the public works, however solidly the walls may have been built originally. Yet, on the other hand, some of the most significant social results are due to the fact that the fortifications were built so permanently. It was so great a task to rebuild that the walls would remain for one, two, or three generations on the original outline. Cities were kept in the same framework for fifty to one hundred and fifty years. The historical maps of all these towns show successive enlargements, but these are spread over long spaces of time.

Basel, for example, occupied in the thirteenth century a space which now seems but a small semi-circle in the center of the present city with a smaller piece on the other side of the Rhine. The greater part of the line of fortification in that period dated from the eleventh century, and it was 1626 before a new circuit was enclosed. This latter line of wall remained until 1860, when it gave place to boulevards. Bern was founded on a narrow peninsula in the Aare river and was destined, like New York, to grow in one direction. In 1191 the settlement received both a charter and a wall of defense. The size of the first enclosure does not seem large when examined now, but it was probably a liberal space for the inhabitants at the time. A new wall was built farther out about 1250. This sufficed for almost a century, for the last wall was erected in 1345. Outlying fortifications were added in the seventeenth century, but these did not serve as city limitations in the way that the earlier walls had done. The lines of successive expansion can be easily traced in the present streets of Bern.

Strassburg starts with a diminutive Roman city which expands first in 720. The next enlargement occurred be-

[15] Züricher Stadtbücher, I, 8, 1315.

tween 1202 and 1220. A third expansion culminated about the middle of the fourteenth century and a fourth was completed in 1390. It took a half century to enclose the next addition. The citadel which was added in 1684 had a military rather than a social significance, hence the framework of civic life in Strassburg remained fixed for long continuous periods throughout the middle age and early modern times.

The city walls and other means of defense deserve greater attention than they have received as a factor in the social conditions and problems of the time. There was not only a financial question to solve, but there was also a sanitary problem to encounter. The latter may not have been appreciated by the contemporary authorities, and it may be necessary to call it rather a sanitary effect. The very choice of a town site was in most cases determined by its defensibility. If it was situated on high ground the chances for natural drainage were favorable, but if in a low spot with a sluggish moat about it, there was a distinct hindrance to health for long periods of time.

We are amused at the narrow streets which may yet be found in some of these old towns. But it is not surprising when you consider the small area in which the community was confined. Undoubtedly the middle ages were not sufficiently aware of the value of air space either inside or outside of their houses, but the presence of the walls gave a constant inducement to economy of ground. The contemporary views and plans of towns show very little room for expansion. The pressure of population gradually pushed the houses outside the gates but there was always some wall to consider. At first the extra-mural inhabitants must be able to get inside easily in time of attack. Later the boundaries of a new wall fixed once more the limits of expansion. Consequently from the beginning to the end of the period there was every inducement to confine both streets and buildings to narrow space. The builder could expect a change of boundary scarcely within a lifetime.

The problems of police regulation, sanitation, and crime

were, therefore, largely dependent on the primary factor of defense, a matter growing out of the spirit of the times and for which the particular locality was not responsible. While sitting in judgment on the activities of city authorities of that period it would be well to consider the limitations, set for them, both in space and scope of action. There will be plenty left to condemn according to modern standards.

Turning to the larger questions confronting council and magistrates within the boundaries of their town or territory, one finds at an early date that the whole welfare and activity of the citizen is in their control. The laws of property, inheritance, and everything relating to commerce and exchange; criminal law including the power of life and death; all the phases of private as well as public law are not only administered, but the principles are established by the city authorities. Undoubtedly the precepts of criminal procedure grew up by degrees out of common custom and feudal practice of Germanic peoples, but the codes followed in the later middle age were not imposed by some superior state above the city but in the case of the larger cities were formulated by each city for itself. Likewise the laws of property and inheritance in these various towns have a resemblance to one another which shows their common derivation, but even in these there are marks of individuality which would suggest, if we did not otherwise know, that each town was autonomous in this respect.

It is not the purpose of this paper to describe the character of the criminal and commercial law, but it is of great significance to know that the same magistrates that administered the minute regulations of streets, markets, and petty misdemeanors, had also the power of banishment, mutilation or death. These latter functions were not in the hands of any superior general authority which would thus permit the town government to devote its whole attention to local affairs, but the whole thing, from the treaty with France to the price of wine, from homicide to fire-buckets, is undertaken by the local officials.

One might suppose that such a condition of things would bring forth a succession of important men in places like Basel, Strassburg, Zürich, or any of the South German cities which enjoyed this sovereign liberty of action. As a matter of fact the list of great statesman is not large, Occasionally a man of large caliber comes to the front in European politics, but for the most part the phenomena gave birth to general vigorous citizenship. The towns had reached their freedom in the first place through their own efforts or shrewdness, hence they were in the mood to maintain and improve their advantages with energy. In Switzerland they were able to throw off all semblance of imperial overlordship and to perpetuate their independence through periods of greater danger. The Rhine cities did not maintain themselves so long but for a noteworthy period set an example of manly self-sufficiency and preserved the seeds of modern democracy.

After the fundamental facts of life and property, the municipal authorities were occupied with the daily concerns of commerce and social comfort. There was no lack of vigor in the administration of these, but the energy was expended in a somewhat different way from that now expected of city fathers. For example, each city determined for itself and its dependent territory all matters concerning weights, measures, and coinage. A supervisor of weights and measures is a familiar official, but we do not ordinarily include a master of the mint among municipal dignitaries. The councils were obliged to consider questions of the fineness of metal and to establish the forms and subdivisions of coinage. From time to time they fixed the rate of exchange with the neighboring or more distant foreign monies. The basis of currency was inherited from Rome and the earlier middle age, but changes and deterioration were constantly at work. The right to coin money was one of the sovereign powers which every place was jealous to maintain. Consequently the interchange of goods must have been seriously hampered by the multiplication of coins of different value.

This trouble continued almost down to this century in South Germany and Switzerland and if the coinage of that period is the distraction, if not the despair, of the collector, it could have been only a little less to the contemporary. The records show that numerous attempts were made to establish a common standard among neighboring towns, or to agree upon a fixed rate of exchange. Matters which now are regulated by parliaments, or the combined wisdom of great nations, were at that period in charge of town councils. Fortunately the habits of trade made certain gold coins, like the Florentine ducat, and the coins of the same weight called the "Rheinische Gulden" an international legal tender and thus the difficulties were somewhat lessened by being confined to the silver coinage.

As an example, the monetary ordinance of 1351 in Zürich provided for a change of currency. It was forbidden to buy or sell with the old pennies, yet debts were to be paid in the coin in which they were contracted. No one should offer bullion silver for sale without the knowledge of the master of the mint, who has the first right to purchase. The goldsmiths might buy broken silver for use without special permission, but should turn over to the mint what they do not need for manufacturing. No one shall conduct an exchange business without the consent of the council and the mint-master, except in certain named coins not needed by the mint. No banker or Jew should lend any money except in the new coinage struck in Zürich or in gold guldens. New coins must not be melted down. Nor must any one within three leagues of Zürich buy silver without the consent of the mint-master, and if the latter wants the silver must sell it to him at the original purchase price. Likewise no citizen should without permission export silver from Zürich. Buying and selling must take place with the new coins, unless one desired to use gold guldens, but this must be at the rate of exchange given by the mint.

The coinage agreements were not necessarily in favor of stable currency. In 1421, an understanding was recorded

that Zürich and Lucerne agree to strike coins of the same value, neither more or less, than those of Bern and Zofingen. Whenever they pleased they might test the coins of the latter places and if found to be lighter than their own they would reduce the latter to the same basis. This curious policy was followed almost to the end of the eighteenth century with the consequence that the Zürich pound fell from a silver value of 20 francs in the thirteenth century to 1.16 francs in 1780.[16]

The records contain many ordinances and agreements about money, but the foregoing citations will indicate the importance as well as the minuteness of the power thus left in the hands of many towns.

As to forms of government the Swiss cities may be divided into two general classes. In one the trade guilds had an active part in the administration, in the other they had not. This does not mean to say that in one case the guilds were regarded as the most important element, but that their right to a share in the government had been recognized, while in the other class of cities the aristocracy took the affairs of State wholly in their own hands. The two prominent examples of the respective classes are Zürich and Bern. In Zürich a revolution which took place under Rudolf Brun in 1336 was clearly an echo of a movement in Strassburg about the same time. There was in both cases a demand for more popular representation, and the result was the admission of the masters of the guilds, *ex officio,* as members of the city council. This principle remained in the government of Zürich for several centuries thereafter, and one may regard it as an unalterable fixture during the period here under consideration.

