The North Carolina Historical Review

The Sheriff In Colonial North Carolina

By JULIAN P. BOYD

Of the several factors at work in colonial North Carolina in the process of fermentation which was to prepare the public mind for revolution, one of the most important was the effect on the government of the colony brought on by continual antagonism between the ruling class on the one hand and the officials of the crown on the other. This antagonism lasted throughout the period of royal control, and found constant expression in the frequent conflicts between the legislature and the royal governors over such economic and political questions as land, fees, money, and courts.[1] One of the most dependable bulwarks on the side of the colonists in this struggle proved to be the county court of the justices of the peace, together with the small ring of officials attached to this court. For, as a general thing, the officials of the local governmental units belonged to the ruling class and exercised a controlling influence over the legislature. One of the most important of these local officials was the sheriff. The part he took in the political struggle going on in the colony was one of great importance. The influences which were at work through the sheriff, the politics of his office, his position in the colonial scheme of things, and his effect upon the royal government in North Carolina are some of the problems to be discussed in this paper.

There was probably no other officer in the colony, and certainly there was none under the jurisdiction of the county court, who exercised such plenary executive and administrative powers as the sheriff did. He was not only the executive officer of the county court, but, in theory at least, the representative of the crown in the county, just as the sheriff in England was. As a peace officer of the county, the full right of posse comitatus was vested in him.[2] He also had important fiscal powers, being the collector of taxes for the colony, the county, and the parish. He was master of elections for members of the legislature and the local vestries, and throughout the colonial period exercised a growing influence over elections and over the legislature. He acted in most counties as vendue master, and possessed important powers in that office. Such offices made the sheriffalty a position of commanding importance in the county, and caused it to be the prized bit of patronage at the disposal of the county court.

It is also equally true that there was no other officer who made efficient royal government impossible quite so much as the sheriff did. Generally speaking, he impeded all effort at a sound fiscal policy. He frequently misappropriated and embezzled great quantities of the public money. He was a controlling factor in the elections, and at times returned the person of his own choice rather than that of the electorate. His influence was felt in nearly every phase of colonial life: it was even claimed that he retarded missionary endeavor by his lax and dilatory methods of handling the duties of his office.[3]

The office of sheriff, however, was not a sinecure, even at best. Jails were very insecure in almost every county in the colony.[4] The criminals were hardened and desperate, and at times openly flouted the law. Even when captured and placed in jail, they could not be kept there: escapes and jail deliveries were common.[5] Riots and slave insurrections were frequently threatened.[6] And what probably disturbed the sheriff more than unsettled conditions of law and order was the opposition which he met with in the collection of taxes, and the consequent reduction of commissions.[7]

It was not until 1739 that the office of sheriff was created in the colony. Prior to that time, the duties which the sheriff exercised were vested in the provost marshal of the colony and his deputies, usually one in each county. The provost marshal of the colony was appointed by the king, was paid out of the public funds, and collected certain fees fixed by the legislature for himself and his deputies.[8] The deputy marshals in the various counties were appointed by the provost marshal for the colony,[9] usually with a certain sum being stipulated in the commission which the deputy was required to pay the provost marshal annually for the office.[10] The deputy marshal was the executive officer of the court, and was obliged to execute all writs, warrants, executions, and orders of the court.

The important change in the office which took place in 1739 was not simply a change of name, but a change in the method of appointment. The old method whereby the office was farmed out through several steps, from governor to provost marshal to deputy marshal, and perhaps to several sub-deputy marshals, was abolished and the system was theoretically placed more under the control of the governor. The sheriff was nominally commissioned by the governor, but in actual practice the appointment was in the hands of the county court. Therein lay a very significant fact: the creation of the office of sheriff was evidence of the growing political power of the county court, and was the direct result of a popular demand for the establishment of the office.

The first notice of any agitation for the creation of the office of sheriff is found in a letter from Governor Johnston to the Board of Trade, in which he points out the impossibility of collecting the quit rents, if allowed to be paid in commodities, without establishing the office of sheriff. "“There are," he wrote, "a thousand inconveniences in this wide extended country for want of sheriffs and the people are strangely bent on having them established by law."[11] The popular demand prevailed, and in 1739 the General Assembly passed an act entitled "An Act for appointing Sheriffs in the Room of Marshals of this Province, for prescribing the method of appointing them, and for limiting the time of their continuance in Office, and directing their Duty therein, and for Abolishing the Office of Provost Marshal of this Province."[12] The preamble of the act showed it to be the result of a popular demand:

> "The Office of Provost Marshal hath been found to be very inconvenient in this extended Province, the Deputy Marshals not only neglecting, but frequently refusing, to do their duty .... which hath occasioned great Murmurs and Discontents among the Inhabitants of this Province."

The act gave the control of the appointment of sheriffs to the county courts by providing that in every precinct[13] in the colony the court should recommend three persons "as they shall think most fit and able" to the governor, who was empowered to select one of the nominees to be sheriff for the next two years. A limitation was placed upon this nominating power which gives evidence of the control exercised by members of the county courts over the legislature; namely, the justices of the peace could not nominate a person to act as sheriff who was not a duly qualified member of their court. The sheriff, however, was not permitted to act as a Justice or sit in the quarter sessions during his term of office. The act further provided that the sheriff should give bond to the king in the sum of at least five hundred pounds sterling, and that if any person nominated to the office refused to accept the appointment, he should thereby forfeit eight pounds proclamation money. If the

county court refused to nominate three persons for the office, the governor was empowered to nominate any other justice, or anyone whom he might then appoint a justice, to fill the vacancy. The governor also had power to appoint in case of vacancy by death. This act would have abolished the office of provost marshal before Sheriffs could have been appointed by the county courts, and to obviate this difficulty the legislature passed an amending act two days later providing that the governor with the consent of the council might appoint sheriffs for every county in the colony for the two succeeding years.[14]

The first act, broadly defining the duties of the sheriff, provided that he should execute, by himself or through his deputy,[15] all writs and precepts directed to him by the county court. The sheriff or his deputy was required to be in constant attendance at the court where his jurisdiction lay, otherwise to suffer amercement at the hands of the court. It was his duty to arrest any person for treason, felony, or any breach of the peace at any time, though he could not serve a writ on Sunday. The sheriffs of the various counties were obliged also to attend in turn the various meetings of the general court, according to rules established by that court, in order to serve writs and summon jurors to the court.

The act of 1739, providing for a specific term of years for the sheriff to hold office, was defective in that a sheriff would often go out of office before another could be appointed to succeed him. In order to remedy this an act was passed in 1745 which provided that the sheriffs should continue in office until their successors had been appointed and qualified.[16] The most important provision of this act, however, was that amending the provision of the act of 1739 which confined the nominations for sheriff to the justices of the court. After 1745 the justices were empowered to recommend for sheriff any freeholder, excepting the members of the legislature and the members of the governor’s council. The reason for this change, the law stated, was the difficulty of finding men to execute the office, since the persons nominated frequently chose to pay their fines rather than act in the office. This provision, however, did not prevent the courts from continuing to nominate justices of the peace for the office just as had been done under the act of 1739.

The acts of 1739 and 1745 only defined the duties of the sheriff as an officer of the court and prescribed the method of his oppointment. There were many other acts passed subsequently which dealt with the office of sheriff directly or indirectly, and these had for the most part to do with his fiscal duties, such as collecting the taxes, settling with the treasurers and the county courts for the taxes collected, selling at public vendue the estates of deceased persons and property attached by him at the order of the court, attending to the prison and prisoners under his care, and other such duties. In addition to these powers conferred by statute, the sheriff enjoyed all other powers or duties conferred on him by the county court. He was sometimes ordered by the court to secure Jailers, to repair the jail, the court house, or other public buildings, or to see that it was done, to let bids for the building of warehouses, ferries, jails, court houses, and other public buildings,—to do, in short, on the order of the court all those things necessary for the judicial and administrative government of the county.[17]

THE APPOINTMENT OF THE SHERIFF

The importance of the sheriff in colonial government is nowhere shown so clearly as in the politics of appointment to the office. The governor nominally appointed the sheriff in the name of the king, but this control amounted to little in actual practice. The real appointive body was the county court.

