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THE GOVERNOR, COUNCIL, AND ASSEMBLY IN ROYAL NORTH CAROLINA

BY

CHARLES S. COOKE, A. B.

but as a connected series, similar in their nature, akin both in origin and development. Their history, like that of events generally in the colony, shows that the people of North Carolina, when occasion demanded, were quite given to force and violence, though not mere lawless rioters who loved strife for strife's sake, and preferred violence to peaceful measures. On the contrary, there was much method in their madness, and cool, deliberate system in their force.

The salient points that strike the student, in an examination of their precedents, with more force than any others, are:

(1) That North Carolinians, from their earliest days, relied upon the known and unchanging texts of written laws without any deviations, and not like their English ancestors, upon unwritten law with its corollaries and incidents, always more or less uncertain and varying, and always more or less flexible. "Our charter still exists," was their slogan from the start to finish, from the first Royal Governor to the last. In the face of the first they flung their charter as the supreme law of the land to which all other things, animate or inanimate, must yield, and so it was with the others, one after another, until not even a shadow of Royal Government was left in North Carolina.

(2) That whenever, in their opinion, speech had been exhausted, and action was necessary, they did not hesitate to use violence to prevent infringements upon their rights, real or fancied.

Few colonies could show a more consistent discontent, more bitter party feeling and personal hostility than did North Carolina. Even more than its neighbors it suffered from foolish laws and injudicious instructions, as well as from bad governors. To the rulers in England and to the Board of Trade it must have seemed a hot-bed of bickering and discontent, yet were the full truth known, as it cannot be for the lack of indisputable evidence, it might be seen that this discontent was due to the attempts of a body of poor but honest settlers to get the most of the circumstances in which they were placed, despite the policy of the rulers in England and the self-seeking activities of their appointees.

An understanding of these conditions is essential to follow closely the differences which sprang up between the colony of North Carolina and its mother country and which form the nucleus around which the history of the Royal period is woven.

After North Carolina became in 1728 a royal province, it was governed by a system that was very like that of the mother country. The king of England was, of course, sovereign in every portion of the province, and to him was due the obedience of the people, and their annual payment of six shillings, three pence for every hundred acres of land. The crown delegated its authority and prerogative to a governor, but retained the power of repealing in council any law enacted by the provincial assembly.

The governor was the fountain from which flowed both civil and military promotion. The sheriffs, judges, and justices of the peace were the creatures of his appointment and removable at his pleasure, as were all the officers of the militia. He nominated and procured the appointment of all the members of the council for North Carolina, which constituted the upper house of the legislature, and corresponded its functions to our present senate. No bill could become a law without the concurrence of this body, while the governor also possessed the power to veto any act upon which both houses were agreed. The lower house, the assembly, was chosen by the free-holders who were in possession of fifty acres of land. There had been a statute for the equalization of representation in the assembly, but it was disregarded or repealed, for Governor Tryon, in a letter to Lord Shelburne in 1767, said that the counties of Old Albemarle at that time sent five members, Bertie three, and all other counties two each. When the members of the assembly were chosen by the people, they usually retained their seats year after year until the governor saw fit to dissolve the House when there was a new election. The towns of Edenton, New Bern, Wilmington, Brunswick, Bath, Salisbury, Campbellton, and Hillsboro were each in time represented by a borough member, chosen by the citizens of these incorporated towns. The law required that as many as sixty families must reside in a village before it was entitled to this distinction. On one occasion, Governor Martin

tried to evade this rule as a special favor to Tarboro, but the assembly refused to seat the man sent up, and the governor reconsidered his claim of right in the premises. It was only by application to the governor and council that the number of borough towns was increased.

The common law of England and the general statutes of that realm were early declared to be in force in North Carolina. The highest court was that of chancery, which consisted of the governor and five members of the council for North Carolina, from which appeal lay only to the king and the Privy Council in London. The governor could issue injunctions to stay proceedings in courts, but no original process seems to have issued from this court of chancery.

The General Court, composed of all the judges, sat twice a year at New Bern to hear appeals. The Superior Courts could grant letters of administration and appoint guardians, a power that also rested with the governor and inferior courts. All matters in law and equity were cognizable in the Superior Courts, except small offenses against the criminal code and money demands not exceeding one hundred dollars in amount.

The governor and council were also required to meet twice a year in what was called the Court of Claims. On these occasions, they inspected the applications for grants of the king's lands and made orders to the secretary to issue grants in fee-simple with the invariable covenant for the annual payment of quit-rents on the lands thus conveyed. The governor issued his warrant to the surveyor general of the province, who in turn transmitted orders to his county deputies, setting out the boundaries and giving other necessary details.

There were two treasurers for the whole province. One of these accounted with the sheriffs of the northern counties for such taxes as were intended for provincial expenses, while his colleague discharged similar functions in the southern counties. They were elected by the assembly and disbursed only under the direction of that body . The positions were considered of great honor and were sought by the most distinguished men.

The receiver general collected the royal quit-rents, and was of

less power and importance than the secretary, who not only made out all land grants, but appointed a clerk of the crown in each county and issued all civil as well as military commissions. The district clerks of the crown attended to the criminal processes in the Superior Courts. Another clerk, appointed by the chief justice, confined his attention to civil pleas and thus divided the business of the terms much after the fashion of the late clerks and masters in equity. The auditor acted simply as a check upon the secretary and the receiver general.

In each county was a court of Common Pleas and Quarter Sessions. They were held by justices of the peace, and these were appointed by the governor and held their office during his pleasure. The jurisdiction of this court in criminal matters did not extend to offences for which the punishment was the deprivation of life or member, and in civil matters they only had cognizance of cases where the money demanded did not exceed one hnundred pounds. The oldest record of these inferior courts is to be found in the minutes of the Berkeley Precinct Court still preserved in the office of the Clerk of the Superior Court of Perquimans County. In the enumerated powers which it conferred upon the justices, it was enacted that they should be authorized "to enquire of the Good men of the province, by whom the truth may be known, of all felonious witchcraft, enchantments, magic arts, trespasses, forestallings, re-gratings, and extortions whatsoever." This extract is interesting in that it shows the offenses which our forefathers considered worthy or deserving of punishment.

It has been noted that the government of North Carolina during the Royal Period was very much like that of England, and that corresponding to the king, who was the executive in England, was the governor, who was the supreme ruler in the province, and responsible to the crown for all of his acts, and not to the people whose affairs he was to administer. As he was the supreme authority in the province, in a study of the government of the province of North Carolina, he is the logical one to claim first attention.

The governor of North Carolina was appointed by the king of

England on the recommendation of the Board of Trade. The methods by which these appointments were secured were similar to those employed in the other departments of the British public service in the days of the Whig ascendency. In a report submitted to the Board of Trade in 1715, there is an interesting statement of the principles of such appointments: "Governments have bin sometimes given as a reward for Services done to the crown, and with design that such persons should make their fortunes. But they are generally obtained by the favour of great Men to some of their dependents or relations, and they have sometimes bin given to persons who were oblidged to divide the profit of them with those by whose means they were procured, the qualifications of such persons for Government being seldom considered." Later on in the colonial era, however, appointments were often made on more rational grounds, since with increasingly frequent communication between the colonies and the mother country, the former naturally exerted increased influence upon the choice made by the crown. The appointment of colonists to the governor's chair was not altogether uncommon in the eighteenth century.

The governor's tenure of office may be considered under two aspects, that defined by the terms of his commission, and the practical aspect determined by actual conditions. His legal tenure, as stated by his commission, was during the king's pleasure, with the formal limitation, imposed by English custom, that all patents terminated on the death of the king.

The newly-appointed governor, on his arrival in the province, published his commission and then took the necessary oaths in the presence of the council.

The governor of the Royal Province of North Carolina may be considered from two distinct standpoints. On the one hand, he was the centre of the local administration, the chief executive of the province; on the other hand, he was the agent of a larger and higher authority, the guardian of interests broader than those of his single province. As will be seen later, it was not always easy, or even possible, to keep in harmonious action the two forces of local feeling and imperial interest. Indeed, their

inevitable conflict constituted the chief difficulty of the governor's position.

It is easy to see, then, that the first duty of the governor was to serve as a means of communication between the province and the home government. He recommended to the colonial assembly the legislation desired by the crown, and furthermore, he was expected to keep the home government informed on a wide range of topics connected with the condition of the province and its administration. He was the head of the whole administrative machinery of the province, and in this capacity watched all the parts of the system, and, so far as possible, directed its movements.

It was his duty, not only to recommend desired legislation, but also to prevent the passage of all acts injurious to the interests of the crown and the mother country. Whenever the provincial interest and the imperial interest should come into conflict, his conrolling obligation was his duty to the crown.

In addition to the various ways in which the governor acted as the representative of the crown, the extension of parliamentary control imposed upon him a gradually increasing number of functions of another kind, connected with the enforcement of the acts of parliament. One of the first navigation acts, the well known statute of Charles II, required the governor to take an oath to enforce all the provisions of the act, under penalty of removal from his office.

As centre of the local administration, the royal governor of North Carolina was charged with many more duties. By the advice and consent of the council, he was empowered to grant lands, according to the terms issued by the crown or according to the terms of the acts of the legislature which the crown had approved. These grants, when sealed with the seal of the province and recorded in the land office, were legal as against all persons, even against the king himself.* He appointed, by the advice and consent of the council, men to fill all vacancies in the land office, and, in co-operation with the two houses of the legislature, enacted all the laws in regard to registration, alienation,

*Colonial Records, Vol. III, p. 90-118.

transfer, title by occupation, validity of patents, re-survey, rent-rolls, and the number of acres to be granted to any one person. Quit-rents and the conditions of escheat and forfeiture neither he nor the legislature could determine, as these were reserved as the crown's exclusive right.*

He was required to administer the oaths and tests to the members of the provincial assembly and the council, and was given power to suspend any councillor for sufficient cause, but only with the consent of a majority of the council. He was given the power and duty of keeping the official seal of the province, and of administering the oath in reference to the king's person to whomsoever he saw fit. He was authorized to issue the moneys raised by acts of the assembly, and to expend this money for the support of the government.

The governor also had all the powers that belonged to a captain-general or commander-in-chief; to levy, arm, muster, and command all persons residing in the province, to march or embark them for the purpose of resisting an enemy whenever occasion demanded it, and to transport the North Carolina militia to any American colony, if needed for its defence. His powers in the matter of defence was almost unlimited.

