THE LOYALISTS OF DELAWARE DURING
THE AMERICAN REVOLUTION

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BY

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## CONTENTS

<table>
<thead>
<tr>
<th>Chapters</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. PARTY ALIGNMENTS</td>
<td>1</td>
</tr>
<tr>
<td>1. Colonial parties</td>
<td>1</td>
</tr>
<tr>
<td>2. Delaware and British Taxes</td>
<td>1</td>
</tr>
<tr>
<td>II. THE EVE OF THE REVOLUTION</td>
<td>6</td>
</tr>
<tr>
<td>1. Radical Activities</td>
<td>6</td>
</tr>
<tr>
<td>2. The Association</td>
<td>9</td>
</tr>
<tr>
<td>III. EARLY MINOR ACTIVITIES OF THE LOYALISTS</td>
<td>11</td>
</tr>
<tr>
<td>1. Robert Holiday</td>
<td>11</td>
</tr>
<tr>
<td>2. The Relief of Boston</td>
<td>14</td>
</tr>
<tr>
<td>3. Thomas Robinson</td>
<td>15</td>
</tr>
<tr>
<td>4. Rash and imprudent expressions</td>
<td>18</td>
</tr>
<tr>
<td>5. Continental currency</td>
<td>20</td>
</tr>
<tr>
<td>IV. OPPOSITION TO A NEW GOVERNMENT</td>
<td>23</td>
</tr>
<tr>
<td>V. LOYALIST MILITARY ACTIVITIES</td>
<td>33</td>
</tr>
<tr>
<td>VI. ILLICIT TRADE</td>
<td>59</td>
</tr>
<tr>
<td>VII. PERSECUTION OF THE LOYALISTS</td>
<td>67</td>
</tr>
<tr>
<td>1. Action of Congress</td>
<td>67</td>
</tr>
<tr>
<td>2. Action of the State legislature</td>
<td>70</td>
</tr>
<tr>
<td>3. Action of the Courts</td>
<td>82</td>
</tr>
<tr>
<td>4. The Mob</td>
<td>86</td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>VIII. PEACE</td>
<td>89</td>
</tr>
<tr>
<td>1. The Treaty of Paris</td>
<td>89</td>
</tr>
<tr>
<td>2. Loyalist claims</td>
<td>90</td>
</tr>
<tr>
<td>3. Repeal of anti-Tory laws</td>
<td>92</td>
</tr>
<tr>
<td>MAP</td>
<td>33</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>94</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>106</td>
</tr>
</tbody>
</table>
CHAPTER I

PARTY ALIGNMENTS

1. Colonial Parties

The three counties, Newcasttle, Kent and Sussex, located upon the lower reaches of the Delaware River, previous to 1701 formed a part of the proprietary colony of Pennsylvania. In the charter of that year William Penn agreed that the Delaware "Territories" should have an Assembly of their own.\(^1\) Delaware, however, was to share Pennsylvania’s governor. The three counties assented to this program and soon embarked upon a political course of their own. The pre-revolutionary political parties of Delaware followed in general the pattern of those in the other colonies. The governor and his officers formed the Court Party and those people who wanted an independent judiciary and impartial laws formed the Country Party. Politics, however, engendered little heat until about 1765.\(^2\)

2. Delaware and British Taxes

On March 22, 1765, the British Parliament passed a

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stamp tax. The news of this measure reached Delaware on May 9. The people threatened the stamp distributor and burned him in effigy.\(^3\) Merchants and traders signed an agreement to countermand all orders for British goods until the Stamp act should be repealed. Furthermore, no British goods were to be received for sale on commission. There were, however, a few exceptions.\(^4\) When the so-called Stamp Act Congress was formed, Thomas McKean and Caesar Rodney were chosen as representatives by Delaware. They signed the petition to the King which protested against the Stamp Act.\(^5\) When the Stamp Act was finally repealed, the Delaware Assembly, on March 18, 1766, sent a congratulatory address to the King.\(^6\)

In May 1767, Parliament passed the Townshend Acts, which were to go into effect November 20. The Assembly appointed Thomas McKean, Caesar Rodney, and George Read to draw up an address to the King protesting against these measures but pledging the loyalty of Delaware. Following this action, Delaware, in correspondance with Virginia, declared that it was ready to cooperate with the other colonies in measures to restore their rights. Parliament,

\(^3\) Scharf, Delaware, II, 184.
\(^4\) Ibid. 185.
\(^5\) Ibid.
\(^6\) Ibid.
however, refused to repeal the acts. This refusal led to a revival of the non-importation agreement. A Non-Importation Association was formed in Boston in August 1768, and Delaware joined it the following year. 7

The violation of the non-importation agreement led to the appointment of committees of inspection consisting of two men in each town to watch trade. At this time there were few persons who supported the Crown, and offenders against the agreement were easily discovered. These were punished by being forced to declare their sorrow publicly and pay to the committee the proceeds of their trade. 8

Parliament, heeding the protest of the colonies, on April 12, 1770, repealed all the obnoxious taxes with the exception of the one on tea. In 1773, the East India Company was given a monopoly on the export of tea to America. This measure was received with anger by the colonial merchants. In September the ship Polly sailed for Philadelphia with a cargo of tea. The pilots on the Delaware River were instructed by a "Committee on tarring and feathering" to give notice of her arrival to the merchants of Philadelphia. On Christmas Day the Polly arrived in the Delaware, but was forced to return to England without emptying her hold. 9

7 Scharf, Delaware, 185-186a.
8 Ibid. 186a.
9 Ibid.
The Delaware Assembly, on October 23, 1773, resolved to form a Committee of Correspondence and Communication. The members were Caesar Rodney, Thomas McKean, George Read, John McKinly and Thomas Robinson.  

Delaware was ably represented in the Continental Congress and concurred in the address to the people of Great Britain, the memorial to the inhabitants of the British Colonies, the address to the people of Quebec and an address to the King.  

The population of Delaware at this time was slightly over 35,000. Agriculture was the main occupation, although iron, textiles, paper and glass were manufactured in small amounts. Trading was carried on chiefly with Newcastle and Philadelphia.  

Delaware, although not especially affected by any of the taxation acts, seems to have followed the actions of Pennsylvania. In the protests against the stamp and tea taxes, the formation of Committees of Correspondence and  

11 Ibid. 220.  
12 Ibid. 184, gives the population as 37,000. Henry C. Conrad, History of the State of Delaware from the Earliest Settlements to the Year 1907, I, 149 gives the population as 35,219 whites and 2,000 slaves. Hereafter this work will be cited as Conrad, Delaware.  
13 Green, Foundations of American Nationality, 294.  
in the occasional violations of the non-importation agreement the germ of the division of this small population into Whig and Tory parties may be discerned.
CHAPTER II

THE EVE OF THE REVOLUTION

1. Radical Activities

On the eve of the Revolution Delaware was connected politically with Pennsylvania only through Governor Penn. This absence of a resident governor made easier the progress of the Whigs, who were thus free from an encumbrance which in other Colonies had provided considerable opposition. The right of the Legislature to meet upon a certain day without danger of being prorogued was also an aid to the radical programs of those members of the General Assembly who were soon to be revolutionary leaders.¹

In the early part of 1774, the radicals confined their activities to signing petitions and protests to the King and Parliament, but when the news of the Boston Port Bill reached Delaware, words were replaced by action. This bill, which closed the Port of Boston until that town should pay for the tea which had been destroyed in the famous tea...

¹ Allen Nevins, The American States During and After the American Revolution, 1775-1789, 9, 47. Hereafter this work will be cited as Nevins, The American States. Allen French, The First Year of the American Revolution, 457. Hereafter this work will be cited as French, The First Year of the American Revolution.
party, caused a storm of protest in the three small counties. On June 29, 1774, a meeting of the freeholders and inhabitants of Newcastle County declared that the Boston Port Bill was unconstitutional, oppressive and dangerous to liberty. The meeting further declared that a Congress of deputies should be formed in order to procure relief and secure the rights and liberties of the colonists. It also recommended the appointment of a Committee of Correspondance for Newcastle County and the selection of a Committee of thirteen to raise subscriptions for the relief of Boston. Twenty-one days later a similar meeting was held in Kent County. This group asserted its loyalty to the King, but otherwise its resolutions followed those of the Newcastle meeting. On July 23, a meeting was held at Lewiston, in Sussex County, which passed resolutions far more radical in character than those of the Newcastle and Kent meetings. It resolved that British subjects might be taxed only by their own consent, and that every act of Parliament "respecting the internal police of North America is unconstitutional, and an invasion of our just rights and liberties."

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3 Conrad, Delaware, I, 93.


The meetings of June and July had asked Caesar Rodney, speaker of the House of Assembly, to call the Legislature into session since the Governor would not do so before the proper day. Therefore, on August 1, 1774, a Convention of members of the legislature met at Newcastle. This Convention appointed a Committee of Correspondance of twelve members for Newcastle County. On August 22, it instructed Caesar Rodney, Thomas McKean and George Read, the representatives of Delaware in the Continental Congress, to press a number of resolutions upon Congress. These resolutions stated that British subjects ought to have all of the liberties of free subjects in any of the King's dominions; that the only representatives of the colonists were the ones they themselves elected; that taxation and internal police were purely colonial matters; that all trials for felonies or treason ought to be held in the King's courts in the colonies; that all parliamentary acts restraining and prohibiting American manufactures, imposing taxes on the colonies, extending the powers of officials beyond the "ancient limits" and sending persons suspected of treason to England for trial, were unconstitutional. It

6 Nevins, The American States, 47.
7 Scharf, Delaware, II, 218. This committee consisted of Thomas McKean, John Evans, John McKinly, James Latimer, Alexander Porter, Samuel Patterson, Nicholas Van Dyke, Thomas Kooch, Job Harvey, George Monroe, Samuel Platt, and Richard Cantwell.
was further resolved that the acts for punishing Boston were oppressive, and that it was the duty of the colonies to aid Massachusetts Bay by lawful means to remove her grievances.\(^8\)

On September 5, 1774, Deputy Governor Penn wrote to the Earl of Dartmouth that representatives of Delaware had met in Congress with the representatives of other colonies "to consult on the proper means of obtaining relief from hardships which they suppose to be entailed on the Colonies by those acts of Parliament."\(^9\)

2. The Association.

In October, the situation took on a more dangerous aspect when Delaware's three delegates in Congress signed an agreement known as the Association, which bound the colonists not to import or consume British goods after December 1, 1774, and not to export merchandise to Great Britain, Ireland or the West Indies after September 10, 1775 unless Parliament should repeal the obnoxious acts.\(^{10}\) On November 28, the Newcastle County Committee resolved to uphold those articles of the Association which counselled frugality, industry and the promotion of agriculture and

\(^8\) Scharf, *Delaware*, II, 219.

\(^9\) Cobbett, *The Parliamentary History of England From The Earliest Period to the Year 1803*, XVII, 133.

\(^{10}\) Scharf, *Delaware*, II, 220.
manufactures, stabilization of prices, and the boycotting of merchants who raised prices because of the scarcity of goods. 11 On December 5, this Committee approved the Association and recommended a strict observance of it. 12 On December 21, it resolved that contributions for the relief of Boston ought to be continued, and that the Committee of Correspondence should collect the money. It also asked that a militia be formed. 13

These measures must have furnished causes for discontent to those who were wholehearted in their support of Parliament. The resolutions calling for the relief of Boston, a place far distant from Delaware, and for the formation of a militia, 14 touched the pocket-book of the poor farmer as well as the city dweller. The terms of the Association, affecting almost every industry of the small colony, must certainly have added fuel to the controversy which, though smoldering now, was about to burst into flames.

