

THE LEGISLATION FOR THE CONFISCATION OF BRITISH
AND LOYALIST PROPERTY DURING THE
REVOLUTIONARY WAR

By

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Chapter I.

INTRODUCTION

It is entirely logical that students of American history should devote a great amount of time and effort to the study of the period centered about the Revolutionary War. The fullest understanding of that war, which by one writer has been denominated the most significant event in recent times, is essential to all who would pretend to consider any later phase of the history of the United States, since it was through the agency of the Revolution that not only was the fact of political independence and separate identity established, but there was also developed, from British provincial sources, the political institutions which became the basis of the governmental framework which has continued down to the present.

The best demonstration of the general acceptance of this theory is to be found in the great body of scholarly writings treating with the historical materials of that period. A hasty examination of any bibliography of the Revolutionary period seems to reveal, in the infinite number and variety of titles, no single event, movement, group, or individual which has not been the subject of a series of investigations. The very thoroughness with which the great majority of the historical elements of this period have been considered, brings, by contrast, into sharp relief the fact that one of the most significant phases of revolutionary activity has been almost completely ignored. Why the general subject of the confiscation of the property of British subjects and those colonists

who elected to remain loyal to Great Britain during the Revolutionary War has been permitted to rest unexplored is an historical enigma, worthy, in itself, of scholarly research. Without any pretense of issuing an authoritative dictum on the mystery, it is possible that many historians, especially those writing during the earlier years of this nation's existence, believed that any reference whatsoever to loyalism tended to reflect a certain amount of discredit upon the inhabitants of the original states. To these often far from objective writers, it is possible that even a mere mention of the fact that there was a considerable group within the colonies opposed to the "glorious contest" with the British tyranny would amount to a wanton desecration of the greatest monument of our history. It is, however, a very different matter when any explanation of the lack of attention on the part of recent investigators to this subject is attempted. Delicacy can hardly be soberly advanced as the explanation of this phenomenon in an age which has seen so many scholastic and popular darts directed at the remnants of the national ego. The formerly taboo subject of loyalism has been repeatedly examined by competent scholars, yet the matter of confiscation lies in obscurity. When the author made his first serious investigations in this field, some three years ago, an examination

of the catalogue of the Library of Congress revealed a single, very brief paper devoted to the subject of confiscation, and in this study,^{1.} only the state of Massachusetts was considered. At the present time this paper, with the exception of a thesis, by the author, on the confiscation of loyalist property in Maryland,^{2.} presented in 1935, still occupies its solitary position.

While attempting to discover material for the thesis cited above, the author became convinced that an attempt to organize and present some of the mass of matter related to the confiscation, by the several states, of British and loyalist property might be of value to those working in the era of the Revolution, and, at the same time, permit of an examination, from a new point of view, of the efforts of the various colonial governments, hastily transformed into state governments, to solve the vast number of problems created by the war with the mother country.

It is quite obvious that no single study could or should pretend to cover the vast field of the confiscation of the property of British subjects and American loyalists by the several states in all its many phases. The origins of the

1. A.M. Davis, The Confiscation Laws of Massachusetts (Cambridge; J. Wilson & Son, 1906).

2. R.L. Allen, The Confiscation of British Property by the State of Maryland During the Revolutionary War (College Park, 1935).

question of confiscation in the colonies, the widespread demand on the part of the "farmers and mechanics" for the confiscation of the property of those groups opposed to the Revolution, the resistance to this demand by the propertied and official classes, the provocation offered by the several British commanders in their widespread requisitioning and actual confiscation of patriot property, the loyalists' position on the matter, the propagandist activities of the various newspapers and pamphleteers, both for and against the action, the character of the properties seized, the types of individuals purchasing such property, and the far reaching and many-faceted economic, political, and social readjustments caused or conditioned by the fact of confiscation all offer opportunities for the student of this period. It is to be hoped that in the near future at least some of these problems will be investigated.

Faced with such a variety of possible approaches to the general subject the author, influenced by his earlier study, decided that an attempt to present, in a compact form, the story of the way the several political divisions which later formed the United States handled the problem as told by their laws, would, perhaps, be more valuable than any other system of examination. In the mass of legislation on the matter of confiscation is to be found the basis for all the later results of this mode of carrying the war to as many of the enemies of the new governments as

possible, together with the culmination of the bitter struggle between the groups opposed to and in favor of the step. Certain advantages to be gained from this line of approach are immediately evident. Of primary importance is the fact that the many laws, related to the confiscation of British and loyalist property, are still obtainable in complete, contemporary, and legally certified form, for every one of the embryonic states involved in the war, while other available material is, at best, incomplete, and in several observed cases, definitely inaccurate and misleading. It is also apparent that the laws of the several states, in their development from their first tentative reachings for the desired property to their final complexity, present, directly, a clear picture of the evolutionary character of colonial and revolutionary legislation on an important subject, and less directly, a glimpse into the minds of the local leaders of these communities during a most critical period of history. The first rather timid thrusts against the enemies within and without, the exultation of the early military successes, the plunge toward despair as the trained forces of the "King of Great-Britain" won victory after victory over the poorly trained and equipped and half mutinous colonial levies, the loss of faith by the patriots in their hastily erected governments and in the paper currency, backed, in most cases, only by the pledge

to pay of these extra-legal bodies, the demands for pay in something besides valueless certificates by deputations from the regiments, the desperate struggle to secure the specie so necessary for the purchase of essential munitions of war and the respect of the states of Europe, the bitter resentment toward those who abandoned their communities at the most critical hour, the impotent fury created by the news of British outrages finding expression in savage attacks upon the only symbols of British authority within their grasp, the dawning realization that the almost despaired of victory was at last in sight, the gratitude toward the men responsible for that victory, the new sense of sovereign authority and dignity, the effort to make all possible provisions for a glorious future, and finally, with peace with Great Britain an established fact, the turning away from the harsh policies of the long years of struggle to a more tolerant position may all be read in and between the lines of these laws.

However, among the laws themselves, there remains a very considerable latitude of choice. The question at once arises as to which ordinances may be properly termed "confiscation laws." Even when a decision has been made in this case, it is still necessary to further diminish the field. By a process which at times may have deviated from the scientific and approached the arbitrary, the author was able to eliminate certain types of legislation

as not being entirely relevant to the general story of the confiscation of British and loyalist property. Thus, the mass of legislation, particularly by the states north of the Carolinas, aimed at the harassing and destruction of the British sea-borne commerce, by the commissioning of privateers, with the concomitant regulations for the seizure, condemnation, and disposal of this type of enemy property was excluded. Similarly, the laws for the prevention of correspondence and trading with the enemy, with their provision for the confiscation of any goods entering upon this commerce, were ignored. All so-called "private acts," treating with individuals or small groups under peculiar circumstances, have been omitted, except in the rare instances when some important principle found its first or clearest enunciation in such an act.

Even after the elimination of so much of the related legislation, the remainder was still a formidable bulk. In order to keep within the modest extent of a paper of this character, it has been found necessary to present in detail only the most basic acts of each of the divisions to be considered. The other enactments will be examined in a less comprehensive manner, laying emphasis on those elements most essential to the development of the confiscation system in each community. When, as is the case with annoying frequency in the legislation of this and the earlier periods of American history, there is included in

a law extraneous matter, such portions will be omitted, their nature being more or less fully indicated in proportion to their degree of relationship to the major topic. By a similar process, when clauses dealing with the question of confiscation are, for some unknown reason, buried in laws primarily concerned with other matters, the significant paragraphs will be divorced from the inconsequential ones. An effort has been made to adhere, as closely as possible to the laws, formally passed and ordered to be published as such by the legislative bodies of the several communities. However, in a few instances, when the proclamations of the executive, council, or military commander-in-chief, or the resolutions of the legislature have had the force of law, and have had a direct bearing on the development of the general policy toward confiscation, they have been included in the examination.

As it seemed to represent the least awkward and most conventional arrangement, the several states have been considered in the closest approximation of a chronological order, with reference to the date of passage of the major confiscation law or laws, that could be attained. Under the circumstances, with the necessity in almost every case of determining the first actual, general confiscation law, it was inevitable that the possibilities of some differences of opinion may arise. However, since the plan

is a matter of mechanical convenience rather than of historical necessity, it may serve as well as any other.

While this discussion is limited to the confiscation legislation of the several states, and, therefore, does not pretend to examine the federal legislation in this field during the Revolutionary War, it may be of value to note the role of the central authority in promoting the enactment, by the states, of such laws. From the earliest days of the revolution, the more radical elements had denounced both the state and federal governments for their reluctance to take drastic legal steps against the loyalists. The chief desire of this group seems to have been to effect the seizure of the property of those who opposed separation from Great Britain, and to apply it to the patriot cause. The increasing popular detestation of the tories, coupled with the resentment toward the British for the harsh measures directed against the patriots who remained in New York City after its capture resulted in constant pressure upon Congress for the confiscation of the property held by the loyalists.^{3.}

After a protracted debate, Congress yielded to the demands of the radicals, and on November 27, 1777, possibly reacting to the stimulating news of the victory at

3. C.H. VanTyne, The Loyalists in the American Revolution (New York; The Macmillan Company, 1902), chap. III.

Saratoga, the following recommendation was made:

"Resolved, That it be earnestly recommended to the several states as soon as may be to confiscate and make sale of all the real and personal estate therein, of such of their inhabitants and other persons who have forfeited the same, and the right to the protection of their respective states, and to invest the money arising from the sales in continental loan office certificates, to be appropriated in such manner as the respective states shall hereafter direct. 4.

Copies of this resolution were forwarded to the governments of the several states, where they were greeted enthusiastically by the patriots, particularly those of the propertyless classes. Thus, the states could proceed with the business of confiscation with the approval and encouragement of the Continental Congress.

4. Journals of the Continental Congress (Washington; United States Government Printing Office, 1913), vol. IX., p. 971.

Chapter II.

VERMONT

When mention is made of the states taking part in the Revolutionary War, the traditional phrase, "the thirteen original states," almost invariably is brought to mind. While it is, of course, quite correct to say that the war against Great Britain was fought by a group of thirteen states, a definite injustice is being done to another community which, although consistently ignored by its neighbors, and denied membership in the Continental Congress, made a very definite contribution to the final success of the Americans. The material and moral effects of the capture, on May 10, 1775, of Fort Ticonderoga, and victory at Bennington, on August 16, 1777, did much to encourage the patriots during two periods of crisis.

It is one of the ironies of history that Vermont, as a separate entity, had its beginnings in a squabble between Sir Henry Clinton, Royal Governor of New York, and Benning Wentworth, Royal Governor of New Hampshire, over the question of jurisdiction of certain crown lands lying west of the Connecticut River.^{5.} The motive for the governors' contentions lay in the rights of each to exact fees from all persons receiving patents to lands in

5. E.D. Collins, A History of Vermont (Boston: Ginn & Company, 1903), p. 66-67.

their respective colonies. The dispute was referred to the Privy Council, and in 1764, an Order in Council declared the Connecticut River to be the boundary between the two provinces. As a result, the grants made by Governor Wentworth became a part of New York. Since the New Hampshire executive had been far more active in granting lands than his New York rival, the country came to be known as the New Hampshire grants. The settlers paid little attention to the technicalities of the jurisdictional controversy until the government of New York began to make grants of lands already held under the New Hampshire titles, and to commence suits to vacate the titles of the original grantees. The infuriated settlers began to make preparation to resist by force any attempt to serve writs of eviction and ejectment. Since the government of New Hampshire was powerless to aid them, these men set up what amounted to an independent revolutionary government and proceeded to defy the authorities of New York.^{6.}

This incipient civil war was cut short by the outbreak of the struggle with the mother country. The triumph of the "Green Mountain Boys" at Ticonderoga was rewarded by the Congress, which voted to pay the Vermont soldiers for their services, and recommended that a regiment be raised in the New Hampshire grants. However the pressure brought

6. Collins, A History of Vermont, p. 70-89.

to bear on Congress by the powerful New York delegation destroyed the value of this apparent recognition.

However, New York soon found itself very much occupied with the war, and the settlers of the New Hampshire grants, taking advantage of this opportunity, issued, on January 15, 1777, a formal declaration of independence. The New York delegation at once protested to Congress, and, after several preliminary measures, a committee of the whole of that body resolved, on June 30, 1777, that it could not "countenance or recommend any thing injurious to the rights and jurisdictions of the several states therein represented,"^{7.} and that the inhabitants of the New Hampshire grants could not be justified in their declaration of independence. The petition of the Vermont government for the privilege of sending delegates to Congress was denied. The Vermonters ignored these setbacks, and continued their independent and sovereign existence until, in 1791, the State of Vermont became the fourteenth member of the federal union.

With its independence established, in 1777 the new state turned its attention to the war with England. In the early summer Burgoyne commenced his march to the south. The Vermont Council of Safety began to consider the raising of troops to protect the state. Among the relatively poor

7. Z. Thompson, History of Vermont, Natural, Civil, and Statistical (Burlington: Chauncey Goodrich, 1842), p. 259.

the Green Mountains there were few who were loyal to the remote British government, and there were many eager volunteers for the militia. Unfortunately, however, there was no money with which to equip and pay the potential soldiers.

The recently created government, faced by this problem, solved the financial question, and the loyalist question by a single simple resolution. The whole matter is briefly and clearly summarized in the following letter, written by Ira Allen, Secretary of the Council of Safety:

The Council of Safety had no money or revenue at command, their powers and credit were not extensive, and all expresses were supported at their private expence; yet in this situation it became necessary to raise men for the defence of the frontiers, with bounties and wages; ways and means were to be found out, and the day was spent in debating on the subject; Nathan Clark, not convinced of the practicability of raising a regiment, moved in Council, that Mr. Ira Allen, the Youngest member of Council, and who insisted on raising a regiment, while a majority of the council were for only two companies, of sixty men each, might be requested to discover ways and means to raise and support a regiment, and to make his report at sun-rising on the morrow. The Council acquiesced, and Mr. Allen took the matter into consideration. Next morning, at sun-rising, the council met, and he reported the ways and means to raise and support a regiment viz. that the Council should appoint Commissioners of Sequestration, with authority to seize the goods and chattels of all persons who had or should join the common enemy; and that all property so seized should be sold at public vendue, and the proceeds paid to the Treasurer of the Council of Safety, for the purpose of paying the bounties and wages of a regiment forthwith to be

raised for the defence of the State. The council adopted the measure, and appointed officers for the regiment. This was the first instance in America of seizing and selling the property of the enemies of American independence. 8.

On July 15, 1777, Ira Allen's plan was accepted. Although legislation involving, more or less incidentally, the confiscation of British and loyalist property was passed long before the Vermont resolution, there is little doubt that Ira Allen was correct in claiming for his state the distinction of having passed the first general confiscation act. While this measure was extremely simple, and devoid of any administrative provisions, it should be noted that the members of the Vermont Council of Safety were, in general, men entirely without experience in legislative methods. It should also be noted that the relatively few loyalists in Vermont were, in almost every case, known to the members of the Council. In this connection, a letter sent by Thomas Chittenden, President of the Council of Safety, to Major-General Lincoln is of interest.

In Council of Safety,
29th August, 1777

The following contains a list of the Tories of this State, and the Several Crimes with which they Stand Charged:
(a list of fourteen names follows)

The above are the whole which the Council have in Custody except some few who have been Brought in so late the evidence have not as yet arrived.

I am Dear General your most obedient
Humble Servant, 9.

8. E.P. Walton, Records of the Council of Safety and Governor and Council of the State of Vermont (Montpelier: J.&J.M. Poland, 1873), vol. I., p. 134-135.

9. ibid., p. 153.

While it cannot be inferred that the fourteen offenders mentioned in President Chittenden's letter constituted the whole of the loyalist movement in Vermont, it is at least indicative of the small number who were in open opposition to the revolutionary government.

On July, 28, less than two weeks after the passing of the confiscation resolution, the following letter of instruction was ordered sent to each of the Commissioners of Sequestration appointed under the original act:

To _____:

You are hereby required (agreeably to a previous resolve of this Council) to seize all lands, tenements, goods and chattels of any person or persons in this State; whom you know or may hereafter learn, to have repaired to the enemy, and a true inventory to take thereof, and return to this Council, except articles as are wanted for the use of the army; which are wanted at Manchester or elsewhere, where there is a contractor to receive and pay for them. You will appoint three persons noted for good judgment, who are, after being duly sworn, to apprise the same; and all the movable effects you are to sell at public vendue, except such necessaries as humanity requires for the support of such families. And after paying necessary charges you are to remit the remainder of the money to this Council. You will take the natural and artificial marks of every creature you shall receive, or take, and their age, from whom they came, for what sold, and to whom sold. You are to lease out all such lands and tenements at a reasonable price, not exceeding two years, giving the preference to such persons as have been drove from their farms by this war. You are farther authorized

to arrest any person, or persons you shall have sufficient grounds to believe are enemies to the liberties of this and the United States of America. and all such persons as you shall arrest you will seize all their movable effects (where there is danger of their being embezzled) and keep in safe custody until after trial. If they are acquitted, to give unto such person or persons such seizures; but if found guilty, to make return to this Council. You are to call to your assistance such person or persons as you shall find necessary, keeping regular accounts of all your procedures.

By order of Council 10.
Ira Allen, Secy.

In this manner, the small farming community of Vermont not even possessed of a recognized status, except as a part of New York in revolt against the authority of that state, anticipating the recommendation of the Continental Congress by more than four months, and the governments of the thirteen original states by longer periods, gave the first impetus to the movement for the confiscation of the property of loyalists and British subjects which was to play such an important part in the prosecution of the war for independence.

It is difficult, in the light of the complicated machinery required in the majority of the states to carry out the work of confiscation, to believe that the highly informal arrangements worked out by the Vermont Council of Safety could meet with any appreciable measure of

success, but a student of the military side of the revolution in the state says that the bounties offered by the defense-confiscation resolution to those who should enlist in the two new regiments were paid, from the proceeds of the sale of loyalist property, within fifteen days. This amazing speed, however, could only have been made possible by the existence, within easy reach of the authorities, of large amounts of personal property, readily convertible into money.

The period of the first harvest of the proceeds of the sale of loyalist property soon passed, and the Council was obliged to resort to other expedients. As reports of the existence of loyalist estates which had escaped the notice of the Commissioners of Sequestration began to come before the Council, that body began to take a hand in the proceedings. By a series of orders, the Council directed the various Commissioners to seize certain specified estates. Thus, on August 29, 1777, the following order was addressed to David Fasset, one of the Commissioners:

Sir,--- You are to proceed to the house of Mr. John Munro of Shaftsbury, and seize all his Lands and effects of whatsoever name or nature, and bring all his writings, Together with all his Movable effects to this Council, excepting Two cows & such effects as are wanted for the Support of said Munro's

11. R.E. Robinson, Vermont, A Study of Independence (Boston: Houghton, Mifflin, & Company, 1892),

Family, which you are to leave with
the Woman, Taking a proper account
of them. 12.

By order of Council.

The above order is typical of the manner in which the major part of the confiscation process was carried on after the first few weeks. The Commissioners of Sequestration continued to hold office, but their duties became largely administrative, connected with the preservation, leasing, and sale of the confiscated property, and carrying out the confiscation orders of the Council of Safety, rather than initiatory, in the moving against the estates of suspects.

At times, the Council ignored the Commissioners, and turned to other revolutionary bodies for aid in proceeding against the estates of suspects. An example of this is to be found in a resolve of January 6, 1778:

Resolved that it be recommended to the Committee of Safety Convened in Convention for the Towns of Shaftsbury, Bennington & Pownal, to Strictly Examine into the particular circumstances of the Estates of all such persons as they have had under Immediate examination & are deemed to be Enemies to this and the United States of America, & as soon as may be Transmit to this Council a Copy of their Opinion of all or any part of Estates that are Justly forfeited to this State. 13.

12. Walton, Records of the Council of Safety and Governor and Council of the State of Vermont, vol. I., p. 151

13. ibid. p. 203.

This division of jurisdiction over the loyalists' estates led to confusion among the various individuals and bodies concerned with the matter. Particularly troublesome was the question of territorial jurisdiction between the several Commissioners of Sequestration. After settling several of these controversies by special resolutions, the Council of Safety issued the following general order:

In Council of Safety,
19 January 1778

Whereas sundry Inconveniences have arose by reason of the Commissioners of Sequestration Interfering one with the other; therefore Resolved that no Commissioner of Sequestration for the future be allowed to Transact Business for this State in any Town where there is a Commissioner appointed. And when any Commissioner has Transacted Business before this date in any Town where there is a Commissioner now appointed, they are directed to Transfer their business done in sd. Town over to said Commissioner.

By order of Council. 14.

However, it became increasingly more apparent that the improvised machinery for the confiscation of loyalist property was inadequate. There was no formal method of procedure by which the charges against suspects could be investigated, and a legal judgment rendered. Also, the system, if it could be so called, worked many hardships upon those who were so unfortunate as to have been associated with the proscribed persons, either as business associates, or as

14. Walton, Records of the Council of Safety and Governor and Council of the State of Vermont, vol. I., p. 209.

creditors. Since there had been made no provision for the collection of debts owing to the loyalists, the system was popular with a part, at least, of the people of the state.

In a final effort to solve the numerous problems arising out of Mr. Ira Allen's scheme for raising funds, the generally inactive Vermont Assembly, by a resolution, ordered the Governor and Council to dispose of all remaining "tory" estates. This resolution was passed on March 26, 15. 1778, and on the same day the Governor and Council worked out the permanent system. The order providing for the purpose follows:

State of Vermont, Windsor
26 March, 1778
In Council

Whereas it is Absolutely necessary that a Court be appointed to Confiscate & order the Sale of the Estates both Real & Personal belonging to the Enemies of the United States & which lies within the Limits of this State--- And whereas the Honorable the General Assembly of this State have impowered the Governor & Council to Determine the Same, therefore Resolved, that his honor the Lt. Governor with Gen. Jacob Bayley, Major Thomas Murdock, Col. Peter Olcott, Benjamin Emmons, Esquire, Paul Spooner, Esquire, Col. Benjamin Carpenter (any four of whom to be a quorum) be & are hereby appointed a Court & Impowered to Confiscate and order Sale to be made of all such Lands & Estates as shall by Sufficient Evidence appear to be forfeited within the County of Cumberland, and order the produce of the Same into the Treasury of this State. They are also impowered to appoint Commissioners to Adjust and Settle the accounts of the creditors to said Estates, and order payment for the Same, and Also

to settle the accounts of the Soldiers
& others in the service of this State
the Last Campaign, & give orders to
the Treasurer or his Clerk for the pay-
ment thereof. 16.

By order of the Governor and Council.

On the same day the Council voted, "that his Excellency, the
Governor and Council that Lives in the County of Bennington
be a Court to Confiscate the Estates of those persons that
are Enemies, in the same form as those in the County of
Cumberland are." 17.

Bennington County included the rest of the
state, since by an act of March 17, 1778, all of western
Vermont had been incorporated into that county.

These steps of the Governor and Council bring to an
end the development of confiscation legislation in Vermont.
Although the Assembly and Council frequently refer to the
subject after the creation of the Court of Confiscation,
the legislation is either in the form of resolutions
requesting the court to carry out the sale of such property
as soon as possible, or private acts for the relief of
individuals whose estates have been seized, or for the
seizure of estates not yet confiscated by the court or
Commissioners of Sequestration.

16. Walton, Records of the Council of Safety and
Governor and Council of the State of Vermont, vol. I., p. 248.

17. ibid. p. 235.

Chapter III.

NORTH CAROLINA

First among the states forming the union under the Continental Congress to provide for the confiscation of the property of the loyalists was, rather strangely, considering its location with regard to the centers of opposition to British authority and the early theatres of war, North Carolina. As early as November 22, 1776, the Assembly of that state had issued:

An Ordinance to empower the Governor to issue a Proclamation requiring all Persons who have at any Time, by taking Arms against the Liberty of America, adhering to, comforting or abetting the Enemies thereof, or by Words disrespectful, or tending to prejudice the Independence of the United States of America, or of this State in particular, to come in, before a certain Day therein mentioned, and take an Oath of Allegiance and make Submission on Pain of being considered as Enemies, and treated accordingly. 18.

This act offered a free pardon to any person, formerly having consorted with or aided the British, who, within ninety days after the proclamation of the opportunity, would appear at any state or county court, or before any Justice of the Peace, and take an oath of allegiance to the new government of North Carolina, to agree to do everything in his power to maintain and defend it, and to forever refrain from any act or word calculated to destroy or injure it in any manner. Those neglecting or refusing to take the oath within the time limit set, were declared

18. J. Iredell, Laws of the State of North Carolina (Edenton: Hodge & Wills, M,DCC,XCI), p. 281.

incapable of bringing any suit or indictment, or of making any defense against any suit or indictment, in any court within the state. They were also barred from the right to purchase or transfer any real estate. Finally, any real estate in their possession was declared to be, after having been so declared by a jury, forfeit to the state. The question of what to do with the property of loyalists openly at war with the new government, or of British subjects was specifically referred to the future consideration of the legislature.^{19.}

In spite of the provision for confiscation contained in the above act, it is not, in the proper sense of the word, a confiscation act. The obvious purpose was to persuade as many as possible of the mild tories to return to the service of the revolutionary government of North Carolina. The provisions for virtual outlawry, and forfeiture were merely expressions of the then common penalties for those guilty of a felony for which capital punishment was not provided. It is to be doubted that more than an insignificant number of proceedings were ever instituted under this act.

As the war continued, the state began to feel the need for stronger measures against those of its residents and former residents who had allied themselves on the side of the British government. Prosecutions were commenced under the British law against treason, commonly known as the

19. Iredell, Laws of the State of North Carolina, p. 281

"statute of Edward III," but the definitions of what constituted treasonable acts contained in this ordinance did not, in many cases, cover offenses which were treasonable in the eyes of the patriots, and the barbarous penalties provided by the English act led to frequent verdicts in favor of the defendants by juries unwilling to be party to such medieval punishments.

As a result, pressure was brought to bear upon the Assembly to enact a statute defining and providing penalties for treason and misprison of treason more acceptable to conditions in America. On April 8, 1777, the Assembly passed,

An Act declaring what Crimes and Practices against the State shall be Treason, and what shall be Misprison of Treason, and Providing Punishments adequate to Crimes of both Classes, and for preventing the Dangers which may arise from Persons disaffected to the State. 20.

This act provided that all persons living within the limits of North Carolina, or voluntarily entering the state, were bound to render to it allegiance. If any person falling under the above classification should accept a commission from the king of England, any officer under his authority, or any other enemy of the United States, levy war against the state, assist in any way the enemies of the state, plot against the state, recruit, or attempt to recruit, soldiers for any enemy, or supply any form of intelligence

to any enemy, and be legally convicted, on the evidence of "two sufficient Witnesses," or public confession, by a properly chosen jury, he would be adjudged guilty of high treason and suffer death without benefit of clergy, and the forfeiture of all estates and other property of every type. Attempting to convey intelligence to the enemy, speaking or writing against the public defense, inciting the people to resist the government of the state, discouraging enlistments, inciting the enemy, or resisting the laws passed for the common defense were declared to be misprison of treason, punishable by imprisonment for the remainder of the war, and forfeiture of one-half of all property possessed by the offender.^{21.}

All former officers under the British government, together with all persons having "traded immediately" to Great Britain or Ireland within the ten years prior to the publication of the act, or having acted as factors, agents, or storekeepers, either in North Carolina or any other part of the United States, for any merchant residing in England or Ireland were given the choice of taking an oath of allegiance or leaving the state. Those refusing to take the oath were required to depart for "Europe or the West Indies" within sixty days. Permission was granted to those selecting exile to sell their estates, and, after

21. Iredell, Laws of the State of North Carolina, p. 284.

satisfying all their just debts, to export the remainder in the form of produce, with the exception of provisions and naval stores. It was also made possible for such a person to appoint an agent to dispose of any property unsold at the expiration of the sixty days of grace. If, however, any property remained unsold at the end of three months, it was to be automatically forfeited to the state. Any of the above classes of persons who returned were to be adjudged guilty of treason.^{22.}

The penalties of forfeiture imposed upon those found guilty of high treason or misprison of treason were, of course, the continuation of the traditional usages of the English law. However, in the provision for the forfeiture of any of the property belonging to exiles which remained unsold for over three months, it is possible to note the beginnings of a movement against the property of all those who were unfriendly to the American side of the revolution. This desire to combine revenge upon the opponents of the new order of things with very practical benefits to the poverty-stricken revolutionary government, began to grow steadily, particularly among the poorer classes and the farmers, as the costs of the war made successively heavier tax impositions necessary. Many of the loyalists had fled, leaving their estates vacant, and the patriots of the

22. Iredell, Laws of the State of North Carolina, p. 285.

vicinities of the abandoned properties had the option of paying taxes for the protection of enemy property, or allowing wanderers and vandals to destroy potential sources of income for the state and for individuals.

With the available sources of revenue being worked to the utmost limits without raising more than a small part of the funds necessary to meet the demands of the war, and with the more frequent recourse to borrowings and the issuance of fiat money destroying what was left of the people's confidence in the credit of the state, the more conservative members of the Assembly began to be less hostile to the proposition that the lands of all enemies of the state be confiscated. As a result, the Assembly, in the November session of 1777, passed:

An Act, for confiscating the Property of all such Persons as are inimical to the United States, and of such Persons as shall not, within a certain Time therein mentioned appear and submit to the State whether they shall be received as Citizens thereof, and of such Persons as shall so appear and shall not be admitted as Citizens, and for other purposes therein mentioned. 23.

Since this act is unusually brief, and may be of interest as a specimen of this type of legislation, it is here recited in full:

Whereas divers Persons who have

23. W. Clark, The State Records of North Carolina (Goldsboro: Nash Brothers, 1905), vol. I., p. 123.

heretofore owned and possessed lands, Tenements and Hereditaments, and also movable Property in this State, have withdrawn themselves from the same, and attached themselves to the Enemies of the United States of America; and also divers Persons who have withdrawn to Places beyond the Bounds of any part of the United States, in order to avoid bearing their proper and equal Part in Defence of the Freedom and Independence of the same; and also divers Persons who having been beyond the Bounds of the United States at the Beginning of the present War, have failed to return and unite their Efforts for the common Defence of American Liberty; and it is expedient and just that every Person for whom Property is protected in any State should be and appear within the same, or join in Defence thereof whenever the same is threatened or invaded; and it is also just that a reasonable Time be given for such as have it in their Power to alledge favourable or mitigating Circumstances to induce this State, ever attentive to the Rights of natural Justice, and ever ready and willing to receive to Grace and Favour all who are sincerely attached to Liberty, to receive them as Citizens, and restore them to the Possessions which once belonged to them.

II. Be it therefore Enacted by the General Assembly of the State of North Carolina, and it is hereby Enacted by the Authority of the same, That all the Lands, Tenements, Hereditaments, and moveable Property within this State, and all and every Right, Title and Interest therein, of which any Person was seized or possessed, or to which any Person had Title on the Fourth Day of July in the Year One Thousand Seven Hundred and Seventy Six, who on the said day was absent from this State and every Part of the United States. and who still is absent from the same, or who hath at any Time during the present

War attached himself to, or aided or abetted the Enemies of the United States, or who has withdrawn himself from this or any of the United States after the Day afore mentioned, and still resides beyond the Limits of the United States, shall and are hereby declared to be confiscated to the Use of this State; unless such Person shall, at the next General Assembly which shall be held after the first Day of October, in the Year One Thousand Seven Hundred and Seventy Eight, appear, and be by the said Assembly admitted to the Privilege of a Citizen of this State, and restored to the Possessions and Property which to him once belonged within the same.

III. Provided, That this Act shall not extend to such Persons as are, or have been actually employed in the Service of the United States, or any of them, and have not deserted to the Enemy, or traitorously violated their Trust, as are imprisoned, of unsound Mind, or under the Age of Twenty One Years.

IV. And provided also, That nothing herein contained shall be construed to give Permission to such Persons as have removed themselves, or have been removed under the compulsive Authority of any Law of this State, or who have removed themselves to avoid taking the Oath of Allegiance to this State, to return thereto, or to avoid any Sales of Lands, Tenements, Hereditaments, or movable Property, by such Persons bona fide made before their Departure or pursuant to an Act of Assembly, passed at the last session of this Assembly intituled, An Act for declaring what Crimes and Practices against the State shall be Treason, and what shall be Misprison of Treason, and providing Punishments adequate to Crimes of both Classes, and for preventing the Dangers which may arise from Persons disaffected to the State. 24.

While it is possible that the members of the North Carolina Assembly knew that the Continental Congress was preparing a resolution requesting the states to move against the property of the loyalists, it seems certain that their action was entirely independent of that by Congress, coming as the result of the local demand for such legislation. At the same session, the law against treason was revised and strengthened by the following act:

An Act to amend an Act for declaring what Crimes against the State shall be Treason, and what shall be Misprison of Treason, and providing Punishments adequate to Crimes of both Classes, and for preventing the Dangers which may arise from Persons disaffected to the State. 25.

This act made improvements in the machinery of enforcement established in the earlier law. It also empowered justices of the several courts having cognizance of the crimes included in the act, to permit, at their discretion, persons refusing to take the oath of allegiance to remain within the state. If, however, any such person should leave the state without permission from the governor and council, his estates became automatically forfeited to the state.^{25.}

It is clear that the confiscation act of November, 1777, by which the estates of absentees and loyalists

25. Iredell, Laws of the State of North Carolina, p. 321.

were, under the conditions outlined above, declared to be forfeited to the state, was little more than an empty gesture to intimidate those in opposition to the revolutionary government, since it provided no machinery by means of which the penalties could be put into operation. It had given those subject to its penalties the privilege of appearing before the first session of the General Assembly, convened after October 1, 1778, and there attempting to prove their loyalty to the new government. Naturally, few availed themselves of this very dubious favor.