He could call a General Assembly whenever occasion demanded it, and he and the council were to be the judges of the necessity. He had a negative voice in the passing of laws and ordinances by the assembly, and none could be passed without his consent. He could also prorogue or dissolve the assembly to prevent the passage of certain bills.†

His judicial powers and duties were confined to establishing such courts of law and equity as he and the council deemed necessary for hearing and determining all cases, to the appointment of all the judges except the chief justice, and to the pardoning of fines and forfeitures. He could not, however, displace a judge or justice without a sufficient reason, the sufficiency of such being determined by the Board of Trade and the Crown.

*Raper, *North Carolina.*
†C. R., III, 66-73.

He was instructed to see that all persons committed to prison had the immediate privilege of the writ of habeas corpus.*

The governor's support was provided in a number of ways, but the most important part of his income was his salary which was paid out of the somewhat uncertain and fluctuating quit-rent revenues of the province.†

In addition to the salary, the governor had various other sources of income. The most important of these was perhaps the fees which were collected on a great variety of occasions, the amount of which was not at first fixed by law but regulated by "English custom," a vague limitation clearly liable to great abuses. These abuses continued in North Carolina until the passage of a law during the administration of Governor Johnston, and recommended by him, which provided for the regulation of fees by the legislature.‡ Johnston's successor objected to the measure on the ground that it was inconsistent with that article of his instructions which authorized the governor to regulate fees, but the Board of Trade decided that such legislation was not inconsistent with his instructions.§

This, then, in brief, is a sketch of the executive part of the royal government, the governor, his duties, powers, and rights. To some students of this period of North Carolina history it may appear that the governors of that time were, for the most part, worthless and vacillating, but one must bear in mind before so judging them that they were a part of an inefficient system, for the machinery of English colonial government in the eighteenth century lacked much in unity and dispatch. The Board of Trade was slow in making its decisions on colonial matters, and the law officers required still more time. The secretaries of the king did not pay much attention to many matters, though important. The records of North Carolina are full of evidence of the carelessness and dilatory habits of the home government. The governors, as a whole, however, were careful to keep the Crown well informed respecting colonial affairs. Most of them

*C. R., III, 90-118.
†C. R., III, 295.
‡C. R., IV, 229, 916.
§C. R., V, 643, 756.

attended to the administration of the province with much interest, though at times with little intelligence, their mistakes being mostly those of judgment. At times they adhered obstinately to the letter of their instructions and in so doing rendered their position and that of the Crown weak. They often forgot that the people under the proprietors had governed themselves almost without restraint, and often ignored the fact that a people with such a history would not readily yield to prerogative government.

The two royal governors who achieved least for the home government as well as for North Carolina were Burrington and Martin, but in so judging them it must be remembered that each was governor of North Carolina at a time when an unusual amount of tact and judgment was necessary. Burrington being practically the first governor of the royal province and consequently having to make the first attempts to uphold the royal prerogative, a theory, the spirit of which the colonists did not understand or appreciate. Martin was the last governor in royal North Carolina and as such had to face the revolutionary spirit that had been growing in the American colonies for years, and which had been especially active in North Carolina.

The governor was the head of the colonial executive of North Carolina during the royal period, but in the exercise of his powers he was assisted, and to a certain extent checked, by an executive council of twelve members. These councillors were appointed by the Crown, usually on the recommendation of the governor. The original rule as stated in the governor's instructions, was that the governor should always keep before the Board of Trade a list of persons best qualified for appointment as councillors. The number required was originally six, but the instructions to Burrington in 1730 required a list of twelve eligible candidates. This rule was evidently not always observed; hence on the recommendation of the Board of Trade it was so modified that as each vacancy occurred, the governor should send in a list of any number of names, from which the crown might make its choice.*

*Instructions to Dobbs, 1754.

The governor, in his nominations for the council, was directed to see that certain qualifications were complied with. For example, the councillors were required to be men of good life and "well affected to Our Government," of good estate, and not necessitous persons or much in debt; they were also required to be "inhabitants of the province."* Clearly the intention was to secure, as far as possible, the substantial men of the province, though undoubtedly many other elements had to be taken into consideration.

The councillors, therefore, did not receive their powers from the people of the province, and hence were not so much inclined to enter into their feelings. They were largely under the control of the governor, and their relations with him were usually close and friendly, for they both represented the same institution, the crown, and were amenable to the same power. They were largely under the control of the governor. He had the right to suspend them for certain causes, although they might be removed only by the Crown. He could suspend them for failure to discharge their duties, especially when such failure was accompanied by an absence from the province of more than twelve months without his consent. He was directed to send immediately to the Board of Trade the names of all councillors suspended by him, with a statement of the grounds of suspension, but this arrangement left him so nearly unrestrained that it was afterwards found necessary to require that all suspensions should have the consent of a majority of the council, to which the governor was to communicate the reasons for his action. If, however, the reasons were of such a nature that they might not be properly commnuicated to the council, the governor was to transmit at once to the home government a full statement of the charges against the suspended councillors.

Under these provisions the governor had considerable latitude in the exercise of the right of suspension, and indeed, even in the final removal of councillors his influence often prevailed. There can be little doubt that this power was often abused by governors who were disposed to take advantage of it to get rid

*Instructions to Dobbs, 1754.

of their opponents in the council, and to to put into their places persons who might be relied upon to support the governor's interest. This danger led to a tendency on the part of the home government to check more closely the governor's power of suspension, with the result that in several cases suspended councillors were re-instated by special order of the Crown. So in 1761 the king sent an order to restore John Rutherford to his seat in the council. It is true that this reversal of the governor's action was not common, but the fact that it was possible and actually took place was of no little significance.

The councillors were not, as a rule, salaried officers. In general, like the members of the lower house, they had to content themselves with per diem allowances during the sessions of the assembly. In 1757 the Board of Trade recommended an allowance of fifty pounds per annum to be paid to each member of the council out of the quit-rents of the province.*

Having considered the organization, let us now turn our attention to its functions. These were of three general classes: In the first place, it was the executive body to assist, to advise, and in a measure to control the governor in the exercise of his executive functions. Secondly, it had some judicial powers, and constituted a court for the trial of certain kinds of offenses. Finally, it was the upper house of the provincial legislature.

An accurate description of its powers and duties as an executive board is not easy, many matters being, in the absence of definite statements, determined by mere usage. A few of its executive duties, however, may be determined.

The council was an executive body in that it was an adjunct to the governor, the president of the council acting as chief executive when the governor died or was absent from the province. As an executive board, the council was, of course, subject to the governor's call, for the conduct of business a quorum of three being required,† which in 1754 was changed to five. In executive meetings the governor presided and proposed matters for consideration, but he was directed to allow the council freedom of debate and vote.

*C. R., V, 787-788.
†C. R., VI, 526.

Another function of the council as an executive body is very clear—it was an advisory board. The councillors were bound "at all times freely" to give their advice to the governor "for the good management of the publick affairs of the government," and were also to restrain as well as to assist the governor in the exercise of his powers. In the instructions to the governor was a long list of matters in which his power was limited by the proviso that he was to act only with the advice and consent of the council. This body, with the chief executive, issued the warrants and grants, decided upon the question whether lands should be granted to certain persons or not, and whether lands were escheated or forfeited. It was its duty also to see that the quit-rents were properly collected.* This council heard many complaints about the legality of grants, decided whether quit-rents were payable in certain products, and what should be the value of such products, summoned persons before them to show why they held or laid claim to lands, heard petitions for re-grants, erected a court of exchequer for adjusting all cases relating to the crown's revenue from land, and appointed assistant barons to the said court.

The advice of the council was of course asked and given on a great variety of occasions and questions, though the extent to which the practice was carried naturally depended upon the personal characteristics of the governor on one side, and of the councillors on the other. Some governors excluded the council from the conduct of public affairs as much as possible, while others were inclined to throw responsibility upon it. The temptation to shift responsibility was particularly strong in questions of legislation. Indeed, governors often asked advice as to whether they might properly give their consent to particular bills, even though before coming to the governor at all a bill must have been previously passed by the council sitting as an upper house.

The council also shared largely in the general administration of the province. It appointed administrators of certain private

*Raper, *North Carolina*, p. 73.

estates, and sat in judgment over the administration,* heard complaints against the officers of the province and at times advised the governor to suspend them, heard and granted petitions for new precincts, ordered sheriffs to complete the collection of taxes by a certain time, and had the power of appointing a committee to act jointly with a similar committee from the lower house in examining and auditing all public claims and accounts.†

The council had many judicial powers and duties, but they were mainly of the nature of advice. It advised that commissions be issued appointing assistant justices of the general court, and that courts of oyer and terminer be held at certain times and places. With the governor, it issued commissions of the peace, appointing themselves, the secretary, attorney general, assistant justices, and the chairman of the precincts—all justices of the peace. The governor with at least four members of the council, could act as a court of chancery and decide all cases in equity.‡

The main legislative power of the council was to be found in its ability to hold up any legislative act until it gave its consent. It kept its own journals, and these give a great deal of evidence that the council played an important part in the law-making of the province. In most matters it had equal rights with the lower house, and in some it had greater powers. All bills were required to pass both houses, through three readings, and to receive a majority vote in each before they could go to the governor for his approval. Either house could make amendments to the other's bills, which caused frequent conferences between the two. The right of rejecting all bills to which it did not assent gave the council a great influence which it exercised when no agreement over the amendments could be reached. It is seen, therefore, that the council had a two-fold law-making function, one as an executive, and the other as a purely legislative body. It had the same right as the lower house to block

*C. R., III, 214-215.
†C. R., III, 405-410.
‡C. R., III, 204.

or hinder any legislation, in spite of the demands of the governor and of the other house.

As regards efficiency, the council as it existed in royal North Carolina was not of the highest rank, though its general policy was one of support of the government. During the administration of Burrington, the council did little but dispute over personal or constitutional matters. Under the succeeding administrations of Johnston, Dobbs, and Tryon, the council agreed for the most part with the governor, but even then was not as efficient as it should have been. Martin, the last of the royal governors, could not agree with the council at all, for the colonists were beginning to show a rebellious spirit against England, and the councillors, in the main, took the side of the colonists. The lack of efficiency of this body was also caused by the continued absence of its members whenever they did not want to attend, for they were colonists and their responsibility to the crown did not rest very heavily upon them, for they could only be suspended for continual absence, and the majority of them did not mind that.