11 Scharf, Delaware, II, 220.
12 Peter Force (comp.), American Archives, 1774-1776, series 4, I, 1022. Hereafter this work will be cited as Force, Archives.
13 Ibid.
14 A Militia organization had first been formed in Delaware in 1704. It evidently disappeared, however, for there seems to be no more records of it until 1755 when an act was passed reviving it. Another militia act was passed in 1757. Conrad, Delaware, I, 114-115.
CHAPTER III
EARLY MINOR ACTIVITIES OF THE LOYALISTS

1. Robert Holiday.

In the first week of February, 1775, there appeared in the Pennsylvania Ledger a letter entitled "A Letter from Kent County." The writer said that the people had begun to change their sentiments concerning political matters and were coming to realize that "such violent measures as have been pursued will not heal but ... widen the breach" with Great Britain. He stated that the Friendly Address and other moderate measures had opened the eyes of many to the dangers of a radical course. Then he wrote "... I believe if the King's standard were now erected nine out of ten would repair to it." He warned the readers against a war with Great Britain; lamented the possibility of destroying a peaceful and prosperous country and concluded by exclaiming "Who could think that a three penny duty on tea could have occasioned all these difficulties, when only a refusal to purchase the article would have kept us free!"

To the radicals of course, this letter was a rank

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1 Scharf, Delaware, II, 221, citing the Pennsylvania Register.
piece of Toryism. On July 13, the Philadelphia Committee of Correspondence inquired of the Kent County Committee concerning the truth of the statements made in this letter. Two days later the Kent County Committee replied that the inhabitants of that county had not changed their opinions with respect to the dispute between America and Great Britain. It also characterized the letter as being "...a base calumny, replete with falsehood, and only designed by the wicked, insidious author to cause divisions and exite... distrust in the minds of Americans..." In conclusion the committee requested the Philadelphians to discover from the printer the author of the letter.²

For a period of over two months no progress seems to have been made in finding the author of the "base calumny." Meanwhile the House of Commons had further excited the radicals by passing a bill which forbade the shipping of any merchandise from any port of Delaware to any other land than Great Britain, Ireland or the British West Indies unless the owner of the goods should swear that they were the products or manufactures of that colony. This act was designed to prevent the shipping of goods of New Jersey, Pennsylvania, Maryland, Virginia and South Carolina through the ports of Delaware.³ Then, in the night of April 26, a

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² Scharf, Delaware, II, 221, quoting the letter.
³ Ibid. 222.
swiftly riding horseman brought the news of Lexington and Concord.

Whether or not these events spurred on the search for the author of the published letter is not known. Nevertheless, on May 2, 1775, the Committee of Inspection for Kent County was presented with a letter signed by Robert Holiday, who confessed that he had written the obnoxious letter. He explained that he had addressed it to Joshua Fisher & Sons, with the caution that it should not be published. Moreover, he declared that the letter had been "somewhat altered from the original." He concluded by saying, "I am sincerely sorry I ever wrote it ... and hope I may be excused for this my first breach in this way, and I intend it shall be my last." However, the Committee of Inspection was not appeased by this expression of sorrow; it ordered Holiday to appear before it and give further satisfaction for his misconduct.

On May 9, Holiday appeared and signed a series of concessions in the form of an address to the committee. Among other things he stated, "I am now convinced the political sentiments ... contained (in the letter) were founded in grossest error, ... especially that malignant insinuation, that 'if the King's Standard were now erected, nine out of ten would repair to it' could not have been suggested but

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from the deepest insinuation." He concluded by begging his countrymen to forgive him for so basely slandering their sentiments and by promising to cooperate with them in "their virtuous struggle for liberty." The address was then ordered published. 5 This case would seem to show that conservative opinion was more prevalent in Delaware than the Kent County Committee cared to admit; otherwise there appears to have been no reason for dealing so severely with a man who had sincerely apologized for writing such a letter.

2. The Relief of Boston.

In the first five months of 1775, the Newcastle Committee of Correspondance had assumed a number of the functions of government. On May 3, it attempted to assume a portion of the taxing power by resolving that money should be raised for the protection of Newcastle County and the other colonies. This measure, however, was opposed and the committee found difficulty in collecting the money. Therefore the justices of the peace and the grand jurymen resolved to vote for a tax of one shilling six pence on every pound of taxable property at the next levy session. This tax equalled the amount which the committee sought to assess, but its collection was now facilitated by a cloak of legality. It was well known, however, that a part of this

5 Force, Archives, Series 4, II, 466-467.
money was destined for the relief of Boston. 6 A further burden of taxation was added when the House of Assembly, at the request of Congress, resolved that Delaware should be charged with its quota of expense, which was to be ascertained by Congress and the Delaware Assembly. 7

3. Thomas Robinson.

When the news of Lexington and Concord reached Delaware and it seemed as if all America was about to burst into flames, many who had formerly supported the policy of Congress went over to the conservative side. Among these was Thomas Robinson. In 1765 Robinson had signed, with five others, a certificate which sent representatives of Delaware to the Stamp Act Congress. 8 On October 23, 1773, the Assembly selected him as a member of the Committee of Correspondance and Communication. 9 In August 1774, he was a delegate from Sussex County to the Newcastle Convention, made up of members of the Legislature, which had expressed its sympathy for the people of Boston. 10 The apparent trend of the radicals toward violence seems to have forced

7 Ibid., 925.
8 Scharf, Delaware, II, 202.
9 Ibid., 217.
10 Ibid., 218.
Robinson to change his political opinions.

On July 18, 1775, a paper addressed "To the Publick" was published by the Committee of Correspondence for Sussex County. This paper stated that there were rumors afloat to the effect that Robinson was opposing the acts of Congress. However, the committee, "out of tenderness to his character," had declined to investigate. But Robinson, thinking that the committee was afraid to act, "began to vaunt and exult, . . . and proceeded more openly and boldly to stamp his vile and slavish ministerial principles upon the weak and unwary. . . ."

Of course, this situation was unbearable, so a sub-committee, meeting at Dagaburry, ordered the authors of the rumors to appear and testify. 11 Peter Watson said that on July 10, 1775, he visited Robinson's store, at the head of Indian River, and saw the clerk, John Goalin, remove some Bohea tea from a ten or twelve pound cannister. The clerk weighed out two small parcles of tea, one of which was presented to a girl and the other to Leatherberry Barker's wife. 12 Robert Butcher testified that, while in company with Robinson, the latter had questioned him concerning the activities of the committees. Butcher had replied that "they were advising the people to muster, in order to defend

12 Ibid.
their liberties." To this Robinson answered that the committees "were a pack of fools, for it was taking up arms against the King; and that our charters were not annihilated, changed, or altered by the late acts of Parliament, and therefore we ought to obey the King..." 13 This damaging evidence was upheld by the statement of Nathaniel Mitchell, who said that Robinson had declared the Congress to be unconstitutional"... and also that the great men were pushing on the common people between them and all danger." 14

With this evidence before them, the committee summoned Robinson to appear for examination on July 22, at the house of William Newbold. Elisha Cottingham, who had been selected to deliver the summons, appeared before the committee, on July 22, and reported that the errant merchant gave his compliments to the committee, but would not appear unless he could bring "forty or fifty" armed men with him. The committee judged his answer to be "insulting and injurious," and resolved to brand Robinson publicly as an "opposer of liberty and the natural rights of mankind." Moreover, it ordered all persons to refrain from trading with him. 15

Robinson immediately took the defensive. In a letter

14 Ibid.
15 Ibid., 1683-1684.
to William and Thomas Bradford, owners of the *Journal* in which the committee's charges had appeared, he insinuated that the accusations had been made for "private election purposes." Disregarding the fact that he had refused to appear before the committee, he stated that he had not had an opportunity to disprove the charges. Appended to this letter was a certificate drawn up by the Committee of Inspection which stated that the proceedings of the Committee of Correspondence in reference to Thomas Robinson were illegal, because only four members of the committee had acted upon the case when there should have been seven. Therefore, the Committee of Inspection asked the public to suspend its judgement on the matter until Robinson could be heard by the "General Committee." Whether or not Robinson was ever heard before the general committee does not appear. However, his petition to the Royal Commission on Loyalist Claims proves that the Committee of Correspondence dealt justly with his case.

4. Rash and Imprudent Expressions.

The Whigs may not have objected to the discussion of their policies in 1774, but in 1775, loose conversation in which they were criticized was resented by them. There is no doubt that oral propaganda, especially if couched in

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economic or political terms, was helpful in preventing converts to the patriotic cause. Much of the evidence presented against Thomas Robinson had been concerned with odd bits of conversation in which he had expressed disdain for Congress.

On August 7, 1775, the Rev. Morgan Edwards attended a meeting of the White Clay Creek Hundred and was forced to sign a recantation. In this document he said that he was sorry for using "rash and imprudent expressions with respect to the conduct of my fellow-countrymen. . . ." He then confessed his wrong-doing and asked the forgiveness of the public. In conclusion he declared his attachment to American liberty. 18 A similar recantation was signed by Hugh Cahoon, who confessed that his expressions had "proceeded from a very contracted knowledge of the British Constitution." 19 On October 16, 1775, Daniel Varnum appeared before the Committee of Inspection for Kent County and signed a confession stating that he was sorry for saying that "he had as lief be under a tyrannical king as a tyrannical Commonwealth, especially if the d--d Presbyterians had the run of it." 20

In November 1775, Samuel McMasters in a letter to James Tilton related the tale of one "J. C.," against whom the

19 Ibid., 218-219.
20 Ibid., 1072.
Grand Jury of Sussex County had returned an indictment. "J. C.," had come into Lawiston on a September day and cursed the Continental Congress and all those who would not curse it. This Tory even went so far as to call "upon the Supreme Being, in a most solemn manner, to d--n the Congress, and all those who would not d--n it; that d--d set would ruin the Country." He was brought up before the Committee of Inspection. Some in the audience wished to execute him; others suggested that he be given a coat of tar and feathers. However, violence was prevented, and "J. C.," was set free after signing a recantation.21

After the Declaration of Independence it became more dangerous than ever to utter rash remarks. There were always tale-bearers to inform the nearest committeeman. Thus, in November 1777, shortly after the British occupation of Wilmington, William Foot told a committee that Joseph Rotheram had said that he would rather starve the Whigs than supply them with provisions.22


When Congress began to issue inflationary currency, there were many who refused to receive it. This refusal, of course, would lower the value of the Continental notes

22 Public archives Commission of Delaware, Delaware Archives Revolutionary War, III, 1306. Hereafter this work will be cited as Delaware Archives.
and work a great hardship upon the patriotic cause. Therefore, on January 4, 1776 the Dover Committee of Inspection resolved that it was essential to the support of the colonies to keep up the credit of the Continental currency. On this same day John Cowgill confessed to the committee that he had refused to receive Continental currency. Furthermore, he said that he would continue to refuse it. Hence it was resolved that Cowgill was an enemy to his country, and he was published as such.

In order to combat this situation the Delaware Legislature passed "An Act to render certain bills of credit a legal tender, and to prevent the counterfeiting of the same and other bills of Credit." Loyalists often acted as agents for the British in passing counterfeit currency into general circulation. On August 9, 1777 Colonel W. Richardson wrote to Caesar Rodney that he had taken one hundred and ninety-nine counterfeit thirty dollar bills from Thomas Cockayne, of Sussex County, who was apparently acting as the agent of Walter Franklin, of New York. Upon examination Cockayne confessed that he had received the bills from

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23 Force, Archives, Series 4, IV, 564.

24 In 1781, Cowgill was a Captain in the First Battalion of the New Jersey Volunteers. Lorenzo Sabine, Biographical sketches of Loyalists of the American Revolution, II, 500. Hereafter this work will be cited as Sabine, Loyalists.

25 The Historical society of Delaware, Minutes of the Council of the Delaware State from 1776 to 1792. Hereafter this work will be cited as Minutes of the Council.
Thomas Lightfoot, a partner with Franklin in an "Iron Works", who, in turn, had received them from Simon Kollick (Kollock?). Both Lightfoot and Cockayne were captured and taken before a magistrate who, for some reason, released them. The counterfeiting of currency probably continued, for on February 6, 1783 the Legislature passed an act to prevent the Counterfeiting of the bank notes of the Bank of North America.27

26 Caesar Rodney, Letters to and from Caesar Rodney, 1756-1784, 211-212. Hereafter this work will be cited as Rodney, Letters.