But notwithstanding the recognition of the working classes there continued to be a preeminent position reserved for the old families. Titles of nobility were carried by some of the associated burgers, and others on account of

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[16] Züricher Stadtbücher, II, 153 and note.

their wealth, influence, or distinguished services received orders of knighthood from foreign potentates. The possibility of aristocratic government was by no means abolished by the constitution of 1336, for Rudolf Brun himself demanded and obtained the position of sole burgomaster for life, and at various other times dictatorships were assumed for longer or shorter periods. These were, however, abnormal situations. Class distinctions were keenly felt, as may be seen in the sumptuary laws of this and the following centuries, but it was a most important fact that the advancement of the industrial classes was made possible. Although contemporaries might not have formulated the matter in the same way, the inhabitants were in fact divided into two classes, the citizens of wealth and the citizens of toil. The first class included the aristocratic families, the larger merchants, and in general those who were financially at ease. The amount of wealth required to give a man distinction was much less extensive than at present. The tax lists show that the richest men had small fortunes compared to those now held in the same city. This portion of the population was naturally smaller in number and was gathered into one guild, called the Constafel. This term was derived from *constabularius,* the designation of a high feudal office, but it no longer implied any duties of that character. The word had come to mean simply a title of distinction, just as in the earlier middle ages the title senator was given to any man capable of holding office. The guild of the Constafel was therefore the assembling place of the aristocracy.

The industrial classes were grouped into thirteen trade guilds, whose organization differs in no essential from the forms found in other countries at this period. In their influence upon the administration of the city government aristocracy and labor were about equally represented. It would be inexact to say " capital and labor " in this description, for every master of a trade was a capitalist and employer in a small way. There was as yet no wage earning class entirely dependent on capitalists for opportunity to

labor. The distinction in classes was made partly in obedience to the natural reverence for well born families, for the capacity for leadership, as well as for wealth itself and its stake in the commonwealth.

In outline the city government consisted of a smaller and a larger council, with a burgomaster at the head. The Kleiner Rath, or smaller council consisted of twenty-six members, of whom thirteen were from the Constafel, and the other thirteen were the masters of the trade guilds. This council met every day if necessary, and was the real executive force of the city.

The great council, known as the Grosser Rath, was composed as follows:

Members of the smaller council	26
Members of the outgoing smaller council	26
From the trade guilds, 6 from each	78
From the Constafel	78
Appointed at large by the burgomaster	3
The burgomaster himself, as presiding officer	1
Total membership	212

After 1370 this larger body was commonly spoken of as the council of the 200, or, for short, "Die zweihundert." Its meetings occurred at irregular intervals for the more fundamental business of the city state.

Elections to the councils took place every six months, at Christmas and midsummer. The burgomaster also was chosen every half year, but it came to be the practice to consider the outgoing mayor as part of the government, and thus two chairmen were constantly available. At the dates mentioned the guilds of Zürich met in their respective assemblies and chose their masters and their representatives for the two councils. These newly elected bodies thereupon met together and chose a burgomaster.

The same general form of government was found also in Basel and Schaffhausen. The number of members in the councils was larger in Basel and smaller in Schaffhausen than in Zürich, but the principle was the same. In Basel the representation of the guilds was introduced about 1350.

These constitutions present an interesting subject of study, for it is still a question how much popular government was possible under their provisions. Analysis of the membership of the guilds in Zürich, for example, brings out the fact that about every man who was not in wardship or dependent service was connected with some guild. In Basel, and perhaps other places, even the widows of deceased members could carry on the business and retain membership, but keeping in mind only that part of the inhabitants who would be called upon for all kinds of civic duties, one finds them all attached to one or another of these organizations.

The connection of the citizen with politics began with the election of his guild master, for the latter was an *ex officio* member of the lesser council. His next opportunity came with the election by the guild of its six representatives in the great council. The common man, therefore, made himself felt through his business organization rather than through a ward or precinct of the city. Such political subdivisions did not exist. In fact the guild system for the exercise of political rights continued down into the nineteenth century, when men of any profession had to be enrolled among butchers or bakers, or some other trade in order to vote. In the fourteenth and fifteenth century this was a more natural procedure, yet the amount of influence upon public affairs depended upon the quality of his guild. On account of wealth and condition the guild of the Constafel was allotted as many members of the lesser council as all the other guilds put together. No doubt this group had more at stake in the commonwealth than any other class. The trades guilds varied in size, but representation in the government was the same for all, one each in the daily council and seven each in the Two Hundred.

In this great council also the number from the Constafel was equal to all the rest of the elected members put together. The burgomaster and the three delegates at large would be the only uncertain quantity, in any division of

party interest. Referring to the previous table it will be noted that the Constafel are represented in the great council by one-half of the incoming and outgoing lesser council and by seventy-eight others elected for the purpose. The thirteen trade guilds have six each, and one-half of the lesser council, making one hundred and four for each class. Representation therefore was not on a basis of general suffrage, but was held in check by the double privilege of property.

A further analysis of the government permits one to make a fair estimate of the democracy present. The population of Zürich in 1357 has been estimated from the tax books to have been 12,375. In 1374 it was about 11,680, and in 1410, 10,570. During four centuries the number of dwelling houses remains almost stationary between 1000 and 1100. The population at the close of the fifteenth century had declined to something like 7000, but if we take an average number of 10,000 residents as a maximum with which to calculate the ratio of representation, the result is interesting.[17] According to the usual proportions the adult men would make about one-fifth of the community, or about 2000 persons. At that figure a legislature like the Two Hundred would provide 1 delegate to every 10 voters, or 1 to 50 inhabitants. Even if the estimate of male inhabitants should be made twice as large as modern figures warrant, we should have a ratio of one delegate to 20 voters, a representation which comes very near to pure democracy.

If we eliminate from this the special representation of wealth, the actual proportion of councillors voted for by the great body of the citizens would be smaller. There is no way to show exactly what this ratio was, because the number of members of the Constafel guild is not closely ascertainable. We simply know that it was a small part of the civic body, and that the plan was in effect a combined representation of interests and population. Practically every-

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[17] Das Alte Zürich, II, 399.

body who was a working force in the city had a voice, although not an equal voice, in public business. The superior representation of wealth marks the boundary of the contest of social forces for the time being.

In 1416 an ordinance was passed to the effect that all nominations in the guilds for members of the great council should first be submitted to the college of guild masters. This was practically a control of the "bosses" which would prevent the choice of men who might favor the aristocracy, or stand in the way of the industrial interests of the city. This inspection could also control the external policy of that portion of the council. We must note, however, that this control is not usurped by the political managers, but openly recognized and provided for by ordinances.[18]

Aristocratic government in Swiss cities was represented in the constitutions of Bern, Lucerne, Freiburg, and Solothurn. Taking Bern as the largest and most influential, we find at the outset that one of the cardinal principles of that city was that guilds were not permitted to have any voice whatever in the government. What is more curious is the fact that the rulers took measures even to the extent of forming military alliances to prevent the guilds from ever getting any hold upon administration. Most curious of all is the agreement which Zürich was willing to enter into. That republican town promised to lend armed assistance to the government of Bern if any one should attempt to overthrow the existing constitution and introduce the régime of guilds. In return for this the Bernese were to come to the help of Zürich if the political power of the guilds was threatened. In Bern these organizations were confined to their industrial functions.

In the aristocratic cities above mentioned there were in the fourteenth century two councils, as in Zürich, but the difference lay in the method of appointment. Bern had a small council of 26 and a great council of 200. Lucerne

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[18] Züricher Stadtbücher, I, 403.

had a small council of 36 and a great council of 100, while in Freiburg the proportion was 24 to 200. Formerly there had been only a single small council of an aristocratic character with a Schultheiss at the head. The constitution of Bern now under consideration was itself a concession to a brief labor movement which began about 1295 and got no further. To appease the demands of the guilds a new board was created, called the Sixteen, or the Secret Council, and consisting of four men from each quarter of the city. This board, with the assistance of four of the chief officers of the government, selected a council of two hundred, to which all classes were eligible. If the members were properly chosen this council could be a fairly popular body, but it is easy to see how in the course of time the great council became simply an instrument for confirming aristocratic power. With lawmakers of its own appointing, the upper classes made the right of citizenship more and more difficult to obtain, so that in the sixteenth and seventeenth centuries the government of Bern was almost a family affair.

If the study of political forms had been the object of this paper it would have been more appropriate to begin with the description of governments. It is desirable for once to point out the remarkable autonomy of these city states, regardless of the form of administration, and to approach the problems of municipal management from the standpoint of the authorities, no matter by what mandate they came into power.