In tracing the general relations of the council with the governor, much can be found both to its credit and discredit. As an executive body, it could not agree with Burrington,* in fact it disagreed with him so much that he wrote to the Board of Trade to the effect that some of the councillors offered more obstructions to his administration than the lower house did. On one occasion, a member of the council, by name of Smith, left the province, and Burrington called the council to nominate his successor, he not only having been a member of the council but chief justice as well. At his call, only two members appeared, Jenoure and Porter, who not being a quorum, could not elect a new member. Thereupon the governor asked these two about appointing others so that there might be a sufficient number to hold a chancery court. Jenoure readily assented to it, but Porter refused.† This led to a long discussion, during which

*C. R., III, 150.
†C. R., III, 196.

no chief justice was appointed, for which the councillors were as much to blame as the governor.*

Under Johnston and Dobbs, while never very efficient, the council acted in substantial agreement with the governor.

The relations between the council and Governor Tryon were very harmonious. On one occasion he wrote that the council had acted well and uniformly for the Crown's interest.† During the early part of Martin's administration, he and the council agreed upon most matters, but after 1772, the council was disposed to take sides with the people in their opposition to the principle of British control which he was attempting to compel them to accept and abide by. In April, 1774, he wrote to Lord Dartmouth that the conduct of the council as the upper house of the legislature at the last session was opposed to his administration, that it was unbecoming, and calculated to injure the interest of the Crown.‡

To sum up what has been noted as to the position of the council in the royal province, it may be said that, although it is a mistake to suppose that the council was always or necessarily under the control of the governor, yet, as might have been expected from its constitution, it was usually on the governor's side in his contests with the lower house, exercising on the whole a conservatice influence, and, although it was not a very efficient body, still, in the main, it contributed much to the good government of the province. It exercised a beneficient restraint upon the lower house of the legislature, prevented the governor from making many mistakes, and brought respect and dignity to the home government.

The position of the executive—the governor and council—having thus been considered and its powers, duties, and acts discussed, as well as the function of the council as the upper house of the legislature, attention may now be turned to the other branch of the legislature, the assembly.

This lower house was first provided for in the charters of 1663 and 1665, and was in existence when North Carolina be-

*C. R., III, 370.
†C. R., VIII, 152-153.
‡C. R., IX, 969.

came a royal province. After this, the lower house was provided for in the commissions and instructions from the crown to the royal governors.

The governor, by this commission, had other important powers in the constitution of the lower house. In the first place, the calling of this body was left in his hands, subject, however, to the advice and consent of the council; but no assembly could convene without his action.

Elections to this house were held regularly in accordance with writs issued by the governor to the sheriffs directing the choice of a certain numbes of representatives from each district* During the early part of the royal period, this gave birth to the question as to whether or not the governor had any discretion in the issue of the writ, so far, for example, as to determine the number of members who should be returned from a particular district, or to grant the right of representation to a new district. The governor insisted that he had precedents for his position, but this claim the lower house denied, and finally went so far as to exclude members from new precincts not fixed by act of assembly.† Finally, however, the home government interfered; the acts of assembly creating electoral districts being disallowed, and the principle was laid down that the right to elect members of the assembly ought to be conferred only by the Crown, a principle which was carried out in the form of proclamation issued by the governor in the king's name.‡

The governor was ordered, in his commission from the home government, to see that the members of this branch of the legislature were chosen from the free-holders only, and he was forbidden to allow them any protection other than of their persons during the session, or to allow them to adjourn without his consent otherwise than *de die in diem* except on Sundays and holidays.

Owing to the fact that elections were held in accordance with the governor's writs addressed to the sheriffs, who were his appointees, the governor had some opportunity to influence the

*C. R., IV, 534.
†C. R., III, 380.
‡C. R., V, 81-92.

election of members. Indeed, corruption of this kind was distinctly charged against several governors,* but this charge is supported by comparatively little direct evidence.

On becoming members of this lower house, the representatives were required to take from the governor the oaths of allegiance and supremacy of the crown.† After the house met, the governor claimed some control over the organization of it, based on the apparently innocent provision that these regular oaths should be administered by him. In his opening speech at the beginning of each session, he outlined his policy to the representatives, spoke of their rights and duties, and made his requests. He allowed them to choose their own speaker and clerk,‡ to keep their journals, introduce, discuss and amend bills, but the final decision was in the power of the council and himself.

Each member of the house was paid nine shillings and six pence for each day that he served. He was allowed the same amount for each day that he spent in travelling to and from the place of meeting. Any member that failed to put in his appearonce on the precise day for which the house was summoned, unless he was detained by some disability, was fined ten shillings. Any member, who, after making appearance, absented himself without permission from the service of the house, was required to forfeit forty shillings for each day that he so absented himself, and was also made liable to the censure of the house for contempt.

After the house had been organized, the governor still had great power over it, inasmuch as the continuance of its sessions depended entirely upon his will, at least so far as the terms of the royal commission could confer that power. The governor was authorized by his commission to adjourn, prorogue, or dissolve all general assemblies as he might think necessary; and by a later instruction, he was directed not to allow the assembly to adjourn itself except from day to day.

In regard to the question of prorogation, it was held by the

*C. R., II, 159.
†C. R., III, 66-73.
‡C. R., III, 540.

law officers of the Crown that the governor might prorogue to any time or place; that he might even prorogue an assembly when not in session.* How was this power actually exercised? In the first place, sessions of the lower house that proved refractory were often prorogued, in the hope that a short interval of consideration might bring the members to a more favorable mood.† Furthermore, it was charged by the assemblies, and probably with some truth, that the governor used this power merely as a means of harassing the house in the hope of forcing it to accede to his demands. There can indeed be no doubt that assemblies were sometimes prorogued in order to prevent them from taking action not in accord with the wishes of the governor.

The question of dissolution now occurs. Prorogation merely ended a particular session; dissolution terminated the life of a house. It is therefore not difficult to see that the governor with this power of dissolution in his hands had a very effective weapon in his possession and so a very strong hold upon the house. This was the common method of getting rid of an obstinate house in the hope of securing one in its place that would prove more tractable. It was sometimes dissolved because the governor feared action that was inconsistent with his own interests. Of course the dread of dissolution must have had some influence upon the actions of members of the house who were by no means sure of being returned at a new election, but on the whole, it may well be questioned whether the dissolution of a refractory house brought the governor any great advantage in the long run.

Another feature of the right of dissolution and perhaps on the whole a more dangerous one, was the power to refuse dissolution. If it was advisable to dissolve an unfavorable house, it was just as clearly desirable to keep a compliant one when once chosen, a consideration which often caused the same assembly to be kept in existence for several years.

In addition to these constitutional means of influence, there was another effective method by which the governor acted on

*C. R., II, 576.
†C. R., VI, 243-244.

the lower house of the legislature, namely through his power of dispensing patronage, a function that was undoubtedly of considerable importance.

But the governor was not limited to this indirect influence; he was himself a part of the legislative system. He had the right to issue ordinances or proclamations of two classes, namely, those for the regulation of fees, and those for the erection of courts. The most common of the ordinances issued by him were those enforcing the provisions of statute or treaty, or those containing regulations regarding subjects which might fairly be considered matters of executive concern. An instance of this was the issuing by the governor in 1735 of a proclamation regulating the sale of liquor to the Indians.*

The governor was furthermore, as has been said, a part of the regular legislative system of the province, acting with the co-operation of the council and the lower house; the comission empowered him, with the consent of the council and the lower house, to make laws not repugnant, but as nearly as might be, agreeable to the laws of England.

Since the right of recommendation necessarily carried with it very little actual power, the governor was left to find his really important legislative function in the right to approve or to refuse to approve all bills passed by the council and assembly. The commission gave him a negative vote on all laws, statutes, and ordinances, "to the end that nothing may be passed by our said council or house to the prejudice of us, our Heirs and Successors." Furthermore, this veto was not merely suspensive there being no such thing as passing a bill over the governor's refusal to approve it.

The governor was restricted in his right to participate in legislation in that there were certain kinds of bills that he was forbidden to approve, a precaution intended to protect in particular imperial or British interests against injurious local legislation. He was not, for example, to allow the final enactment of bills for the issue of paper money, or for the imposition of discriminating duties on British ships or manufactures.

*C. R., IV, 45.

Having considered briefly the powers of the governor in relation to the lower house of the legislature, let us now look at the powers which the house had in itself, both regarding the general government of the province, and regarding the governor.

One of the privileges which the house claimed was that of determining the suffrage. What this was during the royal period it is impossible to judge, but as the royal government began with the principle of freehold suffrage, it would seem that this was the rule throughout the period. The house also claimed the right of making inquiries into the election returns of its members.*

Besides these special privileges, the lower house also had certain specified powers, some of which the crown gave by voluntary grant, while others came to it by custom or assumption. Along with the powers were their correlative duties. The lower house exercised great power in regulating territorial system, especially in excusing the colonists from the penalties of noncompliance with the regulations. During this period seventeen acts concerning land were passed by the house and agreed to by the governor and council and the crown.† These acts were concerning the proper settlement and cultivation of land, enrollment and registration, titles, rent-rolls, quit-rents, and the relief of those who failed to comply with the laws and regulations. Not only did it take a leading part in passing the acts, but it exercised a general supervision over the administration of the whole land system.

The lower house had a great deal to do with the general administration of the province. It acted jointly with the upper house, or council, in inspecting and settling all public claims and accounts. It ordered all the public treasurers to lay their accounts before it, and often appointed and controlled them, attempted to ascertain and regulate the fees of all officers, prescribing in what they should be paid and at what rates, complained of the bad conduct of officers and of the lack of courts, made addresses to the governor and the Crown concerning the laws,

*C. R., III, 288-289.
†Raper, *North Carolina*, p. 94.

currency, trade, lands, rents, and tenants of the province, and appointed and controlled for the most part an agent who resided in England. The governor in his opening speeches encouraged most of this and asked the representatives to promote the welfare of the province by establishing a good system of trade, religion, and education. This request of the governor gave them a legal right to look after the general administration of the province in several matters, and they assumed other rights as belonging to themselves by virtue of the fact that they were representatives of the people who were governed and who paid the taxes. Chief among these rights was the appointment and control of the treasurers of the province. The governor was, naturally, greatly opposed to this claim and declared that the house in making it was assuming to regulate the executive and was, therefore, taking away from his his constitutional rights.* But in spite of the protest of the executive, the lower house appointed and controlled most of the treasurers.