27 Minutes of the Council, 806.
CHAPTER IV

OPPOSITION TO A NEW GOVERNMENT

Throughout 1774 and 1775, Tories held many official positions, and opposition to these officeholders seldom, if ever, took on a more violent character than that generally indulged in by an opposition party toward the party in power. Conversely, during this period, Tories administered their offices in the ordinary manner. However, when the movement toward independence ceased to be the pet child of the Massachusetts radicals and began to acquire foster-parents in the other colonies, then the placid stream of politics in Delaware took on the forbidding aspect of a mountain torrent.

On May, 1776, Congress passed a resolution requesting the Assemblies of those colonies which had inefficient governments to form suitable ones.\(^1\) This resolution must have had an ominous sound to conservatives, for on June 2, 1776, Thomas Rodney informed his brother, Caesar, that the Tories in the Dover district were circulating a petition against complying with the measure.\(^2\) The storm rapidly mounted to such a height that a Loyalist insurrection

\(^1\) Conrad, *Delaware*, I, 99.

seemed imminent in Dover. Certain petitions against independence were brought down from Philadelphia and spread about the country-side. At the Mispillion muster similar petitions caused a furor of excitement. Some of the men refused to attend the muster again, while others attended but once a fortnight. This muster broke up in disorder. Hence preparations were made by the patriot officers to seize all the arms and ammunition at Lewiston, and plans were laid to seize the "most suspected of the Ring Leaders as Hostages for the good Behavior of their Dependents" if matters became more serious. Clark Swordin and Beauchamp Collins were pointed out as Tories who were spreading propaganda in the lower part of Sussex County. 3

On June 15, the Delaware Assembly, led by Thomas McKean, presented the congressional resolution of May 15 for adoption. The Assembly, in spite of protests from the Tories, who demanded that the constitution be left undisturbed, adopted the resolution. It was further resolved that all office-holders on June 13 continue to execute their offices until a new government should be formed. 4

On July 2, 1776, the Assembly recommended that the

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4 Caesar Rodney, William Killen, John Haslet, and Thomas Rodney, representatives of the Whig party in the Assembly had been instructed to withdraw unless the resolution was accepted. Conrad, Delaware, 1, 100.
people choose deputies to meet in Newcastle, in August, and form a government "on the authority of the people." In Dover the Committee of Safety read the Declaration of Independence and the resolution of the Assembly in public. The committeemen then marched around the public square carrying a picture of the King, which was finally burned. A similar scene took place in Newcastle on July 4, when Colonel Haslet's regiment burned the insignia of the King, which had been torn from the Court house. The recommendation of the Assembly concerning a Constituent Convention provided that ten deputies be chosen from each of the counties to attend the Convention.

The Tories in Sussex drew up a ticket consisting of C. Ridgily, Richard Bassett, Thomas Collins, John Cook, S. West, J. Clark, J. Stout, Thomas White, J. Sykes and R. Lockwood. The Convention met on August 27, "and a warm contest was waged between the radicals and conservatives to gain control of it." The radicals finally won, and

6 Conrad, Delaware, I, 102.
7 Ibid., 122.
8 Ibid., 102.
9 Rodney, Letters, 101. From Thomas Rodney. Collins and Cook later went over to the Whigs and were justices of the Supreme Court. Thomas White became an active Loyalist.
in September the Convention adopted the first state constitution. In spite of this victory, Thomas McKean said that "a majority of this State were unquestionably against the independence of America."  

The Loyalists did not accept the verdict of the Convention quietly. Independence, to them, was treason to the only government which they recognized. Their failure to capture the Convention led them to violent measures in the October elections for members of the Assembly and Council. On election day, October 21, a Tory mob took possession of Lewiston early in the morning. The Sussex Whigs, convinced that they would be easily outvoted by the conservatives, had previously decided to remain away from the poles, and few of them appeared in Lewiston. Near noon a Tory, "turned out by the others for a Bully" approached Henry Fisher, who was sitting at his own door, and demanded an ax with which to cut down the liberty pole in the street nearby. Fisher refused and was dragged into the street, escaping only when some friends came to his assistance. He fled into his house, which the mob, threatening "to roast" him, surrounded. Some one procured an ax, and the mob "went in a Body to the Pole and cut it down. . . ." Amidst wild cheering for the

11 Conrad, Delaware, I, 102. The authorship of this constitution has been attributed to both George Read and Thomas McKean; the point is still in dispute. Nevins, American States, 138.

12 Quoted in Nevins, American States, 305.
King and General Howe, the top of the pole was auctioned off for thirteen pence "meaning...hangman's wages..." Following this, a Tory armed with a club stationed himself at the court house door and demanded that all who entered should declare themselves for the King. Thus the Tories easily swept the elections in Sussex. The Whigs had to be satisfied with petitions to the Assembly for protection. Caesar Rodney at this time failed to be reelected to the Assembly.

The conservatives of moderate stamp won a victory on February 12, 1777, when the Assembly chose John McKinly as the first president of Delaware. His election angered many of the radicals. Thomas Rodney characterized him as the only person who could represent the Whig and Tory "Complexion of this State." He also expressed the conviction that all appointments would be of this character, and that the State would continue in the same "shackling" condition as in the past, "without affording the least aid to the Union except the private influence of a few individuals..."
The elections of October 1, 1777 were again marked by disturbances in Sussex. Two weeks there after, a petition from that county, complaining that some of the "freeholders and electors" were prevented from voting by an armed force, was introduced into the Legislative Council. The results of the Assembly's investigation of this affair do not seem to be known. However, in February of the following year, a bill was passed which provided for a new election in Sussex. These political activities, in conjunction with certain military activities of 1777, led Caesar Rodney, in December, to remain in Delaware instead of taking the seat in Congress to which he had been elected.

In March 1778, the Whigs gained control of the executive branch by electing Caesar Rodney President. This election was held because of the capture of John McKinly by the British in September 1777. McKinly's capture was not at all lamented by the radicals. Caesar Rodney, writing to Thomas McKean, aghs over the possibility of exchanging McKinly in a manner strongly suggestive of crocodile tears. "Mr. Read", wrote Rodney, "lets me know

17 Minutes of the Council, 143.
18 Ibid., 185.
19 Scharf, Delaware, II, 204.
21 Ibid.
that he applied to you to Solicit the Exchange of our late President. . . . I cannot help thinking he ment (sic) well tho he might have been deceived by many in whom he placed Confidence. However, the Question is, How his Release can be brought about. . . ." Rodney said further that McKinly was lodged comfortably with his "old friends" Robinson and Manlove. 22

Loyalists holding official positions were hard to discover, and, once found out, were difficult to drive away from their offices. These men, through the maladministration of their offices, were able to render great aid to their cause and damage the position of the Whigs. The administration of justice was a particularly important branch of government to the Loyalists. Seemingly official delays and the improper interpretation of evidence frequently set men at liberty who were guilty of treason. Loyalist judges were particularly irritating to Continental army officers who brought Tories to trial only to see them released.

The Continental Congress on November 22, 1778 recommended to the states that they take especial care in enforcing the proper administration of justice, "as well for the recovery of debts as for the punishment of crimes and misdemeanors." The Assembly, on April 10, decided to uphold

22 This probably refers to Peter, Burton, or Thomas Robinson and Boaz Manlove who were very active Loyalists. Rodney, Letters, To Thomas McKean, March 9, 1778.
this measure by a series of resolutions. One of these stated that a number of judges had neglected to serve; some of those who did accept failed to enforce the state laws, or punish treason and the harborers of deserters, or to prevent discrimination between Continental currency and bills of credit issued by Great Britain, while others fled to the enemy. 23 The Council disagreed with this resolution because the charges made were not specific and also because the justices were not named. The Assembly replied by stating that "the allegations . . . mentioned are self evident and well-attested facts, known to have been committed by several of the . . . Justices in some of the Counties within this State. . . ." This quarrel between the two Houses lasted until the House of Assembly, on May 8, consented to strike out the resolution. 24 Evidently the Whigs thought it was necessary to the peace of the state not to remove Loyalist officials by force. When a few Sussex Tories were confined in jail in Philadelphia, it was suggested to the Board of War that "they are much more likely to have an Impartial Trial (in Philadelphia) than here, (in Lewiston) where at least two-thirds of the County, by the Influence, Lies, Falsehoods, & base insinuations of . . . Joshua Fisher, and about a score of leading Men, who at

23 Minutes of the Council, 221-223.
24 Minutes of the Council, 236-237; 239-240; 256-257; 258.
that Time, held all Offices . . . in this County, are dis-
affected to the American Cause, yet by their numbers will ...
be elected to fill their places again . . . " The Board
of War was asked to examine a certain Tory in order to
ascertain if he could prove enough to convict "Lawyer
Moore" and Peter Robinson, "late Sheriff." 25

On October 23, 1778 the Council received three petitions
from Sussex County complaining that undue influence had been
exercised in the last election. Summons were issued to a
number of witnesses who were heard two days later. The
Council finally resolved that no undue influence had been
used. 26

A further political blow was dealt to the Tories when,
on February 3, 1779, the delegates of Delaware in Congress
were authorized to sign the Articles of Confederation. 27

The October elections of 1779 were marred by charges
of malpractice from Kent County. Whether an investigation
was held does not appear. The Council committee's report
was rejected since the petitions referred to elections for
the Assembly. 28 The conservatives again came into power

VIII, 52-53.
26 Minutes of the Council, 316-319.
27 Ibid., 397.
28 Ibid., 446-447; 454-455.
when John Dickinson was elected as the successor of Rodney in 1781. 29

29 Nevins, *The American States*, 306. Dickinson was elected President of Pennsylvania in the autumn of 1782 and resigned the Presidency of Delaware in 1783.
CHAPTER V

LOYALIST MILITARY ACTIVITIES

As the movement toward independence progressed, the people of Delaware became more and more divided. The irritating spying and tale-bearing of Committees of Inspection, the punitive measures of the Committees of Safety, with their startling usurpations of governmental authority and the economic ruin which descended upon poor folk when Continental currency replaced hard money, soon drove the people of the state into two armed camps, although not all illicit traders were Loyalists. Even the test of the battlefield did not show whether a man was fighting for the empire or merely to eliminate the Whig measures which made salt hard to get and hard money a rarity.

In the last week of March 1776, the British man-of-war Roebuck sailed up Delaware Bay to be joined a few days later by the sloop Liverpool. On May 8, Delaware received its first taste of real war when thirteen row galleys successfully opposed the thundering guns of these ships off the mouth of Christiana Creek. This engagement

1 Scharf, Delaware, II, 225, 227.
2 Conrad, Delaware, I, 121.
was described by John Adams as "a gallant battle" in which "the men-of-war came off second best; which has diminished, in the minds of the people on both sides of the river, the terror of a man-of-war."³

In June the Tories of Sussex arose in insurrection. On June 11, the Lewiston Committee sent word to Congress that a thousand Loyalists were assembling about eighteen miles from the town. It was believed that they intended to cooperate with the British fleet.⁴ At two o'clock in the morning of the thirteenth, Thomas McKean wrote to the President of Congress that the Tories were assembling near Cedar Creek and that they intended to join some British forces "now in Horreact Road." The British plan, said McKean, was to cut off three companies of Continental troops at Lewiston. The Tories had obtained arms and ammunition from the men-of-war. Colonel Haslet's battalion was ordered down from Wilmington but both militia and regulars were "ill provided with arms..."⁵ At seven o'clock in the evening of that same day McKean informed Congress that the insurgents had dispersed as the result of a conference between their leaders and some of the members of the Committee of Safety. The Tories denied that they had traded with the

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⁴ Scharf, *Delaware*, II, 228.
men-of-war, or that they were dissatisfied to the American cause. The real reason for the uprising, said McKean, was not known to the Assembly. The Whigs of Sussex, he continued, a thousand militiamen from Kent, and two companies of the Newcastle militia had marched swiftly upon Lewiston. However, the Tories dispersed and the subject was turned over to the civil authorities.  