After waiting until January for the erring ones to appear for absolution, the Assembly enacted a law of a very different character, entitled:

An Act to carry into Effect an Act passed at Newbern in November, in the Year One Thousand Seven Hundred and Seventy-Seven, entitled, An Act for confiscating the Property of all Persons as are inimical to this or the United States, and of such Persons as shall not within a certain Time therein mentioned appear and submit to the State whether they shall be received as Citizens thereof, and of such Persons who shall so appear and shall not be admitted as Citizens, and for other Purposes therein mentioned; and for other Purposes. 26.

By this act, the General Assembly attempted to supply a complete answer to the problem of confiscation. After reciting the provisions of the act of November, 1777,

26. Iredell, Laws of the State of North Carolina, p. 364.

the new law provided that all lands, tenements, hereditaments, or movable property located within North Carolina, and belonging to any person or persons coming within the description cited in that act, were forfeited to the state. It further provided that three Commissioners should be appointed by the county court for each county. These officers were required to post a bond, guaranteed by three or more acceptable sureties, of two hundred and fifty thousand pounds, to be placed in the hands of the governor, for the faithful discharge of their duties. The commissioners were also required to take the oath of allegiance, and the following oath of office:

I A.B. do swear that I will faithfully discharge the Trust reposed in me as a Commissioner, to the best of my Knowledge according to Law; and that I will fully account for all Money or Effects that shall come into my Hands in consequence of my Appointment, as the Law directs.

So Help Me God. 27.

The commissioners, or a majority of them, in each county were authorized to take possession of all types of real and personal property, declared forfeited by the act, and to make out receipts or discharges which would forever indemnify any persons delivering up or paying the same against any future claim whatsoever.

In order to ascertain that they had knowledge of all forfeitable property, the commissioners were authorized to order the constables of their respective counties to

summon all the inhabitants of the counties to appear before them, and give, on oath, an account of all forfeitable property within the county. If any person failed to answer this summons, or refused to give the account required, he or she, at the order of the commissioners, could be placed in the county gaol until the desired information was supplied. Warrants could be issued for the arrest of such offenders.^{28.}

As a check upon the commissioners, the county courts were declared to have the same power to require sworn statements as to forfeited property in their possession from the members of the commissions for their respective counties, as the commissioners had respecting other persons.

The commissioners were required to keep a book, in which was to be entered all properties forfeited by the act, the names of the former owners, all claims upon such properties, all debts owing to the former owners, and all creditors of any persons described in the act. Reports of their proceeding were to be submitted to the county courts at each session of the latter.

The county courts were authorized to fill vacancies occurring in the commissions, and to remove commissioners if it became necessary. They could also order the commissioners to rent any forfeited lands, in tracts of not more than six hundred and forty acres each, for periods of not more than one year. The courts were directed to order all negroes,

28. Iredell, Laws of the State of North Carolina, p. 365.

and other personal property, forfeited by the act, to be sold at public auction. The commissioners were to supervise all sales of forfeited property, and all sales and contracts made by them were declared to be good and valid.

It was provided that wives and children of absentees were to be allowed, from the estate, the amount by law made allowable in cases of intestacy.

If the forfeitable character of any estate was attacked, the county courts were ordered to stay all further proceedings, and refer the case, with all particulars to the district courts. If any real or personal estate belonging to any orphan or other person not comprehended in the descriptions of the act should be sold, the amount of the sale, with six per cent. interest, was to be returned.

Persons having just claims against any of the estates forfeited under the act were to be reimbursed, either in full or in part, depending upon the amount realized from their sale.

Commissioners for the forfeiture of absentees' estates were granted the same legal remedies, and subjected to the same penalties, as state officials charged with the collection of public taxes. As compensation for their services, the commissioners were allowed two percent of all net sums realized by them in the conduct of their
29.
offices.

All entries, made or to be made, of any lands coming within the meaning of the confiscation acts, were declared to be void, with the exception of a certain tract, previously disposed of by the Assembly.

The clerks of each county court were required to transmit to the Assembly a complete transcript of the reports made by the commissioners.

Citizens owing debts to absentees were authorized to make payments to the commissioners, who were ordered to give suitable discharges, protecting the holders from any future claim on the part of the original creditor.

If any absentees left behind them aged or infirm parents, dependent on them for their subsistence, the superior court of the district, upon application from such parent, was instructed to set off as much of the estate as the petitioner had been accustomed to receive, together with as much more as should be necessary, for the subsistence of such person during his or her life.^{30.}

In spite of the elaborateness of the act of January, 1779, the confiscation of the loyalists' property did not proceed as smoothly or as rapidly as the members of the General Assembly desired. Particularly irritating was the fact that the commissioners had entirely failed to move against some of the most valuable of the estates known to

30. Iredell, Laws of the State of North Carolina, p. 366.

belong to loyalists or absentees. To provide for the seizure of these properties, and to make improvements in the machinery established by the act of January, the General Assembly, in October session, 1779, passed:

An Act to carry into effect an Act passed at Newbern, in the Year One Thousand Seven Hundred and Seventy-Seven, intituled, An Act for confiscating the Property of all such Persons as are inimical to this or the United States, and of such Persons as shall not within a certain Time therein mentioned and submit to the State whether they shall be received as Citizens thereof, and of such Persons who shall so appear and shall not be admitted as Citizens, and for other Purposes therein mentioned, and for other Purposes. 31.

In order to make certain the seizure of the more important estates which had escaped the attention of the commissioners, this act specifically named seventy-five persons and commercial establishments, including one company located in London, and declared that all real and personal property, of any type whatsoever, which had been in their possession on July 4, 1776, or at any time since, was forfeited to the state. New commissioners were to be appointed, in the same manner as set forth in the Act of January, 1779, Their bond was to be placed, at the discretion of the county courts, at between one hundred thousand and five hundred thousand pounds. The powers of the commissioners remained substantially the same.

31. Iredell, Laws of the State of North Carolina, p. 379.

It was provided that all persons owing any debt, payable in sterling, to any of the persons whose property was subject to confiscation could meet their obligation in the current money of North Carolina, at the rate of one hundred and seventy-five pounds current money for every one hundred pounds sterling.

The right of the county courts to fill vacancies in the county commissions was continued, with the proviso that there be not less than seven justices present when any appointment was made.

In place of the system of rentals, it was provided that the commissioners sell all the property, both real and personal, in their possession, by public auction, to be held at the court house of the county in which the property was located. The sales were to be held during the period of the court sessions, and were to be advertised in the Virginia and South Carolina Gazettes, for at least one month before the day set. Notices were also to be set up in the most prominent places within the county. The lands were to be sold in tracts, at the discretion of the commissioners, with the proviso that no tract contain more than six hundred and forty acres. Surveyors were to be appointed by the commissioners, and charged with the work of laying off the tracts.

The commissioners were authorized to accept one-half of the purchase price in cash, at the time of the sale, and to take bonds, payable in six months to the governor

or the commander-in-chief for the use of the state, for the payment, within six months, of the remainder. Full power was granted, to any two of the commissioners, to execute to any purchaser a deed of bargain and sale, or any other legal form of conveyance, for any tract or tracts purchased under the terms of the act. These deeds were declared to be valid, any law to the contrary notwithstanding.

Surveyors, appointed by the commissioners, in pursuance of the act, were to be paid eight pounds for every tract of six hundred and forty acres laid off, and a proportional amount for smaller tracts.

The act of January, 1779 was repealed.

Wives or widows of any person falling under the penalties of the confiscation act were not to be denied their right of dower. Household furniture and provisions belonging to the wives, widows, parents, or children of offenders were to be exempted from seizure.

Commissioners appointed under the act of January, 1779, were to be held accountable to the treasurer of the district for all sums of money received by them in carrying out their duties.

If any recovery should be obtained, by anyone at some subsequent time, against any person for any sums of money paid in consequence of the act, the state agreed to make

good all such sums, together with any damages which might have accrued.

The law of November, 1779 having set up an efficient mechanism for the purpose, the process of the confiscation and sale of loyalist and British property went rapidly ahead. However, it was natural that certain abuses should arise, and certain shortcomings develop as the law was applied. To provide for the correction of these faults, the General Assembly, in September, 1780, passed the following act, entitled:

An Act for securing the quiet and inoffensive Inhabitants of this State from being injured, for preventing such Property as hath or may be confiscated from being devastated or destroyed, and for other Purposes. 32.

In the preamble, which states that there have been many complaints of violence and barbarity on the part of the officers acting for the commissioners, or often on their own initiative, in the frequently illegal seizure of the property of those suspected of being loyalists, there is to be found the almost inevitable result of granting such broad, quasi-judicial powers to commissions made up of local patriots, often more noteworthy for their devotion to the cause of independence than for their legal training, or impartial judgment.

32. Iredell, Laws of the State of North Carolina, p. 405.

To prevent the destruction of many estates which had been abandoned by their owners and had not been disposed of by the commissioners, it was ordered that the commissioners for each county, or, if no commissioners had been appointed, the sheriff or coroner should take measures to protect such property. All other persons except the commissioners, sheriffs, or coroners were prohibited from taking possession of loyalist property, except through legal purchase under the law of November, 1779. These provisions were to be enforced by the governor and the board of war. Confiscated negroes, not otherwise disposed of, were to be hired out, until February 1, 1781, by the commissioners. The act then abruptly, in true colonial manner, plunges into a series of regulations designed to discourage the apparently common practice of raiding the northern part of South Carolina and carrying off every article which could be moved.

At this same time, the operations of the British forces in South Carolina were having a very depressing effect upon the real estate market, particularly on the sale of confiscated loyalist property. Since the lands, as well as other property, were required by law to be sold at public auction, and since the more conservative elements of the population had no inclination to pay out their money on so speculative an investment, a few of the bolder spirits were able to buy very valuable estates at

a small fraction of their real worth. The General Assembly, unwilling to see their recently acquired lands disposed of for almost nothing passed, in September, 1780:

An Act for suspending the
Operations of an Act, for carrying into
Effect an Act, commonly called the Con-
fiscation Act. 33.

After a preamble reciting the rather obvious reasons for its action, the Assembly suspended the confiscation act until the end of its next general session. It is of interest to observe the expressed hope that the confiscated lands, if reserved, "establish a valuable and permanent Fund, either for supplying the Army and Navy with Provisions, or for establishing a Paper Currency, which would in all Probability maintain its original Value." There is something rather pathetic in the second of the uses for the proposed fund. The commissioners were ordered to pay all funds in their possession to the district treasurers, and to return lists of all confiscated property to the General Assembly. Titles were to be issued for sales already completed.

In January, 1781, the Assembly passed:

An additional Act to an Act entitled An Act for securing the quiet and inoffensive Inhabitants of this State from being Injured, for preventing such Property as hath or may be confiscated from being wasted or destroyed, and for other Purposes; for

33. Iredell, Laws of the State of North Carolina, p. 407.

continuing an Act, entitled, An Act for suspending the Operation of an Act for carrying into Effect an Act commonly called the Confiscation Act, and for directing and regulating Elections in particular Instances; and also for giving further Time to surveyors to compleat their Surveys. 34.

This act ordered the commissioners to take possession of all confiscated property, calling on the militia for aid if necessary. A penalty of twenty thousand pounds was provided for any militia officer refusing to grant such assistance. The estates of loyalists who had returned and entered the militia were ordered restored to their families. All lands remaining in the commissioners' hands were to be rented for one year, and all live stock on such lands was to be delivered to the county commissioners for public use. The remainder of the estates were to be carefully preserved. Any sales of property made to avoid its being confiscated were declared void. The commissioners were ordered to bring actions of trespass against all persons unlawfully occupying confiscated property. Finally, the act for suspending the operation of the confiscation act was continued indefinitely.

At the same session, the legislature passed "An Act to compel all such Persons who have received, or have been entrusted with public Monies, to account for the same, and for other Purposes," requiring the commissioners

34. Iredell, Laws of the State of North Carolina, p. 412.

of confiscated property to settle their accounts before
^{35.}
 October 5, 1782.

In April, 1782, with all possibilities of British invasion past, the General Assembly passed, "An Act direct-
^{36.}
 ing the Sale of Confiscated Property." This act reaffirmed the confiscation of all lands seized under all preceding acts, and ordered that they be sold. Persons contesting the legality of any seizure were directed to appear before the county court of the county in which the disputed lands or other property were located. These courts were empowered to make trials of such cases, except where any property involved had been transferred since July 4, 1776, in which case, forfeiture was to be absolute.

The lands directed to be sold were to be put up at public auction. Payment was to be in specie, and could be extended over five years, with interest at six percent, subject to the making of a bond, by the purchaser, of twice the purchase fee. Certificates issued by the state before 1781 were acceptable at the ratio of one hundred and fifty dollars in paper for one dollar in specie, or certificates issued after 1781, at the ratio of one hundred to one, in payment of up to two-thirds of the purchase price.

Seven commissioners were appointed to superintend the sales. The commissioners of confiscated property for the

35. Iredell, Laws of the State of North Carolina, p. 419.

36. ibid. p. 425.

several counties, appointed under the act of November, 1779, were directed to turn over all lists of confiscated property to the new commissioners. The lands to be sold were to be divided into tracts of not more than six hundred and forty acres, and returns made to the governor within three months after the day of sale. Vacancies in the commission were to be filled by the governor. All commissioners were required to take an oath, and were granted, in payment for their services, one percent of the net return from all sales. Surveyors were granted forty shillings for each survey. If they were attacked while making a survey, they were entitled to call on the militia for aid.

The sales were to be held at the district court houses. All negroes seized were to be divided into four lots. Three of the lots were to be sold for state currency. The remaining lot was to be sold for specie only, payable one-half at the time of purchase, and the rest within six months. All sales were to be held on a single day, before January 1, 1783. Persons who had occupied illegally any confiscated estates were to withdraw at once. A penalty of three times the value of the property held was provided in case of refusal to do so. Wives and children of those whose estates had been confiscated were granted one-third of the property seized, or enough to support them in comfort.

At the same session, the Assembly passed:

An Act to establish a Department for adjusting and liquidating

the public Accounts of this State,
and for appointing a Comptroller,
and (for) other Purposes. 37.

This act required the commissioners of confiscated estates to render, at intervals of six months, their accounts to the comptroller. It was also provided that they sell certain specified estates for specie, of which one-third was to be paid at the time of sale, one-third within four months, and one-third within eight months. Of the money so obtained, two thousand five hundred pounds was to be used to pay the expenses of the delegates to Congress.

In April, 1783, the General Assembly took the action forecast in the act of September, 1780 and passed:

An Act for emitting One Hundred Thousand Pounds in Paper Currency, for the Purposes of Government for Seventeen Hundred and Eighty-Three, for the Redemption of Paper Currency now in Circulation, and advancing to the Continental Officers and Soldiers Part of their Pay and Subsistence, and for levying a tax, and appropriating the Confiscated Property for the Redemption of the Money now to be Emitted. 38.

By this act, all property belonging to the state by virtue of the confiscation acts was reserved as a fund for the redemption of the bills emitted.

In May of 1783, the county courts were instructed to

37. Iredell, Laws of the State of North Carolina, p. 434.

38. ibid. p. 443.

require the commissioners of confiscated property for their counties to turn in exact accounts of all property in their possession. If such accounts were refused, the courts were directed to apply to the attorney-general who was instructed to start suit for the forfeiture of the offending commissioners' bonds.³⁹ The courts were empowered to summon any person presumed to know anything about the activities of any commissioner, and examine him under oath.

The conclusion of the Treaty of Paris of 1783 did not bring an end to the question of the loyalist estates. In October, 1784, the North Carolina Assembly published, "An Act directing the Sale of confiscated Property."⁴⁰ According to the preamble:

Whereas it appears to this General Assembly that considerable Quantities of Lands, Tenements, Hereditaments and moveable Property, which have been confiscated under some one or other of the Laws of this State commonly called Confiscation Laws, yet remain unsold; it being just and necessary that the same should be sold for the Use and Benefit of the State: 40.

the legislature ordered that all such lands and other property be sold. How this could be properly done in the face of the obligation, established by the act of April, 1783, to reserve all confiscated property as a fund to provide for the retirement of the paper currency emitted by that act, is a mystery the answer to which must rest

39. Iredell, Laws of the State of North Carolina, p. 460.

40. ibid. p. 522.

with the ghosts of the members of that revolutionary legislature.

Seven commissioners were appointed, one for each of the major districts of Morgan, Salisbury, Halifax, Edenton, Newbern, and Eilmington. These officers were directed to appoint surveyors to divide the lands into tracts of not more than six hundred and forty acres, and to return "fair copies" of the plats to them within three months. Each sheriff was ordered to transmit to the commissioner for his district a list of all personal property confiscated within the county in which he held office. Persons suspected of possessing forfeited property could be called before the county court by the sheriff, and there examined under oath.

The confiscated property was ordered sold, by public auction, at the court houses of the counties in which it was located. Notice was to be given three months in advance, in the North Carolina (if any), Virginia, and South Carolina Gazettes, and by proclamation in the court house. All properties were to be sold for current money or soldiers' pay certificates. Credit could be had for twelve months, subject to making a bond of double the value of the property. The commissioners were made liable for the payment of the notes granted to purchasers on credit. However, in the event of a default, they had the privilege of suing for the recovery of the bonds made by the purchaser in default. All the papers related to the

various sales were to be returned by the commissioners to the secretary's office. When the entire price had been paid, the governor was directed to issue legal grants, under the great seal of the state. Buyers of negroes and personal property were, after the full price had been paid, to be given proper bills of sale.

The governor was empowered to fill any vacancies among the commissioners which might occur. Each commissioner was required to give a bond of fifty thousand pounds for faithful performance of his duties, and, as a payment for his services, was entitled to three percent of the net return. The surveyors were allowed forty shillings for each tract. If they were opposed, the sheriff of the county was ordered to raise a posse comitatus and protect them in their work. For their services, the sheriffs were to be paid "an adequate allowance.."

Since an act of general pardon and oblivion passed^{41.} in May, 1785 permitted many of the loyalists to return in safety, some of the purchasers of confiscated property found themselves the defendants in suits commenced for the recovery of their holdings by the former owners. To protect this group, in November, 1785, the General Assembly passed:

An Act to secure and quiet in
their Possession all such Persons,

41. Iredell, Laws of the State of North Carolina, p. 455.

their Heirs and Assigns, who have purchased, or may hereafter purchase Lands and Tenements, Goods and Chattels, which have been sold, or may hereafter be sold by commissioners of forfeited Estates, legally appointed for that Purpose. 42.

This act provided that persons holding titles under sales lawfully made by commissioners of forfeited estates were not liable to answer any suit by any person specified or described in any of the confiscation acts, or anyone claiming under him. All such suits were to be dismissed upon the defendant's producing a certificate of title legally granted by any two or more commissioners. A year later a second act provided that any citizen of North Carolina, not claiming title under any person specified or described in any of the confiscation acts, could sue the purchaser of any confiscated property. 43.

In November, 1787, the Assembly passed an act entitled:

An Act for the more regular collecting and accounting for the Revenue of this State, for allowing the public Treasurer a Clerk, and for the collection of Arrearages, and to repeal the twelfth Section of an Act therein mentioned. 44.

As the title of this act indicates, it was a general

42. Iredell, Laws of the State of North Carolina, p. 553.

43. ibid. p. 579.

44. ibid. p. 607.

administrative measure, providing for a more careful supervision of the fiscal offices and officers of the state. Buried in it, in the eleventh clause, is a provision for the repeal of the twelfth clause of the act of October, 1784, which provided for the payment of a fee of three percent of the net returns from the sales of confiscated property to the commissioners appointed to supervise the work. This is the last piece of general legislation on the subject of the loyalists' property passed by the General Assembly. Although for years, the legal tangles created by the various confiscation and allied acts made necessary action by the Assembly, this action was in every case in the form of private laws.

Chapter IV.

GEORGIA

After the passage of the North Carolina confiscation act, in November, 1777, a period of over three months elapsed before the next state moved against the property of the loyalists within its borders. On March 1, 1778, the General Assembly of Georgia passed its first confiscation law, entitled:

An Act for attainting such persons as are therein mentioned of high Treason, and for Confiscating their Estates, both real and personal to the use of this State; for establishing boards of Commissioners for the sale of such Estates, and for other purposes therein mentioned. 45.

The preamble of this act is an interesting example of the thought processes of the colonists of the period:

Whereas the king of Great Britain, did on the Nineteenth day of April which was in the Year of Our Lord one thousand seven hundred and seventy five, Commence a cruel and unjust War against the good people of America with intent to reduce them under subjection to a state of lawless sway and absolute despotism in Violation of the Antcient Constitution and utterlay subversive of the same: And Whereas the said King in order to carry the said flagitious (sic) and destructive system of Government into full effect did send a body of his Troops on the aforesaid day and Year, which Troops did Wantonly Attack and Murder the peaceable Inhabitants of America Whereby the said King did forfeit and forefault every right and title to the Allegiance of the said people, and by other and Various methods did do away and destroy the great end of

45. The Revolutionary Records of the State of Georgia (Atlanta: State Printer, 1908), vol. I., p. 326.

all Civil institutions, the public good: And Whereas the powers of Government incapable of Annihilation did devolve upon the people for exercise of the same, and the said people, did (as of right and Justice they ought) enter into a full exercise thereof for their common safety and happiness: And Whereas at a General Congress held at Philadelphia a declaration of the Antient and inheirant rights of the people recognizing the above principles of Government and the Necessity of a final separation and dissolution of all political connection with the King and Realm of England took place on the fourth day of July, one thousand seven hundred and seventy-six, Asserting the thirteen United Colonies to be free, and Independent States, and in full and Absolute possession of every supreme power which free and Independent States and powers do and Ought of Right to enjoy, which declaration not only confirmed the powers of the Separate States, but plainly and Manifestly recognized the Justice and political Necessity of Assuming and exercising the powers which reverted to and devolved upon the people on the breach which was made by the said King of Great Britain on the said nineteenth day of April in the Year of Our Lord one thousand seven hundred and seventy-five, in the original contract which subsisted between him and the people; And Whereas it is both just and Constitutional that all and every allegiance and other duty which was due from the good people of America on the said nineteenth day of April which was in the Year one thousand seven hundred and seventy-five should be immediately transferred and Accordingly were by means of the said breach transferred from the said King to the powers which Assumed the rights and exercise of Government in this State: And Whereas various persons Inhabitants of this

State in contempt of the said Allegiance and duty so transferred as aforesaid did traitorously avoid the same, and, led away by their wicked devices, did contumaciously aid, abet, assist and comfort the Troops and Vessels of the said Britannick King then ravaging and plundering the Coasts and Towns of America, and by every savage and inhuman practice, murdering and destroying the good people of the same and whereas it is but reasonable and just that the Estates both real and personal of all such persons residing within this State, on, or since the said nineteenth day of April who have refused their Allegiance to the Governing powers of the same should be forfeited and Confiscated, which forfeitures and confiscations are further Recommended by Congress to be carried into immediate execution. With intent therefore that effectual Justice may be done, and all such defections and treasons meet with their due punishments and also that the same may be prevented in future: 46.

After beginning with the above cited masterpiece of eighteenth century political science, the Georgia confiscation act plunged into its serious business. In the first section it was enacted that a list of persons, whose names were given, were, by virtue of the act itself, attainted and adjudged guilty of high treason against the state. If any of the persons so attainted should return to the state, or be so unfortunate as to be captured while bearing arms in the British forces, he was to be tried, and, if found guilty by due process of law, executed for the crime of treason.

46., The Revolutionary Records of Georgia, p. 326-327.

Since by law and custom those persons who had forfeited the protection of the state by engaging in the crime of treason against it incurred the forfeiture of their property and all other possessions, and since it appeared only just and reasonable, to the Georgia legislators, that such property should be used for the benefit of the good citizens, and the satisfaction of all just and lawful claims against the traitors, it was provided "that all and every the lands and heritages, debts or sums of money, and goods and Chattels and effects heritable and moveable, real and personal of what Nature or kind soever they be,"^{47.} of those attainted in the first clause, were forfeited to the state, without any further trial or inquest, or separate proclamation of forfeiture. This forfeiture was to apply to any property held by the attainted persons on, or after, April 19, 1775.

In order to provide for the proper discovery, administration, and disposal of the confiscated properties, the General Assembly appointed five commissioners for each of the six counties of the state.^{48.} Any three or more of the commissioners in any one county was declared to constitute a board competent to exercise the various powers and duties to be established by the act. Each board was directed to

47., The Revolutionary Records of Georgia, p. 327.

48. H. Marbury & W.H. Crawford, Digest of the Laws of the State of Georgia, From its Settlement as a British Province, in 1755, to the Session of the General Assembly in 1800, Inclusive (Savannah: Seymour, Woolhopter & Stebbins, 1802), p. 64, et seq.

make inquiries concerning all such estates, both real and personal, within the county for which it was appointed, which could be properly construed to come under the provisions of the confiscation clause. Until the sale of such forfeited property could be made, the boards were instructed to collect all rents and other forms of income arising from them. As soon as it could conveniently be done in a manner conducive to the best interests of the state, the several boards were directed to order the sheriff, or some other appropriate person of their choice, to sell all the properties, of every character, vested in the state by the operation of the act. All funds arising from the rentals, incomes, or sales of confiscated property were to be deposited in the state treasury, to be held for disposal at the pleasure of the legislature.^{49.}

All persons claiming any right or interest in any of the property confiscated under the act, together with all those claiming to be creditors of the attainted persons were directed to produce their respective claims or certificates of indebtedness before the board of the county in which the property in question was located, or where the attainted person last maintained a residence. If the county board, after examination of the documents and, if necessary, the summoning of witnesses, decided that the claims were valid and in no sense colorable or fraudulent, and not impaired by the terms of the confiscation act, it was authorized

^{49.} Marbury & Crawford, Digest of the Laws of Georgia, p. 64.

to adjust them at its discretion. However, if the county board should suspect the claims to be in any way fraudulent, either by their own character, or by the operation of the terms of the act, it was directed to refer them to the attorney-general of the state, who was, by the act, authorized to make investigations, and defend the rights of the state, either before the county boards, or before any of the superior courts of the state, against any such representations.

The boards for forfeitures were empowered to determine their own times and places of meeting, and their methods of procedure. In order to facilitate their work, they were also empowered to require that any books, accounts, deeds, or other records be submitted to them for examination. These papers could be kept as long as might be necessary, and no charges or fees were to be assessed against the boards for the use of such material by any person, official or civilian. Witnesses could be summoned to give testimony, the members of each county board being entitled to require and administer an oath in such interrogations. The proceedings were to be of a summary nature, the usual formalities of the courts being dispensed with in the interests of speed. All sheriffs and constables were required to aid the boards, and execute their orders.

50.

50. Marbury & Crawford, Digest of the Laws of Georgia, p. 65.

The confiscation act required the boards of forfeitures to keep a record of all properties seized, their form of tenure, all known encumbrances, and all persons falling under the general terms of the clause for attainder.

If any person called upon to testify in any case concerning forfeited property should refuse to attend the session of the board, or attending, refuse to testify, the board was authorized to commit him to the common jail in the county involved until he should agree to give the required testimony. Sheriffs or constables refusing to obey the orders of the boards were liable to a fine of not more than fifty pounds for each offense, and might be committed to jail until the fine had been paid.

To discourage any attempts to conceal the existence of any debts owing to the persons attainted by the act, it was provided that any debtors of this class who failed to report their obligations to the proper board within sixty days after the publication of the confiscation law should forfeit double the amount of the debt. A similar penalty was provided for those who concealed any personal property of the offenders. The county boards were authorized to make any reasonable arrangement for the repayment of debts to any confiscated estates or for the payment for personal property which could not be returned intact providing that the state did not suffer by any such provision. If payments over an extended period of time were accepted by the

boards, they were instructed to obtain adequate bonds or sureties for prompt and full payment. In the event of a default, the boards were empowered to sue for the recovery of the bonds.

In order to secure to the state the best possible return from the personal property and chattels seized by authority of the act, the boards were ordered to provide for the safe preservation of such property. A detailed inventory was to be taken, and a fair appraisalment was then to be made. The boards were directed to appoint competent persons to perform these offices. After all outstanding claims against such properties had been liquidated, the boards were directed to require the sheriff or some other proper person within each county to sell all that remained at a public auction, to be advertised for at least thirty days in advance, for the money issued by Georgia to citizens of the state. No other terms or buyers were to be accepted.^{51.}

The members of the board were required to attend all such sales, and make entries, in the books already mentioned, of every item sold, its price, and the name and address of the purchaser. To assure buyers of the validity of their purchases, the several boards were directed to give to each purchaser, under the seal of the chairman of each, certificates stating the nature of the goods bought, and the price paid. The act again laid emphasis on the fact that only

^{51.} Marbury & Crawford, Digest of the Laws of Georgia, p. 67.

actual, bona fide residents and citizens of the state of Georgia could thus be granted certificates of purchase. The purchasers of such personal property were required to make a payment of one-fourth of the purchase price at the time of sale, and give "good and sufficient" security, both by a mortgage on the property itself, and by entering into personal bond, for the payment of the remainder, with interest at eight percent, within three years after the day of the sale, in three annual installments. In the event of a default in payment, the county boards were instructed to recover the said property for resale, and to sue for forfeiture of the bond given by the original purchaser.

An unusual clause provided that no person should be permitted to buy more than twenty-five negroes over the age of fifteen. It was also forbidden to transport any slaves purchased at the sales above described out of the state.

All persons claiming any interest, of any type, in the real estate confiscated in pursuance of the act were allowed sixty days in which to exhibit their claims to the boards for the several counties. If no claim on any piece of real estate was presented within the period cited, the boards were authorized to consider that property free from encumbrances, and proceed to make sale of it, giving at least forty days' notice of each sale.

52. Marbury & Crawford, Digest of the Laws of Georgia, p. 68.

The Assembly provided that if any infant, or other person, favorable to the independence of the state, should be prevented by any unavoidable obstacle from presenting his or her claims before the conclusion of the sixty day period provided by law, it should be within the power of any future House of Assembly to grant redress in the form of payment of any sum up to the real value of the claims. Any claimant who was dissatisfied with the decision of the county board sitting upon his claim was assured the right of appealing to the superior court of the county for which the board was appointed.^{53.}

To confirm the purchasers of any forfeited real estate in their ownership, the county boards were directed to order the sheriffs or other suitable persons, to provide all purchasers of such land who had given the required security for the payment of the full price within five years, with proper deeds of lease and release. These deeds were to be endorsed by the county boards, every endorsement containing the terms of the sale and the purchasers' names.

In order to protect those who had purchased property from persons later attainted, it was provided that all sales and conveyances of a bona fide character for a valuable consideration, and not made with the aim of avoiding confiscation, were to be held as valid and legal.

^{53.} Marbury & Crawford, Digest of the Laws of Georgia, p. 69.

All such conveyances, however, were subject to the examination of the boards of forfeitures. If upon inquiry, the boards found any of the transfers to be fraudulent, or made to avoid confiscation, it would be their duty to declare such conveyances inoperative, and to make sale of the property.

Each commissioner appointed to the county boards was required to take an oath to carry out the duties of his office honestly and with his best skill, and to give security for his good behavior. The amount of the security required varied in the different counties, being as high as five thousand pounds in the large and prosperous county of Chatham, and as low as one hundred pounds in the frontier counties. No commissioner was allowed to act as a guarantor for another.^{54.} The several boards were enjoined to work in cooperation.

All sums of money received by the several boards in consequence of the performance of their duties were to be paid over to the treasurer of the state, who was instructed to make out proper receipts for the returns in triplicate. One of the receipts was to be sent to the governor, one to the board turning in the money, and one to the office of the secretary of the state. Vacancies occurring in any of the boards were to be filled by the governor and council of the state.

54. Marbury & Crawford, Digest of the Laws of Georgia, p. 70.

Sheriffs and all other persons assisting the commissioners in the sale of the forfeited property were to be compensated according to a scale fixed in the act, and were to be bonded by the boards for the faithful performance of their duties.

The county boards were empowered to allot any part of the estate of any attainted person for the maintenance of his wife or children, if any. The commissioners were enjoined from so allotting more than one-half of any estate, unless it appeared that such a grant would be insufficient for the purpose. In the latter case, any part, or all of the estate could be granted.^{55.}

Finally, it was provided that all the sums of money to be realized from the sale of all property confiscated under the provisions of the act were to be employed in sinking the bills of credit issued by the state, and discharging the fair share of Georgia of the expenses of the United States during the war with Great Britain. With a truly American optimism, the General Assembly provided that any residue should be set aside as a fund for the future support of the state, to be used as later legislatures might see fit.^{55.}

In spite of the obvious care with which the Georgia confiscation act had been drawn, reflecting great credit

55. Marbury & Crawford, Digest of the Laws of Georgia, p. 71.

upon the parliamentary skill of its creators, it soon became apparent that modifications would be necessary if the desired ends were to be attained. Since the action of the county boards of forfeitures proved unsatisfactory, the General Assembly dissolved them, and took upon itself the duties formerly delegated to them. The terms of sale, both for real property and for personal property, provided in the original act proved to be unwise, and to revise them the Assembly, on October 30, 1778, passed:

An Act to alter and amend a clause or clauses of an act entitled "An act for attainting such persons as are therein named of high treason, for confiscating their estates, both real and personal, to the use of this state; for establishing boards of commissioners for the sale of such estates, and for other purposes therein mentioned," and for the better and more effectual carrying the other purposes of the said act into execution. 57.