The most striking indication of local control of the appointment to the office is shown in the fact that the justices of the court rarely nominated a person for sheriff who was not a Justice of the peace. This practice, of course, was made mandatory by the law of 1739, but although that provision was repealed in 1745, the justices of the courts continued to nominate one another for the office down to the Revolution.[18]

Another interesting fact is that the justices apparently had few scruples about voting for themselves in the nominations. At the nomination for sheriff in Pasquotank County in January, 1742, there were three persons present at the court, and the nomination which was returned to the governor contained only the names of these three men.[19] There were numerous other instances of a like character.[20] Toward the close of the royal period, however, there seems to have grown up in the county courts a prejudice against this practice of self-nomination. In response to such a nomination "for sheriff in Tyrrell County in 1764, the court at a subsequent meeting passed the following order:

> "The Court being of opinion that as the former recommendation of Sheriff being entered by order of three members only & as one of them was recommended & at the first of the court, we recommend the following persons, Vizt: William Carkeet, James Johnston, and Major John Hardison."[21]

This nomination prevailed, for James Johnston was made sheriff.[22]

At any rate, it is certain that toward the close of the royal period the nomination of sheriff was no longer left to a small group within the court, but almost the entire court engaged in the nomination. Ordinarily at the quarter sessions of most of the counties there were about three to six justices on the bench, and rarely over eight, even in the most populous counties in the eastern section. But when the nomination of a sheriff was before the court, practically all of the justices in commission in the county were present. A good example is found in the Bute County quarter sessions in May, 1772. On Tuesday, May 12, there were only four justices present, including two of the three men later to be nominated. On May 13, the day of the nomination, there were twenty justices present, including all three of the nominees. On May 14, the Justices had all returned to their plantations, for there was barely a quorum, three justices, left to attend to the ordinary administrative and judicial business of the court.[23] In the same county in May, 1774, a similar situation occurred. At the opening of the court on the day of nomination, there were only three justices present. When the nominations were held, there were twenty-one justices present.[24] A similar case occurred in Orange County in May, 1764.[25]

With local politics thus entering into the nomination of the sheriff, the matter of appointment could hardly be said to have been under the direct control of any influence other than the county court. That nomination was considered as virtual

election is shown not only by the above facts, but also by the fact that sometimes the courts returned only one nominee when the law required that three be returned.[26] This local control is still further shown in the practice of nominating three men according to law, two of whom the justices knew would not accept the office if offered them.[27] Then, too, there were personal and family politics working both upon the county court and the royal governors. An example of this is seen in the following letter from Robert Jones to Governor Dobbs:

> "I suppose you have not forgot the Sollicitation I formerly made in favor of my kinsman John Jones for the office of Sheriff of Northampton and Herewith you have a copy of the last Recommendations of persons fitly qualified to execute the said office in which you'll find him included. If you"ll be so kind as to grant him a commission for that purpose, you"ll do me an additional favor in sending it by the Bearer."[28]

Sometimes, too, the members of the legislature added their influence to the matter of getting sheriffs elected, especially when, due to lack of courts or other reasons, the justices failed to nominate.[29]

The governor, however, did have a slight, though nominal control over the office. Every commission appointing a sheriff contained the specific phrase that such commission was issued during pleasure only, and could be revoked by the governor at any time.[30] There were also various amendments to the laws as to the manner of appointing which gave a modicum of power to the governor. These acts, however, gave the governor power over appointments only in exceptional cases. In no sense did they give him any effective control over the manner of appointment, or give him the power of determining the matter of personnel.[31]

The council, usually siding with the governor in upholding the prerogatives of the crown, was inclined to give him some power in the matter of appointing sheriffs. In 1774 it expressed the unanimous opinion that the governor had power to appoint sheriffs in case the law providing for their appointment had expired before the county courts could comply with such law.[32] In 1749 the council made the unique order that "no future person keeping ordinary be recommended to the governor to be appointed Sheriff for any county within this Province."[33] This order was sent to the various courts, but it is not at all certain that it was enforced. For even after a person was appointed sheriff by the governor, there was nothing to prevent the county court from granting him a license to keep an ordinary. This was frequently done.

As a matter of fact, the royal governors were not extremely anxious to assert their authority over the county courts or their officers too strongly, for by doing so, they would have aroused the hostility of the legislature, which was to a large extent made up of justices of the peace, sheriffs, clerks of court, and other members of the court ring. Hence, rather than exercise the power of removal vested in them, the royal governors from time to time suggested that they should be given the right of appointment. The Board of Trade agreed with the governors in this, but nothing was done about it. The office was unequivocally in the hands of the local court party.

In general, the results of local control of the office of the sheriff, from the standpoint of the crown, tended toward a decentralized and weakened colonial government. These results might be briefly classified as follows: (1) a cumbersome, awkward, decentralized government resulting from an impairment of the governor's appointive power; (2) embezzlement and wastage of public funds by sheriffs; (3) lax

and dilatory methods of administration of public, county, and parish taxes; (4) control of elections and influence over politics by the sheriffs; (5) the greater solidification of the county court ring; (6) various abuses in the administration of the office of sheriff, such as abuses of the fee system, the method of serving attachments, the jury system, and so on.

IMPAIRMENT OF THE APPOINTIVE POWER

The position of the Board of Trade in regard to the impairment of the appointive power of the governor is illustrated by a letter to Governor Tryon in 1770:

> “In regard to the Act for appointment of sheriffs,[34] which we consider as part of the general system for the more effectual administration of Justice, as it does not leave a discretionary Power in the King’s Governor of nominating a Sheriff in case he should think fit to reject those recommended by the Judges, it does improperly and as we conceive unnecessarily deviate from the rule & usage in the kingdom."[35]

The Board of Trade went on to threaten, after stating the obvious proposition that the chief representative of the crown in the county ought to be under the control of the crown, that unless the legislature remedied the objection, it would recommend the repeal of the act:

> “for no consideration of general Utility and convenience can justify an Acquiescence in a regulation that does not correspond with the Constitution of this Kingdom."

Replying to this letter, Governor Martin wrote:

> .... The Sheriff's Office .... is held entirely by favor of the Magistrates as Members of the County Courts, they being empowered by a law passed in the year 1768 to nominate three persons, of whom the Governor is obliged to appoint one, under which regulation by their juggles and corruption the Governor is compelled to appoint the candidate they favor so that in fact the absolute nomination of the Sheriffs is in those little prostitute judicatures and the power of the King's Governor in the case is perfectly nugatory to remedy this defection in policy. The Lords of Trade by their letter to Governor Tryon of the 12th of December 1770 direct that it be recommended to the Assembly to amend that law by a provision vesting the appointment of the Sheriff in the Governor, and declaring that they should otherwise think it necessary to recommend it to His Majesty for his Royal dis-allowance. This Act, my lord, is so great a favorite with the Assembly, which is composed of justices of the peace, that there is no hope of its ever consenting to the proposed alteration, and embarrassed as the deliberations of that body have even been by faction since I came to this Country, I have had no opportunity to propose it.[36]

On two other occasions Martin admitted the danger of this local control and his inability to cope with it in the legislature.[37]

These letters of Martin show that the royal governors and the Board of Trade began to realize too late that a mistake had been made in 1739 when, in order to satisfy the demands of the court party, the office was placed under local control and kept there by subsequent acts. The price paid for this concession to popular demand in 1739 was a tendency toward decentralization of the administration from the standpoint of the crown and toward greater unity and greater solidification from the standpoint of the court party. The importance of the power controlling the appointment to this office, then, can hardly be overestimated. For, since the sheriff was the most important figure in the elections, the group controlling his office could obviously exert some influence over the legislature. This was exactly what happened, and throughout the royal period the justices of the peace held a

place of dominance in the General Assembly.[38] And, as Martin clearly saw, they were determined to submit to no law taking from them the power to appoint an officer who could maintain them in such an advantageous position.

THE SHERIFF AND THE FISCAL ADMINISTRATION

The sheriff was given authority to collect the parish, county, and colony taxes. Due to the decentralization of the fiscal administration and the local control of the office of sheriff, there was not even an efficient and systematic tax system for the colony, to say nothing of the individual counties, where local prejudices and politics ran riot. Toward the latter part of the royal period not only the governors, but even the legislature made attempts to remedy the evils in the system.