The three companies of Continental troops, which the British were supposedly seeking to cut off, viewed the situation with much more alarm than McKean’s dispatches indicated. Captain Enoch Anderson, an officer in the Delaware Regiment, described the position of the patriot soldiers by saying "Here we were in the land of Tories - the British men-of-war lying in the bay opposite to us - not more than one mile, - and in the interior surrounded by these Tories."  

Anderson obtained permission to visit his family in Newcastle. On his return he went to Dover and found the inhabitants in confusion, for it was rumored that "the

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7 He was captain of the Fourth Company of the Delaware Regiment. General Smallwood described him as "a jolly - a merry fellow - a little wild and fond of dancing, but... faithful to his duties." Conrad, Delaware, I, 135.

8 Enoch Anderson, "Personal Recollections of Captain Enoch Anderson, an Officer of the Delaware Regiments in the Revolutionary War," 7-8, in Historical Society of Delaware, Historical and Biographical Papers, II.
Tories had risen in Sussex. . . ." He volunteered to serve with the local militia, but as no Tories appeared he again started toward Lewistown. Having ridden but two miles, Anderson was met by "a whole Regiment of Tories going to Dover." However, they let him pass in spite of his Continental uniform. But "some miles further on" he came to a tavern "full of Tories" who also let him pass. However, he soon met seventy armed Loyalists who stopped him and searched his saddle bags. After he had told them some "merry stories", they were persuaded that he was a good fellow and so let him go. At Lewistown he found much confusion. A defensive force of Continentals and militia was hastily assembled under the command of Major Macdonough. "I think it was the third day," wrote Anderson, "that we were surrounded by about fifteen hundred Tories" armed with guns, clubs, and pitchforks. The beleagured patriots numbered about three hundred. Anderson suggested that the Tories soon dispersed because the sentinels of the besieged cried "All's Well" so often that the Loyalists thought they were cheering the arrival of reinforcements. Following the peaceful dispersion of the insurrectionists, a detachment of troops occupied Lewiston for a month and then rejoined the Delaware Regiment at Wilmington.

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9 Anderson, Recollections, 8 - 12.
10 Ibid., 13-16.
11 Conrad, Delaware, I, 121.
After this insurrection many Tories were arrested and disarmed. On June 30, John Haslet wrote to Caesar Rodney that Job Ingram was taken prisoner and brought to Lewiston. "A small detachment of Delawarea and Riflemen went in Quest of the General Boar but returned with non inventus est - Capt. Overlin & others have aigned the Declaration, & been disarmed. . . ."12

However, in the early part of July Sir William Howe took possession of Staten Island and the Delaware militia were called to form a flying camp and proceed to the defense of Philadelphia. This, of course, left the Tories a great amount of freedom.13 Also, Lord Dunmore had landed in Maryland. There was a great fear of Dunmore among the Whigs, because they thought many of the Tories would flee to him. A part of an independent company and a company of the Delaware battalion were ordered to march into the lower part of Sussex, where the disaffected were supplying Dunmore with produce.14

Enoch Scudder informed the Council of Safety that on July 3, while traveling from Philadelphia, four men had asked if he were on his way to join Dunmore. Inquiring about the number who might possibly join the Virginian,

12 Rodney, Letters, 93-94.
he was informed that fifteen hundred might be collected near Cedar Creek. In the harvest fields Scudder had heard it said that those who had persecuted Loyalists "should not be suffered to pass without a guard." He had been told that Boymer Lloyd was already with Dunmore.\(^\text{15}\)

A number of armed British vessels had appeared in the rivers of Delaware, and to these the Loyalists came to trade. The presence of troops did little to change the sentiments of the disaffected, although a number were arrested and disarmed. Raiding parties from the British ships, supposedly belonging to Dunmore's fleet, drove off cattle. The trade with the enemy assumed such proportions at this time that a Whig said there were six Loyalists to every patriot in Sussex. He also stated that unless Congress sent aid it would be necessary for all the inhabitants to go over to the enemy in order to protect their property.\(^\text{16}\)

As a result of this situation Congress ordered one company of Colonel Haslet's regiment to proceed to Lewiston and the remainder to march to Wilmington.\(^\text{17}\)

Trade with the enemy and Loyalist insurrections did much harm to the patriot cause, which was greatly augmented by the refusal of many men to join the army or militia. In

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15 Force, Archives, Series V, I, 11.
16 Ibid., 9-11.
17 Ibid., 9-10.
the autumn of 1776, a flying camp was organized to defend the shores of Delaware and Chesapeake bays. John Clark, the sheriff of Newcastle County, trying to organize a company, found that out of fifteen men only four were willing to march. Four replied that they would not march, one said "I never will march", two declared "I'm damned if I march", one dared not leave his family in distress, two had hired substitutes, and one had sent his son to the army. 18

As the Patriots had much difficulty in enlisting men, so they did in keeping them in the army. On January 31, 1777, General Washington sent a circular letter to the states suggesting that severe penalties be placed upon those harbouring deserters or failing to give evidence against them. He warned that "... our new Army will scarcely be raised; before it will. . . dwindle and waste away ...." 19 On February 22, the Delaware Legislature passed "An Act against Desertion and harbouring Deserters, or dealing with them in certain cases." 20 This act however does not seem to have answered the purpose, for on March 10 the Council received a letter from Washington stating that the penalties

18 Scharf, Delaware, II, 239.
20 Minutes of the Council, 86.
provided were too lenient. An amendment to this act was passed by the Council on March 17, and on April 4 a new act was passed.

Throughout April and May, Washington was puzzled by the movements of Sir William Howe. Writing to Congress concerning the British movements, he said, "In my opinion Delaware Bay is their Object, and Chesapeake only thrown out, by way of blind; their late attempt to procure Delaware Pilots seems to confirm it." It would have been very difficult to navigate the Delaware without experienced pilots, and Howe seems to have made a number of attempts to find some Loyalist pilots. Washington, on April 5, wrote that an agent of Howe's, captured while attempting to engage some pilots, "got exalted upon a Gallows at Philadelphia the other day." The lack of troops at this moment, when the state was in danger of an invasion, seems to indicate that a great many people either favored the British, or did not care to face the dangers of battle. Washington complained to Congress, on April 12, that Delaware had not sent in the

21 Minutes of the Council, 194-195.
22 Ibid., 198.
23 Ibid., 217-218.
24 Writings of Washington, VII, 348.
25 Ibid., 361.
returns of its regiments. Rodney said in explanation that "Great Numbers of the people" refused to associate because it was cheaper to pay the fine than to "Equip themselves, attend Musters and lay themselves liable to be called into actual Service. . . ."

Along with the danger of invasion came the fear of insurrection. Complaints were sent to Congress from Sussex County stating that Tories were engaged in open trade with British men-of-war, that some had promised to help British sailors in kidnapping Patriots, that one person had already been carried off and put in irons, and that many Tories had gone into the British service. It was also said that large sums of counterfeit Continental currency, distributed by the men-of-war, had been circulated in Sussex, and that Sussex Tories were in communication with Loyalists in the Maryland counties of Worcester and Somerset. Fearing a junction between the Maryland and Sussex Tories, Congress resolved that the governments of the two states should take measures to prevent uprisings. President McKinly immediately ordered Caesar Rodney to make an investigation into the "Conduct of the Inhabitants" of Sussex.

26 Writings of Washington, VII, 397.
27 Rodney, Letters, 183.
28 W. C. Ford, (ed.) Journals of the Continental Congress, VIII, 528-529. Hereafter this work will be cited as Journals of Congress.
In July, as the danger from Howe became more imminent, the militiamen began to demand more wages. Caesar Rodney asked Thomas Collins to fix a guard at Cross Roads. Collins gave the order to a Captain Reas, who was not able to get a single man to serve. He was told that the wages were not sufficient. Collins offered the men five shillings a day, only to be informed that twenty shillings was the lowest acceptable wage. "It... Seems", wrote Collins, "that the devil or something else is got into the people for many of them is (sic) endeavouring who can make the most confusion... I think at present that the Militia will not be worth a groat in a little time..." 30

In the last week of July 1777, a large British fleet appeared off Delaware Bay. For two days the ships manoeuvred in an apparent attempt to get into the Bay, but, failing to do so, they sailed out of sight. Several Loyalists from Indian River went on board, including two pilots, Samuel Edwards and Nehemiah Field. The disaffected were highly disappointed because of this failure. 31

The closeness of a British force and the hope of receiving aid from it, were probably the causes for a small insurrection in Sussex in August, 1777. President McKinly, on August 12, gave Caesar Rodney the command of a detachment

31 Ibid., 203-204.
which was to march into Sussex and suppress the uprising. 32 The impression of men for the army or militia seems to have been a cause for the discontent in Sussex. 33

On August 22, Howe's fleet appeared in the Chesapeake and anchored off Patapaco. General Washington then proceeded to Wilmington and established his headquarters. 34 On the twenty-fifth, the British landed six miles below the Head of the Elk at a point opposite Cecil Court House. They were met at Cooch's bridge by a small detachment of Washington's army and an unimportant skirmish ensued. 35 While at Wilmington, Washington ordered his officers to keep a sharp lookout for "strange faces and suspicious characters which may be discovered in camp..." 36

On this expedition Howe was accompanied by the Queens Rangers and a detachment of the Royal Guides and Pioneers, both of which were Loyalist organizations. These received many recruits from both Delaware and Pennsylvania. On August 31, the Loyalists were further encouraged by a proclamation which promised protection to all who would swear allegiance to the Crown, within sixty days.37

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33 Ibid., 207.
34 Conrad, Delaware, I, 130.
35 Ibid., 118. 131.
36 Writings of Washington, IX, 189.
On September 6, Caesar Rodney informed Washington that some Tories in Kent County had joined, with a number on the Maryland border, for purposes of insurrection and some, he said, were already taken. Rodney also said that "it is believed they were encouraged to it by the Methodists." 38
On the following day, Washington replied by asking that a "severe example" be made of the ring-leaders in any possible uprising. 39

The British Army, in its advance along the Delaware border, on September 11 routed one division of Washington's army at Chadd's Ford, on Brandywine Creek. The remainder of the army managed to retreat in fairly good order. This victory led to the British occupation of Wilmington, a manoeuvre which brought great hope to the Loyalists. 40

When the British entered the city in the dead of night, they managed to capture President McKinly and the state papers. 41

In the night of October 11, a number of militiamen

39 Writings of Washington, IX, 195.
40 Conrad, Delaware, I, 106.
41 Nevins, The American States, 306. In June 1778 the President of Delaware was empowered to appoint agents to search for and secure these papers. Evidently the papers were recovered for in October a bill was introduced into the Legislature to compensate the agents who had procured them. Minutes of the Council, 305-306, 320-321.
entered Chester and captured the sheriff of Sussex County. This official was a Tory, and President McKinly had offered a reward of $300 for his capture. 42

On October 29, 1777, the Delaware Council passed an act providing for the recruiting of six hundred militia. Newcastle County was ordered to provide three hundred men, two hundred were to be recruited in Kent County and one hundred in Sussex. 43 At this time the House of Assembly was not in session. In an explanatory message to the House, on December 10, the Council stated that this act was necessary to prevent the kidnaping of inhabitants who lived near the Bay and river and to prevent the disaffected from carrying on an illegal trade with the British men-of-war. 44 In November, Congress rejected a motion which asked that troops be sent to Lewes to overawe the disaffected. 45

On November 8, Washington wrote to the President of Delaware asking for supplies. He said that the disaffected should be compelled to contribute supplies, and that such a course was authorized by Congress. 46

In the latter part of December, 1777, a severe blow

43 Minutes of the Council, 144-145.
44 Ibid., 153-154.
45 Conrad, Delaware, L, 104.
46 Washington's Writings, X, 21.
was dealt to the Loyalists' hopes when General Smallwood reoccupied Wilmington. However, this victory did not aid in recruiting troops for the patriot forces, and the militia itself was not free of disaffection. A letter from Henry Stevenson to Sir William Howe, dated December 12, shows that the Loyalists in the middle colonies were hoping for a swift British conquest of their region. Stevenson offered a plan for invasion, and added that the inhabitants of Delaware would aid in furnishing provisions.