Taking up once more the administrative problems of these governments we observe that the subject of water supply does not come forward for serious consideration at a very early period. The chief cities of Switzerland were situated on important rivers or lakes, and we may suppose that in their most primitive times these sources were employed. This might suffice for a very small population, but in the fourteenth and fifteenth centuries, it was clearly not convenient to bring water from the riverside for household use. The earliest mentioned sources of drinking water in Zürich

were wells on private property. We have no means of knowing how abundant or copious these were at any early period, but in the course of time it became necessary to maintain some wells at public expense. Early in the fourteenth century wells are found on public property and after the sixteenth century they are found in the accounts of the office of public works. At various dates up to 1680 nineteen wells are thus mentioned as maintained at public expense.[19] Water was drawn from these either by ropes alone, or with the assistance of sweeps or windlasses of various kinds.[20] The drawings found in the contemporary chronicles depict the well-known devices used in early times in America, and which are still to be found in remote regions.

The earliest example of a running fountain in Zürich is mentioned in 1307. Water for this was brought in pipes from the hills, and this method appears to have been an uncommon affair for that town. Later in the fourteenth century an attempt was made to distribute some of the river water. Large water wheels were erected on the bridges for which the current furnished the motive power and the water was dipped up in buckets attached to the rims of each wheel. This was caught in a trough and flowed thence into pipes which fed seven public fountains and nineteen private hydrants. Drawings of these wheels are to be seen in Edlibach's chronicle about 1500 and are still there in pictures of the eighteenth century.[21] In the seventeenth century mechanical skill rose to the point of erecting a pump on one bridge to furnish water for the old Lindenhof, an open space on a knoll considerably elevated from the level of the river.

But the rivers were not the most desirable supply, for notwithstanding their mountain source and general clear

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[19] Das Alte Zürich, 410-414.
[20] Zemp, Bilderchroniken, 351.
[21] Zemp, Bilderchroniken, 272. Von Liebenau, Das Gasthof und Wirtshauswesen der Schweiz in älterer Zeit, 56.

appearance, they were more suitable for commerce and drainage. Eventually springs in the neighboring hills were brought into service. The earliest notice of water conducted from a considerable distance dates from 1425. About this period various new fountains were established in the streets and others were added from time to time. At the end of the eighteenth century there were thirty running fountains for public use, but a system of water works in the modern sense was first undertaken in 1868. The water problem of the later middle ages, therefore, was largely left to the self-help of the citizens. Private wells were supplemented by public wells and fountains to which the burgers brought their buckets and carried away water for use in their houses. That it was not commonly carried into the house in pipes is clearly evident from the careful precautions taken when permission was given to make connections with the mains which fed the fountains.

In 1421, the lesser council passed the following order:

" . . . Burgomaster and council permit and allow the provost of the cathedral in his court at the official residence, and Heinrich Suter in his house 'at the Fûlli,' each one of them to have a fountain with a faucet, one from the fountain in the 'Kilchgasse' and the other from the fountain in the 'Hofstatt.'" But both are subject to revocation.[22]

In 1425, there was another order of the same character:

"We, Burgomaster and council of the city of Zürich, have on this day, the date of this writing, granted and allowed our dear fellow Councillor, Rudolf Stüssi, upon his earnest request, to conduct a fountain out of our city fountain and out of the pipes situated in front of the garden of our worthy burgomaster Meisse at the Linden outside the gate, across the street into his own garden and to place there a fountain, but in such a way that he proceed modestly in the matter and not take so much water that it bring noticeable damage to the city fountain; and also that he make the fountain in

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[22] Züricher Stadtbücher, II, 330.

his garden with a faucet, and lock it with a key, so that not everybody can come thither, and that the city fountain suffer less damage. But if it should happen that this fountain should work noticeable damage to the city fountain, whether it be a short time or a long time hence, or if we or our successors decline to permit the said Rudolf Stüssi or his heirs to continue this fountain, for any reason whatever, he or his heirs shall be obedient to us and our successors in all respects and shall discontinue the fountain and conduct the water back into the city pipes from whence he now takes it, and shall see that it is well closed and that the city fountain suffers no further damage, and they shall do this at their own cost without expense to us or to our city." [23]

There is no mention of rental or payment for this privilege. The beneficiaries are prominent citizens who can afford to lay the additional pipes at their own expense. Ordinary inhabitants would go or send to the nearest fountain for their drinking and washing fluid. The cost of the public water works during these centuries would not seem to be a great burden on the community. The efficiency is harder matter to determine. In a compact community with mediæval conceptions of convenience the supply doubtless seemed ample for household purposes. The necessity of bringing water so far by hand undoubtedly made people use less of it than if it could have been drawn from a spigot in the house. The problem of sanitation is closely affected by the water question. In both cases there were the natural difficulties and the natural inclinations to be counted in estimating the cleanliness and health of the place. Personal cleanliness would seem to have been cultivated in the summer time at least, if one may judge from the accounts of swimming and water sports. Public bath houses appear also in the municipal documents.[24]

Basel had the misfortune to be shaken down by an earthquake in 1356 and the ruin was completed by fire. It gave

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[23] Ibid., II, 372.
[24] Urkundenbuch, Basel, Zürich, etc. See indexes of same.

the town an opportunity, however, to begin anew, and in the next century it presented a very prosperous appearance. An interesting description of the city is given by Aeneas Silvius Piccolomini, afterward Pope Pius II, who spent some time there as secretary to certain cardinals in attendance at the Council of Basel. In a letter written in 1436, he records his favorable impression of the streets, buildings, churches, and general aspects of the place and makes note of the fine market places in which fountains gushed forth clear sweet water. "In general, there are numerous fountains in all the streets, even the Tuscan Viterbo is not watered with so many pipes. Whoever wishes to count the fountains in Basel must count the houses.[25] The houses of the citizens are astonishingly well arranged inside and so decorated and attractive that they are scarcely equalled by the Florentine. They all gleam with cleanliness and are mostly frescoed; every house has its garden, fountain, and court." It is evident, therefore, with all due allowance for the exaggerations of the enthusiastic visitor, that Basel had kept pace, if not surpassed its near neighbor, Zürich in the conveniences of water.

Periodic destruction by fire seems to be in the history of many of these towns, great or small. But thatched roofs and wooden structure give way in the course of time to stone and tiles. Protection from fire proceeded more in the line of prevention than in extinction. Building laws and curfew bells are repeatedly reenacted and improved. It was against the law in these times to go into a place where there was hay or other inflammable material with an open light. It must be enclosed in a lantern. Provision for fire extinction was made also. An order of council of 1416 gives a list of the houses where fire buckets are to be found. Thirty-six places are named and each was to have from that date on twenty-five buckets for use in case of fire.[26]

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[25] Oechsli, Quellenbuch, II, 372.
[26] Züricher Stadtbücher, II, 414.

The stationary character of this protection may be seen in the laws of Lucerne just a century previous. The code of 1310-15 ordains that "every citizen shall have a fire-bucket in his house and at night shall keep his great barrel full of water." At that time also it was forbidden to any citizen or servant to thresh or fan out his grain by candle light, an ordinance which throws as much light on the primitive occupations of the town as it does upon the system of fire extinction.[27]

Sanitation, like many other things in a mediæval town was left largely to the self-help of the citizens, yet the authorities attempted to enforce a few principles. The streets must have received a certain amount of attention, for the ordinances are constantly renewed in the fourteenth century to the effect that if any one throws manure in designated places he must remove it within eight days.[28] The laws of Lucerne required every householder to sweep and make things neat before his own door once a week. To throw dirty water in the street by night or day was subject to a fine. "And whatever smith bleeds a horse, he shall catch the blood in a tub or bucket so that it does run into the street, otherwise he will pay 1 shilling as often as he does it."[29] But the people would keep swine inside the town. A statute of Bern in 1313, however, went so far as to say that if any one after that date kept a pig-sty in front of his door he should be fined a pound.[30] One might infer that the swine for a long time had the privilege of the streets, for in 1403, on the sixth day of November, the burgomaster and councils of Zürich, gave notice that after one year from the following Christmas "no one shall have any swine in the city except on his premises in stables, and shall not let them go out on the street. However, every one may take his swine to the water to drink in the day time,

[27] Printed in Kopp, Geschichtsblätter aus der Schweiz; Oechsli, Urkundenbuch, II, 257, etc.
[28] Züricher Stadtbücher, I, 46, 343, etc.
[29] Oechsli, Quellenbuch, II, 260.
[30] Rechtsquellen, Bern, I, 60.

provided his servant is there. If any desires to clean out his stable he may let his swine out, provided his servant is at hand, and after the watering and the cleaning up he shall drive them in again properly." The fine was five shillings for every hog found on the street, "and this fine is to be collected from the owner," not the swine.[31] The long notice in advance and the care with which the needs of the animals are foreseen in the ordinance, all leave the impression that the authorities were reluctant to attack with haste or violence an established institution. A century later (1505-1512), geese and ducks were deprived of their previous freedom of the streets, and hens must be kept within bounds.[32]

The streets for a long period must have been difficult to keep in a sanitary condition. The use of pavement arrived late. Zürich began to lay stone pavement about 1403, and evidently proceeded slowly.[33] The condition of things at night can be inferred from the police regulations, whereby any one who appeared on the street after the curfew bell without a light was liable to arrest as a suspicious character.[34]

As it is the object of this paper to state in outline a few of the problems of municipal life from the standpoint of the magistrates, rather than to give a history of city administration, it must suffice to pass over with brief mention the control of trade and industry. In this the authorities were assisted by the guilds with their special rules for each occupation, but they were often obliged to settle matters by the fixing of wages. The principle of governmental interference speaks out of the records with increasing distinctness through these centuries. For example, the council of Zürich in 1335, fixes the maximum wage for carpenters. In 1424, it is still doing the like for agricultural day laborers, and in the seventeenth century in Basel, the municipality

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[31] Züricher Stadtbücher, I, 344.
[32] Das Alte Zürich, II, 410.
[33] Ibid.
[34] Ibid., I, 90.

publishes a book of eighty pages giving the price of every commodity and every service to be had in town, from a suit of clothes to a hair-cut.[35] The market ordinances and the labor regulations of the fourteenth and fifteenth centuries may well be studied simply to see how many things the authorities had to think of.