This body of representatives also had a great part in passing the acts providing for the organization of the militia and for defence. It was to the lower house that the governor applied for soldiers, arms, supplies, and forts, either for defensive or for offensive warfare, to which requests the lower house generally acceded. In cases of insurrection in the province, such as that of the Regulators in 1771, the lower house took a prominent part in suppressing them. So it was that the house, while in theory it had but little military power, exercised great influence over military affairs, for the governor was very often forced into a position where he must have soldiers and money, and he could do nothing towards getting them without the sympathy and aid of the house, to gain which he often gave up many of his prerogatives.

The part which the lower house had in the passing of acts for the government of the province was great, but it was often hindered in the exercise of these powers by the governor's power to adjourn, prorogue, or dissolve it.

Perhaps the greatest power which the lower house exercised

*C. R., VI, 1253.

was in regard to judicial matters. It made resolves about the proper or improper method of administering justice, and, with the upper house, it decided on juryment for the counties, and it often petitioned the governor to pardon violators of the law. The history of the royal period shows a constant attempt on the part of the lower house to deal with the qualifications and time of service of the judges, in which it was strongly opposed by the Crown, and consequently the governor, and in which it never attained any signal success.

Besides these general powers in the administration of the province as a whole, the lower house also exercised a control over the governor. In the first place, it was a check upon the governor through its very existence as a critical body empowered to inspect accounts, and eager to detect abuses in the provincial administration; furthermore it gave to the public sentiment of the province a constitutional means of expression; it organized public sentiment and thus made it effective. The value of such influence is easily under-rated, but an assembly which performs this function, even though it be without any power of legislation, or without the control of the purse, has yet within its hands a weapon against arbitrary government which is not to be despised.

By far the most important check upon executive action possessed by the house was certainly that exercised through its power over the purse. Inasmuch as no government can maintain itself without money, it is evident that a body that has the power to grant or refuse supplies holds the key to the situation. Such was the case in North Carolina during the royal period. No principle was more firmly held than this, that no taxation within the province was legal without the consent of the lower house, and this doctrine came more and more to mean the domination of the lower house, not only in all financial legislation, but by giving the house a means of controlling the governor, which more than counteracted the measure of power which he possessed over it. In this control of the financial situation, the assembly had a formidable weapon which it used, not only as an instrument of security against abuse of executive

power, but also as a means of extorting from the governor important powers properly belonging to the executive.

There is one phase of the subject regarding the control of the house over the purse which requires a special treatment, namely, the salary question. The Crown had very early adopted the practice of throwing the support of the provincial government, including the granting of official salaries, upon the provincial legislature, and the North Carolina legislature had passed a resolution which ordered the payment of such salaries "out of the revenue arising by the Quit-rents and the sale of Land."* It soon became clear, however, that if salaries were to be granted by the house, this body must in the long run control the amounts of those salaries, and must even have the power to withdraw them if it saw fit. This was a dangerous situation from the standpoint of the home government, which soon awoke to an appreciation of the fact that, with a governor dependent for his support upon the temporary grants of the assembly, the Crown would lose one very strong hold upon the colony, for the assembly often used its power improperly.

There can be no doubt that it is the general tendency of the legislature, when once firmly established, to encroach upon the proper functions of the executive, especially by minute supervision and control; and that in the case of the North Carolina assembly this tendency was greatly strengthened by the misconduct of governors. The popular policy soon became, therefore, to insure as far as possible the governor's dependence upon the lower house by the system of temporary grants, and to weaken the executive as far as possible by the transference of many of its proper functions to the house.

As has been shown, the assembly had gained its power chiefly through its control of the purse; it was therefore natural that the first assumption of executive powers by the house should be in the department of finance. The house, as the body invested with the exclusive right of granting the people's money, felt that it also had the right, in its representative character, to determine how that money should be spent. The representatives claim-

*C. R., III, 295.

ed the right, not only to appropriate money in general terms, but to define narrowly and in detail the uses to which it was to be put, holding that it was their right and duty to provide all necessary safeguards for a proper application of the money to the purposes for which it was intended. It is clear that this view might easily lead to an assumption by the lower house of powers properly executive, which it eventually did, for Governor Dobbs on several occasions complained to the crown that payments of public moneys were made without his warrant.* Thus the assembly had in many cases deprived the governor of even that limited control over finance involved in the requirement of his warrant for the payment of public debts.

From this fundamental assumption that the house as the representative of the people was the constitutional guardian of the people's money, there was only a short step to the claim by that body of the right to appoint those officers who were charged with the collection, custody, and disbursement of the public funds. The prevailing doctrine of the North Carolina assembly is summed up in the following resolution passed in 1753: "Resolved, That it is the inherent and undoubted Right of the Representatives of the People to raise and apply Monies for the Service and Exigencies of Government, and to appoint such Person or Persons for the receiving and issuing thereof as they shall think proper, which Rights this house has exerted, and will always exert, in such manner as they shall judge most conducive to the service of His Majesty, and the Interests of His People."†

The most important exercise of this assumed right was the appointment by the house of the provincial treasurer, which was usually done by formal act of assembly; sometimes, however, being done by a simple resolution of the lower house. Even when appointment was made by formal act of the assembly, the lower house clearly had the real choice; for such a bill, like all others having to do with financial matters, would originate in the lower house, and amendments by the council would be sure

*C. R., VI, 320.
†C. R., V, 758.

to meet with resistance. In 1760 the council ventured to change the name of the treasurer as given in the bill from the lower house, and the latter agreed to make the change, saying, however, that its consent that time should not be construed by the council as establishing a precedent of the right of the council to propose or nominate persons for that office, and resolved "that it is the inherent right of this House to nominate persons to be appointed to the office of Public Treasurer."* The home government made a virtue of necessity by instructing the governor that, although the appointment of treasurers by act of assembly was irruglar, yet it would be improper to set aside a usage of such long standing.

This appointment of the treasurer by the lower house took the control of the provincial finance almost entirely out of the governor's hands and placed it in those of an officer who was generally regarded as "solely and entirely a servant of the assembly."† The treasurer was often a person of considerable importance as is shown by the fact that in 1737, Governor Burrington wrote that Edward Moseley, the treasurer, was also speaker and manager of the lower house.‡

The interference by the lower house with the appointing power was not confined to the choice of treasurer, but extended to a large number of other offices, chiefly those concerned with the collection or payment of public money.

From the administration of finance and the appointment of officers, the lower house was gradually led to encroachments upon another department, the control of which may with even greater propriety be regarded as the exclusive right of the chief executive. If there is any function which especially requires a concentration of authority in a single head, it is certainly the command of military forces and the conduct of military operations. Yet even into this field the lower house forced its way, availing itself of the exceptional opportunities for such encroachments afforded by the frequent wars of that period. The urgent need of supplies for military purposes occasioned by

*C. R., VI, 508.
†Pownall, *Administration of Colonies*, p. 52.
‡C. R., III, 151.

these wars enabled the assembly, in making its grants of money, to impose the most stringent conditions. This power it used in three general ways: In the first place, in granting military supplies it often prescribed in detail the purposes for which they were to be used, and dictated the course of military operations and the disposition of troops. Secondly, it left in the hands of committees of the lower house the disposition of these founds, often with a very considerable control of the conduct of military enterprises. Finally, through the appointment and removal of officers, it went so far as to interfere with the discipline of the troops. It did not often, if ever, claim the right directly to appoint military officers in the strict sense of the term, but it sometimes interfered seriously with the discipline of the troops by attempting to enforce the removal of such officers as it did not want. It is clear that the assembly did in military affairs seriously encroach upon the governor's prerogative. This attitude, or situation, may be summed up with the remark of Chalmers in regard to the last of the Indian wars: "The king's representative acted merely as the correspondent of his ministers. The war was conducted by commitees of Assembly."*

In regard to the interference of the assembly with external relations, a few words will suffice. These external relations were chiefly of two kinds; inter-colonial interests, and Indian affairs. As to questions arising between North Carolina and the neighboring colonies, the appointment of commissioners to deal with boundary disputes was often made by the house, and finally received in some cases the sanction of the crown itself. In regard to relations with the Indians, the house showed a similar disposition to assert its control in the form of demands on the governor, as, for instance, that he should take the council of several members of the lower house in his negotiations with the Indians.

It has now been seen to how great an extent the lower house in various ways encroached upon essentially executive functions of the governor. These usurpations, or whatever else they may

*Chalmers, *Revolt*, pp. 300-301.

be called, probably reached their height during the last of the Indian wars, when the pressure upon the governor was of course greater than at any other time. This policy accomplished the end for which it was taken up, namely, the weakening of the governor, who if not personally an object of distrust and suspicion, was at least looked upon as the representative of interests at variance with those of the colony.

But it must not be concluded that the governors were content with such a course of events and that they sat idly watching the slow but sure encroachment of the lower house on their executive powers, for they were, on the contrary, fighting the advancing powers of the body with every means in their power, and were constantly engaged in conflicts with the representatives of the people. This conflict, increasing in intensity each year, makes up the greater part of the history of the royal period. The governor represented first the monarchical idea of prerogative, and secondly, the principle of imperative control, whether rexercised by king or parliament. The assembly, on the other hand, stood not merely for the representative principle in government, but also for distinctly local interests. The policy of the colonial legislature at its worst expressed a particularistic spirit, disregarding sound considerations of national or imperial policy; at its best it stood for the vital principle of local self-government and for the protection of legitimate American interests as against a narrow English policy.

The royal government of North Carolina reproduced on a smaller scale the constitution of the mother country. As the governor felt the responsibility of maintaining within the province the prerogative of the crown, so the lower house found support for its privileges and encouragement for its aspirations in the example of the English House of Commons. The colonial records of North Carolina reproduce in surprising detail the parlimentary conflicts of the mother country. Nevertheless, these ambitions of the colonial legislature met with but little sympathy from British statesmen of either school; the colonial prerogatives of the crown were identified with the political supremacy

of England, and therefore had the support of English Whigs as well as English Tories.

Some of these disputes were of a trivial nature, but most of them were based on vital constitutional points.