This act repealed the clauses in the former act which provided the methods for the disposal of the several classes of confiscated property. In the case of personal property, it was provided that the sheriffs of the various counties were to dispose, at public auction, of all personal goods, formerly belonging to the persons attainted under the act of March 1. Where the purchase price was less than two hundred pounds, the sheriffs were directed to accept only cash in full, at the time of the sale. However where the amount exceeded two hundred pounds, the purchasers were to

56. Marbury & Crawford, Digest of the Laws of Georgia, p. 72.

57. ibid. p. 72.

be permitted to pay half the price at the time of the sale, and give notes for the payment of the remainder, with interest, within one year. These notes were to be secured, in every case, by land. To encourage cash purchases, the sheriffs were authorized to offer a rebate of four percent.^{58.}

Real estate also was to be sold by the sheriffs at public auctions. Purchasers were permitted to pay one-fourth of the price at the time of sale, and distribute the balance through three equal annual payments, with interest at eight percent. When this arrangement was followed, the sheriffs, under the general supervision of a committee to be appointed by the house, were to take a mortgage on the property as well as some other adequate security, for the completion of the contract of sale.

Finally, the sheriffs were authorized to draw up titles for the purchasers. These titles were declared to be good and valid for all purposes.

Since only by a very forced interpretation could the act of March 1, 1778 be extended to include estates held by British subjects who had at no time resided in the colony, or to those who had left Georgia before the outbreak of hostilities and had failed to return, the General Assembly, on November 15 of the same year, moved against the property of this class, which included some of the greatest land holders in the state. The result was:

An Act to compel non-residents

58. Marbury & Crawford, Digest of the Laws of Georgia, p. 73.

to return within a certain time or in default thereof, that their estates be confiscated, and for confiscating the estate of William Knox, Esq. formerly provost marshall of the province now state of Georgia. 59.

In its preamble this act explained that all persons holding property within a state were obligated to share in the dangers and expenses of its defense in time of war. Therefore, all persons, over twenty-one, who were outside the limits of Georgia, were ordered to return and take the oath of allegiance within twelve months. If any should neglect or refuse to do this, their estates, both real and personal, were declared to be forfeited to the state, to be sold for the public good. The confiscation and sale was to be carried out as established in the acts of March 1, and October 30. A second clause specifically confiscated the estate of William Knox.^{59.}

After this act, the Assembly seemingly dropped the issue of confiscation for over three years, the only acts having any reference to the subject being, "An act declaring certain persons herein described citizens of this state, and for burying in oblivion, certain high crimes and misdemeanors,"^{60.} which restored citizenship (and incidentally, property) to those forced, against their will, to take an oath of allegiance to Great Britain, and a few

59. Marbury & Crawford, Digest of the Laws of Georgia, p. 73.

60. ibid. p. 74.

private acts, granting relief to individuals injured by the application of the confiscation acts.

On January 3, 1782, the General Assembly faced by an empty treasury and constantly rising expenditures, turned from further taxation of the heavily burdened and restive citizenry to a new confiscation measure. This was prepared in the form of:

An Act for the confiscating the estates of certain persons therein described, and for the providing funds for defraying the contingent expence of this state. 61.

This act, after stating that it was absolutely necessary to raise a fund for the use of the state, provided that all the estate, both real and personal, of all persons within the British lines, or who had at any time been within the British lines, as subjects of England, who had not been included in any of the earlier acts of confiscation, was to be forfeited to the use of the state. 61.

In order to meet the current expenses of the government, certificates, in the amount of twenty-two thousand pounds, were to be issued on the credit of the state. These certificates were to be used to pay for provisions for the army, the salary of the governor and council, the expenses of the secret service, the equipment of new troops to be raised, the arrears of the militia, and the civil list. 62.

61. Marbury & Crawford, Digest of the Laws of Georgia, p. 80.

62. ibid. p. 81.

If the certificates remained unredeemed on November 1, 1782, the estates confiscated by the act, or as many of them as would appear necessary, were to be sold at public auction for the certificates issued under it.

In an effort to secure the confiscation of all remaining forfeitable property; the General Assembly, on May 4, 1782, passed:

An Act for inflicting penalties on and confiscating the estates of such persons as are therein declared guilty of treason, and for other purposes therein mentioned. 63.

This act declared a long list of persons to be traitors, and ordered them to leave the state, providing the death penalty for any who should return. All property belonging to any of the persons mentioned on April 19, 1775, or at any subsequent time, and lying within Georgia was declared to be forfeited. Any person who should assist any of the traitors attainted by the act was subject to the same penalties.
63.

Any property, within the state, belonging to any person named in any confiscation act passed in any other state was declared to be forfeited. All debts owing to British merchants were to be sequestrated for the use of the state. Any property, of whatsoever character, within Georgia owned by any subject of Great Britain was ordered seized and sold. All sales of property subject to confiscation made to avoid seizure were declared fraudulent.

63. Marbury & Crawford, Digest of the Laws of Georgia, p. 85.

A board of commissioners was appointed to supervise the enforcement of the act. All persons having any claims against any of the confiscated property were directed to submit them to the board for adjustment, or to proceed by means of suit. Any claims awarded by the board or a jury were to be paid by the state within one year, with interest at seven percent. Small claims were to be determined summarily by the judges of the superior court.

All sales of property under this act were to be advertised for at least thirty days in advance. Purchasers of real estate under the act were to be given seven years in which to complete payment, while those buying personal property were allowed four years. In both cases, the purchasers were required to give a mortgage on the property, together with a suitable bond, for prompt payment. All payments were to be made in Mexican dollars.^{64.}

The commissioners appointed by virtue of the act were required to deposit a bond of three thousand pounds in specie for good behavior, and to take an oath to faithfully and honestly execute their duties.

Temporary support was to be granted to the families of persons banished by the provisions of the act.^{65.}

All lands confiscated by the act of March 1, 1778,

64. Marbury & Crawford, Digest of the Laws of Georgia, p. 86.

65. ibid. p. 87.

and remaining unsold, together with any lands sold to persons who had failed to carry out the terms of the sale, were to be sold under the provisions cited above. The commissioners were instructed to report their proceedings to the governor at frequent intervals. As a compensation for their services, the commissioners were each to receive one and one-half percent of the sums realized through all sale made under their authority. They were also to be reimbursed for all expenditures connected with the conduct of their office.^{66.} Finally, the justices of the various courts of the state were ordered to place the most liberal possible construction upon the provisions of the act.

With the passage of this act, the General Assembly of Georgia brought to a close its legislation for actual confiscation. The following years produced a few acts aimed at the more rapid or more equitable consummation of the business. For example, there was passed, on February 8, 1783:

An Act for empowering a less number of commissioners to be a board than is mentioned in the act passed at Augusta on the fourth day of May one thousand seven hundred and eighty-two, for inflicting penalties on, and confiscating the estates of such persons as have been guilty of treason against this state, and for other purposes therein mentioned; 67.

the title of which is self-explanatory.

66. Marbury & Crawford, Digest of the Laws of Georgia, p. 87.

67. ibid. p. 89.

On July 29, 1783, the Assembly passed a general administrative measure entitled:

An Act for releasing certain persons of their bargains, and again selling and disposing of the same premises; for establishing funds; and for other purposes therein mentioned. 68.

According to the terms of this act, persons who had purchased confiscated property and had been unable to complete the payments were allowed to return the property without payment of interest or costs. Property so returned was to be resold under the terms of the act of May 4, 1782.

However, it was provided that if the purchase price was paid in one year, only half of the sum need be paid in silver or gold; the rest being acceptable in any of the certificates issued by the state.^{68.}

It was further provided that no new claims against any of the confiscated estates should be heard by any court. Instead, a commission, having five members, was appointed and authorized to settle all such claims. In the event of an award to any claimant, the commission was to make payment by means of a certificate, which could be exchanged by the recipient for a state certificate of indebtedness, issued by the governor, and bearing interest at seven percent. No certificates were to be issued until all sales of confiscated property had been completed, and in no case could the commission issue a certificate for more than the sale price of the estate in question.

68. Marbury & Crawford, Digest of the Laws of Georgia, p. 97.

Liquidated accounts of the officers and men of the Georgia Line were to be received as specie on the purchase of confiscated property. If such accounts were applied to purchases of forfeited property within one year, a bonus of twelve and one-half percent was to be granted to the purchaser.

Although acts referring in some way to the confiscated property appeared at intervals for more than ten years, they were in general, private acts, and as such outside of the scope of this discussion, and it may be properly said that the act of July 29, 1783, terminated the legislation, by Georgia, on the confiscation of loyalist and British property.

Chapter V.

PENNSYLVANIA

Five days after Georgia had taken its first steps for the confiscation of loyalist property, the Commonwealth of Pennsylvania became the first of the large states to undertake a policy of general seizure of the estates of those in opposition to the revolution. That the sentiment of the revolutionary group was in favor of harsh measures against those inclined to side with the British was indicated in "An Act declaring what shall be treason, and what other crimes against the state shall be misprison of treason," passed by the General Assembly on February 11, 1777. This act provided that an unusually large number of offenses should be regarded as treason, punishable by death and the forfeiture of all property. It also declared a variety of acts, including almost any statement derogatory to the revolutionary government, or the conduct of the war, to be misprison of treason. Those found guilty of misprison were to be imprisoned for the duration of the war, and were to forfeit one-half of their property. ^{69.}

With the British invasion of Pennsylvania, climaxed by the capture and occupation of Philadelphia, large numbers of residents who had formerly either been definitely on the whig side, or who had passively acquiesced in the activities of the new government, deserted to the British. Among these

69. A.J. Dallas, Laws of the Commonwealth of Pennsylvania from the Fourteenth Day of October, One Thousand Seven Hundred, to the First Day of October, One Thousand Seven Hundred and Eighty-One (Philadelphia: Hall & Sellers, M,DCC,XCVII), vol. I., chap. DCCXL, p. 726.

"traitors" were to be found many of the most prominent citizens of the state, and more than a few of the early leaders of the revolutionary movement. Suffering from the demoralizing effects of defeat, and the loss of their largest city, it was only natural that the members of the new government should turn to drastic measures against the loyalists. With legal skill and attention to administrative details most unusual in the hastily prepared legislation of this troubled era, the General Assembly of the Commonwealth drew up, and on March 6, 1778, passed:

An Act for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon. 70.

With none of the elaboration of preamble which was so characteristic of the majority of the laws of the period, the Pennsylvania statute proceeded to accuse a large group of prominent deserters, including such figures as Joseph Galloway and Andrew Allen, former members of the Continental Congress, Jacob Duche, the younger, former chaplain to the Congress, and several officers of the militia, of treason, and order them to appear before one of the justices of the Supreme Court of Pennsylvania, or any county justice of the peace, on or before April 20, 1778, to abide legal trial for their crimes. Any of the attainted

70. Dallas, Laws of the Commonwealth of Pennsylvania, p. 750.

persons who failed to so appear were declared to be guilty of high treason, and subject to all penalties prescribed for those guilty of that offense.^{71.}

It was further enacted that any person resident in Pennsylvania, or owning real estate within the state, who at that time adhered to or, in any way, willingly assisted the enemy, or who should do so at any subsequent time should be commanded, by a proclamation issued by the supreme executive council, to appear before any of the justices mentioned above, and abide legal trial. If, within forty days or more as directed in the proclamation, he failed to so appear, he was declared to be attainted of high treason, and subject to the penalties prescribed for the offense. Any person formerly a citizen of the state, serving voluntarily in the British army or navy was also declared to be attainted of treason.

The fifth clause of the act declared that since it was just and reasonable that the estates of any of the offenders indicated by the terms of the several clauses of attainder should be used for the benefit of the state, and that proper provision be made for the payment of all just claims made by any faithful citizen of the United States or any friendly state, all estates and property, of any kind whatsoever, of any person legally attainted or convicted of treason under it were forfeited to the state without any further inquest or proceedings.

^{71.} Dallas, Laws of the Commonwealth of Pennsylvania, p. 750, et seq. (To avoid unnecessary complexity, no further references as to source will be made in the examination of the act of March 6, 1778.)

The president or vice-president, and the supreme executive council of the state were directed to inquire into all forfeited estates, both real and personal, and require that all income from them, pending their disposal, be paid into the treasury. All personal property was ordered sold, and, after all debts due to the traitors had been collected, and all claims against them determined, the real estate vested in the state was also to be sold. From the money received for the properties, the officials named above were authorized to pay any proper claims against them.

To assist them in their work, the president and council were permitted to appoint agents, surveyors, messengers, and other necessary officers. These officers were to be paid suitable fees and salaries, and were to receive no other reward. Before undertaking their duties, they were required to take the oath of allegiance and fidelity to the state, and also an oath for faithful execution of their offices, and for complete abstention from the acceptance of any profit, other than their lawful fees, from their work.

The president and council were empowered to require that any books, papers, or other documents, which might be necessary in the execution of the act, be brought to them. No fee or charge could be required for such use by the owner or custodian of any desired material. All sheriffs, constables, and other officers were required to execute the orders of the president and council.

Proceedings for the confiscation of the estates of attainted persons were to be of a summary character. The president and council were empowered to summon witnesses, and to examine them under oath at their discretion. A register was to be made, containing the names of all persons attainted of treason by virtue of the act, the properties held respectively by the attainted persons, the tenure under which all such property was held, and any encumbrances on it. All property held by any of the attainted traitors on July 4, 1776, or at any subsequent time, was declared to come within the meaning of the act. If any person should neglect or refuse to appear before the president and council, they were empowered to commit him to the county gaol, without bail, until he agreed to give testimony. All officers neglecting or refusing to aid the president and council could be fined not more than one hundred pounds for each offense, and be committed to gaol until the fine was paid.

Any person who notified the president and council of any concealed debt payable to any attainted person, and paid three quarters of its face value (except in the case of mortgages, registered bonds, or contracts) within three months after the attainder of the creditor, would be discharged from the entire debt. On the other hand, if any person neglected to announce and pay any such debt within the time set, he should be required to forfeit double its

face value. By a similar construction, all persons possessing any personal property formerly belonging to any attainted person, and forfeited to the state were to be granted a reward, up to one fourth of any such goods or chattels, for turning it over to the president and council within three months, while those failing to give up such property in time were subject to a forfeit of double the value of the concealed property. Where persons indebted to, or possessing the personal property of, those attainted of treason were unable to make immediate payment or restitution, the president and council might make any arrangement which they felt to be just and equitable.

If any person, neither in possession of any of the personal property of, nor indebted to, any of the attainted persons, should, at any time after the expiration of one month and before the expiration of four months after the date of attainder, reveal to the president and council the existence of any debts or personal property liable to forfeiture which have been concealed by any person, he was declared to be entitled to any part of the value of such debts or properties, up to one-fourth, that the president and council might consider adequate. In the same manner, any person revealing the existence of concealed real property, belonging to any attainted person, after one, and before the end of six months from the date of attainder,

under the conditions above cited, was entitled to receive up to one-fourth of the value of such property, after its recovery. The president and council were directed to give certificates to the informers of both classes, payable after the sale of the properties in question, and the settlement of all legal claims upon them. If the proceeds of the sale of any property was inadequate to pay all claims, the proportion used to determine the amount to be paid to the other claimants was to be applied to the allowances granted to the informer.

The president and council were requested to make an inventory of all personal property seized by them as soon as possible, and to appoint reliable persons to protect the forfeited property from destruction. Immediately after the day fixed for the appearance of the attainted traitors to stand trial, the president and council were requested to appoint two proper persons to appraise, under oath, the property of any traitors who did not appear. Upon completion of the appraisal, the president and council were directed to sell all such goods and chattels at public auction, to the "best bidder." At least ten days public notice were to be given of each sale, including, as well as the time and place of sale, a description of all articles to be sold. A record was ordered kept of each sale, mentioning the description of the articles sold, the names

and addresses of the buyers, and the prices received. Each buyer was to be given a certificate, under the signature and seal of the president and council, stating the articles purchased, the price paid, and the date of the sale.

It was further provided that the president and council could, at their discretion, let, or cause any agents they might appoint let, any or all of the forfeited real estates for any period not exceeding two years, collecting the rents, paying all taxes, and assuming the other duties of proprietorship, until the estates in question could be sold. The president and council were directed to keep a register of the names of all persons attainted for high treason by virtue of the act, and of all real and personal property vested, in consequence of their attainder, in the state. This register was to be made in duplicate, one copy being forwarded to the secretary, who was ordered to keep his copy open for public inspection between the hour of ten and twelve during the day. No charge was to be made for the privilege of examining this register. The secretary was further ordered to send copies of the register to the justices of the supreme court, and to the sheriffs. All estates entered in the register against which no claim was filed were considered to be vested absolutely in the state. Those against which some claim had been presented were also held to be vested in the state, subject to any

burden ordimination which might arise from the settlement of the claim.

Within one year after the settlement of all claims upon the estates seized by the state, the president and council were directed to sell them, by public auction, after giving at least thirty days notice of the sales in some newspaper located within Pennsylvania, and in the county in which the lands to be sold lay. Upon payment of the purchase price, the president and council were directed to give to the purchaser, under their signatures and seals, a proper deed or conveyance, describing the lands sold, and citing the price received. If the purchaser defaulted, the president and council were authorized to recover a forfeit of one-fourth of the purchase price, and to place the property on the market again. All monies which were received were paid into the office of the treasurer to be handled with the other public funds, subject to the drafts of the president and council to meet any claims that might arise, and to pay the salaries and fees of the persons assisting in the confiscation and sale of the properties.

All purchasers of confiscated property were guaranteed in their clear and full possession of their purchases, subject only to the payment of quit or chief rents as the deed might provide.

It was provided that any person, persons, corporation,

or body politic, which had any lawful claim against any of the confiscated estates or properties, or which denied that any estate or property, declared by the president and council to be vested in the state was legally forfeitable under the confiscation clause, should, within three months after the entry of the property on the register, if of a personal character, or within six months, in the case of real estate, after its entry on the register held by the sheriff of the county in which the estate was located, enter its claims or demands before the justices of the supreme court. All claims and demands not submitted within the times set were declared null and void. Claims in behalf of infants, madmen, and others legally incompetent to act for themselves were to be made by their proper guardians or attorneys. All claims were to be in writing, and were required to cite all the essential facts of case. They were to be signed by the claimant, or the person legally entitled to act for him, and were also to be attested by two or more credible witnesses.

The court was ordered to transcribe all such claims in a book to be kept for the purpose, and to proceed, in a summary manner to determine the awards, if any, to be made. Both parties to all such cases were allowed thirty days in which to make an appeal. If at the end of that period, no such motion had been made, the decisions were automatically

to become final and irrevocable.

Where such claim were filed, the attorney-general was directed to provide for the making of proper answers on the part of the state. In the event of an adverse decision, he was instructed to file an appeal if he felt it wise.

The supreme court was empowered to summon and examine witnesses, and inspect any records, in the consideration of any claims made against confiscated property. If requested to do so by the attorney-general, the court was required to compel any claimant to attest to the truth of his claim under oath, and to answer all questions which the attorney-general or the court might consider useful in the determination of the case.

If the court decided that any sum of money should be awarded to a claimant, the president and council were instructed to issue to him a certificate for that sum, with legal interest. The treasurer was directed to pay all such demands out of the income from the property in question. Where the award was made in land or other property, the court was empowered to direct the sheriff of the county in which the property was located to deliver to the claimant the property contained in the award.

The act further provided that all conveyances or other transfers of real estate, made by any attainted person, at any time before July 4, 1776, for the use of,

or in trust for, himself, his wife, or any of his children, except any made in bona fide consideration of marriage, were null and void. All conveyances and transfers, of any type whatsoever, made by any attainted person since that day were also rendered inoperative by the act, unless made for actual and valuable consideration, provable by evidence other than the conveyance or transfer itself.

Tenants of any of the attainted persons who had paid any rents due them after July 4, 1776, and before the time of their actual attainder, without fraud or collusion, were to be discharged from further payment, providing that they were able to present proof of such payment.

Finally, the supreme court was empowered to appropriate any part of the estates forfeited by virtue of the act for the support of the wife and/or children of the traitor in question.

The General Assembly had done its work with remarkable thoroughness, and for over a year, the question of the confiscation of the loyalists' lands disappeared from its proceedings. The question of the "discouraging" of the opponents of the revolution was by no means solved however, and it was to this end that the legislature directed much of its energy during the months after the passage of the act of March 6, 1778.

Typical of this anti-loyalist legislation was the

law of April 1, 1778, entitled:

An Act for the further security
of the government. 72.

This act provided that all persons within the limits of Pennsylvania should take the oath of allegiance to the state government before June 1, 1778. Any person refusing to take the oath, was to forfeit all his personal property and chattels to the state, and all his real estate to the person or persons who would be legally entitled to inherit it in case he died intestate. All persons having formerly exercised, or still exercising, any office under the British crown were ordered to appear and take the oath of allegiance before June 10. Any person of this class who refused to do so was to be subjected to the forfeiture of all his estate, both real and personal, and was to be treated as an enemy of the state.

If any of the persons described in the preceding paragraph, who had not at any time been adjudged guilty of or attainted of treason or misprison of treason, wished to sell their estates and leave Pennsylvania, they were, after securing written permission from the executive council, permitted to do so within ninety days after the date upon which the permit was granted. It was provided, however, that only persons who had taken the oath of allegiance

72. T. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, Carefully Compared with the Originals (Philadelphia: Thomas Bailey, MDCCLXXXII), p. 123.

73. ibid. p. 123.

could purchase these estates. In every case, the vendor was required to appear before any justice of the peace and declare, under oath, that the sale of such land was bona fide, and that in no way was any interest in the land reserved for the original possessor, or any person acting for him. After the recording of this declaration, the title conferred on the purchaser was declared to be good and
 74.
 valid.

The rest of 1778 saw a series of modifications in the above act such as, "A Supplement to the act, intituled, 'An Act for the further security of the government, '" which extended the time allowed for taking the oath of allegiance
 75.
 three months, and "A further Supplement to the act, intituled, 'An Act for the further security of the government, '" which required all officers of the Pennsylvania state government to take the oath of allegiance, and appointed commissioners to administer it,
 76.
 passed on September 10, and December 5, respectively. The General Assembly also passed a number of private acts, the majority of which were for the relief of persons subject to the forfeiture of their estates
 77.
 under the act of March 6.

74. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, p. 124.

75. ibid. p. 153.

76. ibid. p. 162.

77. ibid. pps. 146, 159, 160.

As the struggle with England progressed, the normally prosperous state found itself heading rapidly toward bankruptcy. The taxes, while heavy, were completely inadequate to meet the costs of the war. Searching desperately for some other source of revenue, it was inevitable that the General Assembly should turn to the remaining property of the loyalists. A clause in the act of March 6, 1778 had provided that where any claim or claims had been filed against a confiscated estate, sale was to be postponed until one year after the claim had been settled. Thus, a vast amount of valuable property was lying idle, and beyond the reach of the state. To remedy this situation, the legislature, on March 29, 1779, passed:

A Supplement to an act, intituled,
An Act for the attainder of divers
traitors if they render not themselves
by a certain day, and for vesting their
estates in this commonwealth, and for
more effectually discovering the same,
and for ascertaining and satisfying the
lawful debts and claims thereupon. 78.

This act provided that all forfeited estates should be sold without further delay, and that the returns from the sales were to be delivered to the public treasury to be used for the public defense. To carry this provision into effect, the president and council were ordered to proceed at once to the sale of the property of all persons attainted of treason by the act of March 6, or by any other law, or decision of any court.

78. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, p. 177.

Whenever such sales were advertised, it was provided that public notice should be given to all creditors or claimants of the estates to appear before justices of the supreme court and exhibit their claims as directed in the act of March 6. Creditors or claimants living within Pennsylvania were allowed six months to present their claims, while those resident in any other of the United States were allowed one year for the purpose. If however, any claimant should at the time of the publication of the notice of sale be under twenty-one, insane, in prison, or outside of the country, he should be at liberty to exhibit his claim within the time limits prescribed above, commencing from the removal of the impediment in question.

It was further provided that if at any time any attainder of treason should be set aside or voided, the purchasers of the estates released for sale in consequence of the original decision were to remain absolutely secure in their rights of possession. All claims for recovery by formerly attainted persons or their heirs were declared to work against the state only. In such cases, the injured parties were directed to apply to the legislature to be indemnified, out of the treasury, up to the amount of the purchase money for the estate involved.^{79.}

The agents for Philadelphia and the several counties, appointed by the president and council, were instructed to

79. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, p. 178.

deduct all lawful costs and charges arising out of the sales of forfeited estates from the sums received and forward the remainder, within three months after the sale, to the treasurer of the state. The treasurer's receipt was declared to be a legal discharge of all obligations on the part of the agents. Agents who neglected to turn in the sums paid to them were declared to have forfeited twice the amount in question, to be recovered by an action of debt for the use of the commonwealth.

The Assembly provided that nothing in the act should serve as a bar to the effort, by any person, persons, or corporation, to recover any estate by means of a legally instituted suit before any court of record in the state.

If any purchaser of confiscated lands, his heirs, assignees, or tenants, should, at any time within twenty years, be evicted, as the result of any suit or other legal action, from his purchase, he would be paid the value of the estate, at the time of eviction, out of the treasury, ^{80.}

Upon presentation of any claim of more than five pounds, the justices of the supreme court were instructed to order that a jury be summoned, and, after the proper joinder of issues, proceed to try the case. On being informed of the findings of the jury, the justices were directed to make an equitable award.

80. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, p. 179.

The agents, appointed by the president and council, were granted, as a compensation for their services, one percent of the purchase price where the amount involved was one thousand pounds or less, three-fourths of one percent if the amount was more than one thousand pounds and not more than five thousand pounds, and one-half of one percent if the amount exceeded five thousand pounds. The fees of the justices of the supreme court, notaries, auditors, jurors, and witnesses were fixed at the normal amount provided by law, and were to be paid by the commissioner of accounts, whose drafts were to be countersigned by the speaker of the General Assembly.

It was finally provided that all sections of the act of March 6, 1778, supplemented or altered by the act of March 29, 1779, were repealed.

With the passage of this act, the confiscation legislation of Pennsylvania was virtually completed. Most of the problems which made necessary such large amounts of amendatory and remedial legislation were forestalled by the original act of the General Assembly of the Commonwealth. The fact that the entire body of loyalist property confiscated was seized under the indubitably legal power of the state to declare forfeit all the properties of its subjects who had been attainted or convicted of treason made the action of the government in perfect conformity

with the traditional colonial and British practice in the matter as set forth in the Common Law, and in the Statute of Edward III. Thus suits were reduced to attempts to prove that the property of persons not attainted had been erroneously seized, or efforts to secure the recognition and payment of claims against those upon whom forfeiture had been declared. A further advantage arising from the method of procedure employed by Pennsylvania is to be seen in the fact that the British government could find no reasonable grounds to protest against the application of penalties identical to those provided by English law to persons whose treason was clearly admitted by the very recognition of the independent condition of that state. Finally, the appointment of such an unquestionably honest and capable body as the president and council of the state to supervise the confiscation process, and the granting to them of great latitude in the execution of the work, made possible a relatively flexible and efficient administration of the various necessary activities incident to the seizure and sale of the loyalists' estates, standing in marked contrast to the faulty machinery set up in some states.

After the passage of the two major confiscation acts, the legislature only referred at intervals to the matter. These related acts were, in general private acts. On March

18, 1780, there was passed:

An Act for the effectual recovering and securing the fines, forfeitures and other moneys due or belonging to the commonwealth, for the use of the same. 81.

This was an effort to accelerate the payments, by the various agents, of all sums owed to the treasury.

The last important reference to the matter of confiscation is to be found in an act providing that all remaining forfeited lands be sold, for specie or bills of credit issued by the state, on or immediately after May 10, 1781. The receipts were ordered used for the payment of the salaries owing to the officers and men serving in the militia or the continental forces. 82.

81. M'Kean, The Acts of the General Assembly of the Commonwealth of Pennsylvania, p. 338-342.

82. ibid. p. 475.

Chapter VI.

CONNECTICUT

It is clearly indicated by an examination of the early revolutionary legislation of the state of Connecticut that the possibility of converting the estates of those not in sympathy with the war to the ends of the new government appeared very soon after the outbreak of hostilities. The first act against treason failed to provide for the confiscation of the estates of offenders. However, this defect was probably felt almost immediately, since within a few months, the legislature made a preliminary general move against the loyalists' property. This was embodied in an act passed by the General Court of Connecticut, on October 11, 1777, entitled:

An Act concerning the real
Estates of Aliens, and Persons
inimical to the United States of
America. 85.

While this act cannot be classified as a confiscation act, in the usual sense, it clearly foreshadowed such a law by providing for the taking possession of all houses, lands, and other real estates within the state, not belonging to any of the residents of Connecticut or any other of the United States. Such sequestered lands were to be leased for a period of not more than three years. The state attorney in the county where any such estates might be located

83., Acts and Laws made and passed by the General Court or Assembly of the State of Connecticut, in New England in America; holden at New-Haven, in said State, on the second Thursday of October, A.D. 1776. (New-London: Timothy Green, MDCCLXXVII), p. 431.

84. The day of the month is illegible, but must have been the eleventh.

85., Acts and Laws of Connecticut, p. 475.

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was authorized to transact any business connected with the sequestration and leasing of the property. He was also authorized to bring suit to recover any property which had been appropriated by unauthorized persons, and to recover compensation for any damage done to the property by any persons. All money received by the several county attorneys was to be paid into the treasury, with the exception of any costs awarded as a result of necessary suits which were to be taken by the attorneys in lieu of fees.^{86.}

When any county attorney had seized an estate, he was directed to lease it to the highest bidder, at a public sale, the time and place of which had been advertised in one or more of the newspapers of the state for three successive weeks before the day fixed. The lessee was required to give adequate security for faithful payment of the rent,^{86.} and for proper usage of the property.

It was further provided that no person "inimical to the Freedom or Independence of the said States," and no aliens or foreigners could, except by special permission of the General Court, purchase or transfer any real estate in Connecticut. Finally, the selectmen of the towns in the state were required to report all real estate, in their towns, owned by foreigners.

In spite of this early beginning, Connecticut waited until four other states had passed definite confiscation

86., Acts and Laws of Connecticut, p. 475.

laws before taking such a course. On May 14, 1778, the General Court passed:

An Act for confiscating the Estates of Persons inimical to the Independence and Liberties of the United States within this State, and for Payment of their Debts, and directing Proceedings therein. 87.

After a preamble stating that the act was passed in deference to the desires of the Continental Congress as expressed in its resolution of November 27, 1777, the legislature declared that all real and personal property, belonging to any person who had gone over to the British, or aided or assisted them in any way, or who at any future time should do so, was forfeited to the state.

The selectmen of the several towns within the state were ordered to give information, as soon as possible, to the nearest assistant or justice of the peace concerning all persons living in, or formerly resident of, their respective towns who owned estates subject to forfeiture under the terms of the act. Any assistant or justice of the peace receiving such information was directed to issue a summons, stating the information he has received, and notifying the accused to appear before the county court to give reasons, if he could, why his estate should not be declared forfeited to the state. The summons was to be given

87. C.J. Hoadley, Records of the State of Connecticut (Hartford: Press of the Case, Lockwood & Brainard Co., 1895), vol. II., p. 9.

88. Journals of the Continental Congress, vol. IX., p. 971.

to some proper officer, and served by leaving an attested copy at the last usual abode within the state of the person charged, at least twelve days before the session of the county court to which he was summoned. At the time set for the hearing of the case, the selectmen who made the original accusation were directed to appear with all the evidence obtainable. The county court was directed to examine such evidence, and to inquire into the truth of the various allegations. If the evidence pointed to the truth of the charges, the court was ordered to give judgment that the estate, both real and personal, of the accused was forfeited to the use of the state. This judgment was to be certified, and transmitted to the court of probate of the district in which the estate lay, or if the judge of the court of probate of that district was related to the former owner of the confiscated estate, to the court of probate of the adjoining district.^{89.}

Upon receipt of the judgment, the court of probate was directed to grant the administration of the estate to some suitable person or persons, who were to give bond for the faithful performance of their duties. The administrator was ordered, within twenty days, to exhibit to the court of probate a complete inventory, to the best of his knowledge, of the estate. The judge of probate was then to have an appraisal made.

^{89.} Hoadley, op. cit., p. 10.

At the time of the appointment of the administrator, the court of probate was to appoint two or more judicious and disinterested commissioners to examine and adjust all claims brought against the estate by its creditors. These officers were directed to proceed in the same manner, and were granted the same powers as commissioners on insolvent estates. After a period, to be set by the court, they were required to make a report of their proceedings. Upon receipt of this report, the court was empowered to make whatever allowance to the wife and children, if any, of the accused as was consistent with reason and humanity, and also give orders for the payment of all just debts found due by the commissioners. If the personal estate of the loyalist was insufficient to pay these demands, the court was empowered to order the sale of enough of the real estate to make up the deficiency. When any such estate was found to be insolvent, the court was directed to order the whole to be sold, and, after first deducting costs and taxes, and the allowance made to the family of the former owner, distributed among the creditors.^{90.}

Any person who felt himself wronged by any of the above proceedings was granted the same right of appeal to the superior court, under the same limitations and

90. Hoadley, Records of the State of Connecticut, p. 10-11.

restrictions, provided by law in any other probate matter.

The administrators of confiscated estates were given the same powers of bringing suits for the redemption of mortgages or the recovery of property or debts as were provided for the administrators of intestate estates. To make the recovery of debts due to the former owners of any confiscated property more simple, the administrators were authorized to proceed by means of suits in equity, against all known and unknown debtors, in consideration of which, the presiding justice might make inquiries of any known witnesses, for the purpose of determining the names of all debtors and the amount of their indebtedness.

In any case where the personal estate of any loyalist had been previously seized and sold, and the remaining real property was inadequate to meet the just debts of the estate, the judge of the court of probate was empowered to certify the deficiency to the treasurer, who in turn was required to pay over to the administrator, to make up the required sum, any amount up to the total return from the previously confiscated goods, deducting only the charges incident to the actual prosecution for, and sale of the goods involved.

Where any estate had been sequestered by virtue of the act of October 11, 1777, or where legal measures had been taken for the sequestration of any estate under that act, the act of May 14, provided that such estates or proceedings be turned over to the proper administrator, appointed by the court of probate, in pursuance of its

duties under the later act. The administrator was directed to settle accounts with the overseer appointed by authority of the earlier act, take over all funds in his possession, and make the periodic reports formerly required of him.