On March 19, 1778, the Delaware Council turned its attention to Sussex County, which seems to have been the chief centre of the Loyalists in Delaware. It was resolved that all armed Tories should be disarmed and their leaders arrested. The justices of the peace were ordered to investigate certain complaints which charged that "the recruiting officers have committed great abuses in the . . . County of Sussex." It is probable that these officers had resorted to impressment in order to fill the militia quota.

In April 1778, the Loyalists again took up arms. A small fort was erected near Whiskey Town and garrisoned by a number of refugees under the command of Cheney Glow.

47 Rodney, Letters, 249-250.
48 B. F. Stevens, Facsimiles of Manuscripts in European Archives Relating to America, 1773-1783, XXIV, No.2075,1.
49 Minutes of the Council, 200-201.
50 Rodney, Letters, 259-260.
Clow was an Englishman who had been brought as a child to Queen Ann County, Maryland. After his marriage he moved into Kent County. 51 On April 14, the small fort was attacked by a party of about forty Whigs. These were driven off and one Tory was killed. 52 A few days later, however, Lieutenant Colonel Pope succeeded in defeating Clow and burning the fort. It was estimated that the Loyalist leader commanded about 150 refugees, some fifty of whom were captured. 53 Following this uprising, Congress resolved to ask the Governor of Maryland to send three hundred militia and two field pieces into Delaware. Congress also appointed a committee to devise means to suppress insurrections in Delaware and eastern Maryland. 55

Indeed at this time there was a constant fear that the Loyalist refugees, many of whom were actively aiding the enemy, might invade the state. After receiving petitions from Murtherkill Creek and Jones Creek hundreds for guards to be placed at the mouths of those two streams, the Council resolved that several companies of militia should be raised and stationed along the shore of Delaware Bay. 56

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51 Rodney, Letters, Ft. note 2, 259.
52 Ibid., 259-260.
53 Ibid., 261-262.
54 Ibid., 263-264.
56 Minutes of the Council, 245, 247, 254-255.
It was quite common for a party of refugees to land at some unguarded place in the dead of night and abduct a number of the Whig inhabitants. The captives were then imprisoned aboard a British man-of-war. Caesar Rodney wrote to Thomas McKean that ten residents of Port-Pen had been kidnapped and carried on board a British ship in the night of May 7, 1778. 57 During the British occupation of Wilmington, in the autumn of 1777, Samuel Erwin was arrested by a file of Hessians who were led to his house by a personal enemy. He was taken to the "Provo", where he was kept for four days. Then he was placed aboard the man-of-war Diana and held there for nine weeks, while that ship lay in Delaware Bay. Finally he was taken to Philadelphia and lodged for a day and a night in the "new Gaol" and then was given his freedom. 58

It is not certain how many Loyalists were in Delaware. Joseph Galloway, in a letter of June 17, 1778, to the Earl of Dartmouth estimated that at least five hundred men could be raised for the British in each county. 59 Probably more than that number could be found in Sussex. In any case, the Loyalists were present in numbers large enough to keep the Whig inhabitants in fear of attack. Besides there was

58 Delaware Archives, III, 1308-1309.
59 Stevens, Manuscripta, No. 2097, 1-4.
always the danger of dissenision in the militia. In 1778, Abraham Wiltbank, a lieutenant in the Delaware state service, went over to the Loyalists.\(^{60}\) In order to improve conditions in the militia an act increased the fines and penalties on officers and men for refusal or neglect of duty.\(^{\text{61}}\)

The Loyalists seem not to have offered much military resistance in 1779. The Legislature provided for recruiting the Delaware regiment during the summer.\(^{\text{62}}\) On December 23, the guardhouse and magazine on Christiana Creek were ordered sold.\(^{\text{63}}\) But much to the consternation of the Whigs, the quiet of 1779 did not prevail in the following year. In 1780, Loyalist activities of a military sort were revived, and insurrection and privateering again plagued the Whigs.

In April and May, boats commanded by refugees captured many shallows in the Bay and its tributary streams. The crews of captured vessels were placed on parole and ordered to appear in New York within thirty days. This policy was of great aid to the Loyalists, for many who were outwardly Whigs but secretly Tories could make their escape. Caesar Rodney asked Thomas McKean to obtain an opinion from Congress as to whether or not the state authorities should

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61 *Minutes of the Council*, 429.
63 *Minutes of the Council*, 493.
honor the paroles. 64

In June, the Delaware Legislature received, for the first time since the beginning of the revolution, a list of deserters from the Delaware regiment. The men named were in the Kent County jail. 65 Desertions caused much trouble for the patriot forces because it was so difficult to enlist men. Though it is doubtful that these deserters were Loyalists, it is nevertheless true that their desertion and dissatisfaction were aids to the Loyalist cause.

In the first week of August 1780, a serious insurrection broke out in Sussex County. The high taxes necessitated by the war were more responsible for this rebellion than any sense of loyalty to the sovereign. On July 28, the inhabitants of Black Camp asked the people of Cedar Creek to join in a rising against the Whigs. 66 Soon rumors were flying about the county that soldiers had fired upon some people at Black Camp while they were at work in their cornfields. 67 It was also said that the Whigs were forcing the Tories to take the oath of allegiance to the state, 68 and that Major Polk was bringing

64 Rodney, Letters, 341-342.
65 Minutes of the Council, 552.
66 Delaware Archives, III, 1294.
67 Ibid., 1293.
68 Ibid., 1288-1289.
troops to attack the people. 69 These rumors were followed by plans to rise in opposition to the taxes, to prevent the collection of the "Supply tax", and to make the rich pay as much on the pound rate as the poor. 70 Finally, it seems to have been agreed that an insurrection was necessary not only to lower the taxes but also to help the inhabitants of Black Camp. 71

On August 4, George Messick summoned a few men to his home in order to determine whether it would be wise to go to Black Camp, where it was said arms and ammunition could be obtained. 72 On the same day a group of men gathered at David Rortan's plantation for a similar purpose. This meeting sent two of its number to order Justice Simon Kollock not to qualify witnesses "With respect to the Association". 73 Kollock replied that he would proceed according to law. 74

The following day George Messick sent a negro to invite the people to meet again at his home on that night.

69 Delaware Archives, III, 1294.
70 Ibid., 1291-1293, 1295-1296.
71 Ibid., 1287-1288.
72 Ibid., 1288-1289.
73 Ibid., 1295. The document does not reveal the exact nature of this matter relating to the Association, nor has any further reference been found concerning this incident.
74 Ibid.,
Before this meeting took place a number had met at Short's old field and placed themselves under the command of Bartholomew Banum. Banum then marched with forty-five of these men toward Broad Creek, where they expected to collect arms and ammunition from the Whigs. On the march they met and disarmed "John Polk's 25 men". Following this incident, the Tories returned to Short's old field and disbanded. That evening the meeting was held at Messick's home and a roll was drawn up.

In the evening of August 6, another meeting was held at Messick's, with about forty men present. It was decided that they would join with the inhabitants of Black Camp in an attempt to crush the Whigs. Meanwhile Banum had mustered about fifty men at Short's field. These he marched to Elihu Hitchen's old field and encamped for the night. The following morning the men were stationed on each side of a nearby road. A party of Whigs came up and a skirmish ensued, in which one of the Whigs was wounded and taken prisoner. The Tories then marched to Dolby's field near Tindal's field and made camp.

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75 This may have been Major Polk.
76 Delaware Archives, III, 1295.
77 Ibid., 1293-1294.
78 Ibid.
79 Ibid., 1285.
80 Delaware Archives, III, 1295.
During this same day, August 7, a number of men gathered at George Messick's and chose William Dutton, captain, William Ratcliff, first lieutenant, and Job Townsend, second lieutenant. These marched to Tindal's old field, where they joined Banum's men. A member of Banum's company said that Dutton's men numbered about ninety-eight and were called the Cedar Creek Company. They were joined later in the day by nineteen men, led by Major Townsend, who had previously gathered at Messick's house. The Tories were poorly armed, and an attempt to procure some powder had failed. This condition, added to the certainty that the Whigs would soon get reinforcements enough to crush the uprising, led the insurrectionists to send a petition to the Whigs and to disperse on August 9. The petition asked the President of Delaware for pardon, but, since the Tories refused to surrender until a pardon should be granted, it was refused. This insurrection resulted in the death of six Whigs and the arrest of many

81 Delaware Archives, III, 1296.
82 Ibid., 1295.
83 Ibid., 1290, 1294.
84 Ibid., 1295.
85 Ibid., 1292.
86 Ibid., 1292-1294.
of the Tories.

The location of Delaware on the water was a help to the Loyalists. Although the area of the state was small, its coast line was too long for successful defense by a small population torn by civil war. Hence the Loyalists were able to receive aid and provisions from the British men-of-war lying in the Bay and river throughout the revolution and to make swift raids in small boats up the many tributary creeks upon property lying near those streams.

Throughout the summer and autumn of 1780 the Patriots were harried by boats and privateers belonging to Loyalists, who also damaged the trade of New Jersey and Pennsylvania. The Legislature ordered President Rodney to fit out an armed vessel to cruise against the Loyalists and refugees. On January 15, 1781, in a message to the Assembly, Rodney said that collectors of supplies had been unable to transport their goods to the army because of the activities of refugee armed boats. On February 12, the Legislature passed an act for the protection of trade on the Bay and river. Evidently this act did not function effectively, for similar laws were passed in 1782 and in 1783.

89 Scharf, Delaware, II, 256.
90 Minutes of the Council, 595.
91 Ibid., 621.
92 Ibid., 721, 814.
The refugee privateers renewed their depredations in the summer of 1781. In August, Jacob Boulden and other men asked the consent of the Legislature to use the state schooner for an expedition against the Loyalists. In February, the Legislature was forced to pass an act for punishing the seizure of vessels in the ports and harbors of Delaware.

The Loyalists seem to have captured many of the shallows in which the inhabitants of Delaware shipped much of their produce to market. In January 1782, President Dickinson asked the Legislature to amend an ordinance of Congress which provided that no restitution should be made to owners of captured vessels. The amendment provided that a recaptured vessel should be restored to its owner upon the payment of a salvage fee not exceeding one fourth of the value of the vessel. This was to apply only to ships and boats taken within the state, and not to those taken at sea. Rodney said that if this amendment was not passed there would be but few shallows left in the state.

In February, some Loyalist refugees attacked and captured a vessel which had returned from the West Indies with a cargo of rum. It was said that her crew was badly

95 Minutes of the Council, 721.
96 Ibid., 706–707.
treated by her captors. Sometimes a refugee would enter a port in order to learn the sailing schedules of certain ships. On March 24, 1782, a Captain Jones was arrested in Philadelphia, where he had gone for that purpose. Jones had captured a vessel in Delaware Bay, and some of his crew had roughly handled her captain. By a coincidence the two seamen met on the waterfront, and the former captive immediately had his captor clapped into jail.

Pilots were always in demand by the British fleet. Many of them, probably for the sake of good hard gold, fled to the British men-of-war in the Bay. Luke Shields, of Lewiston, was acting as a pilot for one of these vessels when it was captured by the French frigate L'Aigle. He then took service under the King of France, in reward for which both Robert Morris and the French minister asked the Delaware Legislature to pardon him.