Most of the acts relating to the fiscal powers of the sheriff had to do specifically with the methods of accounting for the taxes collected. The first of these laws was passed in 1755. “There is at present," the preamble of the act stated, "no law whereby those who have been invested with the power of applying the Public Money, or the collectors of the same, can be compelled to a speedy execution of the said trusts, by Occasion whereof, the Public hath been greatly defrauded, & the faith thereof much depreciated."[39] This act provided that in case the sheriff neglected or refused to account for taxes according to the various acts levying them, the superior court of the district might give judgment against the sheriff, on motion of the public treasurer of the district. The act also sought to correct certain abuses in the collection and accounting of the public taxes by the sheriffs. It was provided that since sheriffs had theretofore discovered taxables not in the lists given them by the county court clerks, and had kept such taxes for their own use, sheriffs so doing should account for the same on oath to the respective treasurers, county courts, and vestries. The act also gave the sheriffs full power in the collection of taxes. In cases where taxes were not paid when due according to law, the sheriff was permitted to distrain slaves, goods, and chattels. If the taxes were not paid within five days after such distress, the sheriff was empowered to sell the property after first giving notice of at least three days on the church door immediately after divine service. No “unreasonable distress," however, was to be made. No attachment of slaves was to issue unless there could not be found sufficient other property to settle the taxes due. To protect further the public money against improper uses the law raised the bond required of the sheriff from the one bond of £500 required by the law of 1739 to two bonds of £1000 each.

In 1759 another act was passed to correct the same evils. This act stated that "the continuing of sheriffs long in office, who do not regularly account for the Public Taxes they collect, is of great detriment to the Province."[40] To remedy this evil it was provided that no county court should recommend to the governor any person who had served two years successively, unless he could produce a certificate from the treasurer of his district saying that he had fully accounted for and delivered all public taxes he had received as sheriff.

An act passed in 1760 sought to make more explicit the duty of sheriffs in settling their accounts.[41] It provided that the sheriff in settling his accounts with the treasurer should deliver his account, signed and proved, of all the money he had received payable to the treasurer. This account the treasurer was required to produce in his settlement with the general assembly as a voucher for the money received by him. It was further provided that when the county court made allowance to the sheriff for such persons as had no visible estate, five justices of the peace should be present when the certificate of allowance was made.

In 1768 another effort was made to improve the cumbersome system. “Many of the Sheriffs of the Province," the act stated, “have heretofore applied to their own

private uses, or otherwise embezzled, considerable sums of the Public Money, in the hopes of replacing the same when called for."[42] To remedy this, it was provided that the sheriffs should deliver to the county court a regular account, signed by the treasurer of the district, ascertaining the amount of the public money received for the year preceding, together with an account of all disbursements, and that this account should be entered on the court minutes by the clerk. It was further provided that if the sheriff were removed from office for any reason excepting death, he should make an accounting with the treasurer immediately, otherwise he was to lose all commissions from the time of his last settlement. Another important provision of this act was that no person chosen as representative of his town or county should be recommended during his term of office for the office of sheriff by the county court. This provision obviously was aimed at the problem of reducing the growing influence of the sheriffs over the legislature.[43]

In 1770 another act relating to the fiscal duties of the sheriffs was passed.[44] The principal object of this act was to correct “the many hardships and inconveniences [which have] arisen from Sheriffs leaving the Province before they had accounted for Public, County, and Parish duties, whereby their securities have become liable for same." The act simply provided that the persons who had signed the bonds of the absconding sheriff might collect all arrearages of taxes with practically the same powers of collection that the sheriff had. This act, of course, did not remedy the evil, but only provided for the relief of the persons signing the bonds of the sheriff.

In 1773 an act was passed for a still more rigid accounting for taxes collected by the sheriffs. This act provided that, when a sheriff failed to make payment of public monies due from him, the treasurer of the district might then cause a writ of scire facias to issue against him, or, if he were deceased, against his executors or administrators. The act of 1755 had contained this same provision, but this act went further and required that in case the treasurer failed or neglected to bring suit against the sheriff for negligence in accounting, the treasurer himself was to stand liable for the arrearages of the sheriff.[45] This last provision throws a flood of light on the political power of the sheriffs. For the treasurers depended largely for their re-election upon the sheriffs, and were therefore inclined to be rather lenient with them in accounting for the public taxes. Hence the only way to bring the treasurers to task was to hold them responsible for the overdue taxes if they permitted such to accrue.

In 1774 another act was passed to correct further abuses of the fiscal powers of the sheriffs. The practice of the county courts in allowing to the sheriffs a number of insolvents in the collection of their taxes led to the abuse of these taxes being collected and not reported. To correct this, the act provided that the sheriff should not be allowed more insolvents than were expressly sworn to in the list deposited with the clerk of court and kept for public inspection. If the sheriff returned any person as insolvent, and later proceeded to collect from such person any taxes for the year in which he was declared insolvent, he was to forfeit twenty pounds for every act of this kind.[46]

All of these acts relating to the fiscal powers of the sheriff were passed as a result of the lack of an effective central control over the funds handled by the sheriff. The sheriffs" accounts were audited in a rather haphazard manner by neighbors and fellow justices of the peace and by treasurers dependent upon the sheriffs for re-election. In fact, so imperfect in operation was the system of supervision exercised over the sheriff in his fiscal capacity that it is a misnomer

to speak of an auditing system, for no efficient or systematic method of checking up on the funds of the colony existed.

The whole process of assessing, or list-taking, collecting, and auditing the tax funds was in the hands of local officials. The county was divided into districts by the county court, and one justice, usually with one constable, was assigned to each district. The justice took a list of all the taxables in his district, or saw that the constable did it, and returned it to the county court. The court then took all the tax lists and turned them over to the sheriff, who was required to collect whatever taxes were levied by the colony, county, or parish.[47] Frequently there were large numbers unlisted, due to increasing population and other causes. Unscrupulous sheriffs, no doubt, collected from such taxables at times and used the money for private purposes.[48]

There were various methods whereby the courts settled for the taxes collected by the sheriffs. Sometimes the court itself received the account and passed upon it, often when there was hardly a quorum present, and at times when a former sheriff, sitting on the bench as a justice of the peace, would exhibit the account for taxes collected during his sheriffalty.[49] Sometimes the court permitted the chairman of the court to settle with the sheriff.[50] In some counties the clerk of court was given this authority.[51] But the usual practice was for the court to appoint a committee of two, three, or four members to settle with the sheriff.[52]

Examining the county court records, we find it a widespread condition that the sheriffs were delinquent in making their settlements, and at times were several years in arrears. A striking example of this is found in Carteret in 1747. At the July session of the court, the following entry was made in the court minutes: "At the request of Charles Cogdell, Esq., Late Sheriff Desiring time to make up & pay to this Court the levys which he hath received, This Court hath ordered that the said Cogdell settle with Col Thomas Lovick and pay the sd Lovick such moneys due and that the sd Lovick pay the same unto such persons who hath a lawful claim.[53] At the September term of court, Cogdell had not yet complied with this order of the court, and he was consequently ordered to appear before the next court.[54] This order also was apparently disobeyed, for the December records show nothing of his appearance, and no further orders were issued.[55] In the minutes for the March session, 1748, Cogdell was ordered to pay his arrearages within one month, or the clerk was authorized to issue process against him or his security.[56] Apparently the delinquent Cogdell then settled his accounts after almost a year's active insistence on the part of the court that he make up the levies he had collected, for there are no further evidences in the records of his continued disobedience of the order.[57] The Tyrrell court made a weak and ineffectual effort to call the sheriffs to account in December, 1766, by passing an order compelling the clerk of court to “prosecute the several sheriffs for the county tax who may be in arrears."[58] There is nothing in the subsequent records to indicate that such prosecutions were made, or that settlements were made more punctually.[59] An unusual admission of delinquency is found in the petition of Joseph Williams, sheriff of Duplin County for several years. In his petition to the legislature in 1761, he claimed that, as a result of his office, he “became debtor to the public in a large sum of money for the public taxes, but meeting with misfortunes," he was rendered unable to discharge the balance, which was about £230, without great detriment to himself and family. He claimed that he had already been obliged to dispose of several valuable slaves to reduce his indebtedness to the public, and since there was an execution in the hands of the sheriff against him, he prayed the assembly twelve months to pay the balance.[60] Similar examples of delinquency were rather numerous.[61]

The public, or colony, taxes were audited hardly more systematically than the county taxes. In general, the sheriffs settled with the public treasurers, and the treasurers in turn settled with the legislature. This led to several confusing practices, the chief of which was embezzlement. In a letter to the Earl of Shelbourne, Governor Tryon pointed out clearly the effect of the sheriffs on the fiscal system of the colony:

The sheriffs have embezzled more than one-half of the public money ordered to be raised and collected by them (about £40,000) .... not £5,000 of which will possibly ever come into the Treasury, as in many instances the Sheriffs are either insolvent or retreated out of the Province. The Treasurer's lenity or rather remissness in the material part of their duty I construe to be founded on a principal of caution, for by not suing the sheriffs in arrears they obtain a considerable weight of interest among the connections of these delinquent sheriffs & which generally secures them a re-election in their office when expired.[62]

Governor Tryon saw the weakness of the system of collecting the public taxes and the abuses to which it was liable. Consequently, he drew up a careful and systematic scheme for auditing the accounts of sheriffs and treasurers, modeled on the Virginia system. In presenting this plan to the Assembly in 1769, he said:

The fact is too well-known to admit of denial considerable sums have been lost by negligence or insolvency of the sheriffs and other collectors with their sureties.[63]

The plan was rejected by the Assembly.[64] The cause was obvious to Tryon, and he courageously stated it in his final message to the assembly just before its adjournment:

If ever carried, in any future session, into an Act of the legislature, it will be acknowledged the most beneficial session this Colony ever experienced, though it should be the only Act passed in that session. But this blessing is not to be obtained for the country while the Treasurers, late Sheriffs, and their sureties, can command, a majority in the lower house.[65]

Tryon used strong language before the assembly, but he did not overstate the facts. And there was one good result of his emphatic stand in 1769: the first complete and thorough-going investigation of the finances which the colony undertook. The assembly authorized John Burgwyn, clerk of the court of chancery and secretary to the council, to investigate the status of the fiscal system.[66] The result was four reports.[67] These reports revealed a startling condition of the finances of the colony, for most of which the sheriffs were directly responsible. The first report showing the delinquency of sheriffs indicated an outstanding indebtedness to the public on the part of these officials of £64,013 13s. 3d.[68] This amount exceeded by over three thousand pounds the total amount of taxes collected in the colony from 1748 to 1770.[69] The second report showing the amounts due from sheriffs was slightly improved, indicating a total arrearage for the colony of £52,455 1s. 7d.[70] This widespread public defalcation was by no means confined to local officials in the counties in which the Regulators were active. In Currituck, for instance, an account had been standing since 1759 for £797 18s. Od., against which judgment had issued, but Burgwyn reported the sheriff and his securities either dead or insolvent. Such notations occurred with deplorable frequency in Burgwyn's first report: ""New Hanover, William Walker, Sheriff, 1759, £986 16s. Od., Judgment, but no securities taken and nothing to be got .... Rowan, David Jones, Sheriff, 1757,

£1205 8s. Od., Judgment, both principal & securities bad .... Anson, Anthony Hutchins, Sheriff, 1763-1764, £472 4s. 8d., Neither principal nor securities worth a groat .... Cumberland, Isaiah Parvisol, Sheriff, 1763-1764, £652 12s. 1d., Principal died insolvent and securities not worth a groat.[71] The majority of the old accounts shown in the first report had not been collected by the time of the second report, and in many instances had been increased.

These reports reveal the manner in which some of the officials whom the Regulators complained about protected each other. In 1759, Stephen Cade was sheriff of Dobbs County and incurred a debt due the public of £536 19s. Od. A judgment was secured against this sum, but Burgwyn found that four of the sheriffs of Dobbs played into each others hands, and that in levying the execution they always returned that there was nothing to be found. One of the securities of Cade assured Burgwyn that he had paid over two hundred and fifty pounds to one of these sheriffs, and that this amount had not been credited to the account. Cade was also sheriff of Johnston County in 1758, and left an arrearage of £970 6s. Id., against which judgment had been secured with the same result as in Dobbs County.[72] Neither of these accounts had been collected by the time of the second report.[73]

This chaotic financial condition was not due in any sense to the fact that the sheriffs were “insolvent royal officials over whose appointment and in the approval of whose sureties the province had no voice whatever."[74] It was precisely because of local control of the sheriff that such a state of affairs came about. For it was this local control and local politics that made impossible any systematic auditing of the sheriff's accounts, such as that which Tryon attempted to secure.

Aside from the effect of the fiscal and governmental system, this haphazard method of handling the funds had other results. In 1751, the treasurer of the northern district reported that work on the public buildings in New Bern had been suspended because the sheriffs had not paid in the money that they had collected.[75] In 1763, James Reed, the Anglican minister, complained about not having had a stipend for nearly fourteen months, and said that:

> tho the sheriffs now have a whole years collection in their hands yet as there is no vestry to call them to account, they do not choose to part with the money on any terms or security whatsoever, the misfortune is they too often stand in need of it themselves. For the generality of the Sheriffs are very extravagant, to say no more, & very frequently spend the Public money not one in ten, I believe I might say in twenty, can ever make up their accounts, by which means the Clergy are frequently kept a long time out of their stipends.[76]

Another North Carolinian wrote a friend in Pennsylvania in May, 1771, that:

> there never was a people abused by authority more than this country has been.... the main substance .... was in the Sheriffs in most of the counties not having settled their accounts for eight or ten months past; so that by computation they were on the whole 80 or 100,000 pounds behind! The honest party in the administration appeared to the country too weak to bring these overgrown members to an account; therefore to strengthen their hands a great part of the country stopped payment of any taxes, but what were agreeable to law.[77]

It is worth while to note that Tryon was liberal-minded enough to suggest that the pay of the sheriffs should be doubled in order to prevent embezzlement. In

addressing the legislature in November, 1766, Tryon suggested that the emoluments of the public officers were too small and advocated that the commissions of the sheriffs especially be increased. "A Sheriff," he said, “as an Officer of the Revenue, and Being vested with many executive powers, holds an employment of great trust and importance; how far this trust has been executed with fidelity and punctuality in many counties, the Treasurers accounts will certify." He then recommended that the commissions be doubled on the collection of taxes ""to prevent future neglect or embezzling," a fact which would be an inducement to "men of probity and responsibility to offer themselves as candidates for that active and important office."[78] This was advice to which the ex-sheriffs and justices in the assembly could give ready attention. An act increasing the sheriffs" commissions was passed almost immediately.[79]

As a matter of fact, the sheriff was one of the best paid officials in the colony, even when his office was conducted with strict honesty. His revenues came from several sources: (1) fees for the performance of orders of the court, such as making arrests, serving processes, executing attachments, and so on; (2) commissions for collecting the taxes; (3) a salary paid by the colony; (4) a salary paid by the county court for "extraordinary" services performed by the sheriff for which there were no fees allowed by act of the legislature; (5) commissions on the sales of estates for which he acted as vendue master; and (6) various other fees and commissions due to the linking up of the office with the county court ring, whereby the sheriff was given opportunity to administer estates of orphans, act as inspector for the county, hold militia offices, and so on.

By an act of 1740 the commissions of the sheriffs for taxes were placed at three per cent.[80] Three years later this commission was raised to six per cent.[81] It apparently remained at that rate until the increase made in 1766 to eight per cent.[82] The salaries which the sheriffs received from the colony amounted to a stipend of from eight to ten pounds. The salary at first was eight pounds proclamation money but was later increased to ten pounds.[83] The commissions allowed the sheriff as vendue master, according to Tryon, were not over “two per cent or 6d. in the pound.[84] The courts, however, used a discretionary power in fixing the commissions of the sheriffs in this particular.[85] Not the least of the sheriff's profits in office, however, came from his connections with the powerful court ring, for the sheriff frequently held several important positions. James Ellison, Sheriff of Beaufort, was also deputy surveyor for Granville, a justice of the peace, and inspector for the port of Bath.[86] The sheriff was practically always a colonel in the militia. The sheriffs in the Granville district were for the most part not only deputy surveyors but also quit-rent collectors, for which office they received five per cent of all collections.[87]

It is apparent, then, that the office of sheriff was very lucrative, due to the many fees, commissions, and other emoluments attached to it. What any one sheriff received in a year cannot, of course, be determined. But the liberality of the commissions and fees, to say nothing of the fraudulent abuses of these incomes, leads us to the conclusion that the office was very attractive financially.

THE SHERIFF'S CONTROL OF ELECTIONS

One of the most important aspects of the sheriff’s office was its influence over the politics of the colony. To understand this adequately it is necessary to inquire briefly into the suffrage laws of the colony.