Apparently as an afterthought, the General Court realized that there were probably some owners of real estate lying within Connecticut who had never maintained a residence in the state, and therefore, the law would be inoperative in such cases. It was therefore provided that the selectmen of any town in which there was located an estate belonging to any person of this class were required to make a report, as provided in the case of other loyalists, directly to the county court, leaving a written copy of the information with the clerk of the court at least twelve days before any session, after which, the procedure was to be identical with that established for other classes of loyalist property.^{91.}

The act of May 14, 1778 was allowed to function without change for a year. Then an obvious shortcoming made an amendment necessary. In May, 1779, the General Court passed:

An Act in Addition to an Act
entitled An Act for confiscating

91. Hoadley, Records of the State of Connecticut, p. 11.

the Estates of Persons inimical to the Independence and Liberties of the United States within this State and for payment of their Debts, and directing Proceedings therein. 92.

This act simply provided that where the estate of any person or persons holding in joint-tenancy, tenancy-in-common, or co-partnership was confiscated in pursuance of the earlier act, the judge of probate, who had appointed the administrator, was directed to appoint "three sufficient freeholders" to make, under oath, a partition of the estate in question. The partition, if acceptable to the court, was declared to be binding on all parties. However, if any person felt himself injured by any such partition, he was not to be denied the right of appeal.^{92.}

In October, 1780, the General Court, exasperated at the backwardness of the selectmen of many of the towns in making the required reports on any forfeitable estates within their jurisdictions, resolved that the representatives from each town to the Court be requested to make inquiries, in their towns, concerning the estates of all "inimical" persons located there. This information was to be turned over to the Assembly at its next session, so that confiscation proceedings could be commenced.^{93.}

In the same month, the General Court, now terming itself

92. Hoadley, Records of the State of Connecticut, p. 167.

93. ibid. p. 181.

almost alternately "Court" and "Assembly," passed:

An Act for supplying the Treasury and for providing a Fund for calling in and sinking the Remainder of the Bills of Credit emitted by this State since the first of January last, and for paying the Bounties of the Recruits ordered to be raised for filling up the Continental Army. 94.

This act provided that the governor and council should sell, for gold, silver, new continental money at the then current exchange, or Connecticut bills issued since January 1, 1780, confiscated estates up to the amount of fifty thousand pounds, lawful money, and promptly pay the proceeds into the treasury.

By November of 1780, the need for money had again become urgent. The answer was found in the following brief resolution:

Resolved by this Assembly, That a further sale of the confiscated estates to the amount of fifty thousand pounds in addition to what has already ordered to be made, and the same is hereby ordered and directed to be done in the same manner and by the same authority as is already provided for that purpose. 95.

In the same month, a second resolution authorized the use of as much of the proceeds from the sale of confiscated property as might be necessary for the defense of the western frontier of the state. 96.

94. Hoadley, Records of the State of Connecticut, p. 181.

95. ibid. p. 240.

96. ibid. p. 243.

A third resolution of November, 1780 arose out of the appearance before the Assembly of a deputation from the Connecticut regiments, demanding the arrears of pay, at that time almost a year overdue, and the return to the pay scale of twelve pounds, established by act of Congress, from the adjusted scale of eight pounds, as provided by the state in 1777 to 1780. In order to appease the soldiers, the Assembly ordered the governor and council to distribute fifty thousand pounds, in confiscated lands, among them, ^{97.} in lieu of the arrears claimed.

In their session of January 13, 1781, the governor and council, having received a letter from General Washington urgently requesting money for the pay of the continental army, appointed five commissioners to sell all the confiscated property in the towns of Norwich, Lebanon, Mansfield, Pomfret, and Ashford as soon as possible. The sales were to be made for gold or silver only, payable one-half at the time of sale, and the remainder within three months. All selectmen of towns in which the property of "inimical" persons had not already been confiscated were urged to ^{98.} proceed to make seizures as rapidly as possible.

The General Court, in May 1781, by "An Act for raising

97. Hoadley, Records of the State of Connecticut, p. 254.

98. ibid. p. 291.

Supplies for the Use of this State and the Continental Army untill the first Day of January next," provided that a sum of not more than one hundred thousand be raised by the sale of confiscated estates. Bills issued by the state after January 1, 1780, and orders drawn by the committee of pay-table were declared to be acceptable. The sales were to be supervised by the governor, and the council of safety.^{99.}

On July 4, 1781, the governor and council of safety appointed a committee, having one member for each county of the state, to supervise the sale of confiscated lands as required by the act of May, 1781.^{100.}

Two days later, the members of the committee were given instructions on the procedure to be followed in the sale of the confiscated estates. The members were to commence the sales as soon as possible, giving notice in the newspapers of the state, or any one of them, and also posting a notice on the sign-post of the town in which the property to be sold was located. All sales were to be by public auction, some proper person being appointed by the member of the committee to act as auctioneer. Every effort was directed to be made to obtain a price satisfactory to both the state and the purchaser. Large estates were to be broken up into smaller units "not to exceed the abilities of such who may appear inclined to purchase."^{101.}

99. Hoadley, Records of the State of Connecticut, p. 384.

100. ibid. p. 469.

101. ibid. p. 472.

When any property was sold, the member of the committee responsible was ordered to forward full particulars of the sale to the committee of pay-table, which was required to prepare a legal warranty deed for the purchaser. All receipts were to be paid to the treasurer. 102.

With the appointment of the committee for the sale of part of the confiscated property, the matter was allowed to rest until May, 1782. At this time, the General Court passed:

An Act directing certain confiscated estates to be sold. 103.

This act provided that all confiscated estates, not subject to mortgages or already allocated in any manner for the use of the state, were to be sold. Notice of all sales arising under this act was to be given in at least one of the newspapers of Connecticut for three successive weeks before the time of sale. All the sales were to be by public auction, for specie or for the notes given by the treasurer of the state to the officers and men of the Connecticut Line. One year could be allowed for payment. The sales were to be made under the direction of the judges of probate legally empowered to appoint administrators for such estates. when

102. Hoadley, Records of the State of Connecticut, p. 472.

103., Acts and Laws Made and passed by the General Court or Assembly of the Governor and Company of the State of Connecticut, in America; holden at Hartford (in said State) on the second Thursday of May, Anno Dom. 1782 (New-London: Timothy Green, 1782), p. 608.

a sale had been made, the judge was directed to remit the purchase price and a description of the property sold to the treasurer, and the committee of pay-table.^{104.}

No sales were to be made of any property until the commissioners appointed to examine and adjust the claims of creditors to it had made an acceptable report. The claims allowed by these commissioners and the various expenses arising from the sale were to be paid by the judge of probate before making his return to the treasurer. All such disbursements were to be entered in the register of the court by the judge making them.

Where any of the offenders held a mortgage on the estate of any citizen, the judge of probate in charge of the property of that offender was instructed to appoint a person to sue for the recovery of the mortgaged property. If the mortgage was not paid within six months after such recovery, the estate was to be sold, the state receiving the amount due on the mortgage, the mortgagee receiving the remainder.

Finally, the judges of probate were directed to dispose of any remaining personal estates forfeited to the state.^{104.}

In spite of the express requirement that all unencumbered estates should be sold, the probate judges were

104., Acts and Laws Made and passed by the General Court or Assembly of the Governor and Company of the State of Connecticut, p. 609.

apparently slow in carrying out this mandate. Four years later, the General Court in "An Act for the Sale of Lands belonging to this State," authorized them to sell, either at public or private sales, any confiscated lands remaining unsold, making legal deeds of conveyance for the purchasers. Payment was to be made in specie, or in the securities of the state. The judges were required to render an account of their activities to the treasurer within one year from the date of any sale. Finally, they were directed to obtain, from all persons in their districts who had been in possession, legally or otherwise, of any confiscated property, a full account of the stewardship involved. All sums received from such persons were to be paid into the treasury.

The final chapter in the story of the confiscation of loyalist property in Connecticut was written in May, 1787, when, in response to a resolution of Congress, the General Court repealed "such Acts, or Parts of Acts of the Legislature of this State as are repugnant to the Treaty of Peace between the United States and his Britannic Majesty."

105., Acts and Laws Made and Passed by the General Court or Assembly of the State of Connecticut, holden at Hartford (in said State) on the second Thursday of May, Anno Domini, 1786. (Publication data missing)

106., Acts and Laws Made and passed by the General Court or Assembly of the State of Connecticut, holden at Hartford, in said State, on the second Thursday of May, Anno Domini, 1787 (Hartford: Elisha Babcock, 1787), p. 350.

Chapter VII.

DELAWARE

With the possible exception of the extra-legal and unrecognized government of Vermont, the small state of Delaware seems to have solved the problem of the rapid and efficient confiscation of the estates of those unfriendly to the cause of American independence with the least difficulty of all the states of the federal union.

On February 22, 1777, the "Government of New-Castle, Kent, and Sussex, Upon Delaware" passed "An Act to punish Treasons and disaffected Persons, and for the Security of the Government." This act provided the death penalty, with forfeiture of all property, for those found guilty of treason, and imprisonment for not more than one year, with a fine of not over three hundred pounds, for those found guilty of maintaining that the king of Great Britain had any right to rule over the state, or that a similar authority should be vested in the British Parliament. In consideration of the bitterness toward all British sympathizers which characterized the period, the following clause is a tribute to the fair-mindedness and humanity of the Delaware legislature:

Provided Always, and Be it Enacted
by the Authority aforesaid That no Per-
son shall be prosecuted by Virtue of this
Act for any Words spoken, unless the In-
formation of such words be given upon
Oath or Affirmation to one or more Justice

107., Laws of the Government of New-Castle, Kent and Sussex, Upon Delaware (Wilmington: James Adams, 1778), vol. II., chap. LXXXVIII, p. 77.

or Justices of the Peace within five Days after the Words spoken, and the Prosecution for such Offence be within three Months after such Information; and that no Person shall be convicted by Virtue of this Act for any such Words spoken, but by the Oaths or Affirmations of two credible Witnesses 108.

Finally, it was provided that the above act was to continue only during the actual course of the war.

Although the state was given a foretaste of confiscation by the act against treason, over a year elapsed before any general confiscation act was prepared. It seems certain that there was a strong body of sentiment against any wholesale seizure of the property of the loyalists, and it may, at least, be regarded as an expression of this feeling that the Delaware confiscation act was passed under a definitely misleading title. Thus, on June 26, 1778, the General Assembly passed:

An Act of free pardon and oblivion,
and for other purposes mentioned. 109.

The preamble of this act stated that many of the "subjects" of the state had gone over to the British side at the outset of the war, but had since repented of their treason and were anxious to return to their proper duties, but were deterred from doing so by the fear of punishment for their

108., Laws of the Government of New-Castle, Kent and Sussex, Upon Delaware, p. 78.

109., Laws of the State of Delaware, From the Fourteenth Day of October One Thousand Seven Hundred to the Eighteenth Day of August One Thousand Seven Hundred and Ninety-One (New-Castle: Samuel & John Adams, MDCCXCVII), vol. II., chap. XXIX b, p. 636.

crimes. Since the government of the state was anxious to mitigate, as far as possible the horrors of war, it was provided that any person who had levied war against Delaware or any other one of the United States, or had in any other way aided the British, with the exception of a rather lengthy list of outstanding offenders, could appear before any justice of the supreme court or justice of the peace, on or before August 1, 1778, and take an oath of allegiance to the state. After having thus demonstrated his attachment to the American cause, and having agreed to notify the proper authorities of any existing plots against the welfare of the state, the redeemed traitor could take his place among the loyal citizens.

If any of the offenders described in the preamble should fail to appear to take the oath within the period allowed for the purpose, it was provided that all their real and personal estate should automatically be forfeited to the state, subject to the payment of all just debts. All alienations of real property made by any of the offenders in question after May 16, 1778, were declared void.

The commissioners to be appointed by virtue of the act were instructed to make, as rapidly as possible, after August 1, an inventory of all personal property owned by any offender resident in the county to which they were appointed, and also to list all real estate owned by such persons on May 16.

The inventories and lists were, under the terms of the act, to be turned over to the clerk of the county in which the forfeited property was located, for recording. After this had been done, the commissioners were directed to sell all such property at public auction, after having first publicly advertised the sale for ten days, and to return an account of their activities to the General Assembly at its next meeting after any such sale. Any money received by the commissioners, in the carrying out of their duties, was to be disposed of according to the wishes of the legislature. As a compensation for their services and to meet the expenses incident to their activities, the commissioners were allowed ten percent of the proceeds of the sale conducted by them.

The commissioners were instructed to pay to the wife of any offender whose estate had been confiscated by them a sum of money arrived at by three justices of the peace, chosen for the purpose by the court of quarter sessions for the county in which the property lay. If the offender did not have a wife, the act, by some obscure process of logic, at least in its applicability to many cases, provided that the justices of the peace should turn the sum mentioned above over to some person, appointed by themselves, for the maintenance of his children.

After having outlined their duties, the act then

proceeded to appoint one commissioner for each of the three counties of the state. If any of the persons appointed by the act should refuse to accept the commission, or be at any time disabled from carrying out his duties, the president or commander-in-chief was authorized to fill the vacancy.

The commissioners were respectively given full power to execute legal conveyances for any property sold by them in the exercise of their office. If any person, in possession of any such property at the time of sale, should refuse to surrender possession of it within ten days after its conveyance, the commissioner was authorized to proceed to recover possession in the manner directed by law for cases of forcible entry and detainer. All purchasers of confiscated property were declared to hold it with as valid title as if the conveyance had been made by the former owner before his treasonable action.

To remedy the shortcomings of the act of June 26, 1778, the General Assembly, on June 5, 1779 passed:

A Supplement to an Act intituled,
An act of free pardon and oblivion,
and for other purposes therein men-
tioned. 111.

As the earlier act had made no provision for determining disputes over the title of any real estate sold under it,

110., Laws of the State of Delaware, From the Fourteenth Day of October One Thousand Seven Hundred to the Eighteenth Day of August One Thousand Seven Hundred and Ninety-One, p. 638.

111. ibid. p. 658.

or for settling any claims against such property, the judges of the court of common pleas were empowered to try all disputes arising over the title to any property sold by the commissioners. In order to facilitate such trials, the judges were directed to hold a session in the county court house at some convenient time, which was to be advertised for twenty days before the session, for the express purpose of hearing such cases.

Any person who claimed any interest in, or title to, any confiscated property was allowed to appeal to the judge of common pleas for his county at any time within three months after the sale of the property. When any such claim was filed, the judge was instructed to summon, by a writ of venire facias, twenty-four citizens and freeholders to appear before him. From this group, twelve jurors were to be selected to try the claim. The verdict of the jury was declared to be final. Jurors who refused to attend were to be fined five pounds. The judge was instructed to require the jurors to take an oath to render a just and impartial verdict. If any person who had any claim against any confiscated estate neglected to submit it for trial,
112.
no future recovery could be had.

Those persons having any demands against any of the forfeited estates were instructed to place them, together

112., Laws of the State of Delaware, p. 660.

with all available proofs, before the judges of common pleas. The judges were empowered to make an award, which was to be final. The amount of the award was ordered paid, out of the sum realized from the sale of the estate in question, by the commissioner in charge of the sale.

The act required the commissioners of forfeited estates to demand and receive all debts owed to the offenders on May 16, 1778. On payment, they were authorized to give legal releases. If any debtor refused or neglected to pay, the commissioner concerned was empowered, after a delay of thirty days, to commence suit, in his own name, for the sum due, using an attachment if necessary.

If any commissioner had reason to believe that any person was concealing any forfeited goods, he was directed to appeal to a justice of the peace, who was required to issue a summons for the suspected person, and examine him under oath. If the suspect possessed such goods, they were to be delivered to the commissioner, together with a notarized inventory.

All salaries and fees incident to the process of confiscation and sale of the forfeited properties were to be paid, by the commissioners, from the sums realized from the sales.

The justices of the orphans' courts of the several

113., Laws of the State of Delaware, p. 661.

districts were required to appoint a suitable person, under bond, to supervise the expenditure of the funds provided for the maintenance of any children abandoned by those deserting to the British, and to see to their proper care. When any such child should reach a lawful age, the justices of the orphans' court were empowered to pay to him the remainder of the sum allotted for his welfare.

Whether the very large fee granted to the commissioners by the Delaware confiscation act encouraged them to perform their duties unusually well, or whether the small size of the state made supervision by the General Assembly relatively constant, the entire work of confiscation was done under the provisions of the two relatively brief acts cited, without apparent need for further legislation. With the exception of a few private acts, the whole question was ignored by the legislature, until on February 2, 1788, the final chapter was written by:

An Act for repealing all acts or parts of acts, repugnant to the treaty of peace between the United States and his Britannic Majesty, or any article thereof. 114.

Comment on this act seems unnecessary.

Chapter VIII.

NEW HAMPSHIRE

New Hampshire took its first steps against the property of loyalists within its limits on January 17, 1777, through the agency of:

An Act Against Treason and Misprison of Treason, and for regulating trials in such cases, and for directing the Mode of Executing Judgments against Persons convicted of those Crimes. 115.

This act provided the death penalty for treason, but did not declare forfeiture a consequence of conviction, However, the punishment for misprison of treason was set at imprisonment for not more than five years, and the forfeiture to the state of all personal property, and the profits from any real estate, owned by the offender, during his life. If any person, indicted for treason or misprison of treason, should flee to avoid trial, outlawry could be pronounced against him. Should any such outlaw return to stand trial within one year, the chief justice was ordered to remove the outlawry, and to provide for a fair trial. Persons not yielding themselves for trial within the year allowed, were declared to have forfeited all their real and personal property to the use of the state.

The loyalists of New Hampshire, with the example of their unfortunate fellows in Vermont indicating the fate

115., Acts and Laws of The State of New-Hampshire, In America. By Order of the General Assembly (Exeter:, M.DCC.LXXX), p. 65.

116. ibid. p. 65.

117. ibid. p. 66.

that would soon overtake them, began to attempt to protect their property by "selling" it to their agents, open or secret, and friends. Seeing the rapid removal of the tempting properties from their reach, the radicals of the legislature, on November 29, 1777, moved to head off this practice by passing:

An Act To prevent the Transfer or Conveyance of the Estates and Property of such Persons who have been or shall be apprehended upon Suspicion of being guilty of Treason, Misprison of Treason, or other inimical Practices respecting this State, the United-States, any or either of them, and also for securing all Lands within the State, as well of such Persons as have traiterously deserted or may hereafter desert the Common Cause of America, and have gone over to, or any way or Manner joined our Enemies, as of those who belong to, or reside in Great Britain. 118.

This act provided that any conveyance or transfer, of any kind whatever, made by any person named on any warrant charging treason, misprison of treason, or any act against state, or arrested on any such charge, or by any person who had, or at any future time might, go over to the enemy was null and void.

Then, in one of the first enactments of the type to be made by any of the states, the New Hampshire Council and House of Representatives provided that all deeds and other conveyances of real estate located within the state made

after the passage of the act by any person, persons, or corporation resident in Great Britain, or by any agent acting for him, them, or it, were also void.

It was further provided that all property belonging to the offenders mentioned in the opening clauses of the act, as well as that belonging to any British person or corporation, was to be taken into custody and appraised. Its eventual disposal was left to the discretion of the General Assembly. The actual work of the sequestration and appraisal was delegated to the selectmen of the towns in which the property was located. The appraisals were to be returned to the secretary's office within two months after the taking possession of any property by the selectmen. The income from all sequestered property was to be paid, by the selectmen, to the secretary at intervals. In return for their services, the selectmen were to be paid "a reasonable Reward from out of the public Treasury."^{120.}

Having proceeded so far toward a general confiscation law, the General Assembly probably found it no very difficult task to prepare themselves for the final step. On November 28, 1778, it published:

An Act to confiscate the Estates
of sundry Persons therein named. ^{121.}

119., Acts and Laws of New-Hampshire, p. 111.

120. ibid. p. 112.

121. ibid. p. 139.

With a direct simplicity unusual in the legislation of this period, the act declared the entire real and personal estates of a group of notorious loyalists, who, according to the preamble had aided and assisted the British in their attacks upon the people of the state with the avowed intent of subverting the good citizens' "Liberties, Civil and Religious, and taking from them their Property," forfeited^{122.} to the state. Committees of three members were appointed for each of the state's five counties. These committees were instructed to prepare accurate inventories of all estates confiscated by the provisions of the act, and return them to the General Assembly. All selectmen, or other persons, who had taken possession of any of the confiscated property were ordered to deliver it to the committees for their respective counties.

The committees were directed to sell, at public auction, all personal estates seized by them, giving a statement of^{123.} any such sales to the General Assembly. However, before selling the forfeited personal property in their possession, the committees were instructed to set aside as much as in their opinion would provide for the support of the families of the persons named by the act.

The act provided, finally, that all members of the^{124.} committees on confiscated property should take an oath,

122., Acts and Laws of New-Hampshire, p. 139.

123. ibid. p. 140.

124. ibid. p. 140.

before some magistrate, to faithfully discharge the duties of their office.

The loyalists, having had their efforts to protect their estates by colorable transfers or conveyances blocked by the act of November 29, 1777, turned to new devices to escape forfeiture. Perhaps the most common method was the drawing up of a fraudulent attachment for a large part of the entire worth of the forfeitable property in favor of a trusted agent or friend. If, in such a case, forfeiture should ensue, the loyalists reasoned that the agent, being in the position of a preferred creditor, would be able to salvage much of the estate by presenting his bill of attachment. To counter this trick, the General Assembly (or General Court as it was frequently called), on December 26, 1778, passed:

An Act to Make Void all Attachments which have been, or hereafter shall be laid or made upon the Estates of Persons who have left the State or any of the United States, and gone over to the Enemies of the said States since the Commencement of Hostilities by Great-Britain; or on the Estates of any Inhabitant or Subject of Great-Britain, 125.

which provided that all attachments placed on any of the types of estates indicated in the title, since the beginning of the revolution, were void. The act, however, was not intended to apply to cases where attachments had been carried through the courts to a final settlement.

Since the original confiscation act had made virtually no provision for the creation of workable machinery of enforcement, it was inevitable that amendments should follow. On June 25, 1779, the General Assembly passed:

An Act In Addition to an Act in-
titled "An Act to confiscate the Estate
of sundry Persons therein named. 126.

The preamble of this act stated that the act of November 28, 1778, had failed to make any provision for ascertaining what real property actually belonged to the persons named by it, and that no way of settling the debts of the offenders, or paying the profits arising from the forfeitures into the treasury had been established. To remedy these shortcomings, the General Assembly required the judge of probate for each county in the state to appoint a trustee for the estate of each absentee formerly resident within that county. If any offender had at no time been a resident of the state, the probate judge of the county in which his estate was located was required to act as described above. All trustees were required to take an oath and post bond for faithful performance of their trusts. The judges were to direct the disposal of the confiscated estates in such ways as seemed likely to bring about their prompt sale.

The trustees, under the law, were directed to promptly make inventories of their charges, and send copies to the

judges of probate responsible for their appointment. All committees of safety, or other committees, were instructed to turn over to the trustees of their counties all confiscated property in their possession.

The trustees were empowered to settle all debts and credits of the estates committed to their care, bringing suit, where necessary, for the recovery of any assets found to be in the possession of other persons, and making proper defense against any suits brought by the creditors or claimants of the property.^{127.}

If any of the estates were found to be insolvent, the judges of probate were directed to proceed as in other cases of insolvency.

Should the trustees have reason to suspect any person of having embezzled any part of the estate entrusted to their custody, they were ordered to report their suspicions to the judge of probate for their county. The judge, in turn, was directed to summon the suspect before him, and, by examination under oath, determine the truth of the matter.^{128.}

Each trustee was instructed to give public notice for all persons having claims against the estate placed under his administration to present their claims within six months under penalty of being excluded from any settlement that should be made. No suit could be brought against

127., Acts and Laws of New-Hampshire, p. 160.

128. ibid. p. 161.

any trustee by a claimant or creditor, unless a written claim had been presented within the time set.

The judges of probate were directed to proceed to seize all unoccupied lands, suspected of being the property of any offenders against the state, giving public notice to all persons claiming any interest in such lands to appear in defense of their claims.

All sales of confiscated estates were to be by public auction. The probate judges were authorized to make a proper allowance, out of the estates of the offenders named by the act, for the support of the wives and children of such persons. Finally, the judges were to make a report of their proceedings to the General Assembly every six months.

While the Assembly constantly tried to convert the confiscated estates in its possession into specie, it occasionally found situations where this was not necessary. For example, on June 17, 1780, it passed "An Act for clearing and making passable the Road from the upper Coos through unappropriated Lands to Conway," which appropriated one thousand seven hundred acres of confiscated land (formerly the property of William Stark) to pay for the road repairing.

129., Acts and Laws of New-Hampshire, p. 169.

In March, 1780, the General Assembly decided to overhaul its confiscation machinery. As a result, it passed, on the eighteenth of the month:

An Act for repealing an Act, intituled an Act in addition to an Act, intituled an Act to confiscate the Estates of sundry Persons therein named, passed in the Year One Thousand Seven Hundred and Seventy-Nine. 130.

As the title indicates, the act, after declaring all things done in consequence of the provisions of the act of 1779 legal and valid, repealed the older statute.

Having cleared away the debris of former legislation, the Assembly, on the same day, accepted:

An Act In Addition to an Act "intituled an Act to confiscate the Estates of sundry Persons therein named," passed in the Year of our Lord, One Thousand Seven Hundred and Seventy Eight. 131.

After a preamble in which the original act was characterized as insufficient and invalid, the new act provided that all sales made by the trustees appointed by virtue of the former act were legal, and that the trustees should transmit a complete inventory of all property in their possession to the county judges of probate not later than May 1, 1780. All trustees appointed under the former act were to remain in office. The judges of probate were directed to appoint

130., Acts and Laws of New-Hampshire, p. 219.

131. ibid. p. 219 et seq.

other trustees to control all estates confiscated since the passage of the act of 1778. The appointments were to be made in the same manner, and under the same conditions as in the original confiscation act. At convenient intervals, the judges were to grant the trustees licenses authorizing the sale of such property. The proceeds of such sales were to be returned to the treasurer.

Three commissioners were to be appointed by the several judges of probate, and authorized to examine the claims of all creditors to the confiscated estates. The commissioners were directed to hold meetings, advertised for at least three weeks in advance in the New Hampshire and Boston gazettes. Creditors were to be allowed six months to appear and prove their claims. At the end of six months, the commissioners were instructed to return all claims to the treasurer. The matter of payment was left for the future consideration of the legislature.

Persons suspected of embezzling confiscated property were to be examined by the judges of probate. The judges were directed to order the sale, at public auction, of the forfeited estates, and to make a return of their proceedings to the General Assembly every six months.

The state pledged itself to guarantee and defend the legality of all conveyances and deeds made by the trustees in pursuance of the act.

With the passage of the act of March 18, 1779, the legislature of New Hampshire allowed the matter of confiscation to rest until April 6, 1781 when it passed:

An Act in Addition to an Act of this State, entitled an Act against Treason and Misprison of Treason, and for directing the Mode of executing Judgments against Persons convicted of those Crimes: And also in addition to an Act entitled an Act for preventing and punishing such Offences against the State as do not amount to Treason or Misprison of Treason. 132.

Among other things, this act provided that the forfeiture of all real and personal estate should be a part of the punishment prescribed for those guilty of either treason or misprison of treason.

On November 28, of the same year, guided either by a rather peculiar logic, or by the traditional Yankee sense of humor, the General Assembly issued:

An Act to prevent the Inhabitants of Great-Britain and others inimical to the United States of North America, from purchasing Territory within this State. 133.

Under the terms of this remarkable piece of legislation, no British subject or loyalist was permitted to buy any real estate, or to take a lease, of more than a year in duration, within New Hampshire. Since the existing law

132., Acts and Laws of New-Hampshire, p. 247.

133. ibid. p. 270.

provided that any property owned by any such person was forfeit to the state, the necessity for such a statute is a mystery.

After its extensive period of experimentation with laws designed to secure to the state the property of its opponents, the General Assembly, on March 25, 1781, more than five months after Cornwallis' surrender at Yorktown, passed:

An Act For confiscating the Estates of sundry Subjects of this State, and of the other United States of America, who have since the Commencement of Hostilities between Great-Britain and the United States, gone over to the Enemy; also the Estates of the Subjects of Great-Britain lying within this State. 134.

This belated statute gave New Hampshire, for the first time, a workable general confiscation law. Starting with the position that subjects of a state who desert it in time of war are incapable of legally holding property, of any kind, within its limits, and further stating that by the "Law and Custom of Nations" all enemy property within a belligerent state is subject to confiscation, the act declared all British and loyalist property within the state confiscated.

The machinery of the act was simple and logical. It was held that all "subjects" of New Hampshire who had left the state and in any way aided the British government, or who had left since April 19, 1775, and had died or failed to return were aliens.

All property of those declared aliens in pursuance of the act was returned to the possession of the state by escheat. The grand juries of the superior court and the several courts of sessions were instructed to investigate all cases where any person was charged with being an alien in the sense given above. The attorney-general was directed to exhibit any complaints which might be returned by the grand juries to any of the several courts cited. Upon receipt of any such complaint it became the duty of the presiding judge to call upon the accused to appear for trial. If the accused failed to appear before the next term of the court issuing the summons, forfeiture was to be decreed by default. If he appeared, a most unlikely possibility, a proper trial, by jury, to determine whether or not he was guilty of treason, would be held. The right of appeal to the superior court was granted to all defendants. If, however, any one prosecution against a suspect should succeed, confiscation of all his property might be ordered without any further trials.

When a judgment had been obtained against any estate, the judges of probate were to proceed as had been directed in the earlier laws. An exception was made in that the commissioners were directed to send the list of claims, compiled by them, to the judge by whom they were appointed, instead of the treasurer of the state. If the estate was solvent, the judge was to forward the claims to the treasurer for payment, if not, he was to apportion the assets

among the claimants.

The wife or widow of any "alien" was to be paid her dower or "third" of her husband's estate. Where the offender had left any relatives unable to support themselves, and accustomed to receiving their living from him, the judge of probate in charge of the estate was authorized to fix an allowance for them.

All real or personal estate belonging to subjects of the king of Great Britain was declared forfeited. The procedure was to be the same as that employed against absentees. The judges of probate for the counties in which the forfeited properties lay were directed to appoint a trustee for each such estate, and to order its immediate sale, having no regard for any claims which might be made on it. The proceeds of all sales were to be sent to the treasurer.

Finally, on September 15, 1786, the General Assembly passed:

An Act In compliance with the Treaty of Peace between the United States and his Britannic Majesty, and with the recommendation of Congress of the Fourteenth of January 1789, founded thereon. 135.

Under the terms of this act any property which had belonged to British subjects, or absentees resident in territory in the possession of the British army between November 30,

1782 and January 14, 1784, who had not borne arms against the United States, was restored. Any persons regaining property under the above provision were allowed to go to any part of the state, after having given their names to the secretary's office within fourteen days after their arrival, and to reside there for not more than one year to transact the business incident to the recovery of the property.

The last clause of this act declared that all acts repugnant to the "peace and friendship between the United States and Great-Britain" (including the several confiscation acts) were repealed.

136., Acts and Laws of New-Hampshire, p. 420.

Chapter IX.

NEW JERSEY

In common with the majority of the other American states, New Jersey made its first confiscations of loyalist property as an incidental part of the enforcement of the traditional English penalties for treason. On October 4, 1776, by "An Act to punish Traitors and disaffected Persons," the General Assembly provided that, excepting the corruption of blood, the penalties provided by the laws of England should be executed on those convicted of high treason to the state.

Since the penalties provided by the Statute of Edward III. included a most barbarous form of execution, it was almost impossible to secure convictions from the average jury. In order to remove any doubts as to the penalties intended by the law of October 4, 1776, and to secure a greater number of convictions, the General Assembly, on September 20, 1777, passed:

An Act to ascertain the Punishment for High Treason, and to establish the Word State in stead of Colony in Commissions, Writs and other process; and for other Purposes therein mentioned. 138.

This act provided that the corporal punishment provided by the earlier act should be construed to be the same as for the crime of murder. It was specifically provided, however, that the forfeiture of all property should remain a part of

137. P. Wilson, Acts of the General Assembly of the State of New Jersey, From the Establishment of the Present Government, and Declaration of Independence, to the End of the First Sitting of the eighth Session, on the 24th Day of December, 1783 (Trenton: Isaac Collins, MDCCLXXXIV), p. 4.

138. ibid. p. 23.

the penalty.

While the statutes on treason were being put into a workable condition, the legislature turned its attention to the problem of those persons who had fled to the British lines. The answer was announced, on June 5, 1777, in the form of "An Act of free and general Pardon, and for other Purposes therein mentioned." Under this act, all persons who had gone over to the British were granted a full pardon on condition that they appear, before August 1, 1777, in any court within the state and there take oaths of abjuration of the British government, and allegiance to the government of the state of New Jersey. Any justice before whom such oaths were taken was empowered and directed to make out a certificate, attesting to the fact, for the deponent. The certificates were to be given to the clerks of the counties in which the absentees had resided, to be recorded and sent to the governor on or before August 20.

If any persons refused to appear and take the oaths prescribed, his personal property was to be confiscated for the use of the state. A further proviso, indicative of the direction in which the thoughts of the legislators were turning, declared that all sales and alienations of real estate made, by any person refusing to accept the clemency offered, after the proclamation of the law, were null and void.

139. Wilson, Acts of the General Assembly of New Jersey, appendix IV.

A commission was established for each county of the state, with authority to administer the provisions of the act. The commissioners were directed to seize, with all convenient speed, all the personal property of those described by the first clause, and to dispose of that part which was perishable, or likely to fall into the hands of the enemy, having first made an accurate inventory of the whole. The money arising from the sales of any personal property seized was to be held by the commissioners for the owner, to be paid to him immediately upon his taking the oaths of allegiance and abjuration, provided that they were taken before August 1, 1777. In return for the services of the commissioners in "preserving" his property, the owner was required to pay all reasonable costs, and a fee of five percent.