In Sussex County much harm was done to the patriot cause by officials who discharged prisoners, or conived at their escape. James Hillis, evidently a good Tory, who was keeper of the Dover jail in October 1782, allowed ten prisoners of war to escape. His excuse was that no provision was made for their support. The sheriff and some

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97 Rodney, Letters, 434.
98 Ibid., 436.
inhabitants recaptured the fugitives, but two of them again escaped. In relating this incident to the Council, President Dickinson urged that a law be passed providing against such occurrences, because, he explained, the escape of prisoners of war made an exchange of prisoners impossible. 100

After his attempt at insurrection, Bartholomew Banum was indicted for high treason, but made his escape. In 1782, he was armed and at large in Sussex County. The Council offered a reward of fifty dollars for his capture. 101

The year 1782 seems to have witnessed the last military movements by the Loyalists, although in 1783 a motion was made in Congress for the appointment of a committee to consider ways and means of restraining refugee outrages. This motion was negatived. 102

Although their uprisings had failed, the Loyalists on land and on the bay and river had rendered good service to their King. Never adequately supported by the men-of-war, or by the British troops, the Tories nevertheless lowered the morale of the Whigs by keeping them in a constant fear. Inhabitants who might have served in the militia, and produce and goods which might have gone to supply the Continental Army or the state militia, were captured. It is

100 Minutes of the Council, 751.
101 Ibid., 754.
102 Journals of the Congress, XXIV, 152.
possible that Delaware might have been held for the
British had the Loyalists been given the proper assistance.
CHAPTER VI

ILLEGIT TRADE

Illicit trade with the enemy perhaps injured the Whig cause in Delaware more than the other activities of the Loyalities. Such traffic was carried on secretly in those places where the Whigs were powerful, or where troops were present. Less caution was needed in a "Tory Country" like Sussex County. A small boat or shallow would slip quietly out of some creek mouth at night and go to a British vessel with a load of farm produce which could be traded for salt and other commodities. Often the British paid in gold.

Sometime in December 1776, or January 1777, three residents of Delaware were spirited away from their houses and placed on board the Pearl man-of-war. Later they testified before the Council that five men of Delaware had come aboard the Pearl with livestock. One of these, Daniel Dingee, was said to be a member of the Council. Upon investigation it was found that he had not been aboard the ship. It is not known whether or not the five traders were apprehended.¹

On May 6, 1777, President McKinly asked Caesar Rodney to place a militia guard at various places where the enemy

¹ Minutes of the Council, 37-38, 41-44.
might land for cattle. McKinly also wrote that officers from the men-of-war were made welcome by some persons living near Mispillion Creek.²

The trade between the British and the inhabitants of Sussex grew to such proportions that McKinly appointed a committee, in May 1777, to investigate conditions in that county.³ This committee reported that "a considerable part" of the inhabitants were unfriendly to the patriot cause and had supplied provisions and intelligence to the British.⁴ The presence of this committee led the Whigs of Sussex to believe that the Legislature would do something to help them against the Tories. However, nothing was done and an appeal was made to Congress on June 24, 1777, in which it was stated that the Loyalists and British even "fish and fowl together in common along the shore. . . ." It was also said that Simon Kollok had procured £17,000 in counterfeit thirty dollar bills from an enemy ship and had gotten accomplices to use the money in the purchase of cattle. The high sheriff was said to be one of Kollok's accomplices.⁵

A resolution of Congress to send a Continental regiment

³ Minutes of the Council, 130.
⁴ Delaware Archives, 1281.
⁵ Ibid., 1281-1282.
to disarm the inhabitants and capture all boats and ships did not pass. On July 15, 1777, McKinly again ordered Rodney to post guards at various places to prevent trade with the enemy and raids by them.

In 1777 the Loyalists were very powerful in Sussex County. Relating the capture of three traders with the enemy, Rodney asked McKinly whether they should be sent to Newcastle for trial or be tried in Sussex. This suggests that the Whigs had little trust in the Sussex County courts. John Conner was sought by the militia, not only for trading with the enemy but also for piloting some of their boats on a raid up Duck Creek. To prevent such activities, the sheriff was sent to Mispillion Neck to establish a guard but was not able to find a man willing to serve. In explaining his failure, the sheriff said it would be dangerous for a resident in that section of the county to oppose the trade. It was also said that the Tories had offered a reward for those attempting to interfere with their traffic.

On July 26, 1777, a detachment of the Kent County militia captured between twenty and thirty Tories who were selling sheep and produce to the enemy ships in the upper end of Sussex County. Thereafter thirty Loyalists

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5 Journals of Congress, VIII, 530-531.
7 Rodney, Letters, 197.
8 Ibid., 195-197.
assembled to march on Dover in order to rescue their captured bretheren, and about ten of these were arrested. ⁹ On July 30, or August 1, an officer who commanded a district around Dover was ordered by Rodney to seize all the water craft within his jurisdiction and place a guard of six men near Craige's Mill. ¹⁰ This order was resented by the majority of the inhabitants because it struck at both the innocent and the guilty. Without boats it would be difficult to transport produce to the cities lying up the river. Correspondence with the enemy signified the giving of intelligence, or the seeking of aid. Colonel Richardson, at that time stationed in Maryland, arrested Peter and Burton Robinson who were accused of corresponding with the enemy. As inhabitants of Delaware they were ordered by Congress to be handed over to that state at President McKinly's request. ¹¹

Washington had barely established his headquarters at Wilmington when the evil effects of the Loyalist trade were brought to his attention. On August 28, he ordered the militia of Kent to send parties into "Sarsafras Neck" to break it up. ¹²

⁹ Rodney, Letters, 200.
¹⁰ Ibid., 202.
¹² Writings of Washington, IX, 141.
On September 26, Jonas Edenfield and Isaac Stedham confessed that they had been aboard the frigate *Cammilla*, where they had bought salt, rum and molasses and had paid for it in money. These two Tories had been apprehended on the word of Baker Johnson, who, in company with his son, had been kidnapped by some of the *Cammilla*'s crew on August 10.  

During the British occupation of Wilmington, trade between the enemy and the Loyalists reached a high point. Hence Washington ordered an officer to take advantage of it in order to inquire about the number and position of the enemy in the city.  

Early in October, 1777, Rodney wrote to Washington that the British were furnishing the inhabitants of Delaware with articles at such a cheap price that an attempt to stop the trade would be useless.  

A letter from Ambrose Serle, then with the British fleet off the Delaware coast, to the Earl of Dartmouth on October 28, shows the position of the Tories in Delaware at that time. Serle stated that in general the people favored the British and had brought them large amounts of supplies. He prophesied the failure of the Lewiston insurrection because the British could give no aid and because

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13 *Delaware Archives*, III, 1284.  
14 *Writings of Washington*, IX, 317.  
the Loyalists were poorly armed. He concluded by saying that the people were in great distress on account of the high prices and the depreciated currency.\textsuperscript{16} One outspoken Tory, Charles Bryson of Christiana, said in the presence of three witnesses that he had dealt with the enemy, intended to keep up this trade, and that since he had sought protection from the Crown he would defend it.\textsuperscript{17}

Necessity, as well as adherence to the Crown, was responsible for the illicit trade. The blockade kept the Loyalists from obtaining certain commodities through ordinary channels, while the British vessels needed fresh provisions. The more important products which the Loyalists furnished to the British were beef, cattle, Indian corn, potatoes, poultry, pork, wood, vegetables, and fruit. In return they received salt, loaf sugar, and brimstone. Salt was the most wanted commodity, and often the poor farmer was forced to pay fifteen shillings for a very dirty bushel of it. Indian corn sometimes sold for three shillings nine pence a bushel, while one man sold eight head of cattle for £120 in gold.\textsuperscript{18}

Congress finally took action to suppress the trade on November 14, 1777, by resolving that the president instruct

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\textsuperscript{16} Stevens, \textit{Manuscripts}, No. 2068, 1-2.  \\
\textsuperscript{17} Delaware, \textit{Archives}, III, 1308.  \\
\textsuperscript{18} \textit{Ibid.}, 1285, 1306-1307, 1310-1312.
\end{flushleft}
the speaker of the Delaware House of Assembly to ask Congress for help if the patriots were not strong enough to suppress it.19 This was a rather belated move in view of the fact that a brisk trade had been kept up since June 1777. The Council considered this resolution on December 10, but a bill was not then passed.20 It was not until May 20, 1778, that the Legislature passed an act designed to prevent this trade.21

Sometimes Loyalist boatmen who did not wish to excite suspicion, would arrange to be captured by the enemy. To prevent this practice, President Dickinson asked, late in January 1782, that the law for preventing trade with the enemy be amended.22 In June, Congress recommended that the Legislatures attempt to suppress the traffic.23 In July an ordinance of Congress was passed which provided that vessels captured by collusion should be condemned as lawful prizes for the use of the state in which the capture was tried.24

Undoubtedly the Loyalists greatly helped the British

19 Delaware Archives, III, 1285.
20 Minutes of the Council, 162.
21 Ibid., 283.
22 Ibid., 707.
23 Journals of Congress, XXII, 341.
24 Ibid., 392-393.
through illicit trade. Had this trade not been carried on
the British troops would have found their position in
Wilmington untenable, and the enemy vessels in the Bay and
river would have suffered, or been forced to resort to
drastic measures to get fresh provisions. If a large part
of the trade had been diverted to Washington's forces
Howe might not have been able to reach Philadelphia. More-
over, by receiving British gold for their produce the
Loyalists further depreciated the paper money upon which
the Patriots were so dependent.
CHAPTER VII

PERSECUTION OF THE LOYALISTS

1. Action of Congress.

Although the Loyalists of Delaware seem to have been strongly entrenched in political office and to have formed a large minority of the population, they were fiercely opposed by the Whigs. Sometimes this opposition took the form of persecution. The Continental Congress, the Legislature, the courts, the Council of Safety and the Whig mob were all instruments of oppression in the eyes of the Loyalists. Moreover, to the danger created by resolutions, laws and court decrees was added the never-ending fear of spying neighbors, who before the Revolution had been perhaps warm friends.

To the farmer or struggling tradesman this period of civil strife must have been one of deep tragedy. To sell to the Whigs meant that one must accept bad money; to refuse to sell meant being heralded in the public prints as an enemy to one's country. During the British occupation loyalty to either faction wavered in the balance, and often the scales were weighted with gold, or the vengeance of the Whigs after the eccentric Howe had left the Tories to the mercies of their countrymen.

On October 6, 1775, the Continental Congress
recommended that the governments of the colonies take measures to arrest and imprison all persons who might endanger "the safety of the colony or the liberties of America." Early in the next year Congress authorized the governments to call upon Continental troops to aid in the capture of Tories. However, in 1775 and 1776 there were only a few cases where such severe action was taken.

In April 1777, driven by the fear of a joint Loyalist uprising in Maryland and Delaware, Congress recommended that those two states arrest all dangerous persons and prevent their communication with anyone except by permission of a government official. Firearms were to be taken from those who had not yet subscribed to the oath of allegiance, and laws were to be passed providing for the appointment of commissioners who should take inventories of the estates of arrested persons. Rents from such estates were to be received by the commissioners and applied to their maintenance until the state government should direct otherwise.