By an act passed in 1715 the suffrage was made much more liberal than under later acts passed in the royal period.[88] Persons twenty-one years of age, having resided in the precinct one year, and having paid the levies for the year preceding the election, could vote for burgesses.[89] The voting was done by a method which lent itself admirably to political exploitation. The voter was given five votes; he wrote his choice of five names on a scroll of paper, or had it written for him, signed his name to the paper, and handed it to the deputy marshal taking the poll. In 1743, the manner of voting was somewhat altered. The use of a scroll was still retained, but the voter did not sign his name to it, although he did enroll his name in a book kept open by the sheriff at the same time that he voted.[90] By this act, also, only freeholders were permitted to vote; the freehold necessary was fifty acres.

In 1760, the system was made even more advantageous for political influence by the sheriffs, for in that year the legislature passed an act requiring voting by the viva voce method. The candidates might, at any time after the election, look at the poll, and might require the sheriff to give them a copy of it.[91] At about this time, the elections began to be held at the court house in each county; that is, directly under the eyes of the influential local court. Each writ of election issued to the sheriff contained directions that the election be held there.[92]

It is natural to suppose that abuses would occur under such a system as this. The act of 1715 even anticipated this, and required that the marshals should attend the first three days of the legislature in order to explain disputed elections.[93] It is significant to note, however, that there were less complaints of disputed elections during the proprietary period than during the royal period.[94] Immediately after the establishment of the office of sheriff, the number of complaints of wrongly conducted elections increased so much that the legislature abandoned its original policy of hearing the petitions itself, and appointed a committee of privileges and elections, to which it referred all such matters.[95] The findings of the committee in important cases were usually acted upon by the committee of the whole house.

Apparently the first complaints of mismanagement in elections came from the precincts of Currituck and Craven in 1731. In Craven, two justices of the peace were opposing each other: Joseph Hannis and Walter Lane. Lane was declared legally elected.[96] In the Currituck election the house moved for a new writ of election to issue, and issued its warrant for Thomas Lowther, the marshal on the ground that he had “misbehaved himself in the said election."[97]

In 1735, Maurice Moore of New Hanover precinct petitioned the legislature that “he had the majority of Votes but the Marshal who took the Poll returned Mr. Job. How." The house considered the allegations of both sides, and resolved that Moore was legally elected by a majority of votes.[98] Again, in 1739, the house acted contrary to the returns of an election officer. The committee of the whole house examined several witnesses and concluded that Robert Boyd, the returning officer for Bath, had conducted the election irregularly. The petitioner, Richard Rigby, was declared duly elected, and Boyd was summoned to the bar of the house to be “mildly reprimanded .... for obliterating the Poll for Bath Town & other misdemeanors in contempt of the Privileges of this House."[99] At the same time Walter Lane of Craven

County again protested his illegal defeat at the polls, and was declared legally elected.[100] The same legislature summoned John Carter, a deputy marshal, “to attend upon a controverted election," and he replied by sending a “very abusive answer to this House."[101]

Again in 1740 we find Walter Lane protesting an election in Craven on account of the fact that the sheriff voted in the election. The house admitted the sheriff’s vote as proper, however, and the petition was rejected."[102] At the same session a petition was presented by Griffith Jones, John White, and Robert Hamilton in behalf of themselves and the freeholders of Bladen County saying that Richard Everard was not qualified to be a member of the legislature, and gave as their specific charges that he “procured several unnaturalized Foreigners and others not qualified and they were polled by the Sheriff; and that the Sheriff was prevailed on to close the polls abruptly before several Freeholders had given their votes and who were at the polls for that purpose."[103] The petition was put to a vote and rejected, apparently without debate.[104]

A very significant protested election occurred in 1754 in Craven County. On December 16, of that year, four inhabitants of New Bern petitioned the legislature saying that they, among others, had voted for one Jeremiah Vail, but that James Davis, sheriff, had returned himself, "which we Apprehend is Quite Irregular and may be of Very bad President."[105] The house declared Davis illegally elected.[106] In the meantime the adherents of Davis had presented another petition to the assembly saying that they had voted for Davis while ignorant of the fact that his being sheriff would render him ineligible, and that, if he should be expelled, they desired a new writ of election to issue rather than to see Vail seated.[107] This petition was signed by fourteen inhabitants. In the debate on the matter. Samuel Swann objected to the motion for a new writ, and carried a motion to declare Vail seated.[108]

Beginning in 1754 and lasting until 1773 there was an increasing number of disputed elections and charges of mismanagement on the part of sheriffs in the elections in the western counties, particularly in Anson and Granville. In December, 1754, William Hurst of Granville petitioned the legislature in a protest against the election of Robert Harris.[109] In this petition Hurst declared that the sheriff had permitted many persons who were not freeholders to vote, thereby giving Harris a majority which he otherwise would not have had. Hurst further suggested that this was “greatly Subversive of the freedom of Elections, the Laws of this Province, the Rights and Liberties of the Subject." To this suggestion the legislature replied briefly that ““The law does not allow of an Inquiry into the Facts contained in the sd Petition," and Harris was declared duly elected.[110] Here, for the first time, the legislature made an unequivocal denial of its authority to go beyond the returns of an election officer, and thereby made tacit assertion of its connections with local politics.

In 1760, another contested election occurred in the same county. Several resolutions of the committee of privileges and elections in April of that year show that the sheriff of Granville had appointed Reuben Searcy as clerk in the election, and that Searcy had acted with great partiality “in a manner subversive of the rights and Freedom of Elections." The resolutions were adopted and a new writ issued. There was apparently no doubt as to the legality of inquiring into the returns of election officers; the language used by the committee, in fact, was almost identical with that used by Hurst in the contest just mentioned.[111]

In the following years there were many elections in the conduct of which the sheriff was accused of partiality or mismanagement. In at least five of these cases the legislature appeared to find that the accusations were true, and either issued new writs or declared the petitioner legally elected.[112] In four of the contested elections, however, the legislature declared that the petitions of protest could not be sustained.[113] Three petitions apparently died in the committee.[114] The causes of protest in all of the elections were practically the same. William Gray of Bertie, in 1760, said he was “duly Elected ....and that the Sheriff refused to return him."[115] William Little of Anson protested that a “number of voices at the Election were refused or neglected to be received in favor of your Petitioner which would have given a Great Majority of Voices in his favor."[116] Jacob Blount of Craven, in 1762, accused the sheriff of permitting several persons who were not freeholders to vote; and at least five persons admitted to the committee that they voted when they were not legally qualified to do so.[117] In 1770, Thomas Respess of Beaufort accused the sheriff of illegally returning Wyriot Ormond when “he had a great majority of the votes of the freeholders of the town."[118] In 1773, Thomas Stewart of Tyrrell said that the sheriff, “by suffering a number of persons to vote at the said election who were not possessed of a freehold in that county and several freeholders to vote twice and by divers other illegal and oppressive Acts .... procured a majority for one William Slade.[119] The petition of Peter Blinn, Gentleman, of Bath in 1766 claimed a legal majority of the votes of the freeholders.[120]

One of the most significant petitions coming to the assembly in protest of mismanaged elections by sheriffs was that of Thomas Wade of Anson County in 1773. Because of the light which it throws on the electoral procedure in colonial North Carolina, it is worth while to give the matter detailed attention. Starting out with the broad allegation that William Pickett, sheriff of Anson, did not conduct the election in a proper and legal manner, Wade made several specific charges against him:

> that he did not appoint inspectors of the election as required by law to do; “that sundry evil-disposed persons were, with the connivance of the sd Sheriff, placed in the passage to and from the Table where the sd Poll was kept, who stopped and interrogated the freeholders in their way to the Table .... who they intended to vote for; that if the sd freeholders .... declared in Faviour of Mr. James Pickett, the brother of him, and for Mr. Charles Robinson, they were then assisted and helped forward by those persons to give in their Votes;" if their vote was unfavorable, they were “obstructed and hindered .... some of them being violently pushed back, others of them pulled back by the hair of their heads; and others so rudely "and violently treated that great numbers.... were deterred from voting for the petitioner and many of them from voting at all."" Wade also charged that Pickett permitted the clerk at the table where Wade’s poll was kept "to be assaulted and beaten in a very riotous manner as he sat at the table writing down the names of the voters .... and to be driven from the table and out of the court house and deterred from returning any more during the election," though not more than half of the freeholders had voted. He further charged that a justice of the peace voluntarily required the sheriff to take the leader who beat the clerk and put him in jail, and he refused “to obey the command of the justice, or any ways to keep the peace, to quell the sd riot, or conduct the sd Election with any order or decorum."[121]