The first important question that came up during the royal period that showed the breach that had come between the executive and legislative branches of the government in North Carolina was one concerning the administration of the territorial system, which was precipitated in 1731 by Governor Burrington's hostile attitude. The assembly in this year adopted a resolution in which it declared that there was not coin enough in the province with which to pay the rents, as ordered by the latest instructions from the crown, and that, therefore, such payments should be made in such valuable commodities or bills as were convenient, at a proper rate of exchange. The governor insisted that the payments should be made in coin or in bills at a very low rate of exchange, and that payment in commodities at the rate desired by the assembly was to the great disadvantage of the crown. The assembly valued the commodities at high rates, and demanded that the bills be accepted at a small discount. A conference was held in May, but nothing was accomplished on account of the unwillingness of either side to yield.*

In the legislature which met two years later there was a reopening of these disputes. The assembly still held to its original demands that quit-rents should be paid in commodities, while Burrington maintained that they were due in coin. His attitude was such as to keep the quarrel at fever heat, and the result of it was that the lower house finally made the claim that the deed of 1688 from the proprietors, known as the "original deed," or the "Great Deed of Grant," was a permanent and binding document, and that, therefore, the crown had no right to give instructions concerning quit-rents which were contrary to this deed.† This claim practically denied the right of the crown to regulate the territorial system, an assumption which was without legal or constitutional basis, and was virtually an

*C. R., III, 143-144, 279-280.
†C. R., III, 598-599.

assertion by the assembly of virtual independence. In demanding that quit-rents should be paid in commodities, they were ignoring the rights of the Crown and depriving it of some of its legitimate dues, and the governor in refusing assent to such demands was doing his duty. But, on the other hand, he was going to extremes in claiming that quit-rents should be paid in specie only, for there was very little coin in the province, and to demand of the colonists payment in specie only was a hardship on them and a mistake on the part of the governor.

Governor Johnston proved himself to be more open to compromise than his predecessor had been, and so his disputes with the lower house were not as serious as those of Burrington. They were caused, however, by the same assumptions on the part of the assembly and the executive, which finally led to another declaration on the part of the house that the governor's demand that quit-rents be paid in specie was illegal. It asked the governor to have the rents collected according to the customs of the province until a law to that effect could be secured.* Johnston immediately informed the house in a message that its ideas concerning quit-rents were contrary to the king's rights and privileges, because the "original deed" was not irrevocable, having been revoked by the proprietors in 1760; and that North Carolina had adopted the crown laws when she became a royal province.† His arguments, however, failed to convince the members of the house, and no act was passed by that body.

In regard to fees, Johnston and the lower house did not often dispute. Still they had different opinions concerning the amounts of fees, in what they should be paid, and who had the right of regulating them‡ From 1736 to 1774, the lower house at times made complaints about certain officers demanding and taking exorbitant fees, but for the most part the governor was as ready as the representatives to correct such abuses; and during this period, the evidence, both of a positive and negative nature, would indicate that the lower house and the governor

*C. R., IV, 109-110.
†C. R., IV, 110-114.
‡C. R., IV, 173-178.

were willing to compromise on fees, as they did on territorial questions.

The conflicts arising from the question of fees did not originate in the fee system itself, but had reference to the form of their payment and the parties who should regulate them; they were, therefore, conflicts arising chiefly from the fiscal side of the system. Both parties, the executive and the lower house, in the main agreed that there should be a system of fees. They were willing to allow certain fees to the governor, the officers in chancery and admiralty, the attorney general, marshals, collectors of customs, registrars, surveyors, escheators, constables, justices of the peace, and clerks of the different courts. Fees constituted the chief or only compensation of most of these officers. On the question that they should be allowed, the executive and the lower house agreed, but in regard to some of the details of the system, they entertained very different views.*

The disposition and control of the public revenue were subjects of much controversy between the house and the governor during the larger part of the royal period. During April, 1731, the lower house, in reply to the governor's speech, discussed fiscal matters and declared that no public moneys should be issued except by the governor, the council, and itself. One of Burrington's instructions directed him to allow no money to be issued or disposed of except by his warrant issued upon the advice of the council, but he was not to allow the lower house to review and examine the accounts. This instruction was intended to take the distribution of public funds largely away from the lower house and to allow it no further control than that which it might have from the reviewing of expenditures. The house refused to accept such an instruction, at least Burrington's interpretation of it, and claimed that the act of 1715, concerning the public treasurer, gave more power than that involved in reviewing and examining accounts. Burrington would not recognize such a claim, and held that his instructions from the crown had legally superseded all the laws of the proprietary period. During his whole administration, conflicts

*C. R., III, 159-168, 270-272, 496-498; VI, 1097; VII, 796.

upon this subject continued between himself and the house. It claimed the privilege, which it had enjoyed during the proprietary period, of having a large share in the distribution of public money, while he insisted rigidly upon the letter of his instructions concerning their disposition.* Not only did the representatives refuse to recognize his claims, but they proceeded to carry their own into action. They appointed and, therefore, controlled the public treasurers; they had already, by an act of 1729, established that office in eleven precincts, and the control of these was in their power.

But it was upon judicial problems that the struggle between the governor and the house became great and serious. These problems became important in May, 1760, when the house presented to Dobbs a bill for the establishment of superior courts of pleas and grand sessions. He rejected it, and then laid the bill, with some of his instructions, before the chief justice for an opinion. He was instructed not to appoint any person to be judge or justice of the peace without the advice and consent of at least three councillors signified in council meeting, and that all commissions to judges and justices of the peace be during his pleasure only. Dobbs claimed that the bill violated the Crown's rights as expressed in the said instructions. He also argued that the house, in nominating the associate justice, had taken from him and the council the right of appointing justices, and that the clause which made the commission during good behavior was an open violation of the rights of the Crown. This argument, though legally sound, did not convince the chief justice that the bill should be rejected. He advised the governor that the bill, although containing some strange ideas, should be accepted, as it was the best one possible under the circumstances.† Neither did the governor's argument cause the house to change its position, and the struggle continued. But the principal effect of it was that the province fell into great disorder because of the lack of courts, and by the end of 1762,

*C. R., III, 265.
†C. R., VI, 246-248, 408-409, 413-417.

Dobbs assented to bills for superior courts as for inferior courts for two years, in spite of several objectionable clauses.*

The governor and the house also became involved in a conflict over the questions of representation in the assembly, and what should constitute a quorum, matters which may for convenience be called constitutional privileges. The questions, though never critical, were at times annoying, and were never fully settled. In 1750 the house claimed that the Crown had no right to compel counties and towns to take out charters of incorporation from the governor before they were entitled to representation. Dobbs declared the claim contrary to the rights of the Crown, and opposed to his instructions from the Crown.† He was correct in his position, being backed up by specific instructions from the Crown and so the house soon ceased to press its claim. The question of the quorum was far more important. In 1760 Dobbs asked that the house act with fifteen as a quorum, It refused to do so, and denied his right of determining what should constitute a quorum, claimly that as peculiarly its own. Acting on this assumption, it sometimes would allow twenty-five to act and again it would not make a move towards discharging business without a majority of its entire number.‡ In taking such a position, the house was acting directly contrary to the Crown's instructions, which specifically stated that fifteen members should constitute a quorum.§ But as this was a point of considerable importance, it would not obey the crown, and would not act without a majority, or at least twenty-five of its number, whenever the whim struck it. It was much more difficult for the governor to control from twenty-five to thirty-five members than fifteen, and with a small quorum, it was thought, he might easily pass acts against the interests of the people, while with a large one it would be practically impossible.

We have now seen that the conflicts between the governor and the lower house arose from their different points of view on questions of land, fees, money, courts and judges, and con-

*C. R., VI, 890-892.
†C. R., VI, 245.
‡C. R., VI, 319-324, 344-345.
§C. R., V, 1111.

stitutional privileges. The fact has been made apparent that the governor and the council were practically a unit in their point of view and in their attempt to maintain the rights and interests of the Crown. The attitude of the executive toward the lower house was, as we have seen, for the most part, supported by precedents and was in substantial accord with the royal instructions which constituted the chief guide of his official conduct. In some respects they were very specific, and the governor was required to act according to them if possible. In other respects, much was left to the interpretation and discretion of the governor. These conflicts arose between the governor and the house over both the specific clauses and those in which the executive had discretion. The house in questioning or denying the one was attacking the policy of the Crown, but in disputing over the other, it was merely doubting the interpretation of the officers of the Crown who resided in the province. The house was also influenced by the fact that it felt as its duty the maintenance of the rights and interests of the colonists. Although many of its claims appear to be more in the nature of assumptions than founded on a strong legal basis, such a stand against a higher power, a stand which grew more and more determined each year, was caused by the fact that there was beginning to creep into the minds of these representatives, as well as of the colonists generally, the idea that there was something greater than English law as applied to a colony—the principle of freedom and democracy—and it was this strong and growing desire for independence that caused these sturdy North Carolinians to oppose the encroachments of the executive as the representative of all that appeared to them tyrannical and oppressive. These quarrels were the first rumblings of the approaching storm that was to sweep away all vestiges of English government in her thirteen American colonies. For generations these colonists had bowed their necks under the yoke of illegal and unjust exactions, slaving as it were, for their masters across the seas, but they were now beginning to desire and feel the glad sunshine of freedom, and arising at last from the heavy slumbers and barbarous dreams that had so long haunted their minds, were about to join in glad acclaim to usher in the Golden Era of Humanity and the Universal Monarchy of Man.

LAND TENURE IN PROPRIETARY NORTH CAROLINA

BY

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LAND TENURE IN PROPRIETARY NORTH CAROLINA*

In any study of land tenure in Colonial North Carolina during the Proprietary Period, one fact must be kept constantly in mind: namely, that the territory of North Carolina was given by Charles II. to the eight Lords Proprietors. The entire control of the colony, its government, its laws, its property, its lands, was placed absolutely in the hands of the Proprietors, subject only to the limitation that laws and government were to be in accordance with English law and loyalty to the English Crown. The colony was the property of the Proprietors, property granted by the Crown of England, property with which they could do as they pleased. It is the purpose of this paper to trace throughout the Proprietary Period the system of land tenure in the colony of North Carolina.

The Proprietors were not the first to have claims on land in North Carolina. In 1630 Charles I granted to his attorney-general, Sir Robert Heath, all that land extending from the coast westward for more than one thousand miles and lying between the parallels of 31° and 36° north latitude. The province was to be called Carolina. No particulars concerning any settlement made under this grant have been found. Attempts at settlement were made, however, for from the Virginia records it appears that one William Hawkes was in Virginia as "governor of North Carolina," and that leave was granted by the Virginia legislature to colonize in Carolina to one hundred persons from Virginia, "freemen, in being single and disengaged from debt." Whether or not these settlements were made at the instigation of Heath, is not known. Whatever else they were, they were certainly abortive, since Heath's patent was later declared void by the King and Privy Council of England on the express ground that its purposes had never been fulfilled.