One of the first cases to be tried under this resolution was that of Thomas Lightfoot and Thomas Cockayne. In August 1777, these two men were arrested by Colonel Richardson for

1 Journals of Congress, III, 280.
2 Ibid., IV, 20.
3 Ante., 9-11, 16-17, 31.
4 Delaware Archives, III, 1279.
circulating counterfeit Continental currency, but a local magistrate released them. Richardson suggested to Caesar Rodney that the will of Congress ought to be ascertained. Upon the authority of a resolution of Congress and a specific order by the president of the state, the two men were rearrested and turned over to the sheriff of Sussex County, who was ordered "in the Most Positive terms" to see that they remained in jail until further orders from the president. On October 12, Lightfoot and Cockayne wrote to the sheriff: "On the 25th of ... August two of ... Richardson's officers came to our House just before Night and forced us ... to go with them to their Camp ... and gave us no reason why we were thus treated further than that they were Order'd to take us even at the Risque of their lives; and on the 27th ... we were sent under a Guard ... to Lewes Town Goal, with a Commitment from Caesar Rodney, ... where we remain close Confined, and a Guard of Armed Men sit about the Goal ... who have frequently prevented our Friends from coming in to visit us, and we have never yet been Able to Know either our Accuser or Accusation. ..." The final fate of these men does

5 Ante., 18-19.
6 Rodney, Letters, 210-212.
7 Ibid., 208-209.
9 Ibid., 210-211.
not seem to be known.

The invasion of Delaware by Howe, in August 1777, led Congress again to recommend that all disaffected persons be arrested and disarmed.\textsuperscript{10} During the dark period spent at Valley Forge, Washington had great difficulty in obtaining supplies. In January Congress resolved that all who were captured while trading with the enemy should be tried by court martial. Washington immediately ordered Brigadier General Smallwood to enforce this resolution.\textsuperscript{11}

2. Action of the State Legislature.

Although the Legislature frequently upheld the resolutions of Congress, it was not legally bound to enforce them. Congress passed many resolutions relating to the punishment of treason, but these were not binding on Delaware unless the legislature enacted them. Thus, in all probability, the foundation for later laws dealing with treason was an act of 1719 which provided that trials for high treason should follow the procedure dictated by common law. The death penalty was to be exacted upon conviction for petty treason.\textsuperscript{12}

In January, 1777, the Council issued orders for the arrest of Thomas Robinson and his friend Boaz Manlove, who

\textsuperscript{10} Journals of Congress, VIII, 678-679.
\textsuperscript{11} Washington's Writings, X, 251.
\textsuperscript{12} By Authority, Laws of the State of Delaware, 1700-1797, I, 63-64.
were both notorious Loyalists. 13

The following month the Legislature passed "An Act to punish Treasons and disaffected Persons. . . ." This law provided the death penalty for those who levied war against the state, or who gave aid to its enemies; estates of those convicted were to be forfeited to the state. Those who supported the King, or Parliament, in oral or written form were to be imprisoned for not more than a year and fined not more than £300. A repetition of the offense made the offender liable to imprisonment for not more than two years. 14 Before passing this law, the Council engaged the Assembly in a controversy for nearly a week over certain radical features which provided more extreme penalties and tended to encourage informers. It was the Council which kept the law from becoming an unreasonable and oppressive statute. 15

On June 26, 1778, the Legislature passed "An Act of free pardon and oblivion. . . ." The preamble explains that it was passed in order to allow offenders to return "to their allegiance. . . ." Section two provided that any who had levied war against the state, or had aided its enemies, could return to Delaware with the exception of

14 Laws of the State of Delaware, pg. vol. etc., not given in the typewritten copy.
15 Minutes of the Council, 90-91.
forty-four Loyalists who were named in the act. Those who returned were required to take an oath abjuring their allegiance to Great Britain and pledging allegiance to Delaware. Having taken this oath, the offender would receive a certificate which released him from all charges named in the act. He would also have his estate restored, but be disfranchised. Section four provided that if the refugees did not return and receive a pardon before August 1 their estates would be confiscated. The forty-four proscribed Loyalists were not to receive a pardon, but were ordered to return before August 1 and stand trial for treason, or else lose their estates. Sums were to be set aside from the sale of confiscated property for the care of the wives and children of those who had fled the state. 16

In 1779 this act was amended. The amendment provided that justices of the court of common pleas could receive claims and order trials respecting the titles of properties sold under the provisions of the act. It also provided means for filing claims to titles of properties sold under the act, and stated that such claims should be reviewed before a jury whose decisions would be final. Moreover, commissioners were appointed to receive all money owed to refugees and give receipts in discharge of the debt. If necessary the commissioners could take legal action to

recover such debts. Those receiving sums for the maintenance of children of refugees were required to give security. Finally, the act provided that children upon coming of age could receive the remainder of the sum for which the estates were sold.\textsuperscript{17} A bill for this same purpose had been introduced into the Legislature in February, 1777, but was rejected.\textsuperscript{18} The bill which finally resulted in the act of pardon and oblivion was introduced in May 1778, mainly as the result of a resolution of Congress, which recommended that all the states pass such legislation.\textsuperscript{19}

In February 1777, the Council ordered that the president be requested to write to the Council of Safety of Pennsylvania and arrange for the extradition of Leatherberry Barker, William Bagwell and William Milby and all other inhabitants of Delaware confined in Pennsylvania jails.\textsuperscript{20}

Luckily for the Loyalists and unhappily for the Whigs, the Legislature spent much time in what must have seemed useless debate before laws were passed. There was need for a treason act in 1776, but it was not passed until 1777. Acts to support the Continental currency and various militia

\begin{footnotes}
\item[17] \textit{Laws of the State of Delaware, 1700-1797, II}, 658-664.
\item[18] \textit{Minutes of the Council}, 73.
\item[19] \textit{Ibid.}, 259.
\item[20] \textit{Ibid.}, 87-88.
\end{footnotes}
acts were likewise delayed. Thomas Rodney commented sarcastically upon the situation when he wrote to his brother that "The Great Assembly of the Delaware State rose at last; have past (sic) a Treason act, a Militia Act, and a Act to Support the Credit of the Continental money with five or six other laws. ..." 21

Questions concerning jurisdiction over prisoners sometimes proved embarrassing to the state and to the Continental Congress. Congress desired, if possible, to increase its own power, while the state wished to remain as independent as possible in matters concerning its subjects. President McKinly asked the opinion of Caesar Rodney upon this question. Rodney replied, July 1777, that offenders ought to be tried by the authority and laws of the state, but that changes in the mode of procedure might prevent inconveniences. 22

In March 1778, Congress feared that the British would again invade Delaware. In order to prevent the Loyalists from joining the enemy, it was resolved that Smallwood should be directed to arrest all suspected persons. He was specifically ordered to arrest Thomas White and Charles Gordon, although no charges were preferred against them in the resolution. 23 Their arrest eventually led to a conflict

22 Ibid., 199.
between Delaware and Congress over jurisdiction in the case. White was arrested on suspicion of corresponding with the enemy, being released on parole after a term of imprisonment.24

Early in April a Continental officer, "in virtue of an order of Congress," arrested White with the probable intention of taking him out of the state. In an appeal to Rodney, the commander-in-chief of Delaware, on April 3, White declared his willingness to stand trial, but said that he should not be removed from Delaware.25 Upon receipt of this appeal the Council resolved that White should not be removed from his place of confinement in Dover until further orders were issued by the president of the state.26

This action resulted in a controversy with Congress. The following day the Council considered a resolution which stated it had full confidence that Congress would "not infringe the rights and privileges of this State" by assuming jurisdiction over White for crimes which were covered by the laws of Delaware.27 This resolution, however, was set aside in favor of four resolves which stated in no uncertain terms that jurisdiction in this case belonged solely to the

24 Rodney, Letters, 298.
25 Minutes of the Council, 213.
26 Ibid., 214.
27 Ibid., 218.
state. The first said that any person fleeing to Delaware from another state in which he had committed a crime ought to be delivered up to the authorities of that state. The second ordered that no inhabitant of Delaware should be removed therefrom to answer charges of a crime committed within its boundaries, and that the trial of such a person should be by a jury "of the vicinage" where the crime was committed and under the laws of the state. The third asked that a remonstrance be drawn up by the General Assembly declaring that Thomas White was an inhabitant of Delaware, that he be delivered up to the executive power of the state, with the charges against him, and that he be tried under its laws. This remonstrance and White himself were to be delivered to General Smallwood. Finally, it was resolved that should Smallwood obey the order of Congress the remonstrance should be sent to Congress, with the request that the prisoner be remanded to the executive power of the state. 28

Upon receiving notice of this action Smallwood replied to Rodney, in terms as certain as those of the resolutions, that he would direct the orders of Congress "to be put in execution in the most pointed manner. . . ." Moreover, he was not bound "to waive the execution of an express Order derived from the Supreme Authority of the United States. . . ."

28 Minutes of the Council, 216-217.
The course for the Legislature to follow was to apply for redress to Congress. 29

Congress then considered the evidence relating to the case and ordered that a letter to Delaware be drawn up explaining the grounds upon which White had been arrested. 30 This letter stated that the order to Smallwood to arrest Thomas White and others, "whose going at large he might deem dangerous", was based upon the wish to safeguard Delaware and the other states. Moreover, Congress had been informed "that a very great Majority of the inhabitants of Kent and Sussex and a Part of New Castle" were disaffected, and had pursued a similar course in some of the other states without giving offense. 31

Rodney explained to a friend that the reason for the Legislature's opposition to Congress was that its members thought the latter's action constituted a breach of courtesy since the governing powers of the state were loyal to the cause of independence. 32 Justice Thomas McKean explained that the order for White's arrest had been issued at the request of Maryland's delegates. It was claimed, at the time the order was issued, that White was a subject of

30 Journals of Congress, X, 328, 342.
31 Ibid., 351-352.
32 Rodney, Letters, 262-263.
Maryland and was engaged in a conspiracy in that state. McKean also said that it was planned to hold White and his colleague in Maryland in order to prevent any attempt at rescue by other Loyalists and to prevent their release under the act of Habeas Corpus, which had not yet been suspended in Delaware. Meanwhile, White continued to clamor for a hearing. In April 1779, he requested that he be either given a hearing or be discharged. Caesar Rodney, who presented this request to President Dickinson, said that in his opinion the request was reasonable. However, no action was taken at that time because the papers concerning the case were in the possession of Justice McKean, who was then on circuit. Just what the final fate of White was, is not certain.

In July 1777, when Rodney was attempting to suppress the Loyalists in Sussex, President McKinly offered him the use of the Kent militia should the Sussex militia be unable to cope with the situation. On March 31, 1778, George Read resigned as president of Delaware, and Caesar Rodney was selected to succeed him. Immediately Rodney was

33 Rodney, Letters, 264.
34 Ibid., 267.
35 Ibid., 298.
36 Ibid., 300.
37 Ibid., 201.
authorized to raise a company of troops in each county in order to suppress illicit trade. Subjects of the state were required to take the oath of fidelity to it and to Congress. Moreover, military service was imposed upon all persons except the Quakers, who were allowed to pay a certain sum for exemption.\textsuperscript{38} Just why this act was not passed before 1778, does not appear. Obviously Congress did not have the authority to pass such an Act, but the State did. Certainly such action was needed as early as 1776. Delaware needed such a law as soon as Howe's line of march became evident in the early summer of 1777. Surely at that time compulsory service would have aided not only Washington's weak army but also would have strengthened the Whig party in Delaware, which nearly disintegrated when the Loyalists were strengthened by the presence of the British. One reason for the delay may have been a desire to conciliate the Loyalists, who were far from being weak, especially in Sussex County. However, if such an act had been passed in 1777 most of the people would have been forced to take sides. This would have left only a few neutrals, whereas the policy of delay left a large group who changed sides with mercurial swiftness. This group inflicted incalculable damage upon the Whigs by spreading propaganda and by illicit trading.

\textsuperscript{38} Conrad, \textit{Delaware}, I, 105-106.
The Tory uprising led by China Clow, in April 1778, resulted in the passage of a test act in the following month. 39 This law provided that every male white person twenty-one years old, except Continental officers and soldiers, should take the oath of allegiance. Refusal to take this oath rendered the non-juror incapable of holding civil or military office, voting or serving on a jury. 40 This law was revised in June by an amendment to the act of free pardon in order to make provision for those who had levied war against the state. 41

In October an act was passed providing for a committee on forfeited estates. 42 In December 1778, the Council received a letter from the president of the Council of Massachusetts Bay relating to an act of that state to prevent the return of all persons who had joined the enemy. A similar message was received in May 1779 from the president of New Hampshire. 43 However, no action was taken in regard to either of these messages, probably because their suggestions were covered in the act of pardon and oblivion.

The money collected from the sale of forfeited estates

41 *Ante*, 63.
42 *Minutes of the Council*, 322.
probably amounted to a large sum, which was undoubtedly welcomed by the Whigs. In May 1779, $12,000 was drawn from the commissioners for the sale of forfeited estates and applied to the purchase of clothing for the officers of the Delaware regiment. In December, the Council ordered that all sums in the hands of commissioners for forfeited estates be deposited in the state treasury, after deducting their commissions and the sums set aside by the courts of quarter sessions for the support of the wives and children of those who had forfeited the estates. In April 1780, the Council took into consideration the case of a slave forfeited by Joshua North, of Newcastle County. The slave had been sold according to law but desired his freedom. Several inhabitants who knew him signed a petition requesting the Legislature to remit to him part of the sum for which he was sold, in order that he might raise an equal amount and purchase his liberty. The Legislature, with the consent of the purchaser, remitted the full amount and the slave was declared free.