The personal property which was in no danger of being destroyed, either by time or the British army, was to be carefully preserved by the commissioners, and returned to its owners under the terms outlined in the preceding paragraph, except that the fee of the commissioners was set at three percent.

If the owner of any confiscated personal property should fail to appear within the period allowed, the commissioners were instructed to return, after deducting all necessary expenses, to the treasury all money received from the sale of any perishable or endangered goods. Those

articles which had not been sold were to be reserved for future disposal by the legislature. The commissioners were ordered to deliver a complete inventory of all property of this class to the treasurer, and were guaranteed all proper expenses plus a fee of three percent of the eventual sale price.

This act was followed up, on April 18, 1778, by:

An Act for taking Charge of and leasing the Real Estates, and for forfeiting the Personal Estates of certain Fugitives and Offenders, and for enlarging and continuing the Powers of Commissioners appointed to seize and dispose of such Personal Estates, and for ascertaining and discharging the lawful Debts and Claims thereon. 140.

Under the terms of this act, any commissioner could draw up an information against any absentee formerly resident in the county to which the commissioner was appointed. This information was to be lodged with any justice of the peace in the county, who, in turn, was ordered to assemble a jury of freeholders to decide on the validity of the charges. If the jury decided that the person named was an offender under the law of June 5, 1777, their findings were to be certified to the next session of the inferior court of common pleas of the county. At the session of the latter court, the charge was to be proclaimed. If any person appeared to traverse this indictment, a proper trial

140. Wilson, Acts of the General Assembly of New Jersey, p. 43.

was to be held. If not, the commissioner was required to advertise the indictment, in the New Jersey Gazette, and five "of the most public Places of the county," within thirty days after the session. If no person appeared to traverse the issue (the act set no specific time limit for such appearance) the court was to give judgment in favor of the state. In this case, all personal property belonging to the offender was declared forfeited, and the commissioner was directed to sell it at public auction, after giving at least ten days' notice by advertisements posted at five prominent places within ten miles of the location of the sale.^{141.}

The commissioners were further instructed to seize and sell all other goods belonging to any convicted absentee which might, from time to time, come to their attention. All persons possessing any goods subject to forfeiture were ordered to produce them, on penalty of forfeiting double their value if they continued to conceal any such property. Persons who had, in the absence of any commissioner for the purpose, taken possession of and preserved the goods of any absentee for the use of the state, and who promptly notified the proper authorities of their action, were to be indemnified for any expenditures occasioned by their stewardship.

^{141.} Wilson, Acts of the General Assembly of New Jersey, p. 46.

It was further provided that if, at any future time, any persons should go over to the British, or in any other manner act against the interests of the state, the commissioners should at once seize their personal property as provided in the case of those refusing the pardon offered in the act of June 5, 1777.

The eighth clause, significantly, ordered the commissioners to sequester any real estates left by any of the offenders described in the act. The commissioners were directed to lease such estates, for periods of not more than one year from March 25, 1778, at public auctions, advertised for at least five days. The lessees of such estates were declared to be forever guaranteed against any recovery of any type, by the original owners. 142.

All persons who had occupied the vacated real estates of offenders were ordered to pay a fair rental for the use of the properties, beginning on the day of forfeiture. The rental was to be determined by three disinterested freeholders nominated by the commissioners for the purpose. If any occupant neglected or refused to pay the rent fixed, the commissioners were authorized to bring suit for its recovery. If the occupant had in any way damaged the estate, he was required to pay three times the amount of the damages to the commissioners.

142. Wilson, Acts of the General Assembly of New Jersey, p. 49.

No person who had been indicted for any offense against the state was permitted to sell, or dispose of in any way, any real property. All deeds or conveyances made by such persons after their departure from the state were declared to be void.

All quartermasters or commissary officers of the continental regiments who had appropriated the personal property of absentees for the use of their offices were instructed to account for their requisitions to the proper
143.
commissioner.

Officials refusing to assist the commissioners in the execution of their duties were declared subject to fines, as were citizens refusing to serve as jurors or witnesses in confiscation proceedings.

The commissioners were instructed to keep records of all offenders known to them, citing all personal property seized and sold, and the amount received for it, and all real estate sequestered under the act, with the sums received as rent. They were to adjust and pay all just demands against the estates in their possession, and pay the balance, if any, into the treasury, at the same time, preparing an account of their entire activities, to be submitted to the next session of the legislature. In compensation for their services, the commissioners were to be reimbursed for all necessary expenses, and granted

143. Wilson, Acts of the General Assembly of New Jersey, p. 51.

five percent of their receipts. Service on any commission created by the act was to be preceded by the taking of an oath for faithful performance of the duties of the office.

The way having been prepared by the acts cited above, the General Assembly took the final plunge, and, on December 11, 1778, passed:

An Act for forfeiting to, and vesting in, the State of New-Jersey, the Real Estates of certain Fugitives and Offenders, and for directing the Mode of determining and satisfying the lawful Debts and Demands which may be due from, or made against, such Fugitives and Offenders; and for other Purposes therein mentioned. 144.

This act provided that all real estates belonging to any persons adjudged guilty of the offenses mentioned in the act of April 18, were forfeited to the use of the state. A second clause declared that virtually all absentees, not comprehended in the above act, were guilty of high treason. By a rather cynical touch, the legislature declared that the attainder of this clause should work against the offenders' real and personal estates only, leaving their heads strictly alone. Possibly this humane provision was dictated by the fact that the attainted persons were, of necessity, beyond the power of the state.

144. Wilson, Acts of the General Assembly of New Jersey, p. 67.

To increase the amount of forfeited property, it was provided that citizens of any other of the United States, holding real estate in New Jersey, who had deserted to the British were to be subject to attainder of high treason, with the attendant forfeiture, as in the case of citizens of New Jersey.
145.

The form of procedure against offenders under the current act was to be the same as that set up by the act of April 18. When an offender had been convicted in any court, on the information of any commissioner, all of his property, both real and personal, in any county in the state, could be seized without further process of law. The commissioners so acting, were empowered to sell the personal property without further delay, in the manner provided by the earlier act.

Upon application of the commissioners, the clerks of the county courts of common pleas were required to issue writs directing the sale of any real estate forfeited to the state. The clerks were instructed to keep a record of the writs so issued.
145.

Having secured the necessary writ, the commissioners were authorized to sell, at public auction, all forfeited estates under their supervision. The time and place of the sale, and a description of the property offered, were to be

145. Wilson, Acts of the General Assembly of New Jersey, p. 70.

advertised, at least one month in advance, in the New Jersey Gazette, if being published, and posted in three or more of the most public places of the county in which the estates were located.

Upon receipt of the full purchase money for any estates sold by them, the commissioners were directed to make out, in their own names, good and legal deeds of sale and conveyance to the purchaser. These deeds were declared to be valid, and binding in all respects. The purchasers were also to be given all obtainable deeds and other writs related to the ownership of the property which the commissioners should discover. ^{146.}

If by any future legal proceedings any sale made by the commissioners in their official capacity should be declared illegal, the purchaser, under that sale, was declared to be secure in his possession, any process or judgment issuing from such proceedings working against the state only. Persons granted recovery in such cases were instructed to appeal to the legislature for indemnification.

All sales or conveyances of property, of any kind, made by any person whose estate was declared forfeitable by the act with the intention of depriving the state of it were declared to be fraudulent and void.

The commissioners were instructed to pay, after deducting all legitimate charges and fees and a two percent

146. Wilson, Acts of the General Assembly of New Jersey, p. 71.

commission, all receipts from the sale of any confiscated estate into the treasury, within three months after the day of the sale.

If any person found guilty of high treason should be pardoned, the forfeiture of all property, levied in consequence of the original conviction was to continue in effect as if the pardon had not been granted. The estate forfeited under such convictions was ordered sold by the commissioners of the county in which it was located, by authority of a writ to be issued for the purpose by the supreme court of the state. The process of sale was the same as that provided for other confiscated real estate.

The court of common pleas of each county was authorized to hear all claims against the confiscated property lying within its jurisdiction. The claims were to be submitted in writing, within one year after the sale of the property in question. In order to facilitate the presentation and settlement of claims, the commissioners were ordered to give notice, within one month after the day of sale of any property, to all persons having any claims on that property, to appear for the adjustment of their demands. The judge of the court of common pleas could summon witnesses if he believed that their testimony would be of value. Having arrived at a decision, the judge was required to send a copy of his award, within one month,

147. Wilson, Acts of the General Assembly of New Jersey, p. 72.

to the treasurer, who was directed to pay, within three months after the expiration of the period granted for the presentation of claims, the sums awarded by the settlement. If the money received from the sale of any estate was inadequate to meet the valid claims against it, the treasurer was directed to apportion it among the claimants, according to the size of their demands. All settlements of claims made by the commissioners in pursuance of the provisions of the act of May 18, were declared to be valid. To avoid duplication of payments, the commissioners were required to transmit to the judges of the courts of common pleas of their respective counties certificates listing all awards and payments made by them, and any sums still due in consequence of their awards. If there were any unfulfilled obligations, the judges were to notify the treasurer to make satisfaction, as far as possible, upon receipt of the proceeds of the sale of the estate involved. In compensation for their services, the judges of the courts of common pleas were allowed twenty shillings for each day devoted to the consideration of claims against the estates forfeited to the state.

All persons who had leased any of the confiscated

148. Wilson, Acts of the General Assembly of New Jersey, p. 73.

149. ibid. p. 74.

estates during the period of their sequestration were allowed to continue in possession during the period agreed on in the lease. All sales of such property were to be made subject to the operation of the lease.

A final and scarcely relevant clause provided that all offenders of the classes mentioned in the confiscation act and its predecessors were forever barred from all offices of trust or profit in the government of the state, or from voting in the elections of members of the legislature.

The problem of confiscation was, after the passage of the act of December 11, allowed to rest until June 15, 1780, when the General Assembly passed:

An Act for expediting the Settlement of the Accounts of the Commissioners of Forfeited Estates, and for suspending Part of an Act intituled, An Act for forfeiting to, and vesting in the State of New-Jersey, the Real Estates of certain Fugitives and Offenders, and for directing the Mode of determining and satisfying the lawful Debts and Demands which may be due from, or made against, such Fugitives and Offenders; and for other Purposes therein mentioned. 150.

This act, in spite of its imposing title, was very brief. It directed the commissioners of forfeited estates to render their accounts to the state auditor before August 1, 1780, under penalty of a fine of ten thousand pounds. Any part of the act of December 11, in conflict with this act, was repealed. For some unknown reason this act was not

published until after the expiration of the period allowed the commissioners in which to make their reports, and in consequence never functioned.

The abortive effort of June 15, was followed, after an interval of slightly more than a year, by:

An Act to suspend the Sales of
Real Estates which have, or hereafter
may, become forfeited to and vested
in this State. 151.

This act directed the commissioners of forfeited estates to immediately desist from further sales of such property until the legislature should issue further orders. For the time being, the system of leasing, employed under the act of April 18, 1778, was restored.

The next legislation in reference to confiscation was contained in a statute of December 20, 1781, entitled, "An Act for the more speedy settlement of the publick Accounts." This measure was an attempt to unravel some of the more troublesome tangles of the state's fiscal affairs. It was therefore inevitable that the machinery for the disposal of the confiscated estates of loyalists should be overhauled. In order to obtain some definite idea of the amount and disposition of the property seized, the act instructed all clerks of the courts having to do with such property, under a penalty of twenty-five pounds for neglect or refusal, to prepare true extracts of all final judgments entered on forfeited estates in their several courts. After the submission

151. Wilson, Acts of the General Assembly of New Jersey, p. 231.

of their initial reports, the clerks were directed to submit similar extracts within ten days after the end of each session of the court to which they were attached.

Announcing that the act of June 15, 1780 had failed to achieve the desired ends, and expressing the belief that the business of confiscating and disposing of the estates of absentees "in future will not be so extensive nor attended with so much Difficulties," the Assembly declared that the commissioners, appointed under the former acts, were to be discharged on February 1, 1782. It was provided, however, that the commissioners could complete the drawing up of any deeds necessitated by their former activities, continue any suits already commenced, and recover all debts due to the estates in their custody, after the limit of their appointment had expired.

All commissioners were ordered to render full accounts of the money received by them to the auditor of accounts, including with their accounts a complete list of all properties, real and personal, remaining unsold, by June 1, 1782. Any commissioner who failed to make his report was declared subject to a fine of five hundred pounds. The auditor was directed to forward to the treasurer of the state all such accounts. Collection of the sums due to the state was to be made by the treasurer, by legal proceedings if it was found to be necessary.

152. Wilson, Acts of the General Assembly of New Jersey, p. 234.

To replace the commissioners, the General Assembly appointed one agent for each of the thirteen counties, vesting them with the powers, and granting them the fees, formerly delegated to their predecessors. The retiring commissioners were directed to turn over to the agents all papers relating to their offices. Finally, the agents were instructed to pay all sums received in the execution of their duties to the treasurer on or before the second Tuesday in November annually.

On December 16, 1783, the General Assembly passed:

An Act to direct the Agents of forfeited Estates in the respective Counties in this State, to proceed to the Sale of said Estates; and to repeal an Act to Suspend the Sale of Real Estates which have, or hereafter may, become forfeited to, and vested in, this State. 153.

Under this act, the statute of June 26, 1781, suspending the sale of forfeited estates, was repealed. The judges of the courts of common pleas were directed to issue all further processes directing the sale of confiscated property to the county agents instead of the commissioners, as had been provided by the act of December 11, 1778.

The agents were directed to proceed, immediately after receiving any process from the courts of common pleas, to advertise, for one month both in the county in which the estates were located, and in the several newspapers of New

153. Wilson, Acts of the General Assembly of New Jersey, p. 354.

Jersey, the sale of property mentioned in the process.

Finally realizing the opportunity that the sales of loyalist property offered for the retirement of state obligations, the Assembly provided that the agents could accept, aside from specie, officers and soldiers' notes, contractors' certificates, and collectors' surplus certificates in payment for such lands. The agents were allowed six months to return their receipts. A rather amusing proviso declared that the agents were not to be allowed to collect the regular interest paid on any state obligations in their possession as payment for confiscated property.

The last clause provided that the obligations of the forfeited estates arising from mortgages placed on them by the original owners were to be given preference in the payment of claims.

To further rectify the many problems arising from the claims advanced by the creditors of the forfeited estates, the General Assembly, on December 23, 1783, passed:

An Act for ascertaining the
Value of Debts due from the for-
feited Estates of certain Fugitives
and Offenders, and for directing
the Payment of the same. 155.

By the terms of this act, all persons having claims against

154. Wilson, Acts of the General Assembly of New Jersey, p. 356.

155. ibid. p. 384.

any confiscated estates were directed to present them to two or more judges of the court of common pleas of the county in which the estates were located. The judges were instructed to determine the sum due each claimant, and send a copy of the award to the auditor of accounts, before September 1, 1784. The auditor was to draw up a statement of the net proceeds of the estate involved, and forward both statements to the treasurer, who was to pay the claims as soon as possible after December 1, 1784. Where the state of the treasury made payment impossible, the treasurer was authorized to issue to the claimant a note for the sum due him, to be payable from any unappropriated fund to become available. These notes were to bear interest at six percent.

All claims, including mortgages, not submitted for examination before September 1, 1784 (while the language of the act is indefinite, this is presumed to be the day set) were declared void. If however, for any reason acceptable to the judges, any person was prevented from presenting his claims, the time limit was to be disregarded. The right of appeal was granted to any person who felt himself injured by any award under the act.

Finally, it was provided that since many of the officers concerned in the process of confiscation had not been trained in law, no sales or other proceedings of the commissioners or agents were to be voided or quashed on account

of informality in the proceedings.

On August 31, 1784, the General Assembly, by "An Act
157.
to repeal the three several acts therein mentioned," re-
pealed, because of the conclusion of hostilities, the act
of May 18, 1778.

The confiscation legislation of New Jersey was ended
by the passage, on June 5, 1787, of:

An Act to repeal such acts, or
parts of acts, as may be in force in
this State, that are repugnant to the
treaty of peace between the United
States and his Britannic Majesty. 158.

The preamble states that certain states had passed certain
laws which could not be countenanced in the light of the
Treaty of Paris of 1783. Although the General Assembly
was of the opinion that no such laws existed in New Jersey,
it was provided that any acts, or parts of acts, repugnant
to the terms of the treaty, were expressly repealed.

157. W. Paterson, Laws of the State of New Jersey, Revised and Published Under the Authority of the Legislature (New Brunswick: Abraham Blauveet, 1800), p. 55.

158. ibid. p. 82.

Chapter X.

MASSACHUSETTS

From the first outbreak of hostilities, sentiment against the loyalists ran high in Massachusetts. The patriots, particularly in the rural areas and smaller towns were quick to accept any device which would harass their tory neighbors. Faced by complete political and social ostracism, and, by frequent outrages, made well aware of the dangers of their situation, the Massachusetts loyalists flocked to Boston where, under the guns of the British fleet and army, they could find security. Although these refugees took what valuables they could carry with them, their estates, and much of their personal property, were abandoned to the care of their enemies. In spite of the large amount of property left vacant in this way, the government of the new state was slow to make any general provision for its preservation or employment. The urgent demands of the war upon the time and skill of the legislators precluded the careful consideration of other, less immediately important, measures and problems. As a result, the loyalists' abandoned properties were entrusted to the action of the Committee of Public Safety, and the various local revolutionary governments. Thus, the problem was handled by a variety of agencies, with little thought of uniformity or general policy. It is, however, hardly within the scope of this consideration to examine these local activities, their variety and rapidity of change placing them beyond the sphere of any general survey.

However, by the opening of 1777, the military situation had eased enough to permit the General Court to devote some of its attention to the problems presented by the loyalists. Thus, in the first session of the year, the legislature passed:

An Act against Treason and Mis-
prison of Treason, and for Regulating
Trials in such Cases, and for direct-
ing the Mode of executing Judgments a-
gainst Persons attainted of Felony. 159.

This act defined treason as the levying, or conspiring to levy, war against Massachusetts or any other one of the United States, and provided the death penalty for offenders. The concealment of any act of treason was declared to be misprison of treason, subjecting the wrongdoer to imprisonment of from two to five years, and working the forfeiture of all his personal property and the income from his lands during his life.

If any person indicted for treason should fail to appear to stand trial, outlawry could be pronounced upon him. All offenders convicted of treason by the process of outlawry were declared to have forfeited all their property, both real and personal, to the state. If the proceeding should be by attainder, forfeiture should ensue from the
160.
publishment of the attainder.

At the same session, the General Court also passed:

159., Acts and Laws, Passed by the Great and General Court or Assembly of the Colony of Massachusetts Bay, in New England (Boston: Benjamin Edes, 1778), p. 107.

160. ibid. p. 108.

An Act to prevent the Waste, Destruction and Embezzlement of the Goods or Estates of such Persons who have left the same, and fled to our Enemies for Protection; and also for Payment of their just Debts out of their Estates. 161.

Under this act, when any person had fled to the British lines, leaving an estate within the state valued at twenty pounds or more, the judge of probate for the county in which the estate was located was directed to nominate an agent to preserve it. All agents were instructed to return attested inventories, of all goods and real property left by the absentees, to the judges appointing them, within three months after their nomination. Upon receiving the inventories, the judges of probate were directed to have an inventory of the property made by disinterested persons. The agents were then to sell the property at public auction, giving legal deeds to the purchasers, and paying the proceeds into the office of the treasurer.

If the sum realized from the sale of the offenders' personal estates should, in any cases, be insufficient to pay their debts, the agents in charge of them were ordered, on receipt of a license granted by one of the justices of the superior court, or the justice of the court of common pleas for the county in which the property was located, to sell as much of the real estate belonging to such offenders as would meet the shortage.

All sales of the property of loyalists were to be announced at least thirty days in advance.

In order to determine the amount owed by the fugitives, the judges of probate were directed to appoint commissioners to receive and examine the claims of all creditors. At the discretion of the judges, periods of six, twelve, or eighteen months were to be allowed to the creditors to present their demands.

The judges of probate were allowed to set aside any bedding or other articles of a domestic character for the use of the wife and family of any absentee whose property had been seized under their authority. The judges were also authorized to interrogate, under oath, any persons suspected of having concealed any of the personal property of the loyalists. If any persons should refuse to testify, the judges were empowered to commit them to jail until they should agree to make a deposition. The probate judges were directed to fill any vacancies occurring among the agents appointed by them, and could discharge any agent for misconduct.

If no agents should be appointed for any property by April 10, 1777, the committee of correspondence for the county or town in which the property was located was to take charge.

The agents were instructed to eject all persons in occupancy of the sequestered estates, by action of trespass if necessary. However, if any properties were in the possession of citizens, loyal to the state, under a lease, the lessees were to be allowed to remain during the period provided in the lease. Such tenants were ordered to pay the rent agreed upon to the agent placed in charge of the property. The agent was to enter into the capacity of landlord, even to the extent of making necessary repairs to the buildings and equipment of the estate. Finally, the rents thus obtained could be employed by the judge of probate for the support of the absentees' families.

The early session of 1777 also produced:

An Act for securing this and the other United States against the Damage to which they were exposed by the Internal Enemies thereof. 162.

The main object of this act was to drive all loyalists out of the state. However, the fourth clause declared that all persons forced to leave Massachusetts should be permitted to carry their personal property with them. By the same provision, they were denied the right to sell or otherwise dispose of any real estate in their possession.

This preliminary act was followed, in May, by "An Act for prescribing and establishing an Oath of Fidelity and Allegiance." Under this statute, all persons who re-

162., Acts and Laws of the Colony of Massachusetts Bay, p. 159.

fused to take an oath of allegiance to the state of Massachusetts were to be sent, within forty days, to some part of the British dominions. The loyalists were required to pay the expenses of their transportation whenever possible. All those directed to leave the state were allowed to sell their personal property, and, after paying all their just debts and the cost of their passage, take the remainder with them. They were also allowed to appoint an attorney to collect all debts owed to them. However, former British officials and persons who had aided British enlistments were denied this privilege.

Nothing further was done until September, 1778, when the General Court passed:

An Act in Addition to an Act entitled, "An Act to prevent the Waste Destruction and Embezzlement of the Goods or Estates of such Persons who have left the same, and fled to our Enemies for Protection; and also for Payment of their just Debts out of their Estates. 163.

The original act, alluded to in this law, had provided that the judges of probate could appoint agents to preserve abandoned estates only after receiving a certificate from the local committee of correspondence or safety. Since the delay which inevitably arose from this arrangement led to unnecessary depreciation of the abandoned properties, the new act empowered the judges of probate to appoint agents at their discretion. The judges were also empowered to appoint, for each sequestered estate, three impartial

citizens to examine and adjust all claims advanced by the creditors. The last clause reaffirmed the agents' rights of full supervision over all estates entrusted to them.

In spite of the provocations offered by the British forces, and the annoying and often destructive activities of the absentees, the General Court was very slow in providing for the complete confiscation and sale of the real estate belonging to the loyalists. It is a difficult task to assign any reason for this restraint. The radicals were in the saddle, and the example of seven other states was before them. Yet, possibly deterred by the concept of the sacredness of private property, so definitely a part of the Calvinistic Protestantism of that day, the General Court did not move for confiscation until April 30, 1779. At this time the long evolutionary process of development found its climax in:

An Act to confiscate the Estates
of certain notorious Conspirators
against the Government and Liberties
of the Inhabitants of the late Prov-
ince, now State, of Massachusetts
Bay. 164.

This act declared that a group of prominent loyalists had conspired to destroy the government of Massachusetts, and in consequence had justly incurred the forfeiture of their estates, real and personal, and all other civil and political

164., Acts and Laws Passed by the Great and General Court or Assembly of the State of Massachusetts Bay in New England (Boston: Edes & Company, MDCCLXXIX), p. 231, et seq.

rights and privileges, within the state.

Therefore, all property, held on or after April 19, 1775, by the persons named was declared to have escheated to the state. All debts owed by any of the persons named were to be paid out of their estates. This provision, however, was only to be applied to debts owed to citizens of Massachusetts, or the United States, before April 19, 1775.

If the wives or widows of any of the offenders had remained within the jurisdiction of any of the United States, they were entitled to the income from one third of their husbands' estates, after the payment of all debts, during their lives. They were also to be returned dower, by the judges of probate of wills, as in cases of intestacy. Where the offender did not leave a wife, but had left relatives dependent on him for support, the probate judge was authorized to fix an adequate allowance, in relation to the value of the confiscated property, for their support.

Having thus disposed of the estates of the principal loyalists, the General Court, on the same day, turned to the lesser absentees, passing:

An Act for confiscating the Es-
tates of certain Persons commonly
called Absentees. 165.

The preamble of this act stated that all governments had a legal and moral right to command the personal services of their citizens in time of war, and that many subjects of

165., Acts and Laws of Massachusetts (MDCCLXXIX)
p. 233, et seq.

the state had fled, taking the part of the British. Since the British government was engaged in a tyrannical attempt to destroy the free status of Massachusetts, the act held that those going over to the British had forfeited all right to the protection of the state.

It was, therefore, provided that all persons who had in any way assisted the British, levied war against Massachusetts or the United States, or, since April 19, 1775, left Massachusetts or any other one of the United States, and entered any area under the control of the British forces, or any part of the admitted dominions of Great Britain, without the permission of the government of their place of residence, and had not returned and been permitted to resume their rights of citizenship, would be considered as having freely renounced their citizenship within the United States, and having assumed the status of aliens.

All goods, of every kind, and all real estate, located in Massachusetts and belonging to any person described by the preceding paragraph, were declared to be escheated to the state. No property belonging to any other person was to be disturbed. In order to avoid the seizure of the property of good citizens, the law provided that the attorney-general of the state, or any person appointed by him for the purpose, should exhibit, before the several justices of the county inferior courts of common pleas, complaints against

any of the offenders described by the act who possessed property in the respective counties, citing the offense alleged against the accused, and giving a full description of the estate demanded by the government. On receipt of any such complaint, the justice of the court addressed was to continue the suit to the next session, and order his clerk to prepare a formal notice of suit. The notice was to be delivered to the mansion house, if any, of the estate in question by the local sheriff or constable. If there was no mansion house, the notice was to be posted at some nearby public place. A copy of the notice was to be left at the last known residence, within the state, of the offender. These notices were to be delivered at least before the session to which the case was continued. If no person appeared to traverse the suit, the General Court instructed the judge to continue the suit to the next regular session of his court. At the second calling of the case, if no defendant appeared, the judge, after having an oral announcement of the case made, was directed to proceed to the trial, admitting as a party any person who wished to defend the suit. The law directed the judge to carry out the trial by jury in the ordinary manner, calling upon the jury to determine whether any part or all of the estate in question was subject to confiscation.^{166.}

166., Acts and Laws of Massachusetts (MDCCLXXIX), p. 235.

The General Court directed the judge, in the event of a verdict favorable to the state, to issue a writ of habere facias possessionem, transferring possession to the government. The right of appeal was granted to any defendant on the same basis as in real actions.

It was further provided that when any court had declared for forfeiture of any part of the property of an absentee, all other properties belonging to that person were automatically forfeited, subject only to legal proof of ownership on the part of the offender. The courts of the state were instructed to admit certified copies of such decisions as evidence.

All debts contracted legitimately by any offender before his flight or criminal act were declared payable out of his estate. Wives, widows, and dependent relatives were granted the same allowances as in the other act of April 30.

Finally, the act was declared to interfere in no way with the operation of the treason law of 1777.

During the remaining months of 1779, the legislature confined its activities on the problem of confiscation to a series of acts discharging agents for misconduct, or empowering them to act in individual cases.

167., Resolves of the General Assembly of the State of Massachusetts Bay, Begun and held at Boston, in the County of Suffolk, on Wednesday the Twenty-Sixth Day of May. Anno Domini, 1779. (Boston: Benjamin Edes & Sons, MDCCLXXX), pps. 166 and 180.

On December 4, 1780, the process of development in the machinery of confiscation was re-commenced by the passage of:

An Act in Addition to and for the Alteration of some of the Provisions of an Act, intituled, "An Act for confiscating the Estates of certain Persons commonly called Absentees, "(where) it is among other Things provided, the Justices of the same Court where any Complaint is exhibited in Pursuance of the said Law, shall order their Clerk to cause the Notifications as in the said Law is described to be served by the Sheriff or Constable, and that the Person may be tried by a Jury in Cases where no claim is made; by means whereof great and needless Expences are incurred, and the good Intentions of said Act are not so well answered. 168.

This act provided that the notice of suit, which under the earlier act was to be served by the sheriff of the county, or a constable, could be published in three of the newspapers of the state, at least thirty days before the session at which the trial was to be held, in lieu of such personal service.

It was further provided that when no person appeared to traverse the suit brought by the attorney-general the judges of the court involved were to declare forfeiture of the offender's estate, without recourse to a trial by jury.

All costs of such trials were to be itemized by the

168., Acts and Laws of the Commonwealth of Massachusetts (Boston: Benjamin Edes & Sons, MDCCLXXXI), p. 5.

judges, and presented to the General Court for allowance and payment.

Since the passage of the act of December 4, 1780 cast certain doubts on the legality of the proceedings commenced during the period when the original confiscation act was in effect and continuing into the period after the proclamation of the additional statute, the General Court, on January 18, 1781, passed:

An Act in Addition to, and for the Explanation of an Act, intituled, "An Act in Addition to, and for the Alteration of some of the Provisions of an Act, intituled, An Act for confiscating the Estates of certain Persons, commonly called Absentees." 169.

This act provided that any confiscations made under the procedure outlined in the act of April 30, 1779, under the conditions cited in its title, were valid and binding. It further authorized the courts to continue with any trials instituted in pursuance of the provisions of that act.

The fact that the first confiscation laws had made no definite provision for the procedure to be followed in the settlement of debts owed by and to the absentees made corrective legislation necessary. This need was met by the General Court, on March 2, 1781, by the passage of:

An Act to provide for the Payment of Debts due from the Conspirators and Absentees, and for the Recovery of Debts due to them. 170.

169., Acts and Laws of Massachusetts, MDCCLXXXI; p. 7.

170. ibid. p. 28.

This act provided that committees be appointed in each county in the state, and directed to sell the real estate, of all conspirators and absentees, confiscated by the acts of 1779. After any such sale, all just debts were to be equitably discharged, and the residue of the sale price paid into the treasury. If any of the obligations were in the form of mortgages or attachments, these debts were to be paid first.

If the wife or widow of any offender had remained in the state, one-third of the estate confiscated was to be set aside, as dower, for her support. After her death, the dower portion was to be sold, and the proceeds paid to the state, or the creditors of the estate, as circumstances should direct.

Where the proceeds from the sale of any confiscated estate should be insufficient to meet the obligations incurred by its former owner, the act provided that the amount realized should be apportioned among the creditors, as provided by law in cases of insolvency. Where committees, appointed by any former act to examine such claims, had made awards, containing allowances for the depreciation of the paper currency, the awards were to be returned to the committees, or their successors, for the removal of all allowances.

Where any committee had not completed its examination of the demands of any creditor, or creditors, the judge of

probate who appointed the members of the committee was instructed to appoint some suitable person to represent the state in the settlement of the claims. If any of the claims considered by the commissioners were found to be valid, the committees were to grant them, and report their findings to the judge of probate for allowance.

All creditors appearing before the commissioners of claims were to be required to take an oath to give an honest statement of the exact nature and amount of the debt owed to them. If, for any reason, the commissioners suspected the testimony of any claimant to be false, they were empowered to require him to produce two respectable freeholders from the town in which he lived. These persons could be examined by the commissioners as to the character of the creditor, and also as to the probable truth or falsity of his claims.
171.

The agents for the confiscated estates were ordered to collect all debts owed to the former proprietors of the properties, having recourse to suit if necessary. Persons indebted to the estates in question whose obligations could not be found among the papers of the offender available to the agent were required to pay the amounts owed to the treasurer of the state, who was instructed to give them a receipt.

Where the claims against any estate did not exceed the value of the real property included in it, the agents were

directed to pay, on the order of the judge of probate, the debts in full.

If the estate of an offender had been sold before the award to his creditors was made, the judge of probate was instructed to give the creditors certificates citing the amount due them. The creditors could exchange these certificates for a warrant, issued by the governor and council, payable by the treasurer. In order to avoid confusion, the judges of probate were requested to submit to the governor a complete list of all claims allowed on any estate under their supervision before issuing any certificates to the creditors. If this report should show any estate to be insolvent, the governor and council were authorized to appoint suitable persons to divide the amount available, after deducting all costs, among the creditors, granting priority to holders of mortgages and attachments.

Three commissioners were appointed to supervise the sale of confiscated property in each county, and to pay all claims presented by creditors, when accompanied by the certificate of the judge of probate. The sales were to be conducted in the manner provided by law for the sale of the estates of those dying intestate. This, of course, provided for sale by public auction. However, the commissioners, if they felt that "undue measures" were being taken to control the bidding by any prospective purchasers, were empowered to suspend the auction. If, in their opinion,

the state would be benefited, they could sell any property privately. If any creditor desired to purchase any of the confiscated property, his credit certificates were to be accepted in partial or full payment. The committees were directed to promptly pay all creditors the amount of their certified claims. The act directed the committees to give proper deeds to the purchasers of confiscated property, and to record their doings, transmitting the record, under oath, to the secretary's office.

If any of the offenders held any mortgages upon the property of any loyal citizen of the state, the mortgager, upon paying the money due under the encumbrance, to the committee appointed for the sale of the estate of the mortgagee, was to be fully discharged of his obligation.

Good citizens of Massachusetts, holding lands from any offender under an agreement of sale incomplete at the time of the flight of the vendor, were to be granted, upon payment of the amount agreed upon and remaining unpaid at the time of confiscation, deeds in fee simple for the lands.