As a matter of fact, lands in Carolina seem to have belonged

*This study won the second prize offered in 1912 by the North Carolina Society of Colonial Dames of America.

only to the savage Indians, with the colony of Virginia the only civilized government exercising any sort of authority over them. Virginia seems to have had power to make grants in Carolina, for in 1653 the assembly of Virginia granted:

"Upon petition of Roger Green, clarke, on behalf of himself and inhabitants of Nansemand River,—10,000 acres of land unto 100 such persons who shall first seate on Moratuck or Ronoke river and the land lying upon the south side of Choan river and the branches thereof; Provided that such seaters settle advantageously for security, and be sufficiently furnished with ammunition and strength, and the said Roger Green the rights of 1000 acres of land and the choice to take the same where it shall seem most convenient to him, next to those persons who have a former grant in reward for his charge, hazard and trouble of first discoverie and management of others for seating those southern parts of Virginia."

This, however, ungrammatical, is the record of the grant for the first permanent settlement in what was later to be North Carolina. It would seem that the territory of Carolina was considered to be under the control of Virginia. Yet "the earliest grant" made in North Carolina of which we have any copy was made by Kilocacanen, king of the Yæpin Indians, on March 1, 1662 to George Durant. By it the Indian king

"For valeiable consideration of satisfaction received with the consent of my people sold, and made over to George Durant a Parcell of Land—betwixt the aforesaid Bounds of Samuel Pricklove and the said Creek; [called in the grant Awoseake] thence to the Head thereof." Durant was "to have and to hold the quiet possession of the same forever with all the rights and privileges thereunto forever from me or any Persons whatever."

It will be noticed that the "first grant" mentions another made to Samuel Pricklove. No record of such a grant has been found, but its mere mention is proof enough to show that purchase direct from the Indians was a way of securing land before the great grant was made to the eight lords proprietors.

The Virginia governor was instructed by the Crown to make grants in Carolina. In 1663, Governor Berkeley made a grant of 750 to Thomas Relfe in consideration of the fact that he had transported fifteen persons to Carolina. Relfe was to pay each year at the feast of St. Michael one shilling per fifty acres. Similar grants were made to Robert Peel, John Harvey, John Haydin, John Jenkins, and George Catchmyed. Lands obtained at the same time from the Indians, however, had the prior claim, for there is a record of the same George Catchmany, or Catchmyed, who, having obtained a grant from Berkeley, and having found that portions of it overlapped the land obtained from the Indians, surrendered this land without compensation. Indeed, in 1773 the assembly of Carolina passed an act to allow every "inhabitant of this County [Albemarle] the privilege to have the first survey of the land he liveth on and layeth claim to adjoyninge to him having rights to lay upon it sufficient to hold the same and the first seators to have the privilege to the first survey." The fact seems to be that, although Virginia made grants in accordance with the instructions from the Crown, the land in Carolina really belonged to the Indians; that titles received from Virginia were not valid against those received from the Indians.

However this may be, the ownership of the land was settled once and for all when on May 23, 1663, Charles II. granted to Edward, Earl of Clarendon; George, Duke of Albemarle; William, Lord Craven; John, Lord Berkeley; Anthony, Lord Ashley; Sir George Carteret; Sir William Berkeley; and Sir John Colleton, "all that territory or tract of ground, situate, lying and being within our dominions of America, extending from the north end of the island, which lieth in the southern Virginia seas, and within six and thirty degrees of the northern latitude, and to the west as far as the south seas, and so southerly as far as the river St. Matthias, which bordereth upon the coast of Florida and within one and thirty degrees of northern latitude, and so west in a direct line as far as the South sea aforesaid; together with all and singular forts, . . .

rivers, isles, and islets belonging to the country aforesaid; and also all the soil, lands, fields, woods, mountains, ... situate or being within the bounds . . . .; with all the fishing, ... all veins, mines, quarries, ...of gold, silver, gems, precious stones, ... found within the countries, isles, and limits aforesaid."

In the charter which the king gave to the proprietors when he made them this great grant of territory almost absolute powers were conferred. The territory was erected into the "Province of Carolina". Charles granted full and absolute powers, by virtue of these presents, to them and their heirs for the good and happy government of the said province, to ordain, make, enact, and under their seals to publish any laws whatsoever, either appertaining to the public state, or the private utility of particular persons." These laws were to be executed upon all persons within the said province. The proprietors were to have ample authority to see to the execution thereof. Everything connected with the enactment and execution of laws was placed in their hands, the only limitation being that the laws were to be "consonant to reason, and, as near as can be conveniently, agreeable to the laws and customs of our kingdom of England." During the interregnum of the assembly provided for, the proprietors, or their deputies, could by ordinance make laws for the people, which laws were binding.

To encourage emigration to the colony and to secure the rapid settlement of the province, freedom of emigration was given to all "leige people" within the British Empire. Still another provision of the charter in keeping with this idea of encouragement, and, at the same time, showing how absolutely the Crown surrendered whatever rights it may have had, is shown in the provision that all settlers and people living within the province might "inherit, or otherwise purchase and receive, take, hold, buy, and possess, any lands, tenements, or hereditaments within the same places, and them may enjoy, occupy, and bequeathe; as likewise all liberties, benefices, and privileges of this our kingdom of England and of our other dominions aforesaid, and may freely and quietly have, possess, and enjoy, as our

leige people born within the same, without the least molestation, vexation, trouble, or grievance of us, our heirs and successors." Freedom to load and unload freights and imports was given the proprietors. They were given the privilege of importing free of duty silks, wines, almonds, "oyl", and olives. Privileges to erect forts were given. The money secured from the duty on imports was to go not to the Crown but to the proprietors.

The proprietors at their pleasure were given the right to "assign, alien, grant, demise, or enfeof the premises, or any part or parcells thereof, to him or them that shall be willing to purchase the same, and to such person or persons as they shall see fit . . . . in fee simple or fee tayle; or for a term of life or lives, or years, to be held . . . . by such rents, services, or customs as shall seem meet." The Crown renounced forever all control in the matter of the grant or sale of lands, the province being given to the proprietors to do with it whatever they chose.

These extracts from the charter of Charles II., are enough to show that Carolina had been given outright to the propietors. The history of the colony and of everything connected with it is from this time forth until 1728 the history of the proprietary government. We shall now see what the proprietors did with the territory thus given to them.

The proprietors promptly set about seeking to get the province settled. On August 12, 1663, several "Gentlemen of the Barbadoes" offered to settle in Carolina if the proprietors would give a tract of land about thirty miles square and would make certain other "encouragements". They agreed, however, to bear the expense of settling the land thus given. In answer to this on August 25, 1663, the proprietors issued a set of proposals to all "that will Plant in Carolina". They agreed in these proposals to allow a colony to settle on Charles River near Cape Fear . . . . on the larboard side. . . . if on any other river on either side, 20,000 acres being reserved to the proprietors." The colony was to fortify the entrance of the river. Of the colonists, thirteen were to be named to the proprietors, from which number a governor, six councillors, and six deputy coun-

cillors were to be chose. Two freeman out of every parish or other division of the colony were to be chosen to form an assembly which was to make laws subject to the advice and consent of the governor and council, and in accordance with English law and custom.

Land was to be granted on the following conditions:

"We will grant to every undertaker for his own head, one hundred acres of land, to him and his heirs forever, to be held in free and common soccage; and for every man-servant that he shall bring or send thither, that is fit to bear arms, armed with a good firelock musket, perfored bore, 12 bullets to the pound, and with 20 pounds of powder and 20 pounds of bullets, fifty acres of land; and for every woman servant, 30 acres; and to every man-servant that shall come within that time 10 acres at the expiration of his time; and to every woman-servant 6 acres at the expiration of her time. Note that we intend not hereby to be obliged to give proportions of land abovementioned to masters and servants, longer than the first five years, to commence at the beginning of the first settlement. . . We do expect by way of acknowledgement, and toward the charge that we have been and shall be at, 1 half penny for every acres that shall be granted as aforesaid, within the time limited and expressed."

In their instructions to Governor Berkeley, the proprietors declared it to be their wish that the plots described above should be adjoining in a line along the river. By this means they hoped to have two hundred armed men within each mile and a quarter square. Berkeley was instructed to set aside 20,000 acres for the proprietors. He was further instructed to allow the settlers, if they wished it, three to five years in the payment of their quit-rents. Those who had previously bought land from the Indians were to be paid by the settlers who secured the land.

The governor and council provided for were given the duty of issuing warrants for lands granted. These warrants were to be entered with the surveyor-general before delivery. The surveyor was to run out the land and certify to the secretary the bounds

of the territory granted each person. This certificate was to be recorded by the secretary. In his turn, the secretary was to certify what the surveyor had done to the governor and council who should then put under seal the land granted by the secretary. The governor was instructed to "persuade and compell those people [who had previously bought great tracts of land from the Indians] to be satisfied with such proportions as we allot to others." For the proper surveying and recording of these lands, the proprietors gave instructions for the appointment of a secretary, a chief register, and a surveyor-general.

In the same letter of instructions, dated September 8, 1663, Berkeley was told that "Carelyle Island, lying near Roanoke and Chowan rivers" had been granted to Sir John Colleton, one of the proprietors.

Whatever settlements were made by the "Severall Gentlemen of the Barbadoes", they did not prove permanent. The above account was given in order to show on what grounds the proprietors were willing to make grants of land, and what inducements they were willing to offer. In 1665 another proposal to make a grant was made to John Yeamans. This grant is of more interest in the history of South Carolina than in that of North Carolina, for it was on Charles River that the Yeamans settlement was made. Nevertheless the proposal to grant in Clarendon County also contained the amount of land to be granted and the conditions thereof in Albemarle County, or North Carolina proper.

If the settlers came to the county of Albemarle, eighty acres of land were to be given to each freeman and eighty to his wife if he had one. For each man-servant brought, the settler was to get eighty acres; for each woman-servant, forty acres. These portions were to be given to those who came at once. Smaller portions were to be given to those who came later—forty acres to a freeman who came in the third year of settlement.

Land in both Clarendon and Albemarle counties was to be held on the following conditions: All of it was to be taken up and settled immediately. For thirteen years one able-bodied man-servant or two women-servants were to be on each one

hundred acres. Three years were allowed for the completion of this settlement. The lands were to be divided by general lot into plots, none of which were to be less than 2200 acres, none more than 22,000 acres. One-eleventh of each plot was to be reserved for the proprietors. On every twenty-fifth of March one half-penny for each acre received was to be paid to the proprietors. Lands for churches, forts, highways, and public buildings was to be free of the quit rent.