When the matter was discussed in the Committee in December, 1773, several depositions were heard. Only one of these affidavits declared that the election was just and impartial, and this was the statement of John Gwinn, the clerk who took the poll for Pickett's brother.[122] There were three others who testified that there had been fighting, and that Thomas Wade, as a justice, had commanded the sheriff to take the person who had started the riot. One of these, Robert Jarman, testified that he had voted for Wade, and as he did so, the sheriff whispered to him: "I see you vote against us, but pray don't make Interest against us." Jarman testified that he then went out and presently returned, when he saw one Sam Parsons standing by the clerk's table with a bottle in his hand, and as the people came in he whispered to them as if interrogating them, and that when Wade ordered him away he refused and seemed to be "in a passion." Going out and returning again, Jarman saw the two clerks, John Twitty and John Gwinn, standing at the table, one with a pistol in his hand and the other with a drawn sword, and said that he heard Wade "command the peace at sundry times," and command the sheriff to take the leader of the riot, and heard the sheriff's refusal. Wade then turned to the crowd to know if there was a deputy or a constable present. At that point Jarman again left the court house, "it appearing dangerous to stay in the house as it looked as if murder would be done." Jarman asserted that many people had been unable to vote, as "they was not so fond of an Election as to fight for it."" He believed Wade would have been elected if the election had been orderly.[123]

When the committee in the assembly had heard these witnesses, they resolved that "the charges contained in the sd Memorial are not sufficiently supported by testimony so as to set aside the sd election." The house concurred in the resolution.[124] In spite of this, one can scarcely doubt that the sheriff, being the brother of one of the candidates, did show some partiality in the election. The majority of the evidence submitted indicates that. At any rate, the incident serves to illustrate the powerful influence which sheriffs exercised over the elections.

As indicated by the Wade petition, the elections were probably very informal, one-sided affairs. Politics in its crudest sense no doubt found play in them. Since the elections were held at the court house, and under the immediate supervision of the influential court ring, and under the control of the most powerful officer in the ring, the poorer and more numerous class of freeholders probably would not dare to vote contrary to the wishes of the men who more or less determined their economic and social status. Another phase of the political exploitation of the elections no doubt took place in the ordinaries, or inns. Small, informal caucuses, where flip and punch flowed freely for those who promised to vote the right way, were probably held at these places, and elections were more or less determined before the drawing up of the electoral list. Sheriffs were frequently the owners of ordinaries, and therefore in ready position to bring the aid of liquors to their elections.[125]

The petition of Wade also indicates the importance of family politics. But there was still another political phase of the court ring which strengthened the power of the sheriffs; namely, the politics of the colonial militia. The county militia, like the county court, with which it was inseparably bound up, was virtually a close corporation. The officers were the justices of the peace, the clerks of court, and the sheriffs. They controlled the appointments to the militia so effectively that the governors were in the habit of sending blank commissions to the men already in command, and permitting these men to fill the commissions out for their subalterns and even for their successors.[126] As a result, all of the offices drawing attractive fees were filled by local court officials. The sheriffs were prominent in the commissioned ranks of the militia. Alexander Mebane of Orange, Samuel Heighe of Pasquotank, Osborne Jeffries of Bute, John Gray of

Orange,[127] and many other sheriffs were commissioned officers in the militia.[128] And the militia was often used to solidify the position of the court officials in the elections; one petitioner complains of the lax discipline of the militia, “which is wink"d at by the Officer’s Commanding them, in order to Curry favour [to get their Votes at Elections] with the People ...."[129]

Because of these facts, the court officials constituted the most unrepresentative form of local government which North Carolina has ever had. The suffrage was not only restricted legally, but in actual practice was so managed by the officials that nothing like free and representative suffrage existed. As a result even the legislature was of the same complexion as the local bodies, and could be said to be representative only in the sense that it was representative of the dominant class of local officials. The system of self-government which the colonists had thus developed through practice was one which could be easily exploited by the leaders. It is obvious that such an unrepresentative form of government, dominated by local leaders, could be brought to revolutionary pitch in short order if the officials desired it. This is precisely what happened in revolutionary North Carolina, and of the governing officials who were at the lead, the sheriffs were quite prominent.[130]

FOOTNOTES

1 Taper, c. L., North Carolina: A Study in Royal Government, Chapter 1X, (New York, 1904).

2 This was a very important power in the newly-settled colony on account of the danger of riots and slave insurrections Obligation to service applied to all males above the age of fifteen and able to travel. Cf., Potter's Justice, pp. 243-244.

3 Colonial Records, V1. pp. 990-991. These records will be referred to hereafter thus: C. R., VI, pp. 990-991.

4 Craven County Court Minutes, June 17, 1729; June 21, 1743; December 12, 1747;New Hanover County Court Minutes, September, 1764; December, 1766. These records will be referred to hereafter thus: Craven C. C. M., June 17, 1729, etc.

5 In 1764 the New Hanover court ordered "that the Sheriff immediately procure some person Gaoler to reside in the Gaolers house Built for that purpose in order to prevent escapes which of late have too often happened on that account." New Hanover C. C. M., September, 1764; C. C. M. passim.

6 The power of the county was invoked for this purpose in New Hanover in 1767: "The Court being informed that upwards of twenty runaway slaves in body armed are now in this county, ordered that the sheriff do immediately raise the power of the county, not to be less than thirty men well armed to go in pursuit.... and be impowered to kill all such slaves as shall not surrender." New Hanover C. C. M., June, 1767. In 1753, President Rowan, writing to Captain Wilkins of H. M. Sloop Scorpion, gave the following as his reason, among others, why the sloop should not return to England: "The Negroes who have lately attempted an insurrection among us will have the less to discourage them to repeat their attempts." Rowan, Executive Papers, February 1, 1753.

7 C. R., IX, X, passim.
8 Governor Burrington to Secretary Popple, November 11, 1735, C. R., IV, p. 23.

9 In cases of vacancy or non-attendance at court, the court itself usually assumed the power of appointing the deputy. Carteret C. C. M., June, 1736; Tyrrell C. C. M., June, 1735.

10 C. R., I, p. 583.

11 C. R., IV, p. 175, October 15, 1736. Doubtless another reason for the change in 1739 was that given to the governor and council by Provost Marshal Robert Route "that he could get no person of reputation to act under him, the profits being very small & being very desirous to resign what right he bad in that county as Provost Marshal." C. R., II, p. 616.

12 C. R., XXIII, p. 122-127. 154 THE
13 The name "precinct"? was changed by this act to that of county.
14 C. R., XXIII, pp. 129-130.

15 The act did not mention how deputies were to be appointed, but it was apparently understood that the sheriff had that right. Beaufort C. C. M., June 1757; C. C. M., passtm.

16 C. R., XXIII, pp. 217-218.

17 These duties were sometimes unique. The Bute County Court, for instance, ordered Jethro Sumner, who was later to become the hero of Eutaw Springs, to perform a sort of janitor's service. It was ordered "that Jethro Sumner, Sheriff, keep the Court House clean and in decent order to the satisfaction of the Court and take care of the Law Books, etc., and when performed at the years end to be paid forty shillings proc." Bute C. C. M., November, 1774.

18 The following sheriffs of Tyrrell County, for instance, were justices of the peace prior to their appointment: Edmund Smithwick, 1756; John Hooker, 1757; Giles Long, 1758; John Hooker, 1760; John Hardison, 1761; Jeremiah Wynne, 1762; Edmundson Samuel Smithwick, 1763 and 1769; James Johnston, 1764; Joseph Spruill, 1770, 1771, 1772. Tyrrell C. C. M., 1756-1772. This condition seems to have been typical not only of Tyrrell, but of most of the other counties. In Beaufort County from 1756 to 1761 every nominee for the office of sheriff was a justice of the peace. Beaufort C. C. M., 1756-1761. The result in actual practice was the same as if the provision of the act of 1739 had not been repealed. In New Hanover County in 1764 "the Court proceeded to nominate or appoint three justices to be returned to his excellency for appointing one of them sheriff." In the voting there were no nominees who were not justices, five of them being nominated. New Hanover C. C. M., 1764.