The Legislature, happily for the Loyalists, did not assume a revengeful role in cases of treason. On November 4, 1780, it passed an act for the relief of certain

44 Minutes of the Council, 418.
46 Ibid., 533-535.
inhabitants of Sussex County who had participated in the insurrection of August of that year.\textsuperscript{47} Early in 1781, the petitions of seven men for clemency were received by the Legislature. They had been convicted of treason and were sentenced to be hanged, drawn and quartered. Each of these unfortunate Loyalists had either children or parents dependent upon him.\textsuperscript{48} It is very doubtful, in the light of the act for relief, if these men were executed.


As the revolution got under way various agencies of government were disrupted by newly formed organizations, whose functions were often vaguely defined. The judicial system of Delaware suffered greatly in this period of confusion because of the usurpation of authority by the various Councils and Committees of Safety, Inspection and Correspondence.

There is very little known about the Council of Safety. It was composed of twenty-one members, seven being chosen from each county. Its duties were largely military, but for the most part were vague and uncertain. However, it did have the power to examine persons suspected of treason and to compel the retraction of treasonable utterances.\textsuperscript{49}

\textsuperscript{47} Minutes of the Council, 587.
\textsuperscript{48} Delaware Archives, III, 1304.
\textsuperscript{49} Conrad, Delaware, I, 114.
In November 1776, when the General Assembly recessed before choosing a president and Privy Council, a Council of Safety, composed of fifteen members, five from each county, was appointed by the Legislature to carry on the government. It is possible that this Council also had the power to make examinations of suspects.

Committees of various types were chosen early in the revolutionary movement. Often these were elected to take the place of local governments which had been dissolved, or as governing bodies where no regular government had existed. Early in 1775, the inhabitants of that district where the boundaries of Delaware, Pennsylvania and Maryland met, were in great confusion because of the "unsettled state of the boundaries" of Pennsylvania and Maryland. It was decided to form a new county and add it to Delaware. A committee was chosen which immediately declared its intention to do its utmost to secure the rights of the people. Among its first resolutions was one to publish the names and sins of all Tories.

The regular courts seem to have conducted their proceedings in a more formal manner than the committees. The latter do not seem to have exacted fines, or imposed sentences, as did the courts, although they conducted

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50 Minutes of the Council, 22-24.
51 Force, Archives, Series 4, II, 1032.
examinations and enforced a few penalties. Of the many procedures used in dealing with treason, that of recognizance was most common. A case in point is that of Littleton Townsend. On August 3, 1777, Townsend, charged with having levied war against the state, appeared before a justice of the Kent County quarter sessions and acknowledged that he owed the state £400. The conditions of the recognizance were that if Townsend failed to appear at the next court of oyer and terminer in Sussex county and stand trial for treason, his £400, to be levied on his property, would be forfeit to the state. Otherwise his £400 would be returned. 52 Between 1777 and 1780 a great many persons were bound by this procedure. Amounts assessed upon property ranged from £100 to £5,000 and were probably determined by the nature of the offense, or by the amount of property owned. In many cases persons volunteered as sureties. 53

Perhaps one of the most troublesome legal practices of the period, was that of summoning a man to appear before a court to answer to charges made against him by another man. Thus it was possible for a person to be bailed before a justice on the mere suspicion of some one.

The justices in certain cases involving treason were

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52 Delaware Archives, III, 1299-1300.
53 Ibid., 1300-1301.
bound by law to deliver a sentence of death upon conviction. On October 4, 1780, eight Tories were convicted of levying war against the state and were sentenced to be hanged, drawn and quartered. However, in such cases an appeal could be made to the Legislature. Since the legislature tended to be lenient, it is probable that this barbarous penalty was never executed.

The trial, conviction and execution of China Clow is an example of the punishment visited upon a notorious Tory. Clow was indicted for leading the insurrection in April 1778. Following the insurrection, he had shot and killed a member of a sheriff's posse which had attempted to arrest him. In 1782, he was finally arrested and brought to trial in 1783. The charges against him were levying war against the state and murdering James Moore. He was sentenced to be hanged. This seems to have been unjust since the act was committed in wartime by a man who had probably never taken an oath of allegiance to the state. The execution of this sentence was delayed until 1783.

Many of the Loyalists, of course, refused to take the

54 Delaware Archives, III, 1302-1304.
56 Rodney, Letters, 263, ft. note.
57 Delaware Archives, III, 1297-1300.
oath of fidelity and left the country rather than be imprisoned. The property of these refugees was confiscated and placed at the disposal of the state. Joshua North, a resident of Prospect Hill, was one of these. Where he fled to is not known.\(^{59}\) Joshua Hill, charged with treason, fled to New York with his family, and at the close of the war emigrated to Shelburne, Nova Scotia. His losses were estimated at £10,000 and the Crown gave him fifty acres of land.\(^{60}\) Thomas Robinson, a true Loyalist, was convicted of treason and fined £1,000 and his property was confiscated. He betook himself to Canada, but later returned to Delaware, where his brother and a son later became justices.\(^{61}\)

4. The Mob.

The mob caused much trouble for both Whigs and Loyalists. When British arms were in the ascendency, Whigs in Tory districts kept to their houses lest they become the victims of rioting Loyalists.\(^{62}\) Likewise, the Tories were liable to persecution by Whigs who would not bear with the delay of ordinary prosecution.

In 1779, the Rev. Freeborn Garrettson was driven out of Delaware by the fear of violence. He had been informed

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\(^{59}\) Scharf, Delaware, II, 214.

\(^{60}\) Sabine, Loyalists, I, 536.


\(^{62}\) Ante, 22-23.
that a mob had collected with the intention of taking him. Garrettsen fled to Maryland, where, in 1780, he was seized by a number of persons and placed in jail. He finally obtained a release through the intercession of friends. 63

Tory Jack, a Loyalist operating on the Delaware River, captured a Wilmington merchant and placed him aboard a British frigate. The merchant escaped and soon afterwards Jack was captured and hanged to an apple-tree. 64 Jonathan Rumford, a shipping merchant of Wilmington, held Loyalist sentiments but was not an open Tory. Nevertheless a mob broke into his house, attempted to burn it, and one of the gang struck Rumford with a blacksmith’s hammer. Luckily, a seaman and two militia captains came to his rescue. 65

Elections were frequently attended by mob violence. The election of 1783 in Sussex County was the scene of much trouble. The inspectors refused to accept the votes of some persons who were legally entitled to vote. A number of former Continental officers and soldiers, in company with an election inspector and his clerk, threatened the people at the polling place with bayonets, swords and clubs. A constable who attempted to restore order was severely beaten. Many electors, in fear, left without casting their

63 Sabine, Loyalists, I, 463.
64 Scharf, Delaware, II, 214.
65 Ibid.
ballots. Joshua Polk, elected as a member of the Council, was declared illegally chosen,\textsuperscript{65} and a new election was ordered in April 1784 in order to fill his seat.\textsuperscript{67}

\textsuperscript{65} \textit{Minutes of the Council}, 864-867.
\textsuperscript{67} \textit{Ibid.}, 873.
CHAPTER VIII

PEACE


The great number of Loyalists in Delaware made easier the reconciliation between Whig and Tory after peace was made.\(^1\) However, there was some persecution of Loyalists after the treaty. In the spring of 1783 the Whigs of Sussex agreed in a convention that if any of the refugees returned the militia officers would give them two days to leave the county. It is exceedingly doubtful that a widespread persecution was carried on.\(^2\) In January, 1785, the Rev. Sydenham Thorne, a Protestant Episcopal minister of Sussex County, petitioned the Council for relief from taxation in Sussex since other clergymen were exempted. The Council took no action in this case.\(^3\) It is probable that Thorne was the victim of anti-Tory feeling.

On January 14, 1784, the treaty of Paris was ratified by Congress. The fifth article of the treaty provided that Congress should recommend to the states that they "provide for the restitution of all estates, rights and properties"

\(^{\text{1}}\) Nevins, American States, 650.
\(^{\text{2}}\) Ibid., 307.
\(^{\text{3}}\) Minutes of the Council, 905.
which had been confiscated belonging to British subjects and those who had not borne arms against the United States. It also stated that persons "of any other description" could reside for twelve months in any part of the United States in an attempt to regain their property. Persons having purchased confiscated estates were to be recompensed by the states for any properties returned to their former owners. Congress was also bound by this provision to recommend that the states revise all laws regarding confiscated estates in the light of justice and conciliation. Congress immediately passed a resolution recommending these measures to the states, but it is very doubtful if Delaware ever took any action to return confiscated property.

2. Loyalist Claims.

In 1783 Parliament passed an act appointing five commissioners to inquire into the losses and services of the Loyalists. These commissioners were given power to examine claimants under oath and to adjust compensation. In February 1784 the Commission examined the claim of John Watson, who had migrated from Scotland to Newcastle, in 1767, where he settled as a surgeon. He had remained quiet

4 *Journals of Congress, XXVI, 26-27.*
5 *Ibid., 30-31.*
6 *Esther Rice, The Recompense of the American Loyalists by the British Government, 21-22.*
until 1777, when he publicly expressed his sympathy with the British government, and was immediately marked as a Tory. When Howe began his invasion of Delaware, Watson was forced to join a provincial regiment as a surgeon or go to prison. In August 1777, he escaped and joined the British Army remaining in service during the rest of the war. He said that he never received pay from the British until he was forced by circumstances to do so. He fitted out a row galley with which to harrass the rebels, but the vessel was lost. Watson became a "Mate of the Hospital", and in 1780 was promoted to the position of "Apothecary to the Hospital." For these services the Commission granted him compensation. 7

In June 1784, that body examined the claim of Thomas Robinson, who testified that in 1774, he was a member of the Delaware Assembly and had opposed sending a delegate to Congress, that he had been in trade for several years prior to the beginning of the war and had owned some farm property, that at the time of Howe's invasion of the state he had offered to recruit men for the British in Delaware, that he accompanied Colonel Campbell on an expedition to Georgia in 1778, and that Clinton had commissioned him a captain of the Safe Guards in 1779, for which he received

7 Hugh B. Egerton (ed.) The Royal Commission on the Losses and Services of American Loyalists, 1783-1786, 81. Hereafter this work will be cited as Egerton, Royal Commission.
five shillings a day until October 1783. From January 5, 1784 Robinson received an annual allowance of £100 from the British treasury.

Further evidence in support of Robinson's claim was provided by Joseph Galloway, who stated that in 1776 Robinson had written an address against independence, for which he was placed in the pillory, and that sometime afterwards he was forced to sign a bond not to oppose any measure of the state. Robinson had been very useful in procuring pilots for Lord Howe. However, he was not given any compensation for the loss of his property, because his brother, Peter, had evaluated it.8

Although fine service had been rendered by the Loyalists of Delaware in the field and by furnishing intelligence and provisions, it is doubtful if very many of them ever received compensation from the Crown.

3. Repeal of Anti-Tory Laws.

With the return of peace, there was little need to continue the laws which had been enacted to combat the influence of the Loyalists. Some of these laws expired by their own limitation when the Treaty of Paris was ratified, but others, which had to be repealed by action of the Legislature, were often not terminated until they had far outlived their usefulness.

8 Egerton, Royal Commission, 139-140.
The act to prevent trading with the enemy expired at the ratification of peace. The "act for the further security of the government", which had provided that all who refused to take a test oath would be disfranchised, was repealed in 1788. Those sections of the act of free pardon and oblivion, which had forbidden certain persons the rights of holding office and of exercising the franchise were repealed in 1790.

With the elimination of these disabilities, it is probable that much of the bitterness caused by the war disappeared. Such of the Loyalists as remained in, or returned to Delaware were no doubt taken back into the community as acceptable citizens.

9 Laws of Delaware, 633.
10 Ibid., 928.
11 Ibid., 968.
# APPENDIX

## LOYALISTS OF DELAWARE

<table>
<thead>
<tr>
<th>Name</th>
<th>Occupation</th>
<th>Township or County</th>
<th>Reference</th>
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<tr>
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