On May 1, 1781, the General Court passed:

An Act in Addition to an Act passed the last Session of the General Court, intituled, "An Act to provide for the Payment of the Debts due from the Conspirators and Absentees; and for the Recovery of Debts due to them." 172.

This act extended the power of the committees to dispose,

172., Acts and Laws of Massachusetts, MDCCLXXXI; p. 59.

under certain circumstances, of confiscated property by means of private sales. The prices to be paid were to be fixed, in each case, by a board of three competent and impartial appraisers.

Two weeks later, on May 15, the Massachusetts legislature published:

An Act in Addition to an Act intitled, "An Act to provide for the Payment of the Debts due from the Conspirators and Absentees; and for the Recovery of Debts due to them. 173.

The preamble of this act stated that many of the persons hostile to the state possessed the obligations of some of those whose estates had been confiscated, and had attempted to arrange for their payment, by the committees appointed to dispose of the properties.

To prevent this drain upon the income of the state, the committees were ordered to refuse payment of all claims which they believed to be made on behalf of any enemies of the state.

In order to avoid injuring any of the loyal citizens of Massachusetts who had been prevented from exhibiting claims on confiscated estates, within the period allowed, by forces beyond their control, the time for filing such claims was extended to two months.

All money paid into the treasury by the committees

173., Acts and Laws of Massachusetts, MDCCLXXXI; p. 57.

appointed for the sale of confiscated property was specifically reserved for the payment of depreciation allowances and wages of the Massachusetts troops.

Finally, the commissioners of claims were instructed to allow all judgments, obtained through the normal legal channels, by creditors of the estates under their jurisdiction.

Since the long delays incidental to the development of the machinery for disposing of the confiscated property had given many persons holding mortgages on forfeited estates an opportunity to foreclose, obtaining valuable lands for a fraction of their worth, and depriving the state of much needed revenues, the General Court, by "An Act to prolong the Time for Redemption of Estates mortgaged by Conspirators or Absentees, before the Nineteenth day of April, One Thousand Seven Hundred and Seventy-Five," passed on July 6, 1781, put an end to the practice by extending the time for redemption of such property until January 1, 1783. ^{174.} Either the treasurer or its creditors could redeem any mortgaged confiscated estate. If any Mortgagee, having obtained a confiscated estate by foreclosure, had sold it, the treasurer was directed to sue for and collect any amount received over the total of the mortgage and interest.

174., Acts and Laws of Massachusetts, MDCCLXXXI; p. 79.

For over nineteen months no general act on the problem of confiscation was passed. Then, on March 13, 1783, the General Court published:

An Act empowering the Committees for the Sale of the Estates of Conspirators and Absentees, and the Agents appointed by the Judges of Probate on such Estates, in certain Cases to plead the General Issue, and give the Acts and Resolves of the General Court and any special Matter in Evidence. 175.

This act provided that the committees or agents, when sued by any private individuals, could introduce the acts of the General Court, defining their duties and powers, as evidence on a plea of the general issue.

With the end of the war and the subsequent ratification of the treaty of peace, many of the laws passed against the loyalists became, in the light of the terms of the peace, extremely immoderate. On March 24, 1784, the General Court began the work of repealing the wartime legislation by:

An Act for repealing two laws of this State, and for asserting the Right of this free and sovereign Commonwealth, to expel such Aliens as may be dangerous to the Peace and good Order of Government. 176.

After asserting the obvious right of any sovereign state to exclude from its territory any aliens which it feels to be a menace to its best interests, this act declared that the acts of 1778 and 1783, barring certain absentees and

175., Acts and Laws of Massachusetts, MDCCLXXXIII; p. 233.

176., Acts and Laws of Massachusetts, MDCCLXXXIV; p. 125.

fugitives from returning to the state were "not calculated to produce those measures which are suitable to a state of peace and tranquility." The acts in question were therefore
 177.
 repealed.

Buried in this act was a clause providing that, since the sixth article of the Treaty of Paris of 1783 declares that no further confiscations were to be made by any of the parties, the lands held in fee simple by any absentees on April 19, 1775, which had not been confiscated or pledged under any of the several acts of the General Court, should be delivered to their original owners. The owners were allowed three years in which to dispose of the property so returned to any citizen of the United States. Absentees barred from returning to the state under the act of 1778 were excluded from the benefits of this clause.

The final chapter of the story was written on November 10, 1784, when the General Court passed:

An Act in Addition to an Act made and passed the present Year intitled, "An Act for repealing two Laws of this State, and for asserting the Right of this free and sovereign Commonwealth, to expel such Aliens as may be dangerous to the Peace and good Order of Government. 178.

This act repealed the denial of the right of recovery of their confiscated estates to those absentees included under the terms of the act of 1778, contained in the last

177., Acts and Laws of Massachusetts, MDCCLXXXIV; p. 125.

178. ibid. p. 213.

clause of the act of March 24, 1784.

It was further provided that where the property of any absentee had been confiscated, under the provisions of the act of April 30, 1779, and mortgaged by the state, the original owner could reclaim it by paying the amount of the mortgage. Estates that had been leased in pursuance of the same act were to be returned at the end of the period set for the duration of the lease. All rents paid under any such lease were to be the property of the state.

By some irony of the legal gods, the last clause of this final act declared that all personal property forfeited under the several confiscation acts was irrevocably vested in the state, and that no person described in the acts of March 24, and November 10 could bring any action against any committee, agent, or any other person or body concerned with the sale or disposal of such property.^{179.}

179., Acts and Laws of Massachusetts, MDCCLXXXIV; p. 214.

Chapter XI.

VIRGINIA

The confiscation of the estates of the loyalists and British subjects was carried out by Virginia with only a very small amount of confusion. It is entirely possible that the lateness of the state's action, permitting the members of the legislature to observe the attempts to create satisfactory confiscation machinery in other states, together with the ability and legal training of so considerable a number of the delegates and representatives made the creating of relatively complete and practical machinery at the outset of the period of confiscation a natural thing. However, it seems almost certain that the very real concept of the existence of the right of eminent domain as an element of sovereignty, together with the system of escheatments, inseparable from the existing system of land tenure, tended to greatly simplify the work of the legislators, since, as far as the actual processes of legal forfeiture were concerned, they were able to employ methods long accepted, and of proved workability. In a community long accustomed to the exercise of the sovereign's prerogative of escheat, it was relatively easy for a new government to proceed to the confiscation of its enemies' estates without arousing popular or judicial opposition.

As early as May 6, 1776, the General Convention had, in

An Ordinance to amend an Ordinance intituled An ordinance for establishing a mode of punishment for the enemies of America in this colony (sic), 180.

provided that all persons duly convicted of aiding the enemy should forfeit all their real and personal estate, and be imprisoned at the discretion of commissioners appointed to suppress disaffection. Where such "inimical" persons had left wives and/or children within the state, the commissioners were directed to allow a reasonable part of the forfeited estate for their support.

In October, 1776, in "An Act declaring what shall be treason," the forfeiture of all estates was included in the penalty for that crime. The widows of persons executed for treason were allowed their dower from the confiscated property.

As the war continued, it was inevitable that demands for action against the loyalists' and British subjects' estates should be taken by the legislature. However, the members of the new General Assembly were as yet unwilling to resort to any general policy of confiscation. In order to prevent the profits from Virginia estates, owned by the enemies of the revolution, being used to foster attacks

180., Ordinances Passed at a General Convention of Delegates and Representatives from the several Counties and Corporations of Virginia, Held at the Capitol, in the City of Williamsburg, on Monday the 6th of May, Anno Dom: 1776. (Williamsburg: Alexander Purdie, 1776), p. 24.

181. W.W. Henning, Statutes at Large, Being a Collection of all the Laws of Virginia (Richmond: George Cochran, 1823), p. 168.

upon the state, the Assembly, in October, 1777, passed:

An Act for Sequestering British Property, enabling those indebted to British subjects to pay off such debts, and directing the proceedings in suits where such subjects are parties. 182.

The preamble to this act is a most interesting illustration of the opinions held by the moderate whigs on the matter of confiscation. It states:

Whereas divers persons, subjects of Great Britain, had, during our connexion with that kingdom, acquired estates, real and personal, within this commonwealth, and had also become entitled to debts to a considerable amount, and some of them had commenced suits for the recovery of such debts before the present troubles had interrupted the administration of justice, which suits were at that time depending and undetermined, and such estates being acquired and debts incurred, under the sanction of the laws and the connexion then subsisting, and it not being known that their sovereign hath as yet set the example of confiscating debts and estates under the like circumstances, the public faith, and the law and usages of nations, require that they should not be confiscated on our part, but the safety of the United States demands, and the same law and usage of nations will justify, that we should not strengthen the hands of our enemies during the continuance of the present war, by remitting to them the profits or proceeds of such estates, or the intrest or principal of such debts. 182.

182., (Laws passed) At a General Assembly Begun and Held at the Capitol in the City of Williamsburg on Monday the Twentieth Day of October, in the Year of Our Lord One Thousand Seven Hundred and Seventy-Seven, and in the Second Year of the Commonwealth (Williamsburg: Alexander Purdie, 1777), p. 17.

Under the terms of this act, the real and personal estates of all British subjects were to be sequestered, and placed in the care of commissioners, appointed by the governor and council, for each estate. The commissioners were to operate the estates seized, paying all expenses and taxes out of the profits, and turning any surplus in to the loan office of the commonwealth. The loan office was directed to make out certificates of indebtedness, in the name of the proprietors of the estates, and deliver them to the governor and council, who were also to be given, by the commissioners, annual statements of the financial affairs of the estates.

Each year, the governor and council were to report all certificates given to them. They were also to preserve the certificates, subject to the future directions of the legislature.

Where any estate was held, by the British subject, in joint tenancy with any citizen of Virginia, the Virginian was instructed to institute, in the high court of chancery, proceedings for the partition of the property. Such partitions were declared to be legal, and binding, subject to redress by appeal to the legislature, on both parties. The commissioners were directed to make every effort to secure a partition that would be fair and equitable to the British subject owning part of the property so divided.

Any citizen of Virginia owing money to any British subject was authorized to make payment of the entire debt, or any part of it, to the loan office. The loan office was directed to issue a certificate, in the name of the British subject, for the amount paid, and citing the name of the debtor, who was required to send the certificate to the governor and council. The governor and council were authorized to issue to the debtor a receipt for the sum paid, discharging that part of the debt, and to preserve the certificate for the uses to be ordered by the legislature.

The governor and council were empowered to make allowances, out of the sums paid into the loan office, for the support of any wives or children of the proprietors of the sequestered estates.

All suits pending in any court within the state, on April 12, 1774, in which British subjects were plaintiffs were ordered continued indefinitely. Where a citizen was the plaintiff and a British subject the defendant, the courts could proceed to a decision, reserving to the defendant the right of appeal which might be allowed by the legislature.
183.

The extremely moderate language and equitable provisions of this act, standing in such marked contrast to the expressions and restrictions imposed by some of the other states, serve to indicate how far from any sweeping and vindictive action against the property of British

subjects and loyalists the Virginia General Assembly was in the closing months of 1777.

It was inevitable that this lenity on the part of the Virginia government should give way, under the strain and bitterness aroused by the protracted combat, and the need for constantly increasing revenues, to a more aggressive policy. Thus, after about six months under the system of sequestration, the General Assembly, in June, 1779, passed:

An Act concerning Escheats and
Forfeitures from British Subjects. 184.

After a preamble which stated that while the government of Virginia had, in spite of the efforts of the British government to destroy it, provided for the protection of the property of its enemies, with the intention of making full restitution at the end of the war, the enemies of American independence had often departed from this humane and advanced policy. Therefore, since the property, located in Virginia, of British subjects was by law and custom forfeited to and vested in the commonwealth, and since the system of sequestration and preservation instituted by the act of October, 1777, required more of the attention of the officers of the state than was consistent with their public duties, the sale, at the prevailing high prices, of all sequestered property, would be of benefit both to the original owners,

184., Acts Passed at a General Assembly Begun and Held at the Capitol, in the City of Williamsburg, On Monday the Third Day of May, in the Year of Our Lord, One Thousand Seven Hundred and Seventy-Nine (Williamsburg: Dixon & Nicolson, 1779), p. 28.

if it should be decided to make restitution, and to the people of the state.

To carry this resolution into effect, the act provided that anything in the sequestration act which may have been construed to suspend the operation of the rights of escheat and forfeiture, inherent in the government, was repealed, and that all lands belonging to British subjects at the time of its proclamation were vested in the state, "the lands, slaves, and other real estate by way of escheat, and the personal estate by forfeiture."^{185.}

The governor and council, assisted by the commissioners and assessors of taxes, were instructed to institute proceedings of escheat and forfeiture for all British property within the state. If any such actions were decided for the state, a delay of one month was to follow to allow any persons claiming any right to the property to appear. If, at the end of the month, no claimant had appeared, or if any claims had been decided in favor of the state, the title of the owner was declared to be barred forever. However, the General Assembly declared that the former owner had the right to later enter a claim for any money obtained by the sale of his property.^{186.}

An escheator was appointed for each estate with orders to sell it in properly surveyed parcels of not more than

185., Laws of Virginia, 1779, p. 28.

186. ibid. p. 29.

four hundred acres. For every such sale, the governor and council were instructed to appoint two commissioners to superintend and control the actions of the escheator. The commissioners were required to take an oath to secure the best possible price for the estate to be sold. All sales were to be made only for cash (presumably specie although the act is not specific), to be paid to the escheator. The escheators were allowed to deduct for their services three percent on the first thousand pounds received, and one and one-half percent on the remainder.

Certificates of purchase, granted by the escheators, when delivered to the registrar of the land office, authorized him to grant the lands involved to the purchaser, free of all other rights or claims, including mortgages. The mortgagees, in such cases, were granted the right to enter a claim upon the proceeds of the sale. The escheators were required to pay all receipts into the public treasury within a reasonable time, estimated at one day for each twenty miles between the place of sale and the treasury, with twenty days grace. Penalties were provided for delinquencies in payment.

The commissioners were directed to transmit to the auditor of the state the particulars of all sales supervised by them, and the auditor, in turn, was to allow the commissioners enough money to cover all reasonable expenses incurred in the execution of their duties.

Where the commissioners, or any of them, were of the opinion that the public interest would be better served by a delay in the sale of any property, they were empowered to stay such sales until December 6, 1779.

After the sale of any estate, and the payment of the net purchase price into the treasury, the sum was to be stated in pounds of tobacco, at the prevailing price, by the grand jury of the General Court, acting under oath. This amount of tobacco was to be considered thereafter as the denominator of value for the property.

The duties which were generally to be performed by an escheator were, in the counties in the "Northern Neck," to be vested in the sheriffs.

By the terms of the act, the phrase "British subject" was declared to include all inhabitants of the dominions of Great Britain, all inhabitants of the United States who had assisted the British, and, finally, all absentees.

A proviso exempted from the operation of the act, certain lots in "the town of Richmond" set apart as sites for the projected public buildings of the new capital.

Finally, the General Assembly provided that where a British subject, within the meaning of the act, had left a wife or widow within the state, she should be granted, from the confiscated estate, her dower, and when a British subject had left a wife and child, or a child, the entire estate should be construed to be outside of the provisions of the law.

At the same time, the legislature passed, "An Act to secure the Movable Property of those who have joined, or hereafter may join the Enemy," which instructed the governor and council to appoint a person in each county to secure all slaves and movable property which belonged to any person who had deserted, or might desert, to the enemy. When such property had been seized, the escheators of the several counties were to dispose of it, as provided in the act
187.
cited above.

A third act, passed at this session, entitled, "An Act concerning Escheators," instructed the governor to appoint an escheator for each county, upon the recommendation of the court of that county, with the exception of the counties of the "Northern Neck." These escheators were to post a bond of two thousand pounds for the faithful performance of their duties.

The escheators were directed to hold public inquiries to ascertain what properties were subject to forfeiture and escheat. A jury was to be impaneled, and witnesses were to be summoned to testify. One copy of any verdict reached by the jury was, after certification by the escheator, to be retained by the first juror selected, and delivered to the county court. Another, sealed by the jurors, was to be delivered, within two months, to the General Court, for final review and judgment.

187., Laws of Virginia, 1779, p. 51.

No lands against which may claims had been entered were to be sold or leased (except to the persons making the claims) until a final verdict had been given. In no case, were any lands to be sold until twelve months had elapsed after the report from the escheators to the General Court.

If no claims were made on any estate within twelve months, or if all claims made had been dismissed, the escheator, on notification of the fact by the clerk of the General Court, was ordered to proceed to sell it, advertising the time and place of the sale for at least one month. The purchaser was to be given a certificate, exchangeable at the office of the registrar of lands for a legal grant.

All persons injured in any way by the sales of any escheated property were granted the right of appeal for
188.
legal remedy.

In its session of May, 1780, the General Assembly passed:

An Act repealing part of the act entitled An act for sequestering British property, enabling those indebted to British subjects to pay off such debts, and directing the proceeding

188., Laws of Virginia, 1779, p. 52.

in suits, where such subjects
are parties. 189.

This act repealed the section of the act of 1777 relating to the payment of debts owed to British subjects to the public loan office.

The next reference to the subject of the escheatment of British property in Virginia was made in November, 1781, in:

An Act to adjust and regulate the pay and accounts of the Officers and Soldiers of the Virginia line on (sic) Continental establishment; and also of the Officers, Soldiers, Sailors, and Marines in the service of this State; and for other purposes. 190.

The seventh clause of this act provided that all escheated estates should thereafter be sold only for specie, or for tobacco (at a price to be fixed by the auditor of public accounts). However, the escheators were directed to consider the certificates granted in lieu of pay to the members of the military forces to be specie. In all sales of escheated lands, these certificates were to be accepted as legal tender at their full face value.

In the eighth clause, it was ordered that all specie paid for escheated estates be set aside for the redemption of the certificates granted to the military. All such certificates which were paid into the treasurer were to be destroyed.

189., Laws of Virginia, 1780, p. 6.

190., Acts Passed at a General Assembly of the Commonwealth of Virginia (Richmond: Dunlap & Haynes, 1781), p. 11.

The eighteenth clause set aside all tobacco given in payment for escheated estates for the same use for which the specie so paid was reserved by the eighth clause.

On June 27, 1782, in an effort to increase the return from the sales of escheated estates, the General Assembly passed, "An Act providing more effectual funds for the redemption of Certificates granted the Officers and Soldiers raised by the State," which provided stricter limitations on the conditions under which escheatment could be appealed, and laid the burden of proof in all such cases on the claimant. All transfers of property made by British subjects after April 19, 1775, were to be examined. If any appeared fraudulent, the escheators were directed to bring the matter before a jury, and, in the event of a decision for the state, proceed to the sale of the property. The provisions of the act of October, 1777, which made it possible for citizens who were indebted to British subjects to pay the sums due to the public loan office were revised, with the substitution of the treasury, as the place of payment. Payments in tobacco and hemp were declared to be acceptable. The sums thus received were to be applied to the payment of the interest on the soldiers' certificates.^{191.}

A proviso to this act extended the notice of sale to be made by the escheators to three months.

191., Laws of Virginia, 1782, p. 30.

An interesting sidelight on the business of escheat-
ment is to be found in an act of May, 1784, by which the
General Assembly granted Hampton Sydney College four hun-
dred and twelve acres of land, formerly the property of
Spiers and Company, of Great Britain, and a similar act
bestowing eight thousand acres of escheated lands to the
"County of Kentucky" to establish a "public school or
seminary of learning," which resulted in the founding of
192.
Transylvania Seminary.

In October, 1784, the General Assembly passed, "An
193.
Act respecting future confiscations." This act declared
that since the sixth article of the Treaty of Paris had
provided that all confiscations of property by the signa-
tories should cease, no future escheatments or confisca-
tions were to be made in Virginia. However, the act was
not to extend to suits which had been commenced prior to
the ratification of the treaty.

Although several remedial measures were passed, as
late as 1788, by the Virginia legislature, its last general
piece of legislation on the matter of confiscation was:

An Act to repeal so much of all
and every act or acts of assembly as
prohibits the recovery of British debts. 194.

192. Henning, Statutes at Large, vol. XI., p. 392.

193. ibid. p. 446.

194. ibid. p. 528.

This act repealed all laws which in any way prevented the payment, by the citizens of Virginia, of debts to British subjects. Like the preceding act, this was based on a provision of the Treaty of Paris, in this case, the sixth article, which provided that no legal impediments should be put in the way of creditors resident in Great Britain attempting to collect debts in America. A proviso suspended the operation of this act until Great Britain should evacuate the forts in the Northwest Territory, and return the slaves taken in Virginia.

Chapter XII.

RHODE ISLAND

While Rhode Island was the eleventh state to enact a general confiscation law, the seizure of loyalist property was, even during the opening months of the war, anything but a novelty in that state. As early as October 31, 1775, the General Assembly passed a "resolve" approving of the conduct of General Hopkins in seizing, on behalf of the state, the estates of five prominent loyalists. 195.

At the same meeting, the Assembly also directed the seizure of the estates of three other tories, ordering the sheriffs of the counties in which the properties were located to make the act effective at once. The tenants on these estates were to be allowed to retain possession. A third act passed at this session provided that persons guilty of holding a traitorous correspondence with the British government or officers, supplying the British army with any provisions or arms, or acting as pilots on British warships were to be punished by death, and the forfeiture of all real and personal estate. 196. 197.

While these early acts are important indices of the willingness of the government of Rhode Island to proceed against the estates of the loyalists, the first definite

195. J.R. Bartlett, Records of the Colony of Rhode Island and Providence Plantations in New England (Providence: A.C. Green, 1862), vol. VIII., p. 376.

196. ibid. p. 376.

197. ibid. p. 388.

move toward confiscation, on a general scale, of tory property was made on December 19, 1777, when the General Assembly appointed a committee of four of its members to draw up a bill for the confiscation of loyalist property, and for the investment of the money to be derived from its sale in continental loan-office certificates, in pursuance of the recommendation made by the Continental Congress on November 22, 1777. The committee was ordered to report to the next session of the Assembly.^{198.}

In June, 1778, the General Assembly observed that the committee appointed on December 19, 1777, had failed to make a report, and in consequence appointed a second committee to continue the preparation of the bill.^{199.}

Apparently the passage of time has had little effect on the character of special committees appointed to study particular problems since, in October, 1778, the General Assembly appointed a third committee, giving it substantially the same commission awarded to its predecessors. Once again the request that the committee should present its report at the next session was made.^{200.}

Whether the committees were finally able to draft a suitable bill, or whether the General Assembly went ahead

198. J.R. Bartlett, Records of the State of Rhode Island and Providence Plantations (Providence: Cook, Jackson & Co., 1863), vol. VIII., p. 341.

199. Bartlett, Records of the Colony of Rhode Island, vol. VIII., p. 426.

200. ibid. p. 461.

with some bill presented by a member, does not appear in the record. However, in October, 1779, the General Assembly passed, "An Act for confiscating the estates of certain persons therein described."^{201.}

The preamble stated that all states had a right to demand the personal services of their inhabitants, and that any withdrawal from the state, in time of war, to the lands in the possession of the enemy, constituted a total renunciation of all rights and privileges on the part of the deserters.

Therefore, the Assembly declared that any inhabitant of the state of Rhode Island and Providence Plantations, or of any other one of the United States, who, since April 19, 1775, had aided the enemy or voluntarily left his residence and gone into any place under the control of Great Britain was to be regarded as an alien. All real or personal property, located in Rhode Island, belonging to any alien as described in the act was declared forfeited to the state.

In order to provide for a form of trial to determine whether or not any estate was subject to forfeiture, the act provided that the attorney-general of the state, or any other person or persons appointed by the General Assembly for the purpose, should exhibit to the justices of the

^{201.} Bartlett, Records of the State of Rhode Island, vol. VIII., p. 609.

superior court of judicature a complaint against any person whose actions had made his estate subject to forfeiture. The complaint was to specify the offense committed by the accused, and give an accurate description of his estate.

The justices were instructed to continue all such complaints to the next session of their courts. To expedite the proceedings, the justices of the superior court were empowered to meet on the second Thursday in November, 1779, at Providence, for the purpose of receiving complaints. These complaints were to be continued to a series of special sessions, held at Tiverton, on the first Monday in January, 1780, in Kings' County two weeks later, and in Bristol County on the last Monday of the month. At these sessions, the cases were to be tried.

The several towns of the state were directed to draw jurors for these courts. Any town or individual juror who refused to act was declared subject to the usual penalties for that offense.

The clerk of the superior court was instructed to prepare notifications, stating the offense charged and the property demanded, against each of the offenders. The sheriff of the county in which the property was situated was directed to insert a copy of the information in all the newspapers in the state, within thirty days after the session of the superior court to which the complaint had been continued. He was further instructed to leave an

attested copy at the mansion house of the estate demanded, or if there was no mansion house, to post the copy in some public place in the nearest town. Finally, a third attested copy was to be left at the last place of residence of the accused, at least thirty days before the next session of the court.

At the session of court convening after the posting of the notifications, the cases were to be tried, after public proclamation of the fact, summoning all persons who wished to appear to defend any of the cases to come immediately before the court. The right of defense was extended to any person within the state. The trial was to be by jury, in the usual manner.

If the jury, in any such case, should bring in a verdict for forfeiture, the judges of the superior court were directed to issue a writ of execution in behalf of the state.

When forfeiture had once been pronounced against any property belonging to an offender, all other property belonging to that person was to be forfeited, without further trial, except to the extent of determining that the property demanded actually belonged to him.

Finally, it was provided that all debts justly due from any convicted offender to any citizen of the United States were to be paid out of his estate.

In December, 1779, the General Assembly, by a resolution, directed the attorney-general to prepare the complaints against absentees directed in the act of the preceding October.^{202.}

By 1780, the ever present problem of the arrears of pay due to the militia and continental troops became very pressing. In July of that year, to meet the demands of the troops, the General Assembly resolved that seventy-five thousand pounds, realized from the sale of the wrecks of several British ships which had attempted to navigate in the dangerous coastal waters of the state without proper pilots, should be applied to the payment of the arrears. Since this sum was inadequate to pay off all such obligations, it was also provided that confiscated real estate, estimated at the value of the balance of the obligation, should be placed in the hands of a committee of the Assembly for distribution to the soldiers. The land was to be held in two separate parcels, one for the commissioned officers, and the other for the non-commissioned officers and privates. The members of the committee were then directed to grant to each man, in fee simple, enough land to constitute a fair and equitable discharge of the debt owed him by the state.^{203.}

The committee, however, was instructed not to proceed

202. Bartlett, Records of the State of Rhode Island, vol. VIII., p. 631.

203. ibid. vol. IX., p. 170-171.

to the distribution of the land until the officers and soldiers had agreed to accept it in payment to the arrears due them.

The General Assembly next found a way to use part of the confiscated estates in backing its paper currency by passing, in September, 1780:

An Act for the sale of the real estates therein described, for redeeming the bills of credit heretofore emitted, and founded on real estate, and for supplying the treasury, and discharging the debts of the state. 204.

Under the terms of this act, two thousand four hundred acres of confiscated land were to be sold, before December 1, 1781, to retire an issue of ten thousand pounds, paper money, made in June, 1780. A committee of five men was appointed to supervise the sale of the property. All sales were to be for gold or silver, to the highest bidder. The bills of credit mentioned in the act were also to be accepted at full face value. Purchasers were required to pay one-eighth of the price on the day of sale, three-eighths on or before December 15, 1780, and the remainder before January 1, 1781. If any purchaser was delinquent in making any payment, the amount already paid was to be forfeited to the state, and the property again sold. Upon payment of the full price, purchasers were to be given guaranteed deeds in fee simple.^{205.}

204. Bartlett, Records of the State of Rhode Island, vol. IX., p. 238.

205. ibid. p. 238-239.

All money received for the property was to be paid into the general treasury and applied to the retirement of the bills cited. Any surplus was to be used for the discharge of the debts of the state.

The members of the committee were instructed to advertise the sales in the Newport, Providence, and Boston newspapers. They were also directed to have the estates surveyed and partitioned into readily salable tracts.

In order to increase its revenues, the General Assembly, in what resembles a "rider" to this act, instructed the committee to dispose of other estates, comprising one thousand four hundred and sixty acres, in the manner provided by the earlier clauses, except that purchasers were given until March 1, 1781, to make the last payment. ^{206.}

The revenue received from this sale was to be used to discharge the obligations incurred by the commissary for the militia. The commissary was ordered to issue certificates to those persons selling him supplies. These certificates were to be paid, in specie, by the treasurer, out of the revenue derived from the sale of confiscated property.

^{207.}
A resolution of October, 1780, set the time for making the second payment on confiscated property purchased under the act of September at one month from the day of sale, instead of on December 15, 1780, as provided by that act.

206. Bartlett, Records of the State of Rhode Island, vol. IX., p. 239.

207. ibid. p. 261.

Apparently the committee was unable to dispose of the confiscated property placed in its hands rapidly enough to please the Assembly. This may be seen in a resolution passed during the October session, which empowered the committee to sell such properties at either public or private sales, at their discretion, and to make any alterations in the times specified for payment which would encourage sales at the best available price. No alterations were to be made, however, which would prevent the redemption of the paper money as provided by the act of September. ^{208.}

In November, 1780, the General Assembly set aside a second quantity of land, one thousand three hundred and thirty-nine acres in all, to be distributed among the officers and soldiers of the militia in compensation for the depreciation of their established pay. A committee was appointed to appraise the lands, which were then, if the arrangement proved acceptable to the soldiers, to be apportioned to the men, in relation to the amount owed to each by the state. ^{209.}

The committee still was slow in its work, and, in March, 1781, it was ordered by the Assembly to dispose of the remaining estates at once, or, if unable to find buyers, to rent them, at public auction, accepting only gold and silver in payment of the rental. ^{210.}

208. Bartlett, Records of the State of Rhode Island vol. IX., p. 254.

209. ibid. p. 270-271.

210. ibid. p. 351.

The Assembly, in January, 1782, directed the committee for the sale of confiscated estates to proceed to the sale of all such property vested in the state. The estates were to be sold for gold or silver only, with the exception of those pledged for the redemption of the bills issued in June, 1780, and of the commissary's purchase certificates, which were to be sold for gold, or the bills or certificates. Those estates which could not be sold were to be leased, on any terms that the committee could obtain.

For some reason the General Assembly had made no provision for the payment of the claims declared to be just by a committee empowered to examine all demands on the estates of the absentees and loyalists. In February, 1783, it passed:

An Act for securing to the creditors of the absentees, whose estates have been confiscated to and for the use of this state, their several demands, as reported by the committee who were appointed to settle the several claims exhibited against the said estates. 212.

After listing the persons whose claims had been allowed by the committee, the act instructed the general treasurer to give each claimant his note for the amount awarded to that person. Interest at the rate of six percent was to be paid,

211. Bartlett, Records of the State of Rhode Island, vol. IX., p. 523.

212. ibid. p. 657.

up to January 1, 1782 from the date of forfeiture, on all debts which in their original form had carried no interest, as well as those in which the payment of interest was an inherent part.

In October, 1784, the General Assembly appointed a committee of three to dispose of the remaining confiscated property for any bills or notes issued by the state.^{213.}

Unlike the majority of the states there was no definite action, on the part of the Assembly in Rhode Island to end the period of confiscation by a single act of repeal. The problem was allowed to gradually wear itself out, the Assembly, at rare intervals, interrupting the normal processes of judicial determination by enactments. Perhaps the last general act on the matter was one, passed in February, 1791, accepting the report of a committee which had been appointed to investigate the affairs of the commissioners in charge of the sale of confiscated estates.^{214.} While this report indicated that the situation was one of great confusion, no action seems to have been taken by the legislature.

213. Bartlett, Records of the State of Rhode Island, vol. X., p. 79.

214. ibid. p. 420.

Chapter XIII.

NEW YORK

It is probable that the long delay in providing for the general confiscation of the property of loyalists in New York arose not only from the disordered condition of the state government, during the opening years of the war, but also from the ever present menace of the British garrison in New York City. In a state in which the loyalists were able to raise, in spite of the apathy of the British government, fifteen thousand regular troops and six thousand five hundred militiamen for the royal army,^{215.} which was unusually exposed to naval attack, and which lay in the course of any English and Indian advance from Canada, the adoption of a policy of harsh and sweeping measures against the British sympathizers was to be approached with caution. The extent to which reprisals would be carried had to be considered, since large numbers of whigs were at the mercy of the British.

These considerations probably weighed upon the minds of the legislators as long as the military situation in the northern part of the United States was unfavorable to the continental forces. It was therefore only natural that no general confiscation laws were passed, although the property of many loyalists was seized. Confiscation was carried out by any number of the extra-legal local revolutionary

215. A.C. Flick, History of the State of New York (New York: Columbia University Press, 1933), vol. III., p. 344.

bodies, and, in some individual cases, by the Convention, but nothing that could be properly called a confiscation act is to be found in the legislation passed during the first four years of the war.

By 1779, however, the situation was greatly altered. While the British forces still held New York City, their position was not far from being that of a besieged garrison. The great British effort to drive a wedge between New England and the rest of the United States by converging armies moving from New York City and Canada, and meeting at Albany, had ended in the catastrophe at Saratoga. The French fleet was beginning to make its strength felt. Finally, the loyalists, demoralized by the defeats administered to their brothers in other states, and feeling that the British hold on New York was rapidly weakening, ceased to be a real menace to the state government.

Feeling free at last to visit its pent up anger on its enemies, The Assembly of New York, on October 22, 1779, passed:

An Act for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in Respect to all Property within the same. 216.