19 These three were: Col. Thomas Hunter, Chairman of the court, Capt. Charles Sawyer, and Capt. David George. Pasquotank C. C. M., January, 1742. Notice the titles. The justices were not only the judicial and executive officials of the county, but they controlled the militia to a large extent, probably on account of the influence and fees attached to militia offices. In 1754, James Connor, who was colonel of the Tyrrell regiment and who also held commissions as clerk of the court and clerk of the peace in several counties, advised President Rowan that the only change needed in the militia law was an increase in the fees allowed officers, and a decrease in the "extravagant"" fees allowed soldicrs of the rank. Rowan Excutive Papers, December 8, 1754.

20 Hunter, Sawyer, and George were again returned in the same county in 1743. Pasquotank C. C. M., 1743. In March, 1761, John Hardison, Joseph Spruill, and Isaac Meeks were nominated by the Tyrrell court, there being only three justices present, two of whom were Hardison and Spruill. Tyrrell C. C. M., March, 1771. In 1763, in the same county four justices were present and three of those present were nominated. Idem, 1763. In Beaufort County, March, 1758, three justices were sitting and two of those present were nominated. Beaufort C. C. M., March, 1758.

21 Tyyrell C. C. M., March, 1764.
22 Idem, June, 1764.
23 Bute C. C. M., May 1772.
24 Idem, May, 1774,
25 Orange C. C. M., May, 1764.
26 Pasquotank C. C. M., March, 1772; C. C. M., passim.
27 Governor Martin to the Earl of Hillsborough, C. R., IX, pp. 314-315.
28 Dobbs, Executive Papers, June 6, 1756.

29 The representatives from Beaufort petitioned Governor Dobbs in 1760 saying that "there wants a Sheref for the said county their being no corte letely held there to represent three persons . .. . We humbly recommend .... John Anderson." Dobbs, Executive Papers, 1760.

30 C. R., VII, p. 91.

31 An act passed in 1755 gave the governor power to appoint any freeholder in case the person recommended to him by the justices refused to serve. C. R., XXIII, pp. 424-432. An act passed in 1759 provided that no county court should recommend to the governor any person who had served two years successively unless he could produce a certificate from the treasurer of his district saying that he had fully accounted for and delivered all public taxes he had received as sheriff. If the county court did nominate such a person, the governor was empowered to appoint someone else to the office. C. R., XXIII, p. 505. These acts were amended in 1766 to the extent that if the person holding the nomination of the county court did not apply to the governor for a commission before the next succecding court, the governor might appoint some other person of "sufficient curcumstances and ability." C. R., XXIII, p. 767. In the same year another act was passed giving the governor power to appoint as sheriff any freeholder in counties where there were no _ sheriffs, since in some counties, for lack of sheriffs, the taxes had not been collected. C. R., XXIII, pp. 767-768.

32 C, IX, p. 983.

33 C. R., IV, p. 950. How effective this order was is shown by the fact that on June 1, 1758, the Beaufort court accepted the commission appointing Thomas Bonner sheriff and at the same time granted him a license to keep an ordinary. Beaufort C. C. June, 1758. Joseph Spruill, Edmund Smithwick, John Hooker, sheriffs of Tyrrell, were also keeners of ordinaries. Tyrrell C. C. M., 1751-1757. James Bonner, Thomas Bonner, and John Hardy, sheriffs of Beaufort, were keepers of ordinaries. Beaufort C. C. M., 1756-1758. Samuel Heighe of Pasquotank; Jethro Sumner of Bute; Alex Mebane of Orange; James McIlwaine of Craven; Osborne Jeffries of Bute; Caleb Grainger of New Hanover; Isaac Gregory of Pasquotank were some of the other sheriffs who were keepers of ordinaries. Craven C. C. M - 744s AL aduotank C. C. M., 1746; Bute C. C. M., 1768; Orange C. C. M., 1755; New Hanover C. {., 1749.

34 C. R., XXIII, pp. 789-790.
35 C. R., VIII, p. 266.
36 C. R., IX, pp. 1158-1159.

37 On board the Cruizer in the Cape Fear in September, 1775, Martin wrote to the Earl of Dartmouth: "The appointment of Sheriffs.... ought to be in the same [the governor’s] hands . . These officers are generally, if not universally, the leaders in the present sedition."" C. R., x, pp. 244-246. Martin wrote the Board of Trade from Long Island in 1777 as follows: "It has been thought advisable .... that the power of appointing sheriffs be vested in the Governor in North Carolina, as it is in this province, but it will be necessary that the law of 1768 ... be disallowed ... as in effect it gives the power of appointing sheriffs entirely into the hands of the justices of the peace, who have most shamefully prostituted those important offices." C. R., X, p. 404.

38 The assembly of 1735, for instance, at which there were forty-seven members present, contained no less than thirty-three justices of the peace, and at least six of the members were appointed justices soon after. C. R., I, pp. 526, 638, 676; III, pp. 223,234,252; IV, pp. 46, 48, 115, 218, 313, 346, 713, 800. The committee on propositions and grievances "of this legislature was made up of ten members, and seven were justices. C. R., 1V, 817,823,825. Other and more important committees no doubt had similar proportions.

The assembly of 1755 contained fifty-seven members present, and in that body there were thirty-eight justices, or exactly two-thirds of the entire number present. C. R., HI, 522,526; III, pp. 223, 234, 244, 425; IV, pp. 243, 330, 345, 346, 562, 683, 693, 713, 813, 966, 1046, 1254; V, pp. 403, 655, 691, 813, 824, 993; VI, pp. 80, 762, 1070.

The majority of the total number of representatives from individual counties throughout the colonial period were also justices of the peace. Bute County, where the court party was very firmly entrenched had seven members from the time of its establishment in 1764 to 1775, and all were justices. North Carolina Manual, 1913, p. 350; Bute C. C. M., 1764-1775. Carteret County from 1725 to 1775 had eighteen members, including William Borden, a Quaker who never took his seat, and all but one of the others were justices. Idem, p. 3580; Carteret C. C. M., 1725-1775. Granville County had nine members from 1746 to 1775, and all were justices. /dem, p. 350; Granville C. C. M., 1746-1775. The examples might be multiplied; they were typical rather than exceptional.

39 C. R., XXIII, pp. 424-432.
40 C. R., XXII, p. 505.
41 C. R., XXII, pp. 526-531.
42 C. R., XXIII, pp. 713-723.

43 Governor Tryon, writing to the Earl of Shelbourne about this act, on March 7, 1768, said: “This Act will be.... productive of great benefit by stopping up the avenues that led many former sheriffs to fraud and embezzlement of the public money, as the excluding the members of the assembly being returned .... to the governor for his choice .... will have a salutary effect, for while those sheriffs who were representatives were attending to the public service in the.... Assembly, their duties in their counties were too frequently neglected or abused by their deputies." C. R., VII, p. 694.

44 C. R., XXIII, p. 789.

45 C. R., XXIII, p. 905. Governor Martin had addressed the assembly of 1773 concerning this bill as follows: "The Law for the appointment of Sheriffs will also deserve your maturest consideration, the manifold and important duties of these officers .... involve almost every relation to the honor and happiness of the community." He further expressed the desire that, "as the deficiency of funds of this County as well as the disorders that lately prevailed .... are due to their [the sheriffs"] malversation," the assembly would take effectual steps to suppress these bad results. C. R., IX, p. 379, 455.

46 C. R., XXIII, p. 970.

47 The power of collecting taxes was in some counties vested in the constable prior to the establishment of the office of sheriff. Tyrrell C. C. M., 1735.

48 The law of 1755 sought to correct this. Supra, note 39. The Tyrrell court in September, 1756, commanded John Hardison, sheriff, to return a list of "such persons as have paid their taxes and are not upon the list of taxables to the next court." Tyrrell C. C. M., 1756.

49 Bute C. C. M., September, 1759.

50 Col. Thomas Lovick, chairman of the Carteret court, member of the assembly from 1734 to 1760, and colonel of militia, usually settled in this manner. Carteret C. C. M., passim.

51 Carteret C. C. M., 1757.
52 C. C. M., passim.
53 Carteret C. C. M., July, 1747.
54 Idem, September, 1747.
55 Idem, December, 1747
56 Idem, March, 1748.
57 Idem, passim,
58 Tyrrell, C. C. M., December, 1766.
59 Idem, passim.