The same body of magistrates that made treaties and capitulations with kings and emperors, found it necessary at times to regulate the clothing and expenditures of private citizens. They were often busy with the cost of wedding feasts, and the price of a christening gift. The care of tourists, for which Switzerland now appears to exist, was already a subject of legislation. In the year 1400, if not before, there seems to have been a practice among boatmen to chase after travelers to induce them to use their conveyances, much to the discomfort of the pilgrims. Boatmen are commanded, therefore, to stand in their boats and call out if they like, but not to hinder the passengers. A year or two later an ordinance for inn keepers forbids them to run after guests or send their servants to induce them to come to their houses, "But one may stand in his door and from there invite a guest into his house with modesty." [36]

The same body that made this ordinance might soon be ordering the transportation of an army.

The closing centuries of the mediæval period was the period which witnessed the rapid expansion of towns into states. By lending money, by direct purchase, by conquest, or by inheritance, municipalities came into the possession of feudal rights which hitherto belonged to individuals. The town governments simply took the place of the former governors, and exercised their rights in exactly the same way. By an accumulation of these properties the territory of Zürich or Bern was built up to its present dimensions.

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[35] Züricher Stadtbücher, I, 72; II, 362. Der Stadt Basel, Tax-Ordnung, 1646.

[36] Züricher Stadtbücher, I, 335, 336.

The government extended over the whole of this area, but the governors were the inhabitants of the walled town. The peasants and villagers outside were not citizens but subjects of the city.

The evils of this were great, for the country was regularly treated with unfairness. The city desired no competition in trade or industry on the part of country artisans. Country made goods were forbidden the city or grievously burdened with taxation. The trade guilds were afraid of their own subjects and got behind the protection of their walls. This policy excited bad feeling between the two classes of inhabitants and occasional outbreaks of revolt. In fact, it took centuries of government to teach the necessity of equal rights for all citizens.

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INDEX

Acadia, 383.
Accomac Co. (Va.), 476 (note), 488, 504 (note), 512 (note), 518 (note).
Adams, Herbert B., quoted, 150 (note), 154 (note), 164 (note).
Adams, John Quincy, 571-574, 585, 586, 590-600, 603 (note), 611 (note), 622-628.
Addison, Daniel Dulany, 227 (note).
Admiralty Courts (Va.), 469-471.
Aigleville, 561, 563.
Aiken (S. C.), 69.
Aiken, Judge, 30.
"Aile," The, 569.
Alabama, French exiles in, 557-565.
Albany (N. Y.), 320.
Albemarle, Duke of, 306.
Aldrich, Judge, 72, 80.
Allyn, Mr., 343.
Almenara, Marquis of, 638-639, 641-656.
Alston (S. C.), 24.
Alvord, J. W., 55.
Amelia Island, 618-621.
Anderson, Joseph, 230 (note).
Andros, Sir Edmund, 469-470.
Anonours, M. de, 207.
Annapolis (Md.), 180, 182, 204, 234, 240.
Anne Arundel Co. (Md.), 166 (note), 167 (note), 195 (note), 225 (note), 234.
Annimessex Island, 227.
Appeals, Lords of, 429 (note). See "Assembly," "Virginia," etc.
Archdale, John, 363.
Argall, 427 (note), 428 (note), 453.
Aristocracies in Switzerland, 674.
Arlington, Lord (Henry Bennet), 261, 338, 386-387.
Armstrong, Gen., 638.
"Articles of Confederation," 155-165.
Assembly (Va.), as Supreme Court, 415-416; organized, 417; jurisdiction, 417-421; procedure, 421-422; appeals to, 422-428.
Atherton Company, 293-294, 333, 351-354.
Athurst, Mr., 340-341, 390-391.
Atkins, Gov., 264.
Attainder, Bills of (Va.), 418-419, 423.
Augusta (Ga.), 21.
Augusta Co. (Va.), 517.
Aury, Louis, 618-621.

"Bacchus," The, 539.
Bacon, Nathaniel, 418, 437 (note), 441, 451-453.
Bagot, 603 (note), 611 (note).
Baltimore (Md.), 180, 212, 213-216, 234, 238-240, 548-549, 618.
Baltimore Co. (Md.), 167, 225 (note), 234.
Baltimore, Lord, 268, 288, 398.
Balzac, quoted, 531-533, 610, 634.
Bamberg (S. C.), 21.
"Bank of England" Stock, 190-191, 202.
Barbadoes, 263, 266, 306.
Barlow, Joel, 638-656.
Barnwell (S. C.), 21, 68.
Bartlett, James, 228 (note).
Basel, diplomatic relations, 663, 665, 666; area and walls, 669; statesmen, 670; government, 676; earthquake, 683; water supply, 684; description by Aeneas Silvius, 684; regulation of prices, 686.
Bassano, Duc de, 639-640.
Beaufort (S. C.), 12, 21, 25-26, 73, 108, 115.
Becker, Gen., 534.
"Bellerophon," The, 535-536.
Bellingham, Gov. (Mass.), 366-367, 377, 379, 384-385.

"Benefit of Clergy," 466-468, 498-499.
Bennet, Sir Henry, see "Arlington."
Béranger, 609-610, 634-635.
Berbice, 381.
Berkeley (S. C.), 68.
Berkeley, Lord John, 306.
Berkeley, Sir Wm., 269, 288, 306, 307, 437 (note), 444 (note), 452-453, 469.
Bermuda Islands, 217 (note), 219-220.
Bern, diplomatic relations, 664-666; fortifications, 669; aristocratic gov't, 679; sanitation, 685.
Beverley, quoted, 423, 437 (note).
Biddle, Nicholas, 599-601.
Bingham, John A., 60 (note).
"Black Code" (S. C.), 40, 51.
Blackstock (S. C.), 24.
Blair, quoted, 425, 437 (note), 442, 473 (note).
Blair, Commissary, 459-462.
Blair, F. P., quoted, 24.
Blair, Mr. (of S. C.), 39.
Bluffton (S. C.), 13.
Bonaparte, Joseph, 631-632; and Napoleon, 536, 538, 636-656; escapes to America, 537-540; refused official reception, 540-542; at Bordentown, 542-543; Mexican throne and Napoleonic Confederation, 567-584, 588, 590, 591-592, 596, 598; and Tombigbee Co., 602.
Bonaparte, Lucien, quoted, 537 (note), 566-567, 569.
Bonaparte, Napoleon, attempted escape to America, 533-539; and Joseph, 636-656.
Bond, Beverly W., Jr., on "State Government in Maryland," 135-248.
Booth, Rev. Bartholomew, 228 (note).
Boozer, Lemuel, 100.
Bordentown (N. J.), 543.
Boston (Mass.), 336-337.
Boutwell, Geo. S., 60 (note).
Bowie, Rev. John, 224 (note).
Bowley, Daniel, 238 (note).
Boyce, W. W., 15-16, 30.
Boyle, Robert, 340, 390-391.
Bradstreet, 285-290, 298, 300-301, 360 (note), 384, 385 (note), 390.
Branchville (S. C.), 21.
Bratton, John, 36.
Breda, Treaty of, 383.
Breedon, Capt. Thomas, 275-276, 278, 361, 362 (note).
Breisach, 665.
Brenton, Gov., 384 (note).
Bridau, Philippe, 531-532.
British prisoners in Maryland, 184-185.
British property in Maryland, 200-202.
Brodhead, quoted, 308 (note).
Brun, Rudolf, 674.
Buford's Bridge (S. C.), 21.
Burrough, Edward, 283.
Burt, Armistead, 48, 102.
Byrd, William, 459-463, 505 (note).