It seems certain that this act represented the fruition of

216. S. Jones & R. Varick, Laws of the State of New-York, Comprising the Constitution, and the Acts of the Legislature since the Revolution From the First to the Twelfth Session, inclusive (New York: Hugh Gaine, 1789), vol. I., p. 39.

the long felt hopes and careful planning of at least a portion of the legislators voting in favor of the act. It is interesting to note that the state constitution accepted by the Convention on April 20, 1777, contained the following clause:

And this Convention doth further Ordain, Determine and Declare, in the Name and by the Authority of the good People of this State, That Trial by Jury in all cases in which it hath heretofore been used in the Colony of New York, shall be established, and remain inviolate forever. And that no Acts of Attainder shall be passed by the Legislature of this State, for Crimes other than those committed before the Termination of the present War; and that such Acts shall not work a corruption of Blood. And further, that the Legislature of this State shall at no time hereafter, institute any new Court or Courts, but such as shall proceed according to the Course of the Common Law. 217.

It is hard to believe that the permission of the passage of acts of attainder for crimes committed during the "present War" was not inserted into the constitution with the hope, at least, that such acts would be passed.

After declaring in its preamble that many persons who owned property in New York had aided the enemies of the state, the act attainted fifty-nine prominent loyalists of attempting to subvert the liberties of the state, and proclaimed that all real and personal property belonging to them, and located within the state, was forfeited to the people.

The offenders were declared to be banished from the state, and subject to the death penalty if they returned.

The third clause of the act provided that the grand jurors of the supreme court, court of oyer and terminer, and court of general or quarter sessions of the peace, upon being informed, on the sworn testimony of at least one credible witness, that any person, holding any real or personal property in New York, had been guilty of the offense cited by the first clause, should prefer a bill of indictment against the offender. If the grand jury attached to any of the above courts in session in any county was thus informed of an offense committed in any other county, it was directed to draw up an indictment charging the offense as if it was committed in the county for which the grand jury was assembled.

If any person so indicted, whether alive or dead, failed to appear to traverse the indictment, he was to be declared guilty of the offense as charged. All persons found guilty of adhering to the enemies of the state were declared to have forfeited all real or personal property held or claimed by them within New York. The supreme court was directed to give judgment of confiscation in all such cases. The estates were to be considered as having been vested in the state from the earliest day mentioned in the indictment. However, where forfeiture was adjudged after a trial, the possession of the state was to commence from

the day on which the verdict was rendered. All persons who had at any time before April 4, 1778, taken the oath of allegiance to the state were declared to be immune from the operation of the act.

The clerks of the several courts, in which indictments for the crime mentioned in the first clause could be made, were instructed to transmit all such indictments to the supreme court of the state. The cases thus established were to be tried before that court. In such trials, no greater number of witnesses was to be required than in cases of 218. felony without benefit of clergy.

In order to increase the number of convictions, the act declared that it was only necessary for indictments to charge that the offenders mentioned, on the days and at the places observed, adhered to the enemies of the state. The grand jurors were also directed to forward to the supreme court the depositions and testimony of the witness or witnesses bringing the charges.

The defendants were to be given copies of the indictments, and transcripts of any depositions or testimony presented against them. The prosecutor, at the time of the trial, was prohibited from giving evidence of overt acts, other than those mentioned in the depositions or testimony.

In addition to the acts which were declared treasonable under British law, the General Assembly declared that being at any time, after July 9, 1776, in any part of the

United States not under British control and later voluntarily going to any place held by the British, or being arrested by order of any authority of the state or of the United States and paroled, and later voluntarily breaking such parole, or having been allowed to go, with the understanding that the stay was to be temporary, into territory held by the British, and voluntarily remaining there, were also to be regarded as treasonable. The first of these acts was declared to be inoperative upon any persons who, living in the southern portion of the state and fleeing before the British advance, were later compelled by economic necessity to return to their farms and homes, unless their action was clearly directed and accompanied by treasonable motives or actions.

Convictions under this act were not to exempt offenders from trial and punishment under the regular treason law.

All conveyances of real or personal property made, after July 9, 1776, by any person convicted under this or any other act against treason, were declared fraudulent. If any appeal from this rule was made, the burden of proof was placed upon the person claiming possession under the questioned conveyance.

All properties, of every sort, belonging, on July 9,

219. Jones & Varick, Laws of New York, vol. I., p. 43.

1776, to the British government were declared to have been vested, on that day, in the state of New York.

The "Person administering the Government of the State for the Time being," was directed to appoint, with the advice and consent of the council of appointment, three commissioners of forfeitures for each of the great districts of the state. The commissioners were authorized and directed to sell all forfeited real estate located within their respective districts. The sales were to be made at public auction, and the estates were to be divided into parcels of a size conducive to easy sale. Eight weeks' notice was to be given, in one or more of the newspapers of the state, stating the particulars of the property to be sold. The commissioners were empowered to give good and legal deeds to all purchasers of such property.

The act declared that the state would guarantee all such deeds, being obligated to grant relief in case of the eviction of the purchaser by some later action. The commissioners were instructed to sell the lands in parcels of five hundred acres or less. No more than one farm was to be included in any one sale, and the sales were ordered to be held in the county in which the property lay. Sales were not to be held before October 1, 1780.

No definite compensation was provided for the several

220. Jones & Varick, Laws of New York, vol. I., p. 44.

221. ibid. p. 45.

commissioners appointed under the act, but the "public faith" of the state was pledged for the payment of all expenses and a just fee. The treasurer was directed to advance two thousand pounds to the commissioners of each district, to meet the expenses of their office.

Where any confiscated lands were in the possession of tenants loyal to the state, the tenants were allowed to remain in possession, paying the same rent that they had paid to the former owner, until the property was sold. If the tenant had made improvements on the estate which he leased, a board of three appraisers was to be appointed to estimate the value of the property excluding the improvements. The tenant was then to be offered the property at this price.^{222.}

All tenants desirous of obtaining the benefits of the preceding paragraph were required to produce to the commissioners a certificate, signed by at least twelve reputable inhabitants of the county in which the estate was located, and endorsed by a justice of the peace, stating that the bearer was a loyal citizen of the state, and had been one since July 9, 1776.

At the time of each sale of confiscated property, the commissioners and purchaser were instructed to draw up a joint memorandum, stating the particulars of the sale. The commissioners were then ordered to give the purchaser a

^{222.} Jones & Varick, Laws of New York, vol. I., p. 46-47.

certificate, declaring the price agreed upon. The purchaser upon presentation of this certificate, together with the money specified, to the treasurer, within three months of the date of sale, was to be given a receipt, in duplicate. One copy of the receipt was to be given to the commissioners who made the sale. The commissioners, on receiving the receipt, were ordered to immediately make out a deed in favor of the purchaser.

The commissioners were required to take an oath for the faithful performance of their duties, and were barred from purchasing any forfeited property. No lands which were located in the area under British control were to be
 223.
 sold.

The treasurer was directed to keep an account of all estates sold, recording the name of the purchaser, the price paid, and the name of the original owner.

The act included a series of models of the forms to be employed in proceedings instituted under it. All persons claiming any interest in any confiscated property under any deceased person were to be admitted, upon exhibiting to the superior court attested statements of their claims and affidavits affirming the death of the offender, to traverse
 224.
 the indictments.

223. Jones & Varick, Laws of New York, vol. I., p. 47.

224. ibid. p. 48.

Where any two or more persons appeared to traverse the indictment, the court was empowered to compel them to join in the traverse. Those traversing any indictment rendered under the act were to be granted all the rights extended by custom to those defending any suit before the courts of the state.

With the increased military activities which inevitably followed the relative inaction of the winter, the state found itself in need of money. Therefore, on March 10, 1780, the General Assembly passed, "An Act for the immediate Sale of Part of the forfeited Estates."^{225.}

After a preamble which stated that it was necessary to sell part of the forfeited estates in order to supply the troops of the state with "clothing and other necessaries," this act repealed the clause of the act of October 22, 1779 which had declared that no sales of forfeited property were to be made before October 1, 1780. The commissioners of forfeitures were directed to immediately proceed to the sale of all forfeited real estates lying within their respective districts, following the methods established by the confiscation act.

The commissioners for the Middle District, and for the Western District, were authorized to draw from the

^{225.}, Laws of the State of New York by Order of the Legislature (New York: John Holt, MDCCXXII), p. 116.

state treasury any amount, up to twenty thousand pounds, for expenses. For compensation, each commissioner was granted thirty dollars for each day actually employed in the execution of his office. Purchasers were allowed one month to pay the amount specified on their certificate of purchase, instead of three months, as provided in the law of October 22, 1779. The commissioners were authorized to hold sales after four weeks public notice, instead of the eight weeks provided in the earlier act. A new oath of office was provided.

An abstract of each sale was to be prepared by the commissioners, giving the name of the purchaser, a description of the property sold, the price received, and the name of the former owner. These abstracts were to be filed in the offices of the clerks of the several counties in which sales were made. The clerks were granted a reasonable allowance for the work of recording the abstracts, to be paid by the commissioners. Finally, the commissioners were directed to make periodic reports to the legislature, stating the property sold, and any difficulties which had arisen in the course of their work.

The next reference, on the part of the legislature, to the confiscated property was made in an act passed on June 15, 1780, entitled:

226., Laws of the State of New York, MDCCXXXII., p. 116.

An Act approving of the Act of Congress, of the Eighteenth Day of March, 1780, relative to the Finances of the United States, and making Provision for redeeming the Proportion of the State of the Bills of Credit, to be emitted in Pursuance of the Said Act of Congress. 227.

The sixth clause of this act provided that the forfeited estates of nine of the most important loyalists were to be mortgaged for the security and eventual redemption of the new bills. The money obtained from the sale of these properties was to be used for no other purpose than that stated. Finally, the commissioners of forfeitures were prohibited from selling any of the estates mentioned except on direct instructions from the Assembly.

In spite of the elaborate character of the New York confiscation act of October 22, 1779, defects and omissions became apparent as the law was put into actual operation. As a result, the General Assembly, on October 7, 1780, passed, "An Act for the Amendment of the Law directing the Sales of forfeited Lands." 228.

The opening clause prohibited the commissioners of forfeitures from selling all lands forfeited, or to become forfeited, to the state until the Assembly had made further provisions in the matter.

227., Laws of the State of New York, MDCCXXXII., p. 123.

228. ibid. p. 159.

It was provided that where any tenant who had made improvements on the property, rented by him, of any loyalist, had assigned his interest in such improvements to any other person, the assignee was not to receive the right to purchase the property by appraisement, granted to such tenants under the law of October 22, 1779, unless he exhibited to the commissioners, no longer than one month after requested to do so, the certificate of character of the tenant required by the former law.

The commissioners of forfeitures were authorized to collect all rents due on any lands forfeited to the state. If necessary, they were to sue for the arrears. However, the commissioners were denied the right of suing lessees holding under the commissioners of sequestration.

If any tenant on lands forfeited to the state objected to paying any rent due, on the grounds that the incursions of the British had prevented the proper use of the property, the commissioners were authorized to refer the dispute to arbitrators. Any rents or awards paid to the commissioners were to be paid into the treasury.

The act declared that purchasers of forfeited estates, who had made their bargains before its passage, who had not paid half the price agreed upon within one month after its publication, and the remainder within two months were to forfeit all interest in the property in question. Those who

purchased confiscated property after the publication of the act were given one month to pay the entire price. The penalty for delinquency provided for the first class of buyers was to be applied to those failing to complete the payment in the time specified. In both cases, a penalty of one-fourth of the purchase price was to be exacted by the commissioners, and paid into the treasury.

Forfeited lands which carried any encumbrances were not to be sold until the legislature had made provision for the course of action in such cases. Persons who had illegally taken possession of any forfeited lands were to be ejected, by action under the statutes of forcible entry and detainer if necessary. Repeated assertions were made that nothing in the act was to be considered as raising any legal bar to the right of any landlord to recover any of his property, the tenant of which had gone over to the enemy. The right of procedure against illegal possessors of forfeited lands was also granted to any purchasers of such property.
229.

Where tenants had gone off to the British leaving any arrears of rent due on the property abandoned by them, the lessees, under the commissioners of sequestration, unless a special arrangement had been made, were liable for the arrears.

229., Laws of the State of New York, MDCCXXXII., p. 160-161.

The final clause provided that if suits should be commenced for the recovery of any lands disposed of by the state as forfeited property, the purchasers were to be defended by the attorney-general, at the expense of the state.

On the same day that the above act was passed, the legislature published:

An Act to procure a Sum in Specie for the Purpose of redeeming one sixth Part of the Bills emitted of the Credit of this State, pursuant to an Act of Congress of the 18th Day of March, 1780, for discharging the Interest of such Bills, and for other Purposes therein mentioned. 230.

This act appointed commissioners to sell any forfeited lands in the state to raise the amount of money necessary to redeem the bills mentioned. The commissioners were to accept only gold or silver, and were directed to raise the amount needed and an additional sum of twenty thousand dollars. All purchasers of these lands were required to pay the entire price agreed upon within six months of the day of sale. At least one-fourth of the purchase money was to be paid at once, and would be forfeited to the state in the event of delinquency in the payment of the remainder.

The new bills, which the sum ordered raised by this act was to redeem, were to be accepted by the commissioners in lieu of gold or silver for the confiscated property sold under this act. All sales were to be in parcels of five

The next attempt by the legislature to improve the machinery of confiscation was made on March 31, 1781, in, "An Act for the further Amendment of the Laws directing the Sales of forfeited estates." Under the terms of this act, purchasers of forfeited properties were given an extension (until May 1, 1782) of the time allowed for payment of the price set. However, interest and depreciation, from the day specified in the original agreement for final payment, were to be collected. A scale of the depreciation of the continental currency was given, the ratio of this money to gold being set at forty to one for March 18, 1780, and advancing by a geometric progression to seventy-five to one on March 31, 1782. Treasury certificates issued by New York were declared acceptable in payment for forfeited lands. Any persons who wished to pay for such lands in specie or the "new bills" of the state were to pay one dollar for every forty dollars set as the sale price.

The commissioners were again instructed to evict all persons occupying forfeited properties without their consent.

Since, in consequence of the several previous acts, both the commissioners of forfeitures and the commissioners

231., Laws of the State of New York, MDCCXXXII., p. 192.

for procuring a sum in specie were empowered to sell the same property, the two commissions were instructed to keep each other informed of all their sales.

The commissioners for procuring a sum in specie were prohibited from selling any lands possessed by tenants who were entitled to the improvements on them. Such tenants, upon obtaining a certificate of good character, could request the commissioners of forfeitures to sell the lands upon which they had made improvements to them by appraisal, as provided by the act of October 22, 1779. The commissioners of forfeitures were empowered to make such sales, in spite of the clause restricting them from making any further sales until allowed to do so by the Assembly.

All rents due from lands forfeited to the state were to be collected by the commissioners of forfeitures.

The act closed with a clause granting relief from the forfeiture of property to two citizens.

On July 1, 1781 the legislature passed, "An Act relative to the Office of State Agent." ^{232.} Although this act was not related to the matter of confiscation in its general theme, one clause gave the purchasers of forfeited estates a further extension (to September 1, 1781) of the time in which to complete the payments on their holdings.

Since many of the indictments and informations against

232., Laws of the State of New York, MDCCXXXII., p. 201.

absentees were drawn up by persons without legal training, the courts were often forced to dismiss such proceedings for errors in form. To remedy this, the Assembly, on November 18, 1781, passed:

An Act to remedy the Mistakes and Defects in the Proceedings for Conviction of Persons who have adhered to the Enemy, grounded on an Act intituled "An Act for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in Respect to all Property within the same. 233.

This act declared that all errors in form in the proceedings against any of the offenders mentioned in its title were thereafter made valid.

The legislature next, on April 14, 1782, passed:

An Act for the further Relief of the Tenants of forfeited Lands, and for the further Direction of the Commissioners of Forfeitures, and of the Commissioners of Sequestration. 234.

Under this act, the commissioners were empowered to receive, in payment of rents, all certificates receivable in payment for confiscated lands, up to one-half of the amount due. The remainder was to be paid in specie. Military certificates were also declared acceptable. Tenants were granted until

233., Laws of the State of New York, MDCCXXXII., p. 208.

234. ibid. p. 250.

January 1, 1783, to produce the certificates of character necessary to enable them to purchase forfeited land in their possession under the favorable terms granted by the original confiscation act. All forfeited lands in the Southern District were to be held until the legislature should give orders for their sale.

On April 6, 1784, the Assembly passed, "An Act for the immediate Sale of certain forfeited Estates,"^{235.} which authorized, Isaac Stoutenburgh, one of the commissioners of forfeitures, to raise twenty thousand pounds in specie by the sale of forfeited lands in New York City and King's County.

The final act of importance in the extensive body of laws passed by the New York Assembly on the confiscation of loyalist property was published on May 12, 1784, under the title of:

An Act for the speedy Sale of the
confiscated and forfeited Estates with-
in this State. 236.

This was an administrative measure, which appointed a commission of seven to sell all remaining forfeited property at either public or private sales. Six weeks notice was to be given of all sales. The commissioners were instructed to sell all mortgaged estates subject to the encumbrance, except where the mortgage was between two loyalists, when it was declared void.

235., Laws of the State of New York, MDCCXXXIV., p. 26.

236. ibid. p. 102.

All forfeitures and confiscations, made at any time in pursuance of any foregoing act, were confirmed. The various commissioners were barred from buying any forfeited property. All just debts owed by absentees were to be paid out of the proceeds of the sale of their estates. If the amount realized was inadequate to meet all demands, it was to be fairly divided among the creditors.

The commissioners for the Southern District were allowed one and one-fourth percent of the amount of their sales in payment for their services, the other commissioners were granted twenty-four shillings per day, while actually performing their duties. All debts owed to absentees were to be paid to the commissioners, and by them transmitted to the treasurer of the state. No real property was to be sold in parcels of more than eight hundred acres each. Finally, the purchasers of forfeited property were declared to be secure in their possession.

In this way, the center of loyalist strength in the American federation attempted to close its ledger on the problem of the loyalists' property. Under the circumstances, it is hardly surprising that the problem continued as an embarrassment to the state for years. However, the Assembly, wisely, left this cleaning up process to the courts.

Chapter XIV.

MARYLAND

The confiscation legislation of the state of Maryland is, of all the bodies of law falling within this category passed by the legislatures of the original American states, the most elaborate, and perhaps the most interesting. Why these characteristics should be true of the laws passed by the legislature of a relatively small state, in which the fires of partisan bitterness were never intensified by enemy occupation of its territory or destruction of its property must be left to conjecture. There is a tradition which makes colonial Maryland a veritable lawyers' paradise. It is a matter of record that the body of law written during the Revolutionary War by the General Assembly of that state was extensive. An almost infinite variety of subjects were made the object of the legislators' effusion of laws, but, once commenced, the confiscation of the property of loyalists and British subjects seems to have assumed a dominant place in their minds.

However, this interest was slow in materializing. No state seems to have been as unwilling to embark upon a policy of general confiscation as Maryland. In almost every other instance, the trend toward confiscation was of long-continued evolutionary development. From the traditional basis found in the British common-law provision for the forfeiture of the estates of traitors to the sovereign, arising out of the prevalent medieval politico-religious

concept of eminent domain, the revolutionary governments, infuriated by military reverses and the often inexcusable tactics resorted to by some of the loyalists, and faced by economic disaster, more dangerous under the circumstances than defeats in battle, began to extend, by a mixture of liberal construction of legal principles, rationalization, and simple desire for vengeance of the Mosaic order, the area within which confiscation could be employed, until all loyalists were made subject to the application of general laws. As the examination of the development of the laws of this class for almost any of the preceding states will have indicated, the process most frequently was extended over a period of many months, being often halted, or, in an occasional instance, set back, for considerable periods. Maryland experienced virtually nothing of this evolutionary process. The legislation of its General Assembly providing for forfeiture of property as a penalty, until the passage of the first general confiscation law, was limited to the inevitable statute against treason and misprison of treason, passed, by an interesting coincidence, on July 4, 1776, and a similar act, of April, 1777.

237. A.C. Hanson, Laws of Maryland Made Since M,DCC,LXII, Consisting of Acts of Assembly Under the Proprietary Government, Resolves of Convention, the Constitution and Form of Government, the Articles of Confederation, and Acts of Assembly since the Revolution (Annapolis, Frederick Green, 1787), 1777, chap. XX.

238. ibid. 1777, chap. XX., (f.n.).

In November, 1780, after a bitter struggle between the House of Delegates, which favored the confiscation of loyalist and British property, and the more conservative Senate, the Assembly passed:

An Act to seize, confiscate and appropriate, all British property within this state. 239.

The lengthy preamble to this act, in its long bill of particulars against the British government, and its appeal to international law in justification of the measures adopted, is outstanding in this type of legislation, being far more extensive and well argued than the preambles to the Georgia and Rhode Island laws, which also base their existence upon British violations of the laws of humanity and of nations.

Charging the British government with levying an unjust war against the United States, the preamble denounces the "pretense" on the part of England that the new states were rebellious colonies. The British armies were accused of seizing the property of the citizens of the United States, and of committing outrages on the people and property of the several states, out of "mere wantonness and cruelty," and contrary to the practice of civilized nations, and the then existing rules of war. It was further charged that American prisoners of war had been forced to enlist in the British army and navy, and to make war on their own friends

and governments.

The preamble stated that although subjects of Great Britain, including, of course, all loyalists not triable for treason or misprison of treason, owned large quantities of land and other property within the state, the government, unwilling to injure individuals, had allowed it to remain in their possession. This, argued the legislature, should, by example, have induced the British government to have similarly respected private property and the rights of non-combatant individuals. However, the British had apparently believed that weakness and fear of retaliation were the motives, rather than humanity, and had embarked upon a program of violence and cruelty. The act particularly charged the British government with seizing the funds of the state which had been deposited in the Bank of England, and with the breach of the capitulation of Charleston. Why this latter incident should have been cited is a mystery. The confiscation of the property of those loyal to the revolutionary governments was by no means a novelty by the time of passage of the Maryland act. The British had made such seizures as early as 1776, when they captured New York.^{240.} The confiscations in Charleston were carried under the authority of a proclamation issued on September 16, 1780. Since the news of this "outrage," allowing for the very dis-

240. Flick, History of the State of New York, vol. III., p. 351.

ordered communications of the period, could have reached Annapolis only a short time before the introduction of the confiscation bill, it is possible that its very recency led to its inclusion. The preamble closed with the statement that since all political connection between Maryland and Great Britain had been severed by the Declaration of Independence, British subjects, during the continuance of the war, were to be regarded as enemies. Therefore, according to the law of nations, they were responsible, not only for all expenses incurred by the state in consequence of the hostilities, but for any injury or damages sustained by its subjects, and their property, lying within the state, was subject to confiscation.

The first clause declared that all British property within Maryland, with the exception of debts, was forfeited to the state. "British subjects" were defined as any persons born within the dominions of the British crown, as well as any made a subject by any of its laws, who had not, by entering into the service of any of the United States, taking an oath of allegiance to any of the states, or by some other definite and voluntary act severed his relations with the mother country. All absentees who did not return to the state by March 1, 1782, and take an oath of fidelity to the state, were to be considered to be British subjects. If any person, who had left the state with the permission of any

committee of observation or the council of safety, was prevented from returning by age or infirmity, he was allowed until March 1, 1782, to dispose of his property located in the state.

An interesting proviso declared the property of Horatio Sharp, former governor of the state, exempt from seizure if he would appear within the time limit mentioned above and take the oath of fidelity. If he would not do this, he was to be permitted to sell his property before that time. The property of Mistress Anne Ogle, widow of another former governor, was protected, without any qualifications at all. Other British subjects who had "manifested their attachment to this state by acts of friendship" were excepted from the application of the act, if they should appear before the end of the period of grace and establish their claims.

The properties belonging to the three trustees of the Bank of England stock owned by the state were, by a bit of humor which was probably not appreciated by the gentlemen themselves, set aside to form a fund for the retirement of bills of credit issued by the state on the security of the impounded stock. If the amount thus pledged proved to be insufficient, other confiscated property was to be appropriated to the same use by the legislature.

"Subjects" of Maryland who were creditors of any

British subjects whose estates had been seized in pursuance of the act were to be indemnified out of the proceeds of their individual debtors, while "citizens" of the state (those who had taken the oath of fidelity or served in the armed forces) were to be paid in full out of the British property seized by the state. No payments or remittances, of any kind, were to be made to any British subject. An exception was made in the cases of parents or guardians of children who had been sent to England in order to attend a school or college. In these cases, only enough for the return passage of the children could be sent.

To prevent efforts to conceal any evidences of debts owed to British subjects, the legislature forbade the conveyance out of the state of any papers formerly belonging to any person liable to the forfeiture of his property under the act. Factors and agents, having such papers in their custody, who had not taken the oath of fidelity were ordered to immediately deliver them to the treasurer of whichever
241.
shore on which the papers were located. With the papers, they were instructed to include an affidavit declaring that the papers surrendered were the entire number placed in their custody. Any judge or justice of the peace who had reason to

241. For convenience in collecting taxes and making disbursements the state was divided into the districts of the eastern and western shores. Each had its own treasurer.

suspect that any factor or agent had withheld any papers was empowered to commit the offender to gaol until he agreed to produce the documents.

If any British debtor, whose property had been or should be appropriated by the General Assembly for any special purpose, did not have debts due to him worth enough to satisfy his debts to the subjects of the state, the legislature, on application of the creditors, would appropriate enough other British property to complete the amount needed.

All conveyances of any kind, made between April 19, 1775 and December 1, 1779, by British subjects were declared fraudulent and void, unless made in pursuance of some bona fide written contract, entered into before the first of the dates. Persons holding property under such transfers were required to prove the legitimacy of the conveyance.

The final clause provided that all British property confiscated under the act, and not specifically appropriated for the redemption of the bills of credit emitted by the state or for the payment of debts, was subject to the orders of the General Assembly.

Since the above measure was concerned only with the legal confiscation of British property within Maryland, it was necessary to provide, by a second statute, the machinery for putting its declarations into practice. Therefore, the

General Assembly passed, at the same time:

An Act to appoint commissioners
to preserve confiscated British prop-
erty. 242.

This act appointed three commissioners to preserve all property seized by the preceding act. They were declared to be in full and actual seizin and possession of all British property within the state, without the necessity of proceeding to any other legal measures. The commissioners were instructed to appoint, as soon as it could be conveniently done, agents to take possession of the forfeited estates to prevent their waste and destruction, or to use them for the public benefit. The agents were directed to make inventories of all property committed to their care. The commissioners, in turn, were to return to the next General Assembly a list of all properties seized under the confiscation act, citing the original owners, the agents to whom the estates were committed, and an estimate of value of each property. If any person, in possession of forfeitable property at the time of its seizure, should claim it, the commissioners were empowered to allow him to remain in possession, under a bond of twice the value of the property, until the title had been legally determined. If, in the recess of the Assembly, any of the commissioners should die, or refuse to act, the governor and council were directed to

242. Hanson, Laws of Maryland, 1780, chap. XLIX. (Nov.).

appoint a temporary commissioner, to act until the next meeting of the legislature.

Each commissioner was required to take an oath for faithful discharge of his duties. The commissioners were directed to appoint a clerk, charged with keeping a full and accurate record of their proceedings. The clerk was also required to take an oath of office. Each commissioner was allowed fifty shillings, in Spanish dollars or bills of credit, for each day devoted to the execution of his office, and a travel allowance of fifty shillings, also paid for each day's work. Thus, the commissioners received a total remuneration of about twenty-four dollars a day, which, when it is taken into consideration that the pay of a colonel in the Maryland militia was, at the time, fifty dollars a month, was, to say the least, an adequate, if not generous, compensation. The clerk was allowed thirty shillings in pay, and another thirty in travel allowances, for each day's work. Finally, the possession and control granted to the commissioners, over all confiscated property, was reaffirmed, and the appointees reminded of their duty to report to the next General Assembly.

Having confiscated all British property within its jurisdiction, the Assembly next turned to the problem of putting it to some practical use. The solution was embodied in a third measure passed by the same session of the

legislature which had produced the confiscation and administrative laws. This was:

An Act to procure a loan, and for the sale of escheat lands, and the confiscated British property therein mentioned. 243.

The preamble of this act stated that it was necessary to raise a sum of money for the relief of members of the militia who had been captured by the British, for clothing for the new recruits, and for the expenses of government. Therefore, premiums were offered to persons loaning the state sums of more than ten pounds in gold, silver, or state bills of credit of any emission. Loans in wheat, flour, clothing suitable for military use, and tobacco were to be accepted, subject to smaller premiums. All loans were to bear interest at six percent. 244.

In order to provide for the prompt repayment of these loans, the legislature provided that the estates of a number of the largest British landholders, including those of the former proprietor, Frederick, lord Baltimore, were to be pledged for the purpose, to be sold as it should later direct. Also, it was provided that the certificates of indebtedness issued to the subscribers to the loan announced in the first clause were to be receivable in payment for

243. Hanson, Laws of Maryland, 1780, chap. LI. (Nov.).

244. The act provides elaborate regulations concerned with the quality and disposition of the produce receivable and with the distribution of the receipts, but since these are irrelevant to the present discussion, they are omitted.

any confiscated property to be sold, except that set aside to redeem the new bills of credit, or for other purposes named by the Assembly. All lands which had escheated to the state, through reversion, where a citizen or subject had died leaving no competent heir, were also to be sold for the same purpose.

A number of forfeited lots in Baltimore were added to the lands already pledged. The commissioners were directed to sell, after three weeks' notice in the Baltimore newspaper for the city lots, and six weeks' notice for the other estates, by public auction any or all of the appropriated lands. The properties were to be partitioned into small parcels, and sold subject to a payment in specie of one-fifth of the price, with the remainder paid in the new state bills of credit and the new continental bills of credit, issued in Maryland. The specie was to be paid within three weeks of the day of sale. One-half of the residue was to be paid within two months, and the rest within four months from the sale. If the first and second payments were not made at the times specified, the commissioners were authorized to re-sell the land, while if the purchaser was delinquent in meeting the third installment, no conveyance was to be made to him until he had done so, also paying a penalty of ten percent on the sum due. All sums received by the commissioners were to be paid over to the treasurer of the shore on

which the property sold was located.

The state warranted and secured the title of all estates so sold to the purchasers and their heirs, and pledged its protection of their right of possession.

The last clause cautioned the commissioners against selling any property which was not clearly forfeited to the state under the confiscation act.

The lands originally specifically pledged for the redemption of the state bills of credit by the act of November, 1780, proved insufficient to raise the required amount of money, so, in April, 1781, the General Assembly passed:

An Act to secure the certain redemption of the bills of credit emitted by this state, and for which confiscated property was pledged. 245.

Under this act, the commissioners for confiscated estates were directed to sell certain valuable industrial properties. Purchasers were required to give bond, certified by two sureties, each of whom was able to pay twice the amount of the purchase price involved, to pay the entire price, either in specie or the "black" bills, by January 1, 1786.

At the same time, the legislature passed, "An Act to

245. Hanson, Laws of Maryland, 1781, chap. XXXIII.(April).

246. The properties involved were the White Marsh iron furnace and the Long Caln forge, formerly belonging to James Russell and Company.

dispose of certain confiscated British and forfeited property," which ordered the commissioners to sell the lands of the Principio iron company, for specie, payable at the time of the sale or soon thereafter. All property forfeited by those convicted of treason was also ordered sold. Payment could be made in specie or in continental state money. If any claims were made against any of this property, the commissioners, if satisfied of the justice of the claims, were directed to certify them to the treasurer for payment. The treasurer was instructed to set aside one-third of the money received for such properties, pending action by the General Assembly.

In November, 1781, the legislature, in "An Act to raise recruits," set aside several tracts of forfeited property to be sold. The returns were ordered sent to General Smallwood for financing the recruiting service.^{247.}

Since the seizures of British property included some estates which had been entailed to persons who were neither heirs of the tenants in tail nor British subjects, many suits were promptly instituted by the injured parties. To correct this flaw in the original act, the General Assembly, in April, 1782, passed:

An Act concerning forfeited lands which may be entailed with limitations over in reversion or remainder. 248.

247. Hanson, Laws of Maryland, 1781, chap. XXVIII. (Nov.).

248. ibid. 1782, chap. XXIX. (April).

This act provided that tenants in tail were to forfeit their property, after conviction for treason, only as far as themselves and their heirs by blood were concerned. All other persons, included in any reversion or remainder of the property were not to be affected. The commissioners were to sell such properties, subject to the conditions provided above, for current money, payable within three years, with interest at six percent.

Another difficulty was discovered in the fact that persons having claims against those convicted of treason had no means of recovery. To remedy this, the legislature published, in April, 1782:

An Act for the liquidation and
payment of debts against persons con-
victed of treason. 249.

According to the terms of this act, all persons having claims against any subject of Maryland who had been convicted of treason were directed to lay their accounts before the auditor general, who was authorized to make suitable awards. If the claimant was allowed any sum of money, the auditor was instructed to transmit it to the intendant of revenue for approval. If approved, the claimant could take the certificate to the treasurer of the western shore who was ordered to give such creditors bonds which had been posted by the purchaser of the property involved, or certificates of exemption from taxation, not to exceed the amount received

for the property.

At the same session of the Assembly, a quantity of confiscated property was ordered sold to raise funds to fill the state's quota for the support of Congress. A similar act provided for the sale of British property to supply bounties to recruits.

As in every other state, the question of the debts owed by the former owners of confiscated property created a persistent source of trouble. The April, 1782, session of the Maryland General Assembly tried to lay down a complete set of rules for the guidance of the commissioners and other officials in the matter, by:

An Act respecting claims to confiscated British property, and to direct the commissioners in certain cases. 252.

It was provided that all persons claiming any right or interest in any property seized by the commissioners should deliver their claims, in writing, on or before March 1, 1783, to the commissioners. In any future confiscations, claimants were directed to file their demands within one year after the day of seizure, and to commence prosecution of actions for recovery within six months thereafter. All

250. Hanson, Laws of Maryland, 1782, chap. LIX. (April).

251. ibid. 1782, chap. LVIII. (April).