60 C. R. Legislative Papers, MSS., April 4, 1761. This petition was rejected by the Legislature. C. R., VI, p. 671.

61 For example, in May, 1776, Joseph Spruill, who was sheriff of Tyrrell County from 1770 to 1772, made a settlement for his taxes in 1772. Tyrrell C. C. M., May, 1776. In Carteret County in 1757 a committee of three justices was appointed to examine the accounts of the sheriffs for the years 1755 and 1756. Carteret C. C. M., 1757. In the same county in 1747 the sheriff settled his account with Col. Thomas Lovick in June, with a balance due the county of £21 4s. 6d., and this amount remained in the sheriff's hands until December, 1748. Carteret C. C. M., June, 1747; idem, December, 1748. In September, 1760, the sheriff of Beaufort County for 1757 and 1758, exhibited his account to the court for those two years. Beaufort C. C. M., September, 1760. In Tyrrell in November, 1769, the sheriff settied his account for the year 1767. Tyrrell C. C. M., November, 1769. In the same county in May, 1771, Edward Smithwick, who was sheriff in 1769, appeared before the court "ready to settle his account," but refused to do so because five justices were not present. Idem, May 1771. At this next quarter session, Samuel Smithwick, who was sheriff in 1768, made his settlement in favor of the county to the extent of £24 14s. 4d. Edward Smithwick settled at the same court. /Idem, August, 1771.

62 C. R., VII, p. 497.
63 C. R., VII, pp. 93-94.
64 C. R., VIII, pp. 93-99.
65 C. R., VIII, p. 105.
66 C. R., VI, p. 984; VIII, p. 139.

67 It is generally considered that there were only three reports. North Carolina Historical Review, Vol. III, p. 475. The fourth, if not prepared by Burgwyn, was certainly based upon the other reports. Three of these reports, showing the state of the taxes levied to retire the currency and the delinquency of tax collecting officials, are in the Colonial Records. C. R., VIII, pp. 278-281; IX, pp. 166, 572-575. The other, showing the taxes collected from 1748- 1770, is reproduced in the North Carolina Historical Review, Vol. III, 475.

68 C. R., VIII, pp. 278-281. This report was filed in December, 1770.
69 North Carolina Historical Review, Vol. II, p. 476.

70 C. R., IX, pp. 572-575. This report was filed March 5, 1773, and if not compiled by Burgwyn was based on his earlier reports.

71 C. R., VII, pp. 278-281.
72 C. R., VIII, pp. 278-281.
73 C. R., IX, p. 574.
74 C. R., IX, p. xvii.
75 C. R., IV, p. 1292.
76 C. R., VI, pp. 990-991.
77 C. R., VIII, pp. 637-638.
77 C. R., VIII, pp. 637-638.

79 C. R., XXIII, p. 674. Only the caption of the law is published, but apparently the commission was only raised from six per cent to eight per cent. Tryon, “View of the Polity of North Carolina,” C. R., VII, pp. 472-491. Letter Book, p. 142; C. R., VIII, p. 256.

80 C. R., XXIII, p. 154.
81 C. R., XXIII, p. 212.
82 C, R., XXIII, p. 627; VII, p. 472; VIII, p. 256.
83 Legislative Papers, March 15, 1742; passim; C. R., VI, p. 743.
84 Tryon, Letter Book, p. 142; C. R., VII, p. 472.
85 Tyrrell, C. C. M., September, 1739; passim.
86 Beaufort C. C. M., September, 1760; passim.
87 Tyrrell C. C. M., 1761-1762; passim.

88 McKinley, A. E., The Suffrage Franchise in the Thirteen English Colonies in America, pp. 80; 81-121.

89 C. R., XXIII, p. 12.
90 C. R., XXIII, pp. 207-210.
91 C. R., XXIII, pp. 523-526.
92 Tyrrell C. C. M., 1760; Executive Papers, 1769.
93 C. R., XXIII, p. 14.
94 C. R., II, III, IV, passim.
95 C. R., IV, pp. 384, 389, 496, 499, 500, 652-653.
96 C. R., III, pp. 289, 301.
97 C. R., III, p. 289.
98 C. R., IV, p. 117.
99 C. R., IV, pp. 384-389.
100 C. R., IV, pp. 384, 385, 387.

101 C. R,, IV, pp. 384-385. Carter was finally sent down to the house by the council, where he was. in attendance as an officer, and begged the pardon of the house.

102 C. R., IV, pp. 496, 499, 500.
103 C. R., IV, pp. 494-495.
104 C. R., IV, pp. 494-495.
105 Legislative Papers, 1754; C. R., V, p. 243.
106 C. R., V, pp. 245-246.

107 This petition is not mentioned in the published journal of the legislature. Legislative Papers, December 20, 1754.

108 C. R., V, pp. 245-246. By way of comparison it is interesting to note that in 1743 the assembly had issued a new writ of election on the ground that the sheriff had merely failed to administer the Oath to an election officer and was not, according to the resolution of the legislature, guilty ol any partiality at all. C. R., IV, pp. 652-653.

109 C. R., V, p. 243.
110 Legislative Papers, December 18, 1754.
111 C. R., VI, pp. 366, 367, 374,375.
112 C. R., VI, pp. 351-352, 366, 406, 675, 896, 904; IX, pp. 748-747.

113 C. R., VI, pp. 1259, 1278-1279; VIII, pp. 317, 341; IX, pp. 748, 755, 756: Legislative Papers November 5, 1762; November 12, 1762; December 13, 1762; Secretary of State Papers, April 10, 1

114 C. R., VI, p. 365; VIII, 113; Legislative Papers, October 28, 1769.
115 C. R.. VI, pp. 366, 406.
116 C. R., VI, p. 365.

117 Legislative Papers, February 8 and 25, 1764; C R., VI, p. 1154b. The committee reported, however, that Blount’s petition could not be sustained. Legislative Papers, February 25, 1764; C. R., 1159, 1183. The house did not concur in the resolution of the committee, but the matter was allowed to lie over till the next session, and nothing was done about it.

118 C. R., VIII, pp. 317,341; Legislative Papers, December 13, 1770. Ormond was declared duly elected.

119 C. R., IX, pp. 745-747. Stewart was declared elected by the committee.

120 Legislative Papers, November 7 and 8, 1766; C. R., VII, pp. 351-352. Blinn was declared elected.

121 The justice here referred to was Wade himself. Secretary of State Papers, November 29, 1773; the deposition of Robert Webb; idem, December 11, 1773.

122 Moreover, this deposition was taken April 13, 1773, three days after the election, apparently in anticipation of a protest. The others were made in November. Iden, 1773

123 Secretary of State Papers, November 30, 1773.
124 C. R., IX, pp. 748, 755, 756.

125 Supra, note 33. This was probably the cause for the order of the council in 1749 prohibiting ordinary keepers from being commissioned as sheriffs.

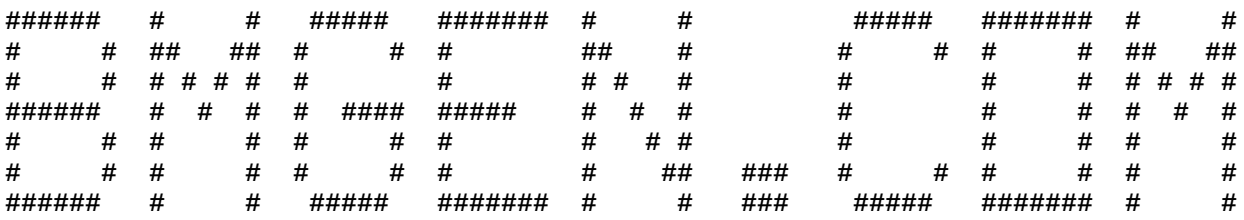
126 Executive Papers, April 30, 1756: passim.

127 Alexander McCulloch resigned his commission as colonel in Orange, and wrote to Dobbs as follows: “The properest person to Act in that commission who lives in the County is one John Gray who is Sheriff of sd County." Executive Papers, December 19, 1754.

128 Bute C. C. M., 1766; Tyrrell C. C. M., 1754; Orange C. C. M., June, 1753; C. R., XXII, p. 345; passim.

129 John Sallis to Dobbs, September 6, 1755. Executive Papers.

130 Dartmouth MSS., pp. 114, 123-124, 159, 171, 172, 215; C. R., X, 244-246. "These officers are generally, if not universally, the leaders in the present sedition." Martin to the Earl of Dartmouth, September, 1775.



Transcribed from original documents by Brent R. Brian & Martha M. Brian.

This document and others can be found on our website:

BMGEN

Brent R. Brian
Martha M. Brian
BrianMitchellGenealogy@gmail.com