Cadore, 638.
Cain, R. H., 84-85, 92 (note), 93 (note), 94 (and note).
Calvert, Benedict, 229 (note).
Calvert Co. (Md.), 167 (note), 195 (note), 235 (note).
Calvert, Philip, 268.
Cambridge (Md.), 226.
Cambridge (Mass.), 376.
Camden (S. C.), 24.
Campbell, quoted, 449 (note).
Canada, 381-383.
"Canary Islands Company," 256 (note).
Canby, E. R. S., 71-73, 79-80, 98-99.
Cardozo, F. L., 93, 94, 100.
Caribee Islands, 382-383.
Carmichael, William, 151 (note).
Carolina, grant of, 304-307.
"Carpet-Bag Regime," in S. C., 83-106.
Carr, Sir Robert, 320, 330-331, 346-348, 354, 367, 370, 375, 383 (note) 392-395. See "Royal Commissioners."
Carroll, Charles (of "Carrollton"), 151 (note), 189, 201, 240; quoted, 200 (note).
Carroll, Daniel, 151 (note), 164.
Carteret, 306.

Cartwright, Col., 320, 330-331, 334, 338, 346-348, 354, 355 (note), 362 (note), 370, 371 (note), 375, 378, 392-395. See "Royal Commissioners."
Casco Bay, 364.
Cecil Co. (Md.), 177, 220, 233, 236.
"Celibataires, Les," 531-533.
Chalmers, James, 227.
Chamberlain, D. H., 84, 90, 100.
Champ d'Asile, 532, 569, 602-617, 627-632.
Chapron, John M., 562 (note).
Charles II, colonial administration, 261; colonial attitude toward accession, 268-274; and Massachusetts, 298-300, 302.
Charles Co. (Md.), 167 (note), 195 (note), 225 (note).
Charles City Co. (Va.), 476 (note), 505.
Charleston (S. C.), 10-11, 29, 83, 119.
Charrassin, Col., 605, 609.
Chase, Samuel, 202, 238.
Chilton, quoted, 425, 437 (note), 442, 473 (note).
Chitwood, Oliver Perry, on "Justice in Colonial Virginia," 402-522.
Churchwardens (Va.), 447, 481-482.
Circuit Courts (Va.), 493, 495.
"Circular No. 15," 118.
Cities, mediaeval, see "Municipalities."
Clarendon, Lord, colonial administration, 255-398; colonial policy, 257-261; and New England Colonies, 280-282, 286, 289-290, 295-298, 303, 323-329, 331, 340-341, 379-383, 391; sends commissioners, 290, 303, 325, 387; influence in New York and Carolina grants, 304-305; relations with the Dutch, 314-316; downfall, 387.
Clarke, Dr., 288, 291-298, 348 (note).
Clausel, Gen. Bertrand, 551, 558, 586, 611, 631.
Clay, Henry, 540.
Clerks of Court, 512-513.
Cluis, Col., 564.
Colleton, 306.
Colmar, 665.
Columbia (S. C.), 22-23.
Commissary of Bishop of London, Court of, 416, 468-469.
"Common Prayer," see "Episcopalians."
Confiscation in Maryland, 200-202.
Congress (U. S.), and Maryland, see "Maryland;" southern representation in, 54, 58-62, 105.
Conkling, Roscoe, 60 (note).
Connecticut, claims western territory, 150; sends Gov. Winthrop to England, 288; charter granted, 291-298, 303, 324, 336; relations with Dutch, 310-311, 313, 316-317; and Lord Clarendon, 323; Royal Commissioners, 333, 374-375; boundary dispute, 341-346; French war, 381-382.
Constables, 511-512.
Constafel guild, 675, 677, 678.
Constitutional Convention (S. C.) of 1865, 33-42; of 1868, 83-98.
Cooper, Sir Anthony Ashley, 274.
Corbett, Abraham, 368, 383-384.
Coroners' Courts (Va.), 502-503.
Councils, mediaeval city, 676, 679.
County Courts (Va.), 472-505; established, 472-473; judges, 474-477; meetings, 477-478; jurisdiction, 477-481; procedure, 481-482; grand jury, 482-485; punishments, 486-489; various duties, 489-491; weakness and strength, 491-493, 520-521. See "Virginia."
"Courier," The (Charleston), quoted, 16, 71-72, 73, 77 (note); 89, 100 (note).
Courts baron and leet (Va.), 504-505.
Cradock, Matthew, 359.
Crawford, Sec., 558, 560, 562-563.
Cromwell, Joshua, 226 (note).
Cromwell, Oliver, 262, 268, 393.
Cromwell, Richard, 268, 270.
Crown, John, 282.

Crozier, Calvin, 46.
Culpepper, Lord, 419, 423, 505.
Curaçao, 381.
Curcier, Mr., 586.
Currency in Maryland, 188-193.
Custis, William, 503.
Cutts, Mr., 617 (note).

Dale, Sir Thomas, 411-414, 427 (note), 449, 453, 464.
Danforth, 360 (note), 367.
Davis, Jefferson, 41.
Davis, R. M., quoted, 121 (note).
Davis, Capt. Richard, 175 (note).
Dawkins, Mr., 39-40.
Deane, Thomas, 357, 361-362, 373-374.
Défourni, Col., 551, 558, 564, 609.
Delaney, M. R., quoted, 127.
De Large, R. C., 94.
Delaware, 158, 160, 170, 220, 320.
"Demopolis," 561.
Dennison, 384, 385 (note), 390.
De Wett, N. R., Jr., 122.
Diplomatic relations of mediaeval towns, 663.
Ditto, Abraham, 229 (note).
Dorchester Co. (Md.), 225 (note).
Dover (N. H.), 366-368.
Downing, 315-316.
Doyle, J. A., quoted, 295 (note), 300 (note).
Drysdale, Hugh, 460.
Dupont, S. F., 11, 108.
Dutch, in America, 308-322, 395-398; war with England, 381-383, 397-398.

"East India Company," 256 (note).
Ecclesiastical Courts, 468-469.
Eden, Gov. Robert, 151-152.
Education of Negroes, 108, 123-124.
Elliott, R. B., 91 (note).
Endicott, Gov. (Mass.), 282-284, 302, 341.
England, Bank of, see "Bank."
"English African Company," 256 (note).
English colonial administration, 255-398. Prosperity of English trade, 255-257; policy of Clarendon, 257-261, 265-266, 295-298, 323-329; navigation laws, 262-266; inadequate communication, 266-267; Charles II and colonies, 268-290; Massachusetts, 269-270, 272, 273-290, 354-380, 383-387, 388-391; Rhode Island and Connecticut, 291-298; Carolina, 304-307; New York, 307-308, 316-321, 370; the Dutch, 308-322, 381-383, 395-398; Royal commissioners, 329-331, instructed, 332-336, 357; reception, 336-341; adjust Connecticut boundary, 341-346, 371; at Plymouth and Rhode Island, 346-350; Rhode Island boundary, 350-354; in Massachusetts, 354-363; in New Hampshire and Maine, 363-370; return, 370; work and results, 370-374, 388-390; report, 374-376, 391-394; answer of Massachusetts, 376-380; war with Holland and France, 381-383; fall of Clarendon, 387.
Episcopalians in New England, 299, 302-303, 333-334, 359, 371, 389.
Examination, Courts of (Va.), 494-495.
Executive, in Maryland, 140, 143-145.
Exeter (N. H.), 366-368.
Exiles, see "Napoleonic Exiles."

"Fairfield Resolutions" (S. C.), 16-17.
Fendall, Josiah, 268.
Fesch, Cardinal, quoted, 537.
Fessenden, W. P., 60 (note).
"Field Orders No. 15," 114, 119-120.
Fire protection, mediaeval cities, 684.
Florida, 621-623, 637-656.
Foreign Plantations, council for, 258-260.
Fortifications, mediaeval, 667-671.

Fort Frederick (Md.), 184-185.
Fort New Amstel, see "New Castle."
Fouché, 534, 544-545.
France, relations with Maryland, 207-208; war with England, 381-383.
Franchise, see "Constitutional Conventions."
Frederick Co. (Md.), 166 (note), 167 (note), 170, 178 (note), 181 (note), 183-185, 195, 202, 231, 237.
Frederick, Duke of Austria, 665.
"Freedmen's Bureau" in South Carolina, 54-55, 81, 93, 114-129.
Freiburg in Breisgau, 665.
Freiburg in Switzerland, 663, 665, 666, 679, 680.
"French Agricultural and Mechanical Soc.," 558-565, 583, 586-587, 597, 602.
French, Rev. Mansfield, 108.
Frost, Judge, 29.