252. ibid. 1782, chap. LX. (April).

such actions were to be brought against the state, as defendant. If any person neglected to file his claim, or prosecute the subsequent action, in the manner and time provided, he was to be barred from any right of recovery. This disqualification was not to be applied to infants, persons out of the state, in prison, or of unsound mind.

Where it appeared to the commissioners that the state was entitled to any personal property in the possession of any person who claimed ownership of it, they were directed to bring suit for recovery in the general court, or, if the value was small, in the county court. Proof that the property demanded had belonged to a British subject was declared an adequate basis for judgment for the state. The justices of courts trying such cases were authorized to issue, after the posting of an adequate bond, writs of replevin in favor of the defendants.

The purchasers of confiscated property, purchased from the commissioners were again confirmed in their titles. If any property was, in the opinion of the commissioners, mortgaged to any citizen or subject, by a British subject, for less than its real value, suit was to be made for the recovery of the equity to which the state was entitled. If the best interests of the state did not suffer by the action, the commissioners were empowered to settle such cases

by compromises or agreements with the mortgagees.

Where any purchaser of confiscated property had failed to comply with the terms of sale, and the breach was not covered by any previous enactment, the commissioners were directed to bring suit for the amount of damages which would adequately compensate the state for the delinquency.

Finally, the commissioners were directed to sell no more of the property pledged for the redemption of the last emission of currency. "Negroes, stock, and other perishable articles" were exempted from this restriction.

While the legislature passed, at frequent intervals, private acts for the relief of individual sufferers or purchasers under the confiscation act and its supplements, no public act of significance in reference to the confiscated property was passed for over two and a half years. Late in 1784, the mounting total of the public debt, together with the uncertainties of the state's income from taxation, led to an effort to repair the fiscal structure of the government through the use of the remaining confiscated property. Therefore, in November, 1784, the General Assembly passed:

An Act to establish funds to secure
the payment of the state debt within six
years, and for the punctual payment of
the annual interest thereon. 253.

After announcing that justice and policy required the state to scrupulously comply with all engagements made to its

creditors, the act declared that all the funds in the possession of the state, consisting in all British property which remained unsold, and had not been earmarked for any specific use, all debts for confiscated property sold, all debts on hand, and all arrearages of taxes, due before January 1, 1783, were pledged to the creditors of the state for the payment of the principal of the state debt on or before January 1, 1790, and for payment, until that day, of interest at six percent annually.

A moratorium until January 1, 1790, was granted to purchasers of confiscated property who had not completed their payments. This, however, was conditioned upon the prompt payment of the interest agreed upon. If any purchasers delayed more than six weeks in the payment of their annual interest, the intendant was directed to proceed to the forfeiture of the bonds posted by the purchasers at the time of the sale.

All confiscated British property that had not been previously disposed of (with the exception of two estates) was ordered sold under the supervision of the intendant of the revenue. All sales were to be made, as rapidly as possible, for specie or any of the bills of credit issued by the state, payable on January 1, 1789. Interest was to be collected annually on the unpaid balance.

All purchasers of British property who had not already given bond were instructed to do so, before April 1, 1785,

posting whatever security the commissioners of confiscated property should require, for the payment of the price agreed upon, with interest, on or before January 1, 1790. If any purchaser neglected to post bond, the commissioners were instructed to bring suit for the immediate payment of the principal and interest due, or declare the contract of sale void, and re-sell the property. In the latter case, the first purchasers were required to make good any damages done by them to the property in question.

The tenants living on certain estates were given priority of choice in their sale. If they elected to purchase the lands in their possession, a moderate valuation was to be established, by impartial appraisers, exclusive of any improvements upon the land. The commissioners, in establishing the final price, were instructed to take into consideration the age and health of the tenants who planned to buy such lands, and deduct the value of the lease from the amount arrived at. If the tenants refused to purchase their farms, the commissioners were instructed to dispose of them to the highest bidder, accepting only the current money of the state. Finally, provision was made for the payment of the claims awarded against the assets of the Principio Company.

At the same session, the General Assembly, in "An Act

for the discovery of confiscated British property," instructed the intendant of the revenue to call upon all persons having British property, or the title papers to any such property, in their possession, to deliver it or them at once.^{254.} If necessary, the intendant was empowered to commence proceedings for recovery in the high court of chancery. If any person, in possession of British property or evidences of ownership of British property, refused to make delivery before January 1, 1786, the intendant was authorized to impose a fine of one-fourth of the value of the property concealed. If however, any person should voluntarily report possession of such property, the intendant could sell it to the informant, at a reasonable price.

In November, 1785, the General Assembly acted to clear up the difficulties arising from the uncertainty as to the titling of the confiscated properties which had arisen as the work of the commissioners and the intendant had progressed. In order to establish some definite system, it passed:

An Act ascertaining the mode of granting titles to purchasers of certain confiscated property. 255.

Under this act, purchasers of British property were directed to transmit certificates of survey to the land-office for

254. Hanson, Laws of Maryland, 1784, chap. LXXXI. (Nov.).

255. ibid. 1785, chap. LXVI. (Nov.).

the western shore. If the certificate was in order, the land-office, after receiving a memorandum of payment in full, was to issue, at the end of six months, a patent in fee simple. The surveys made by any person appointed by the intendant to measure confiscated property were declared to be of equal validity to surveys made by the county surveyors. If necessary, the governor and council were authorized to appoint additional surveyors to assist in the plotting and recording of confiscated property.

Any person was allowed to enter a caveat to any certificate granted in pursuance of the act, if entry was made within six months of the day on which the certificate was returned.

When any sale had been made and recorded as cited above, the purchaser, unless the chancellor had agreed to hear any caveat to the certificate, was declared entitled to a deed, signed, sealed, and delivered by the chancellor, on behalf of the state. Purchasers of personal property were similarly entitled to a deed of purchase.

The chancellor was given full authority to decide all disputes between purchasers of confiscated property, being empowered to have surveys made, summon witnesses, and to enforce obedience to his summons. If, in his opinion, any purchaser of confiscated land from the state was entitled to only a part of the land sold to him, he was authorized

to appoint a board of five suitable men to determine the damages sustained by the purchaser as a result of his decision. The chancellor was to issue to the purchaser a certificate for the loss set by the board, and the purchaser could obtain the sum established on presentation of the certificate to the treasurer of the western shore. If the purchaser had not finished the payments due on the property, the award was to be deducted from the balance due the state.

With the Revolutionary War fading into the past, the General Assembly was unwilling to devote its time to the consideration of numerous complaints from almost all classes of people connected with the ownership, disposal, and purchase of the confiscated British property. It was provoked at the inability of the commissioners and the intendant to manage the affairs of their commissions, and had no desire to see the war measures persist indefinitely. Therefore, with the intention of settling the whole question permanently, the legislature, in November, 1786, passed:

An Act for the speedy adjustment of
sundry purchases of British property. 256.

After administering a sharp reprimand to the commissioners and the intendant for their inept handling of the task entrusted to them, the Assembly ordered them to survey, at their own expense, all lands sold by them where the pur-

256. Hanson, Laws of Maryland, 1786, chap. XLIV. (Nov.).

chase price was conditioned by the quantity of land. Certificates of survey were to be drawn up for each separate purchase, locating the plots exactly, and mentioning any well grounded contrary claims. If the commissioners or intendant were persuaded that any purchasers were entitled to refunds, a notification was to be sent to the chancellor, presenting the reasons for the decision reached. The chancellor was empowered to make allowance of any refunds which he found to be just. If any sale had been made of land which had been previously recorded by some other person in the land-office of Pennsylvania, the chancellor was to grant an equitable compensation to the purchaser under the Maryland officials. If any encumbrances on British property, unknown at the time of its sale, were established against the purchaser, the chancellor was to grant him a suitable award. Finally, if any purchaser, by any subsequent legal action, was deprived of all or part of his property, the chancellor was instructed to order suitable compensation paid.

An act passed in the April session of 1787 submitted to the court of appeals the question of whether or not the interest on the unpaid balances of the purchase prices agreed on by the buyers of confiscated property could be legally paid in specie certificates.

257.

257. Hanson, Laws of Maryland, 1787, (April).

With the passage of this act, the continuing series statutes which had originated with the passage of the original confiscation act of 1780 came to an end. While the questions aroused by the seizure of the property of its enemies haunted the General Assembly for many years after the passage of the act of April, 1787, the work of that body was confined, in such cases arising out of the period of confiscations as were brought before it, to interpretation of existing laws, and the relief of individual sufferers.

Chapter XV.

SOUTH CAROLINA

Although every other state of the federation had taken steps, by the close of 1780, to confiscate the property of the loyalists and British subjects within their boundaries, South Carolina made no move to follow this example. The chief reason for this probably may be found in the fact that, in the first months of the war, the General Assembly of that state had passed a law against treason and other crimes against the state so far-reaching in its provisions, that to all practical purposes it made the existence of a general confiscation act unnecessary. This act, passed April 11, 1776, was:

An Act to Prevent Seditious and
punish Insurgents and Disturbers of
the Public Peace. 257.

Under its provisions, any person who took up arms against the state, or by any means induced others to do so, opposed the constitution of South Carolina, injured the person or property of any citizen, corresponded with the enemy, assisted in any way the forces of Great Britain, attempted to enlist troops for the enemy, supplied money or provisions to the British, attempted to persuade slaves to desert their masters and escape to the enemy, collected any riotous body of people, or spoke or acted in any way against the peace and order of the government was guilty of felony punishable by death and the forfeiture of all property.

257. J.F. Grimke, The Public Laws of the State of South-Carolina, From Its First Establishment as a British Province Down to the Year 1790, Inclusive (Philadelphia: Aitken & Son, MDCXC.), p. 283, no. 1132.

Any property seized in pursuance of this act was ordered sold, by the sheriff of the district in which it was located. The sheriffs were instructed to have all forfeited property within their jurisdiction appraised by three freeholders, appointed for each estate, and then to advertise, for twenty-one days, the property, before selling it by public auction. The returns from such sales were to be sent to the treasury within three months of the day of sale. Sheriffs neglecting to enforce the act, or disobeying its provisions, were to be fined one thousand pounds and removed from office.

The money obtained from the sale of the offenders' properties was to be set aside as a fund to make compensation to citizens who had sustained losses through depredations by the British troops.

After the passage of this act, the South Carolina legislature paid no attention to the opportunities offered by the property of its enemies until four months after the surrender of Cornwallis. Then, on February 26, 1782, it passed:

An Act for disposing of certain
Estates, and banishing certain Persons
therein mentioned. 258.

The act opened with a preamble bitterly attacking the British government for its activities in the war, and charging it with

258. Grimke, The Public Laws of the State of South-Carolina, p. 305.

being the first to resort to the confiscation of property, The hatred on the part of the South Carolina General Assembly was natural, since Lord Cornwallis, after his capture of Charleston, had been very harsh in his treatment of those who had upheld the revolution. On September 16, 1780, he had issued a proclamation sequestering the estates of "partizans of the United Colonies." The work was carried out quite thoroughly by a loyalist commissioner of forfeitures. Thus, when it was freed from the menace of the British forces, the legislature probably greeted the opportunity to repay the compliment with enthusiasm.

Announcing that it was inconsistent with public justice to afford any further protection to British subjects, and that the property of the enemies of the state should be applied toward lessening the burdens brought by the war, the act declared that all the real estate belonging to any of the persons mentioned in a list attached to it, together with their personal property, with the exception of debts, was vested in a commission of five members, in trust for the uses provided in later clauses.

The commissioners were instructed to dispose, as soon as possible, of the property entrusted to them at public

259. J. Cruden, Report on the Management of the Estates Sequestered in South Carolina, by Order of Lord Cornwallis (Brooklyn: Historical Printing Club, 1890), p. 5.

auction. Six weeks' notice was to be given of each sale, and all sales were to be for specie, payable within five years, with the interest fixed at seven percent annually. Purchasers were required to post bonds, with adequate security in land, for prompt payment. The commissioners were authorized to execute the necessary titles and conveyances for transferring the property to purchasers.

All persons who had refused or neglected to take the oath of allegiance, and who still possessed property within the state were declared to have forfeited their estates to the commissioners of confiscation, to be disposed of and employed as directed in the case of the estates belonging to the persons mentioned above. The property of absentees was also to be seized, unless the offenders had returned to their residences by September 27, 1781, and taken arms in defense of the state.

Four other lists attached to the act proscribed persons who had been too friendly to the British during the occupation of Charleston, or who had accepted commissions from Lord Cornwallis. A sixth list included the names of persons whose general conduct "had manifested their attachment to the British government." In every case, the commissioners were given authority to dispose of the offenders' property under the rules laid down for their duties in selling the

260. Grimke, The Public Laws of the State of South-Carolina, p. 309.

estates of those mentioned in the first list.

The act declared that although the various persons named and described were liable to the death penalty, the humanitarian sentiments which characterized the new government led it to substitute banishment. The commissioners were directed to make allowances, out of money received for the estates sold by them, for the support of the families of the offenders until The General Assembly should make a final provision.

The commissioners were further directed to set aside a sufficient number of confiscated slaves to make possible the granting of one to each volunteer for the militia. A second group of four hundred and forty male slaves were to be sent to the Continental forces, to serve as wagon drivers, artificers, and servants. Cattle, wagons, and provisions seized by the commissioners were to be also turned over to the army.

All personal property which had been possessed by any of the offenders, or their agents, on July 4, 1776, and which had not been sold, bona fide, for a valuable consideration, by May 12, 1780, was declared vested in the commissioners.

The commissioners were required to take an oath of office.

The confiscated lands were ordered divided into tracts

of from two hundred to five hundred acres, in order to accommodate "the most fixed and useful purchasers." No tract was to consist of more than five hundred acres unless the character of the land made a larger unit absolutely necessary.

The commissioners, in return for their services, were granted one percent of the net return from all sales, to be divided equally among themselves. They were authorized to appoint a number of clerks to record all their proceedings, and to list the inventories of the estates which had been forfeited. The clerks were required to take an oath of office. The costs of surveying the lands seized and partitioned were to be paid by the purchasers of the tracts.

All persons having claims against any of the persons mentioned in any of the lists, except the first, were instructed to lay proofs of their demands before the commissioners on or before February 20, 1783. The commissioners in turn, were authorized to investigate the claims, and report their findings to the legislature. The legislature reserved the actual awarding of damages to itself, granting the claimants the right of judicial review, by actions brought against the commissioners. Claimants neglecting to present their demands before February 20, 1783, were barred from any recovery.

Any persons convicted of removing or concealing any

confiscated property were to suffer death without benefit of clergy.

Each commissioner was required to post a bond of ten thousand pounds sterling, for good behavior.

If it became necessary for the commissioners to examine the plats of lands adjacent to those confiscated, they were empowered to require the owners of those lands to produce the documents. If such owners of adjacent lands should refuse to produce the plats, or be unable to produce them, the commissioners were directed to have surveys made to determine the boundaries of the lands involved, and no appeal made by the owners failing to produce their plats would be heard.

In order to raise a sum of specie for the immediate use of the government, the governor, with the advice and consent of the privy council, was empowered to sell any number of slaves, up to one hundred and fifty, seized in pursuance of the act. However, in all sales of negroes made under the confiscation act, the officers in charge were ordered to sell families in units, separating parents and children under no circumstances whatsoever.

The state warranted all purchases made from the commissioners acting in their official capacity, against all suits and awards. The commissioners were instructed to report, at least once a month, to the treasurers.

All courts in the state were instructed to construe

the act liberally, so as to benefit, as far as possible, the people of the state. Finally, if any commissioner was sued, in consequence of any act done in his official capacity, he was entitled to introduce the act in evidence, and on receiving a verdict in his favor, recover three times the costs of the action.

Several flaws appeared in the act of February, 1782, so the General Assembly, on March 16, 1783, passed:

An Act to amend an Act, entitled
 "An Act for the disposing of certain
 Estates, and banishing certain Persons
 mentioned." 261.

The first clause provided that the estates of the persons mentioned in the first list given in the earlier act were liable for the payment of just claims, as provided in the case of the other lists. This provision was also extended to cover the estates of all persons described by the former act.

The time required for advertising the sale of any confiscated property was extended to two months, and the commissioners were instructed to leave plats of the estate to be sold at some house in the vicinity, for at least three weeks before the sale.

All state obligations were declared receivable in

261. Grimke, The Public Laws of the State of South-Carolina, p. 322.

payment for confiscated property. The commissioners were instructed to sell all personal property confiscated by the state, after giving two months' notice, on credit of two years. Where the amount involved in any sale was over five hundred pounds, the purchaser was required to post bond. The costs of defending suits against the confiscated property was to be paid by the state. The time allowed for creditors of the offenders to present their claims was extended to July 20, 1783. All such demands were to be laid before the auditor of the state. If he refused to make any allowance, the claimants were granted the right to bring suit against the commissioners. No debts contracted by any of the offenders after the passage of the confiscation act were to be honored. Creditors whose claims had been allowed were given the option of using the credits thus created in the purchase of confiscated property, or being paid out of the interest arising from the bonds deposited by the purchasers of the estates involved. In no case were the creditors to receive more than the amount received from the property against which their claims had been awarded.

The families of the offenders were allowed the household furniture, plate, linen, wearing apparel, carriages, carriage horses, and house servants belonging to them at the time of the seizure of their other property.

Purchases made of the property of banished persons

before the passage of the confiscation act were declared to be valid, if there was no evidence of collusion between the vendor and buyer, to defraud the state. Where the full price agreed upon had not been paid, the purchaser was to pay the remaining amount to the commissioners.

If purchasers of confiscated property failed to pay, within thirty days after the day on which it was due, the interest on the bonds given by them for payment of the price agreed, the treasurers were instructed to commence suit for recovery. Finally, the commissioners were allowed funds to buy provisions for any negroes in their possession, and to meet all other necessary expenses.

On March 26, 1784, the Assembly of South Carolina passed "An Act for allowing a further Time to render in a State and Proofs of any Demands against the Confiscated Estates," extending the time allowed for one year. 262.

On the same day, the Assembly passed:

An Act for restoring certain Persons therein mentioned, their Estates, both real and personal, and for permitting the said Persons to return to this State, and for other Purposes therein mentioned. 263.

Persons mentioned in the first three lists of offenders were permitted to return. If their estates had not already been

262. Grimke, The Public Laws of the State of South-Carolina, p. 341.

263. ibid. p. 347.

sold, restitution was to be made subject to an amercement of twelve percent to the state, and a fee of two percent paid to the commissioners. If any estates belonging to the beneficiaries of the act had been sold, and the new proprietors were unwilling to give them up, the proceeds of the sales, including all bonds posted to guarantee payment were to be delivered to the original owners. If the new proprietor was willing to surrender any such estate, his interests were to be maintained by an adequate compensation.

The final statute of the South Carolina legislature on the confiscation of British property was passed on the same day as the act cited above. It was:

An Ordinance for amending and
explaining the Confiscation Act. 264.

This act provided that any property which had not been titled within two months after the date of its publication, was to be re-sold by the commissioners, with the understanding that the full price be paid by the time set in the original contract of sale. The first purchaser was declared liable for all expenses incurred by the commissioners in making the second sale, and was required to pay seven percent interest on the price agreed upon from the time of the first sale to the time of the second sale.

The commissioners were authorized to sell any property,

264. Grimke, The Public Laws of the State of South Carolina, p. 353.

subject to a mortgage or other encumbrance, in their possession, satisfying the obligation out of the amount received.

If any property had been sold by the commissioners, no suits against the commissioners or owner under the sale, based on a claim made after the sale was to be entertained by any state court, unless permission to sue was first granted by the General Assembly.

State certificates of indebtedness were, by the final clause of this act, declared receivable by the commissioners of the treasury as security for payment of any price agreed on by the purchasers of confiscated property.

Chapter XVI.

CONCLUSION

As the examination of the confiscation laws passed by the several states has indicated, there was little uniformity in the methods used in the seizure of the estates of the loyalists and British subjects. Local conditions inevitably governed the legislatures in the legislative process, and there seems to have been relatively little imitation by any legislatures, of the system employed by their contemporaries in other states. It was natural that the small community of Vermont, with its highly informal government, and its few loyalists, should find confiscation by the simplest and most direct methods entirely adequate. On the other hand, New York, with its large area and population, its numerous body of loyalists, its British garrison in New York City, and its very complicated system of state and local government, was destined from the first to require an elaborate body of statutes for the purpose, with inefficiency, clashes of a jurisdictional character, and confusion as inescapable concomitants.

However, in addition to the relative advantages enjoyed in the work of confiscation by the smaller and less disturbed states, there were certain factors making for greater or lesser success in the confiscation of British and loyalist property which were not dependent upon area or the relative danger from British sources. Of great importance was the system of land tenure in effect in the colonies at the outbreak of the revolution. There seems to be little doubt

that the system in use in the southern colonies, as typified by Virginia, with its active acceptance of the full implications of the theory of eminent domain, with its attendant prerogatives of tenure subject to continuing compliance with the terms of some contractual relationship with the original proprietor, identified with the sovereign, leading to the working out of a regular, and frequently applied law of escheatment and reversion, gave the revolutionary governments of that group of states a tremendous functional and psychological advantage over the state governments of the northern divisions. In the New England area particularly, the land system of tenure in fee simple, reinforced to a great extent by the religious and social convictions of the bulk of the inhabitants, led to a firm belief in the almost sacrosanct character of private property, and caused the responsible citizens to turn instinctively from any suggestion embodying the negation of this principle. Aside from this important mental barrier to sweeping confiscations of any property, patriot or loyalist, the reign of fee simple had inhibited the erection of any legal machinery, or even precedent, for procedure against the estates of the enemies of the revolution.

A final significant difference in the manner in which the work of confiscation was carried out by the various states is to be found in the provision for officers to

execute the provisions of the many confiscation laws. For convenience, the states may be roughly divided into two groups according to their choice of officials. In one group, the legislature simply conferred the supervision of confiscation, as an added duty, upon men already acting as public officers. Among the states in this class may be included New Hampshire, where the selectmen of the towns were given the task, and Pennsylvania, where the occupants of the other extreme of the political hierarchy, the president and council acted as supervisors of confiscation. The second group of states created special commissions or committees to handle the processes of seizure. New York and Maryland are typical of this category.

Strangely enough, the states of the first class, in spite of, or perhaps because of, their rather cavalier treatment of the problem, had, as a general rule, far less difficulty in converting the property of their enemies into money or credit than those of the second. While any attempt to assign a definite reason for this phenomenon is a flight into the realms of the conjectural, it is possible that the legal training, experience, and sense of social responsibility of the regular state officials more than made up for the lack of other duties and presumed special knowledge which seemingly should have characterized the specialists in the

business of confiscation. Of course, fairness makes it necessary to exclude from the comparison states such as Virginia, where the basic outlines of the confiscation system had long been laid down and brought to an efficient state of workableness. But there is no doubt, that the states employing the commission type of administration were obliged to pass a much larger body of remedial legislation, on the average, than the states of the other group.

Regardless of the relative efficiency of the methods employed by the several states, and the necessity for correctional measures, the fact is patent, to the highest degree, that every one of the American states engaged in the Revolutionary war determined upon the confiscation of the property of loyalists (and in almost every case, of British subjects as well) and took whatever steps it considered necessary to bring about that end. In spite of this unanimity of state action, reinforced by the recommendation of the Continental Congress, as expressed in the resolution of November 27, 1777, the majority of writers on the general subject of the American Revolution, and even those devoting their attention to the story of loyalism during the war, seem to consider the story of confiscation a begrimed and unpleasant page of history, to be turned as rapidly as possible by the casual reader and attentive student alike. To this group, the confiscation of the property of the

loyalists, and subjects of Great Britain, was a distinctly disreputable business, at the best, a more or less unjustified product of the bitter animosities roused by the long war, at the worst, or perhaps, in general, a sordid traffic in the property of their former neighbors, converted into enemies by a matter of conscience, by a grasping and petty lot of political parvenus. They pronounce, with voices of finality that the whole business of confiscation was illegal, unethical, and impractical, the unfortunate result of the fratricidal character of the revolution, and reflecting little credit upon the founders of the United States, except as far as it revealed the intensity of their hatred for all that was British.

The author feels that this position deviates from the canon of objectivity as far as the historical scholarship involved is concerned, and, of far greater importance, is almost completely unfair to the men responsible for the conduct of the war against the mother country.

The first charge leveled against the institution of confiscation is that it was illegal. As any person having any acquaintance with the international law of the eighteenth century knows, the confiscation of the property of any subjects of a hostile state was entirely legal, and sanctioned not only by long usage, but by the outstanding authorities on the science of the law of nations. Emerich de Vattel,

whose great work on international law had been published in 1758, and was certainly well known to the widely read American lawyers, had stated that the subjects of a hostile prince were individually and collectively responsible, to the sovereign of its adversary, for all expenses incurred by the latter in prosecuting the war, as well as for losses and injuries sustained by its citizens. This expression was the opinion of one of the most humane interpreters of the rules governing the relations of states, and was designed to be applied to the sedate, international wars of the Europe of his era, rather than to the rebellion-civil war waged in the new world. By what process scholars who lived through the period of the World War, with its utter disregard for the property rights of noncombatant citizens of belligerent states, can demand a higher standard from the desperate revolutionary governments of the war for independence, is a mystery to the present author.

The second charge, that confiscation was unethical, finds the critics of the act on safer ground since ethics can hardly be reduced to "authorities," and to absolute standards. Yet here the error seems to be even more obvious, and even less excusable than in the first instance. Those attacking the ethics of the patriots in seizing the lands

265. E. de Vattel, The Law of Nations, tr. by Joseph Chitty (Philadelphia: T. & J.W. Johnson & Co., 1883), p. 366.

of their enemies seem to be dangerously close to the error of ascribing to the eighteenth century, the public ethics and morality of the middle twentieth century (the phrase "middle twentieth century" is used advisedly, since the events of the years from the dawn of the century to the present hardly license the throwing of many righteous stones at the past centuries for shortcomings in these fields). The war of 1914-1918 has already been cited as an instance of modern thought on confiscation; others will occur to everyone. In the defense of the state governments, it should also be recalled that the conduct of the British forces, and their official and unofficial loyalist assistants had done little to inspire humanitarian sentiments among their opponents. The Revolutionary war presents a surprisingly long list of the most barbaric excesses, and no apologist for the British cause has as yet suggested that the patriot faction had any monopoly of the bloody work. By their position in the war, the loyalists inevitably brought upon themselves the stigma of treason, as far as their fellow Americans were concerned, and the confiscation of property seemed a mild enough punishment to the legislators, who were painfully aware of the penalty provided for the crime under the Statute of Edward III. Finally, the governments of the American states had an excellent precedent for their action in the activities of the British forces after the capture of New York City, in 1776, when the property of many patriots was confiscated, many months before

Ira Allen persuaded the government of Vermont to return the compliment. That this was not the act of an irresponsible commander is to be seen in the British law of December, 1776, approving of this action, and the similar activity, already mentioned in the presentation of the legislation of South Carolina, on the part of the British in Charleston, in 1780.

A fact which has been quite generally overlooked by the writers on confiscation is that in nearly every state, the assembly was, to a large extent, forced into the passage of confiscation laws, by the inability to provide, in any other manner, for the protection and maintenance of the estates abandoned by the loyalists who sought shelter within the British lines. Since this abandonment left many valuable properties to the mercies of the weather and the vandals of the neighborhood, some way to provide for their preservation was necessary. In the absence of any regularly organized police force, the states were forced to appoint trustees, often at a considerable expense, to take care of the properties of their treacherous former citizens (in the opinion of the patriots), and their enemies. Naturally, this situation was not permitted to continue for long. Even where the solicitude for the interest of the former owners was strongest, the existence of quantities of perishable property in the form of provisions, standing crops, stock, and, always included by the legislators, slaves,

on some of the abandoned estates, made some sales of loyalist and British property essential. Although at the opening of the war, the sums thus received were carefully recorded to the credit of the proprietor, and invested in interest-bearing loan office certificates, the absurdity of such an arrangement, which bound the new governments to pay interest to persons actively trying to cause their downfall, soon led to the confiscation of all such deposits.

The final objection to the confiscation of loyalist and British property on the grounds that it was impractical and brought few if any benefits to the governments enforcing it, is in the author's opinion, the most untenable of all. While the attacking of such a charge could hardly be necessary at the end of a moderately detailed presentation of the entire story of the confiscation legislation of the states, some of the advantages derived from the action, while based only on the theories of the author, may be of interest.

A fairly extensive examination of the available materials on the confiscation of loyalist and British property has led directly to the conclusion that this action was of immense, if not of absolutely vital importance to the successful conclusion of the Revolutionary war. While this is undoubtedly an extreme view, its development has taken place through a considerable period of time, in a mind inclined, at the

beginning of the study, toward the conventional view of the matter.

Turning first to the question of what the confiscated estates meant in money to the several states, it must be admitted that no satisfactory figure can be fixed. The total amount asked by loyalists from the British government in compensation for their losses, amounted, to March, 1784, to nine million, four hundred thousand, three hundred and ^{266.} thirteen pounds. One estimate of the total amount paid by Great Britain, in all ways, to loyalists, is six million ^{267.} pounds. While the first figure probably included many excessive demands, it is only just to note that there is every reason to believe that many of the poorer and more ignorant loyalists, who suffered just as heavily in proportion to their wealth as did the Johnsons and the Russells, never presented claims to the British government. It is also certain that many loyalists died or were killed before they had a chance to put forth their claims. Leaving such questionable ground we can say with certainty that the sales of confiscated real estate alone, in the city of Boston, recorded in the registrar's office, brought five hundred and

266. J.T. Scharf, History of Maryland (Baltimore: J.B. Piet, 1879), vol. II., p. 389.

267. A.B. Hart, Commonwealth History of Massachusetts (New York: The States History Co., 1929), vol. III., p. 264.

twenty-nine thousand, five hundred and ninety-one pounds,
268.
eighteen shillings, and eight pence. It is probable that
some purchasers failed to record their deeds, so that the
total was, in reality, larger than the figure cited. Drop-
ping all figures, which in an age trained to think in
terms of billions, are rather meaningless, it may be safely
said that the fourteen governments opposing Great Britain
received a very considerable sum from the sale of confis-
cated property. However, this is a minor part of the bene-
fit derived from the act. The amount received was, to a
considerable extent, specie. Thus, there was provided a
sound basis for a credit expansion far beyond the amount
obtained. The outbreak of hostilities, with the inevi-
table recourse by the states to unsecured paper money,
drove the specie of the people out of circulation. While
the loyalist element probably formed a majority of the
wealthy group within the colonies, there were many pros-
perous patriots who hoarded their gold and silver during
the early part of the war. In the light of the uncer-
tainties of the war, and the greater uncertainties of the
state securities, their action was reasonable, but its
paralyzing effect upon the already hopelessly inadequate
supply of available specie was none the less definite.
However, these shrewd "misers" who could not be persuaded

268. J.T. Massam, Confiscated Estates of Boston Loyalists (Cambridge: John Wilson & Son, 1895), p. 5.

to buy loan office certificates were quick to buy the fine estates of the former leaders of the colonies at a fraction of their real value. The mere fact that the state governments owned vast quantities of land and other property which could be, and frequently, as in Maryland, was, pledged to guarantee payment of all obligations had an incalculable effect in bolstering the confidence of the citizens.

The sale of abandoned farms, timberlands, mines, and factories not only increased the productive capacities of the states when increased production of almost all goods was greatly needed, but provided employment for many of the poorer artisans and laborers, caught in the depression accompanying the opening of the war, and provided potential fields for taxation. In fact, the states would probably have benefited much if all abandoned and sequestered properties of the types mentioned above, had been given freely to capable and energetic men.

Aside from the economic benefits, the confiscation and sale of loyalist and British property brought the state other dividends. There is little reason to doubt that the mere act of confiscation greatly raised the new governments in the eyes of the "radical masses," the working group who fought to a successful conclusion, at twelve pounds in nearly worthless continental money per month, the war started

by the lawyers and merchants who felt only fear and contempt for the "rabble in arms." The states apparently realized this fact, for in nearly every case, there are provisions that large estates be broken up into tracts small enough for any to buy. This redistribution of wealth may have strengthened the demand of the common people for a more democratic government. There is little doubt that by creating a vastly larger body of landholders, it postponed to some extent the creation of a landless proletariat, and possibly prevented a general rising of the poorer classes during the depression after the war. It clearly foreshadowed the great redistributions of land so essential a part of the French Revolution and the modern French Democracy.

Of a very direct importance to the successful conclusion of the war was the granting of large quantities of confiscated provisions of all kinds to the armies. Horses, cattle, and slaves were also turned over to the quartermasters. When deputations of the unpaid and mutinous troops came before several legislatures, their wrongs were righted by the distribution of confiscated land. In South Carolina, recruits were each given a confiscated negro slave. In every state, confiscated property was sold to raise funds for military purposes.

In spite of the war, the legislatures did not forget

the arts of peace. The Virginia General Assembly, in appropriating a large tract of land to be given to Randolph Macon College, and in granting eight thousand acres of confiscated lands in the "County of Kentucky" for educational purposes (resulting in the establishment of Transylvania Seminary), was not acting alone. It is interesting to note, incidentally, that the public buildings in Richmond are built on confiscated land.

Finally, of indirect but perhaps supreme importance is the fact that every one of the thousands of buyers, rich and poor, of confiscated property was tied by a thread of gold to the cause of the revolutionary government which had given him the title to his bargain.

Faced by empty treasuries, weakened credit, declining public confidence, the inability to secure recruits, a general shortage of provisions, a powerful enemy, and a large and active group of disaffected persons within their boundaries, the United States found in the confiscation and sale of loyalist and British property at least a partial solution for all of these problems. While the laws were harsh, and often inequitably and brutally enforced, while the machinery of confiscation was in many cases anything but efficient, and while the returns to the states in money were often ridiculously small in proportion to the properties sold, I am convinced that the action was of great value to the revolutionary cause at its darkest hours, and that the

entire work may be characterized by the motto of the General of the Continental Armies, "exitus acta probat."

Chapter XVII.

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