From this it would appear that the proprietors, according to their knowledge of the country and their understanding of conditions meant to do all in their power to settle the province quickly. No purchase money was required to be paid for the lands granted, as it was given free of charge except for the annual quit-rent. But the differences in the quantity granted in Virginia and in North Carolina and the differences of conditions on which land was granted in the latter territory at once aroused opposition. By June, 1665, the surveyor-general for Albemarle, Thomas Woodward, wrote the proprietors a letter in which he pointed out their mistake and told them that the restrictions were hurting the colony. He pointed to Maryland as a comparison, and said that conditions in Albemarle would have to be made lighter if the population was to increase. Following this letter, in 1666, the assembly of Clarendon petitioned the proprietors to redress; 1, The undecimal way of division of the lands; 2, The half-penny per acre for all lands; and 3, The injunction on penalty of forfeiture of keeping one man on every one hundred acres.

The petition was successful, for in 1668 the proprietors in a letter of instructions to Samuel Stephens, at that time governor of Albemarle, told him that they would "consent and do grant that the inhabitants of the said County do hold their lands of us the Lords Proprietors upon the same terms and conditions that the inhabitants of Virginia hold theirs." The governor and council were given full power to grant such proportions" of lands as by our instructions and Concessions. . . . bearing date of October, 1667". The surveyor's warrant for the land, signed by the governor and a majority of the council, and having fixed

on it the seal of the County, was to be good and effective title to land.

Previous to this, however, in the year 1665, Charles had given a second charter to the proprietors in which their territory had been largely increased. All land from the northern end of Currituck River, 36° 30′ west to the "South Seas," south to 29°, and west again to the "South Seas", was given to them. Full powers to erect provinces and counties, grant lands, enact and execute laws were, as formerly, given to the proprietors. Other provisions were in the main like those of the previous one.

The governor was the representative of the proprietors in the province, and through him they carried on the business of granting lands. Charles granted the whole territory to the proprietors and they, in turn, issued proposals or statements of conditions on which they would grant lands to settlers. In the beginning, as we have seen above, these proposals were made to promoters like the gentlemen of the Barbadoes or Yeamans. Then, as the County of Albemarle became settled by purchase from the Indians or by grant from Berkeley, governors of Albemarle were appointed, and were given power, through letters of instructions from the proprietors, to sell, let, convey, and assure lands in the County. Land was at first granted in large quantities to promoters, then to individuals. In both cases in the beginning the land was granted free of purchase money price, the buyer having to pay only the small annual quit rent. In the first case, the land was granted direct by the proprietors; in the second, by the proprietors through the governors. Thus the proprietors maintained absolute control over their territory, at least at the beginning of its settlement.

Samuel Stephens was appointed governor of Albemarle on October 1, 1667. He was given "absolute power and authority from us and in our names to lett, sell, convey, and assure such lands in our said County to such person or persons and for such Estate and Estates, and with such provisoes, conditions, and lymitations as we in our Instructions and Concessions. . . . have directed." These instructions were: The chief register,

or the secretary, was to keep exact entries of all grants of lands from the proprietors to settles, all conveyances of lands from man to man, all leases of lands by landlords to tenants, and do all other things as instructed by the proprietors through the governor. The surveyor-general was to lay out and bound all lands granted and records of these surveys were to be kept. All who subscribed allegiance to the king were to have the right to hold lands. An assembly of the freeman was to be chosen, which by act was to lay taxes on lands, prescribe the quantity of lands to be allotted to every freeman or servant, provided, however, that such grants did not exceed sixty acres to each freeman as much to his wife, sixty acres to every master for each armed male servant, fifty acres for each woman servant. Such grants were made on condition that one able-bodied servant be kept on each one hundred acres for thirteen years and that the land be settled at once. The land was to be divided into plots of not more or less than 2200 acres. Of these plots, one-eleventh was to remain in the hands of the proprietors. A warrant from the governor was to be given to each person to whom land was granted, and the lands were to be held on payment of one half-penny for each acre, payable on the twenty-fifth of March.

Concerning lands, we find the assembly of Albemarle in 1669 passing the following acts: Prohibiting the sale of "Rights or Rights to land untill he shall hath been two compleate years at least an inhabitant of the County"; "that no person for the space of five years next ensuing shall survey or cut out above 650 acres of land in one devidend"; "that if any person or persons that have bestowed any labour on any Land within the County shall not repair to it and seat the same within 6 months after the publication hereof, then it shall be lawfull for the Governor and Council to let it out to any other person to doe it."

The proprietors had long been seeking some general, fundamental system of government for their province. Such was furnished them in 1670 when John Locke gave them the Fundamental Constitutions. This was a system of government based primarily on land tenure. According to the Fundamental Constitutions, the province was to be divided into coun-

ties. Each county was to be sub-divided into eight seignories, eight baronies, and four precincts of six colonies each. Each seignory, barony, and colony was to consist of 12,000 acres, the eight baronies being the share of the proprietors. Thus three-fifths of each county was to be left in the hands of the people. There was to be a system of nobility—the Palatine, landgraves, and casiques—all based on the amount of land held. There were to be as many landgraves as counties and twice as many casiques. Every manor was to contain from three thousand to twelve thousand acres in one entire piece. Landgraves had the power to make grants of land for twenty-one years only. A lord of a manor might sell his holdings to anyone else, a privilege which denied to the proprietors and landgraves after 1671. Freemen were to be subject to the lord of the manor. The marriage of a leet-man and woman was to be celebrated by the gift of ten acres of land. In every county there was to be a sheriff who had to own at least five hundred acres of land, and in every colony a constable who had to own at least one hundred acres.

For the next twenty-eight years the proprietors struggled to enforce the Fundamental Constitutions but to no avail. The principles laid down in them were too closely akin to those of feudalism, and were in no way suitable to the conditions facing settlers in America. They were out of date and absolutely impracticable. Governor after governor was instructed to carry out the principles of the Constitutions, but the land in practice was never divided into artificial divisions provided for. The Fundamental Constitutions are of small historical value to-day except in so far as they show what the proprietors would have liked to have done with their possessions.

In 1679 John Harvey was president of the council of Albemarle, and as such, the representative of the proprietors. Instructions were sent him to have the surveyor-general divide the county into squares of 12,000 acres. This was of course in accordance with the Fundamental Constitutions. To all the free persons coming to the province before the year 1684 over sixteen years of age, sixty acres of land were to be granted.

For every able-bodied male servant sixty acres were to be granted, and for every other sort of servant, "fifty akers". Warrants from the president of the council were to be given settlers on taking up lands. According to the Fundamental Constitutions, the quit rent was to be one penny per acre, but because of the fact that a number of settlers had grants from Governor Berkeley of Virginia, at one farthing per acre, and some at one half-penny per acre, in accordance with the former instructions of the proprietors, Harvey was ordered to allow these settlers to continue to hold their lands at the old rate. By all who could show evidence of having obtained grants from Governor Berkeley before December 25, 1663, land was to continue to be held at one farthing; by those holding grants previous to the present instructions (1678-1679) land was to continue to be held at one half-penny per acre. Back rents were to be collected, however. The holders under previous grants had to pay from the time at which they received their grants.

In accordance with these instructions, Harvey issued patents to those who had received grants from Governor Berkeley. On November 27, 1679, he issued a patent to John Varnham, who produced a grant from Berkeley for two hundred and fifty acres issued in 1663. Varnham was given the usual property rights to this land. He was to pay, according to the patent, "ye every 29 day of September, according to the English account for every fifty Acres of land hereby granted 1 shilling of lawfull English money; provided the land be not seated within one year after date hereof. That then this patent be void." A like patent was given by Governor Jenkins on Feburary 5, 1679, to Thomas Relfe whose patent from Governor Berkeley was mentioned above. Thus the proprietors maintained absolute control of their property. The only valid titles were those obtained from the proprietors.

There was, however, all this time general dissatisfaction in the County of Albemarle at the conditions on which land was granted, the quit rents, and the favoritism shown the southern part of the province. The proprietors had agreed to lighten the conditions some time before, but the new conditions, as we

have seen, were if anything even more stringent. In 1670 letters and petitions were received by the proprietors in protest against the fact that the northern county had received "but a tenth part of what your southern parts have had." Rents were always difficult, almost impossible, to collect. The county was in a constant state of turmoil. This dissatisfaction finally in part led to the Culpepper Rebellion. This insurrection, however, has little interest to us in connection with the subject of this paper save that it did not reduce quit rents or make the proprietors less anxious to collect them. At a council of the proprietors held may 22, 1683, the governor and sheriffs of Albemarle were ordered to "require and receive Quitrents, Leveys, fees, and all other publick dues from the inhabitants of Currituck."

In 1681 Henry Wilkerson was appointed governor of Albemarle. He was instructed to grant the same quantities of land as before and on the same conditions of quit rent payment; namely, one penny per acre. Holders of the Berkeley grants were to receive the same consideration as outlined in the instructions to Harvey. Wilkerson was further instructed to choose four judicious men who had in no way been connected with the late rebellion, with himself as the fifth man, to hear and determine all suits that should be brought by persons claiming to have been dispossessed of their estates. Such suits had to be brought by residents within six months; by non-residents within two years. These instructions were carried out, according to a letter of Sothel, then a proprietor and governor, to the other proprietors. That they were not justly carried out, however, is shown in a letter of the proprietors to Sothel in 1684 in which they reprimanded him for his bad conduct. He was soon afterwards dismissed from the office of governor.

In 1689 Phillip Ludwell was appointed governor in the place of Sothel, and was instructed to settle all claims against Sothel by means of a court of four impartial men. He was, as was customary, instructed to carry out as far as possible the provisions of the Fundamental Constitutions. In a set of private instructions, Ludwell was told that the proprietors, since a number of persons in the colony were unwilling to pay quit rents and

desired to buy their lands outright, had given power "to our Trustees for granting land to sell six thousand acres and pass grants of the same to such persons as shall first have payed the purchase money in pieces of eight after the rate of five shillings the piece of eight to. . . . our receiver which you are to encourage men to do as much as you can."

Ludwell was, however, dismissed in 1694 for granting lands at too small a quit rent. Archdale was appointed in his place. In order to encourage settlement on the southern part of Albemarle Sound, Archdale was instructed to make grants at moderate quit rents—not less, however, than one penny per acre. He was further instructed, with the consent of three or more of his deputies, to sell land in Albemarle for what he could reasonably obtain—not under ten pounds per thousand acres, reserving an acknowledgement of five shillings per thousand acres yearly.