Galabert, Col., 551, 558, 564, 586, 587, 588.
Gallatin, Albert, 548-549.
Galveston, 603-605, 618-621, 623, 625, 627, 629-630.
Galvez, Count, 589-590.
Garrettson, Rev. Freeborn, 230 (note).
Gates, Gen., 198.
Gates, Sir Thomas, 410-411.
"General Court" (Quarter Court), 415-416, 419-421, 424-426, 427, 480, 491, 493-495, 505, 513, 514, 516-518, 520-521; organized, 431-432; session, 432-434; place of meeting, 435-436; appointment of judges, 436-441; pay, 441-442; procedure, 442-443, 448-449; jurisdiction, 443-447; severity, 449-451; weakness, 451-455; grand jury, 464-466.
German Empire and mediaeval cities, 661.
Germans in Maryland, 170, 208, 228.
Gibbes, James G., quoted, 23 (note).
Gillmore, Gen. Q. A., 27-28, 44-45.
Girard, Just., 602 (note); quoted, 613.
Girard, Stephen, 536-537, 631.
Gist, Gen., 169, 182, 225 (note), 234.
Goddard, William, 238-242.
Godfrey, Edward, 275-276, 278, 289.
Goffe, see "Regicides."
Gold, Mrs., 343.
Goldsborough, Robert, 201.
Gookin, Capt., 375.
Gorges, Ferdinando, 276, 278, 304, 325-328, 363-365, 368-369, 377, 385.
Gorton, Samuel, 351, 372-373.
Gosnold, Bartholomew, 408-409.
Gourgand, 546.
Graham, George, 625-628.
Grand jury in Virginia, 464-466, 482-485.
Grant, U. S., 53, 70-71, 100.
Green, John, 226 (note).
Grider, Henry, 60 (note).
Grimes, James W., 60 (note).
"Gros-Davillier et Cie.," 609.
Grouchy, Marshal, 545-547, 558, 586, 631, 632.
Guilds in Zürich, 674.

Halleck, H. W., 17-18.
Hamilton, Duke of, 351-354, 375.
Hamor, Ralph, 413-414.
Hampton, Wade, 43, 57 (note), 76-77, 80.
Hanson, John, 151 (note), 164.
Harford Co. (Md.), 195 (note), 203 (note), 220 (note), 225 (note), 233, 234.
Harris, Ira, 60 (note).
Hartford (Conn.), 310, 323.
Hartmann, 632; quoted, 606-607, 612-613.
Hartwell, quoted, 425, 437 (note), 442, 473 (note).
Harvey, Gov. (Va.), 435, 438 (note).
Hatch, John, 268.
Hathorne, Major, 379, 384-385, 390.
Heath, Sir Robert, 305.
Henley, Commodore, 621.

Henrico Co. (Va.), 476 (note), 499, 505, 512 (note).
"Herald" (N. Y.), quoted, 16 (note), 17 (note), 18, 21 (note), 23 (note), 26, 30, 76 (note), 80 (note).
Higginson, T. W., 111.
Hill, Luke, 485 (note).
Hindman, James, 142.
Hollis, John Porter, on "Reconstruction in South Carolina," 7-129.
Holmes, Isaac, 29.
"Hooper's Strait," 227, 230.
Howard, C. H., 55.
Howard, Gov., 442 (note), 443, 446, 456 (note), 469.
Howard, O. O., 21 (note), 22, 25, 115, 118-120.
Howard, Senator (Mich.), 54, 60.
Howe, Sir William, 232.
Hughes, Samuel, 210.
Hull, John, quoted, 270 (note) 273 (note), 287 (note).
Humbert, 611-612.
Hunter, Gen., 109.
Hurley, Timothy, 85.
Hustings, Court of (Va.), 416, 499-502.
Hutton, Mrs., 238 (note).

Indiana, 160-161.
Indians in Maryland, 237; Iroquois, 320.
Inferior Courts, see "Virginia, Colonial Justice."
Inglis, John A., 36.
Iroquois Indians, 320.

Jamestown (Va.), 411, 414, 417, 433, 444, 497, 508-509.
Jarvis, William, 229 (note).
Jefferson, Thomas, 546-547, 59-560, 563.
Jenifer, Daniel of St. Thomas, 141, 151 (note).
Jillson, J. K., 84.
Johnson, Andrew, 29, 31-33, 40, 41, 42, 52-54, 71, 82, 118.
Johnson, Reverdy, 60 (note).
Johnson, Thomas, 144-145, 174, 186 (note), 210, 231, 232, 242.
Jones, Rev. Hugh, 469 (note).
Jordan, Col., 551, 558, 564.
Jordan Island, 228.
Judges in Virginia, see "Virginia, Colonial Justices."
Judiciary of Maryland, 140, 146-149.
Jung, quoted, 560.
Jurors in S. Carolina, 72-73, 126.
Justice, see "Virginia," etc.

Kaye, Percy Lewis, on "English Colonial Administration," 255-398.
Kendall, George, 408-410.
Kent Co. (Md.), 203 (note), 220, 228, 233.
Kent Island, 439 (note).
Ketchum, A. P., 55.
Key, Philip Barton, 227 (note).
Kilpatrick, Gen., 21 (note).
King, Col., 537.

Ladies Island (S. C.), 109-110.
Lafayette, Marquis, 63, 551-552.
La Fère, conspiracy, 549-551.
Lafitte, 603-605, 612, 620, 627-630, 632.
Lakanal, Joseph, 551-555, 558, 564, 571-584, 590-601, 632-633.
Lallemand, Gen. Charles, 538-539, 545, 549-551, 558, 564, 565, 569, 586-590, 597-599, 601, 602-614, 615-616, 623-632.
Lallemand, Henri, 549-551, 558, 564, 585-586, 588-589, 601, 631.
Lamertine, quoted, 533, 544, 609.
Langley, L. S., 84.
Las Cases, quoted, 534-536.
Lander, Rev. Francis, 142 (note).
Lavallette, 533-534.
Lawrence, Mr., 240.
Lee, Charles, 240-241.
Lee, Henry, Jr., 153-154, 171.
Lee, Richard, 518.
Lee, Thomas Sim, 145, 178, 186 (note), 242.
Lee, William, 559, 585-591, 594.
"Leeward Islands," 263.
Lefebvre-Desnouëttes, Gen., 545, 549-551, 558, 563, 586, 611, 631.
Legislature, Maryland, 140-143.
Leri, Capt., 612.

Leslie, C. P., 84, 90 (note), 92 (note), 97 (note).
"Levant Company," 256 (note).
Leverett, 270, 274, 277, 278, 285, 360 (note), 367.
Lewis, Commodore, 540-542.
Lincoln, Abraham, quoted, 52 (note), 112, 113.
"London Company," 414.
Long Island (N. Y.), 304, 311-314, 317.
Louis XI of France, treaty with Swiss, 666.
Louis XVIII of France, 544-545.
Lower Norfolk Co. (Va.), 476 (note), 486, 487.
Ludwell, Philip, 451-452, 459.
Lusha, 369.
"Luther vs. Borden," 65.

McAlilley, 30.
McCrady, quoted, 306 (note).
McFadden, John, 209 (note).
McGregor, Gregor, 597 (note), 604, 611 (note), 618-619.
McGowan, Samuel, 36.
Mackall, Benj., 142 (note).
Mackey, A. G., 29-30, 85-86.
Mackey, E. W. M., 90.
Madison, quoted, 163, 540-542, 638-656.
Magrath, Gov. A. G., 14, 26-28, 41.
Maillard, Adolph, quoted, 538.
Maillard, Louis, 538.
Maine, 275-276, 278, 289-290, 304, 325-328, 363-365, 375, 385.
Maitland, Capt., quoted, 535, 538.
Mamaroneck, 345-346.
Manchester, Earl of, 295, 298.
Mann, Dr., 605.
Manning, Gov., 30, 43.
Marengo Co. (Ala.), 561.
Marriage Laws for Negroes (in S. C.), 122-123.
Martin, John, 408-409.
Martin, Luther, 226.
Maryland and Charles II, 268, 288, 305.
"Maryland Gazette," 240-241.
"Maryland Journal," see "Goddard."
"Maryland Line," 169-171, 179-181, 182.
Maryland, State government in, 135-248; organization, 139-149; assembly, 140-143; executive, 143-145; judiciary, 146-149; "North West Terr.," 150; opposition to Congress, 152-154; troops in Continental army, 166-176, 186; supplies, 176-181, 183-184, 186; transportation, 181-182; British prisoners, 184-186; currency, 188-193, 204; taxation, 193-200, 204; confiscation, 200-202, 205; loans, 203-204; state bank, 204; interstate trade, 206-207; relations with France, 207-208; domestic trade, 208-210; foreign trade, 210-212; state navy, 212-216; embargo, 216-220; supplies for French fleet, 220-222; Tories, 223-231, 237-242; British invasions, 231-237; Indians, 237; public opinion, 237-239; "Goddard riots," 239-242; summary, 243-246; bibliography, 247-248.
Mason, John, 278, 289, 325-328, 363-365.
Massachusetts, claims North West Terr., 150; also, 269-270, 272, 273-290, 316, 322, 323-329, 331, 332-333, 336-341, 343, 352-386, 388-393.
Matagorda, 619, 626.
Matthews, Mr., 439 (note).
Maverick, Samuel, 313, 331, 346-348, 354, 370, 378, 384, 385 (note), 387. See "Royal Commissioners."
Meade, George G., 45.
Medical Dept. of "Freedmen's Bureau," 122.
"Ménage de Garçon," 531-533.
"Mercury" (Charleston), quoted, 14 (and note), 63 (note), 89-90, 104 (note).
Merrimac River, 364-365, 367.
Methodists in Maryland, 224.
"Mina Expedition," 569.
"Minerve," La, 609-610, 617.
Minor, John B., 516.
Misservey, Capt., 539.
Mister, Stephen, 230 (note).

Monetary Laws, mediaeval, 665, 672.
Monroe, James, 585, 594-601, 611 (note), 622.
Montgomery, Col., 12-13.
Montgomery Co. (Md.), 225 (note).
"Monthly Courts," see "County Courts."
Morrice, Sir Wm., 261, 282, 340-341, 377, 379, 386, 391.
Morrill, Justin S., 60 (note).
Moses, F. J., Jr., 83, 92-93, 94, 100.
Municipalities, mediaeval; sovereign powers, 661; relations to German empire, 662; to Swiss Confederation, 662; diplomatic relations, 663-666; fortifications, 666; area, 669; commerce, 672; coinage, 672; monetary treaties, 673; forms of government, 674; under guild system, 674; aristocracies, 679; water supply, 680; fire protection, 684; sanitation, 685; streets, 686; miscellaneous functions, 686; fixing of prices, 687; protection of travellers, 687; sumptuary laws, 687; discrimination against rural subjects, 688.
Municipal problems in mediaeval Switzerland (Vincent), 661-688.

Nantes, Piré de, 612.
"Napoleonic Confederation," formed, 567-584; investigated, 585-601; end, 627.
Napoleonic exiles in America, 527-656; Balzac on, 531-533; Napoleon's attempt to escape, 533-539; Joseph comes to America, 539-540; refused official reception, 540-543; proscriptions, 544-545; Grouchy, 545-549; Lallemand, etc., 549-551; Lakanal, 551-555; American sympathy, 556-557; Vine and Olive Society, 557-565, 583, 586-587, 597, 602; Napoleonic Confederation, 567-601; Texas expedition, 602-606; Champ d'Asile, 606-614, 627-632; international complications, 615-628; U. S. boundary dispute with Spain, 621-623; cessions of Texas and Florida, 636-656.
"Narragansett Country," 293-294, 343, 350-354, 371.
Nash, Beverly, 85, 86 (note).
Navigation acts, 262-266, 292, 312-313, 319, 395-398.
Neagle, J. J., 100.
Negroes free, in South Carolina, 39-41, 42, 47-51, 57, 69, 76 (note), 81, 91-94, 107-129.
Negro soldiers, 45-46, 109-111, 125.
Neuville, Hyde de, 547-549, 570-584, 585, 590-599, 603 (note), 632.
New Castle (Del.), 320.
New England, royal commission to, 267; loyalty of, 322. See "Mass.," "Conn.," etc.
New Hampshire, 289-290, 325-328, 363-368, 375, 393.
New Haven colony, 271-272, 289-290, 310, 317, 323, 341-346.
New Jersey, 157-158.
New Netherlands, see "New York."
New Orleans, French exiles in, 603-604, 619, 627, 629-633; College of, 633.
Newport, Christopher, 408-410.
"News" (N. Y.), The, quoted, 20 (note), 25-26, 89.
New York, claims western lands, 150, 160-161; grant, 304; charter, 307-308; seizure, 309-322, 370, 383; boundary, 341-346, 371.
Nicholas, Sir Edward, 261.
Nicholas, James, 238 (note).
Nicholson, Benjamin, 238 (note).
Nicholson, Capt., 152-153.
Nicolls, Col. Richard, 264, 316-321, 329-331, 334, 336 (note), 344, 346, 354, 359, 363, 365, 372, 378, 380, 381, 385-387, 392-397. See "Royal commissioners."
"Niles's Register," 568-569, 609.
Norfolk (Va.), 416, 502.

Northampton Co. (Va.), 421, 444-445, 478 (note), 403.
Northern Neck (Va.), 505.
"North West Territory," 150, 154.
Norton, John, 271 (note), 285-290, 298, 300-301.
Notary public, 513.
Nott, Gov. (Va.), 499, 500.

Oakes, Pres., quoted, 389 (note).
Orangeburg (S. C.), 22, 90.
"Order No. 10," 68-69, 71.
Orr, James L., 36, 40, 42-43, 44, 73, 86-87.
Onis, Don Luis de, 588-601, 616, 617-618, 620-625, 628.
Oyer and Terminer, Courts of, 455-466, 497-498, 513.

Palmer, Sir Geoffrey, 325-326.
Pancatuck River, 293-294.
Parker, Niles G., 84, 100.
Parmentier, Col. N. S., 557-558.
Patterson, Rev. John, 227 (note).
Pavements, mediaeval cities, 686.
Pemaquid, 326.
Pendleton, Edmund, 136.
Péniers, M., 563-564.
"Penn Farmer," 210.
Pennsylvania, 170, 218.
"Pequot country," 350-354.
Perry, B. F., 30, 31-35, 36-37, 43, 77, 80, 86 (note), 125.
Pickens, F. W., 36.
Pierce, Capt., 392 (note).
Pierce, E. L., 108-109.
Pillsbury, G., 84.
Plymouth (Mass.), 271, 288, 316, 326, 348-350, 371 (note), 374.
"Point Breeze" (N. J.), 543.
Police regulation, mediaeval, 670, 684, 685, 686, 687.
Pollitt, Thos., 224 (note).
Pollitt, Wm., 224 (note).
Pomaria (S. C.), 24.
Population of mediaeval cities, 678.
Porter, John, 359-360, 372-373.
Porter, W. D., 102, 103.
Port Hudson, 111.
Port Royal (S. C.), 11, 108, 110.
Portsmouth (N. H.), 366-368.
Pott, Gov. (Va.), 440 (note), 442 (note), 464 (note).
Povey, George, 313.
Price, Anne, 422 (note).
Prices, regulation of, in mediaeval cities, 686.
Prince George's Co. (Md.), 195 (note), 198 (note), 203 (note), 238 (note).
"Privy Council" (England), 257-258, 429-430.
Pulaski, Count, 171.
"Pumham," 353.

Quakers, 276-278, 282-284, 299-302, 393.
Quarter Court, see "General Court."
Queen Anne's Co. (Md.), 167, 224, 226 (note), 228.

Ramsay, Nathanael, 238 (note).
Randolph, Edward, 309, 328-329, 387, 398.
Raoul, Col. Nicholas, 563-564.
Ratcliffe, John, 408-410.
Rawlings, Col., 170.
Rawlings, Francis, 229 (note).
Razor, John, 183 (note).
Reade, 410 (note).
Réal, Count, 551, 559, 586.
Reconstruction, 62-66. See "South Carolina."
Reeves, Jesse S., on "Napoleonic Exiles in America," 527-656.
"Regicides" in New England, 276, 282, 284, 358, 375.
Representation in mediaeval city gov't, 682.
Rhode Island, 157-158; and Charles II, 270-271, 288; chartered, 291-298, 303, 324, 336; Royal Commissioners in, 333, 347-354, 374-375, 393-394; boundary dispute, 343, 371 (note).
Richards, Mrs., 343.
Richardson, Col., 223-224.
Rigaud, Gen., 550-551, 602-606, 608, 611, 628-630, 632.
Ripley, Major, 611.
Robertson, T. J., 83, 85, 90 (note), 94, 97, 100, 106.
Robinson, Conway, 440 (note).
Robinson, John, 464.
Rodney, Admiral, 235-236.

Rogers, A. J., 60 (note).
Rose, quoted, 534 (note), 536 (note).
Rosebery, Lord, quoted 533, 535.
Rousby, Christopher, 456 (note).
Royal Commission to American colonies, 290, 303, 323-387.
Royal Fishery Company, 256 (note).
Rush, Attorney-General, 541-542, 570, 595, 611 (note).
Russell, Jonathan, 637-656.
Rutland, J. M., 83.
Rynnuse, Paul, 503.

St. Croix River, 326.
St. Mary's Co. (Md.), 167, 195 (note), 198 (note).
Salaries, official, in Maryland, 192-193.
Sandwich, Earl of, 261.
Sanitation, mediaeval cities, 685.
Sawyer, F. A., 106.
Saxton, Rufus, 54-55, 109-111, 113-118, 121, 127-128.
Say and Sele, Lord, 295, 298, 351, 353.
Scott, John, 293 (note), 294 (note), 336 (note).
Scott, R. K., 100, 106, 128.
Scottow, Joshua, 361-362.
Seward, Wm. H., 43, 46.
Shaftesbury, Earl of, 261-262, 306.
Shattock, Samuel, 283, 284 (note).
Sheriffs, in Va., 506, 511.
Sherman, T. W., 11, 108.
Sherman, Wm. T., 13-14, 17-26, 114-115, 119.
Sherwood, Grace, 485 (note), 503 (note).
Sickles, Daniel E., 66-71, 73-74.
Sigismund, German Emperor, 665, 668.
Silser, J. A., quoted, 139.
Skinner, Postmaster (Baltimore), 548-549.
Slave Courts (Va.), 495-499.
Smith, Capt. John, 408-410, 428, 464.
Smith, Capt. Lawrence, 505 (note).
Smith, Sir Lawrence, 411-412.
Solothurn, 665.
Somerset Co. (Md.), 198 (note), 223, 225 (note), 228, 230-231.
"South Carolina Railroad," 21.
South Carolina, reconstruction in, 9-129; Civil war, 10-26; close of war, 27-30; presidential reconstruction, 31-51; constitutional convention (1865), 33-42; first elections, 42-43; gov't reëstablished, 44-45; negro soldiers, 45-46; 109-111, 125; militia, 47; negro labor, 47-51; congressional intervention, 52-82; sentiment, 54-57; representation in Congress, 54, 58-62, 64, 105-106; military gov't, 66-73; justice, 72-73, 126; registration of voters, 73-79; election (1867), 79-82; convention of 1868, 83-98; election (1868), 100-105; free negroes, 107-129; sale of lands, 112-113, 118-121; Freedmen's Bureau established, 114-129; medical dept., 122; marriage laws, 122-123; education, 108, 123-124; administration of justice, 124-128; closing of Bureau, 128.
Sovereignty of mediaeval cities, 661.
Spain, boundary dispute with U. S., 621-623.
Spottswood, Lieut.-Gov. (Va.), 448, 457-464, 476 (note), 500, 519.
Stanberry, Attorney-General, 74.
Stanton, E. M., 108.
Staples, Waller, 472 (note).
Stapleton, Gov., 395.
Starke, quoted 467.
State House (Va.), 435-436.
"State rights," in S. C., 9-10, 56.
Sterling, Earl of, 304, 311-314, 326.
Sternmeyer, J. A., 29.
Stevens, A. H., 41.
Stevens, Thaddeus, 60 (note).
Stewart, David, 238 (note).
Stolbrand, C. J., 85.
Strassburg, 663, 666, 669, 670.
Streets, mediaeval cities, 686.
Stuyvesant, Peter, 310, 317-319.

Sumptuary law[illegible], 687.
Sumter, Fort, 10-11.
Survill[illegible] Joseph Bonaparte.
Switz[illegible] pal problems, [illegible].

Taillade, Col., 587-588.
Talbot Co. (Md.), 225 (note), 226.
Talbot, George, 45[illegible] (note).
Taxation in Maryland, 103-200.
[illegible]
[illegible] d'Asile," [illegible]
Thornton, Dr., 611.
Thouin, 552.
[illegible], Ed., [illegible], 220 (note).
"[illegible]" [illegible] quoted 18 [illegible] (note), [illegible]
[illegible]
[illegible] 567, 597, 600.
[illegible], 123-124.
[illegible] in Maryland, 189, 223-[illegible], 237-[illegible]
[illegible] Council [illegible]8-[illegible].
"Trade and [illegible] Plantations," [illegible]
Trenholm, [illegible]
"Tribune [illegible], 32 (note), [illegible] (note), [illegible] note), 43 [illegible]
Trinity River settlement, see "Champ d'Asile."

Usher, Hezekiah, 285 (note).
Usher, John, 327.

"Vandalia land," 160-161.
Vandamme, Gen., 545, 559, 586-588.
Vestrymen (Va.), 481 (note).
Vice-admiralty, court of, 416.
Villars, Charles, 562 (note), 586-588, 598 (note).
Villeray, M. de, 611.
"Vine and Olive Society," see "French Agricultural and Manufacturing Society."
Vincent, J. M., Municipal problems in Switzerland, 661-688.
"V[illegible]," The, 152, 212, 238, [illegible]).
V[illegible], cla[illegible] [illegible]ern territory, 150, 15[illegible]; trade with Maryland, [illegible]-207, 215, [illegible]8, [illegible], 220, 233, 234; colonial [illegible]ce in, 402-522; charter and settlement, 407-408; council, 408-410, [illegible] charter, 410-41[illegible], [illegible], 41[illegible]; self government, 4[illegible]; courts established, 4[illegible]6; assembly organized, 417; jurisdiction, 417-421; procedure, 421-422; appeals, 422-428; to England, 426-43[illegible]; Superior courts, 433-471; [illegible] courts, 431-432; ses[illegible]4; p[illegible], [illegible]5-436; [illegible] of councillors, [illegible], 441-442; procedure, 442-443, 448-449; juries, 443-447; severity, 449-[illegible]1; weakness, [illegible]51-455. [illegible] of Oyer [illegible] Term[illegible] [illegible]55-466; benefit of [illegible], 466-468; ecclesiastical courts, 468-469; [illegible] courts, 46[illegible]; Inferior courts, 47[illegible]; county courts, 472-473; judges, [illegible]-477; meetings, 477-478; jurisdiction, 477-[illegible]; procedure, 481-48[illegible]; [illegible] jury, 482-485; punish[illegible], [illegible]-489; court duties, 489-491; weakness and strength, 491-493. Circuit courts, 493-494; courts of examination, 494-495; slave courts, 495-499; court of hustings, 499-502; coroners' courts, 502-503; military courts, 503-504; courts baron and leet, 504-505. Sheriffs, 506-511; constables, 511-512; county clerks, 512-513; notaries public, 513; lawyers, 513-519; conclusions, 520-521; bibliography, 522. Charles II, 268-269; trade of, 306-307. Council, 408-410, 427-428, see "General Court."

"Virginia Company," 407-408, 427-429.
Vorster, Col., 605.

Wage regulation, mediaeval cities, 686.
Wardlaw, Judge, 48.
Wardlow, D. L., 36.
Warr, Lord de la, 410-414, 428 (note), 431.
Warwick (R. I.), 271, 351.
Washington, George, 168-175, 240.
Water supply, mediaeval cities, 680.
Wensloe, Mr., 393.
West India Company, 317.
Whaley, Wm., 29.
Whalley, see "Regicides."
"Wig Club," 238-239.
Whipper, W. J., 84-85.
Whittaker, Rev. Alex., quoted, 413.
Whittemore, B. F., 85.
Willett, Captain, 316-318.
William and Mary, College of, 436 (note).
Williams, Geo. H., 60 (note).
Williams, Geo. W., 29.
Williams, Frederick, 29.
Williams, Roger, 373 (note).
Williamsburg (Va.), 416, 435, 495, 500-502, 509.
Willoughby, Gov., 383, 384, 390.
Willys, Mr., 318.
Wingfield, Edward Maria, 408-409, 464.
Winnipiseckik, Lake, 364.
Winslow, Major, 348.
Winthrop, Gov. (Conn.), 288, 289, 291-298, 316-319, 343-344.
Winthrop, Fitz John, 316-319, 343.
Worcester Co. (Md.), 198 (note), 223-224, 230.
Wright, J. J., 84.
Wyatt, Gov. (Va.), 431, 434, 435, 448, 450.

Yates, Col., 29.
Yeardley, Gov., 414, 417, 428 (note), 432-433, 441, 464.
York, Duke of, 304-305, 308, 314-324, 326, 329, 330, 341-346, 369-370, 386.
York (Me.), 385.

Zweihundert, council of the, 676.
Zürich, mediaeval diplomacy, 663; walls, 668; statesmen, 670; monetary ordinances, 673; revolution of 1336, 674; gov't, 674; guilds, 675; councils, 676; population, 678; suffrage, 678; compared with Bern, 679; water supply, 681; fire protection, 684; sanitation, 685; pavements, 686; wage scale, 686; boatmen, 687; hotel keepers, 687; territory, 687.

F
274
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