On these conditions land was granted and held. The proprietors had nothing to do with the land after it was granted save to see to the collection of their quit-rents. The people willed and sold their lands without interference, the records of the court being full of suits between individuals in which the proprietors did not figure at all. For instance, at the Court of Albemarle, September, 1694, Major Alexander Lillington and Mrs. Susanah Heartly obtained an attachment against the estate of Captain George Clarke because of a debt of £35, 19s. due from Clarke to William Wilkerson for whom Lillington appeared. In 1693 Stephen Pace and John Foster appointed William Glover their attorney for a sale of their plantation to Alexander Lillington. The attorney was to make acknowledgement of the sale at the session of the general court. It was thus seen that land in Carolina, after it had been granted by the proprietors, passed from their control. It was at the court of the colony, not at the council of the proprietors, that property rights were proved. The proprietors, through their governors and other deputies, continued to make grants, and the people taking possession of the land held it as their own property.

The proprietors had trouble enough in their attempts to col-

lect the quit rents. They came in 1702 to the point of allowing the sale of land with only a nominal quit rent, twelve pence per thousand acres. This, the governor was allowed to settle "by Patents or Indentures and by such methods as you our said Governour with any three or more of our deputies shall see fit soe as when money cannot be had a true vale may be settled in the Best of such commodityes as the County is capable of producing." Continued instructions were sent to the governors to collect the rents, an almost impossible task, for people, not only did not pay their rents for lands granted by the proprietors, but even began to take the tracts of land without grants. In some cases lands were never paid for, and quit rents were not thought of. Already petitions were coming in to have the proprietary government abolished.

Land was still very plentiful in Carolina, and was so readily granted that Virginia complained that this was the cause of the loss of many of her inhabitants. The unpatented land in that colony was south of "Black-water Swamp" and even this was shut up by orders of the government. This caused many families, especially young people, to move to Albemarle. In Carolina the proprietors still exercised their rights to make grants and in 1709 instructed Tynte to have the surveyor-general measure out five thousand acres for Able Ketechty—a landgrave—at ten pounds per thousand acres. No grants exceeding 640 acres could be made save by special permission and warrant from the Lord Palatine and four of the proprietors.

In 1711 the proprietors isued instructions to Edward Hyde, governor of Albemarle, in which they ordered him to send a full account of his rents, what amounts were due, and from whom. In addition, he was to send accounts of the amount of land sold and to whom sold. On account of the abuse made, as they said, of the privilege of taking up land in Carolina by exorbitant and illegal grants made to several persons, the proprietors ordered all sales or grants of lands to be prohibited except such as should be made at their Board at the instance of the governor. During the period of seven years next succeeding, however, they instructed Hyde to allow purchase of land,

not exceeding 640 acres in amount, at the rate of twenty shillings for each acre and ten pence yearly quit rent for every hundred acres. In 1711 acts were passed by the assembly ordering Cary to appear and account for the money collected by him on the quit rents due. All persons holding lands were ordered to appear before certain designated officers and give account for their lands. The proprietors seem to have exerted considerable influence is connection with these acts.

The last great grant of land in North Carolina by the proprietors was made to Christopher DeGraffenried, a Swiss noble, who agreed to plant a colony of Swiss and one of German Palatines in North Carolina. The agreement between DeGraffenried and the proprietors was entered into on October 10, 1709. DeGraffenried and his partner, Lewis Mitchell, were at their own expense to transport six hundred Palatines to Carolina. Within three months after their arrival in the colony, two hundred and fifty acres of land were to be surveyed and set out for each family, the farms to be as contiguous as possible and the land divided by lot. For five years the Palatines were to pay no rent, but after that period had elapsed each family was to pay DeGraffenried and Mitchell the yearly quit rent of two pence for every acre. The latter were to furnish grain and provisions and a certain quantity of cattle, hogs, sheep, and farm implements during the first year for which the Palatines were to repay them.

The proprietors agreed to grant to DeGraffenried and his partner ten thousand acres on or between the Neuse and Cape Fear rivers at ten pounds and a yearly quit rent of five shillings for every one thousand acres. One hundred thousand acres of land near by were to be reserved for the proprietors for twelve years. None of this could be touched by any other persons, but either DeGraffenried or Mitchell could buy it during the first seven years at the rate mentioned above. One of the two was to buy five thousand acres and become a landgrave. On September 3, the warrant for the grant was made out. DeGraffenried was to have a lease on all royal mines and minerals within the province of North Carolina to discover and work them for a

period of thirty years, the products to be divided into eight parts, one-half to the proprietors, one-half to DeGraffenried for five years after discovery, but after five years, the proprietors were to get five-eights of the whole.

The grant was made and the survey completed. The Palatines were located by the surveyor-general on a tongue of land between the Neuse and Trent rivers, where afterwards was founded the town of New Bern. The colony did not prosper, the Palatines suffering from sickness and want of clothing and good food, the avarice of the colonial officers, the rebellion of the time, the Indian attacks, the turbulent colonists, the failure of promised help to arrive, and the desertion of DeGraffenried. In time, however, the colony met better fate and prospered despite its early troubles.

To meet the debts incurred by reason of the Indian war, the colony of Albemarle had to resort to the issue of paper money, and issues, when ouce begun, continued throughout the Proprietary Period. In 1729 £40,000, were issued, of which £10,000 were to be applied to the redemption of former issues, the remainder to be lent out at six per cent interest on land security, the whole to be paid back in fifteen years.

At the crisis of affairs in the colony immediately after the Tuscarora outbreak, the proprietors, instead of extending a helping hand, demanded that their rents be paid in silver, and this at a time when the colonists had been compelled to make ordinary articles of trade legal tender at certain fixed rates. From time to time they issued instructions to their governors, heard complaints, and ordered redress, but the laws governing property were almost wholly made by the council and assembly. The colonists had but little love for their proprietary lords and paid little heed to their wishes.

The proprietors vacillated in their policy towards the colony. By orders issued from Craven House, January, 1712, it was directed that no land should be sold in the colony for the future but what was paid for at the Board. Then on September, 3, 1713, because of petitions received from the colony, they consented to revoke this order prohibiting the sale of land except

by special warrant, and allowed warrants to be issued as usual. Again in 1716, the proprietors decided that "tenants ought to be held to their covenants in their Grand Deed in relation to the payment of their Quit Rents but that all the purchase money now due for land should be paid in Sterling Money or 16 pennyweight the Crown or in produce of the country equivalent thereto." And the proprietors resolved to put a stop to the selling of lands in North Carolina but at their own Board. This time it was not the proprietors who revoked the order, but the governor and council on petition of the lower house. They were "unanimously of the opinion that the permitting of the people to occupy the vacant lands on payment of certain rent until the Lords Proprietors' further pleasure be known will not only strengthen and increase the Settlement of this Colony, but also cause a very great addition to the Lords Proprietors' annual revenue." No special effort was made to gain any statement of this "further pleasure". The proprietors were absentee proprietors and their absence was keenly felt and enjoyed.

The proprietors, in truth, had little more to do directly with the government of the colony after this time. From time to time they issued instructions to their governors concerning the quit rents or to order certain laws to be changed, but they had little real influence in the affairs of the colony. The real government was in the hands of the council and assembly, the governor himself, although he had considerable power and influence, being regarded as a suspicious person, and with him the assembly was almost always at strife with the advantage on its side. Almost every law connected with lands, their granting patenting, sale, and inheritance, was made by the legislative body and forced upon the governor. It is to the laws of the period then that we must turn for further information.

The council in 1713 was composed of Thomas Pollock, president, Thomas Boyd, Nathan Chevin, Christopher Gale, and Tobias Knight. In that year we find it prohibiting the survey of lands within one mile of Marattock River, or the issue of grants and patents, or the survey of land within twenty miles

of Cape Fear River. We find it ordering that all persons in Bath County who held lands without having paid for them, and who did not pay for them by December 25, 1713, should be deprived of their holdings. The council also ordered that several persons should be empowered to take an exact account of all land held by all persons in the colony.

The council was continually issuing orders concerned with land. In May, 1713, it ordered that as several persons had taken up lands before the orders from the proprietors forbidding this, these persons should be allowed to keep their holdings by paying for them at the rate of sixpence per hundred acres. This quit rent was only half of that hitherto charged according to the instructions of the proprietors. The council further declared that rents were due from the date of the survey, despite the fact that patents were sometimes not issued until considerably later. When petitions came in from the people of Bath asking for more time in which to pay for their purchases, they were readily granted.

It is interesting to know the approximate size of the farms at this time. From the journal of the council in 1713, it is found that a Captain Fred Jones had estates of 4700 acres on Morattock River, and two tracts of 440 and 600 acres respectively on Neuse River. One Richard Evans had a tract of 350 acres in Perquimans district. Anthony Alexander had a tract of 150 acres. There is in Pollock's letter-book an account of the purchase of 15,000 acres at Hill Creek. This, by the way, had not been paid for. It was an exceptionally large tract, the average size of holdings running from 300 acres to 650 acres.

The council made other rulings in connection with land. In 1714, it ordered that no lapsed patents should be granted for the future for any settled lands in Bath County until further orders. Owners of property there were to have liberty to provide and secure payment for same. Upon petition from the Palatines who had been brought over by DeGraffenried, and who had suffered much in the Indian war, the council ordered that each family might take up four hundred acres at the rate of £10 per thousand acres with two years to make payment. The case

was ordered to be presented to the proprietors in the best light. Land thus taken up was not to lapse for non-payment until the answer of the proprietors was received. By 1718 the council came to the point where it signed blank patents to land, ordering the surveyors to make full reports as to the situation and extent of the lands taken up.

Registration of the land taken up and also of that conveyed by sale or inheritance was recorded at the sessions of the general court. The court records are full of such proceedings as:

"Captain John Pettiver in Open Court acknowledged ye conveyance of a Tract of Land lyeing on the South Shore in the precinct of Chowan unto Mr. Antho Hatch and Mr. Geo. Durant.

'Ordered to be Registered' ".

Or:

"Apower of attor. from Mary Spellman to Augustus Scarbrough was proved in Court by oath of Mr. Thos. Passingham by vertue of wch. Said power Said Augustus Scarbrough acknowledged a Conveyance of 300 acres of land more or less lyeing upon the fork of ye Creek known by the name of Lakeres Creek unto Robert Harman.

'Ordered that the said Conveyance wth. the Said Power of attorney be Recorded.' "

The two houses of the legislature also joined in acts upon the subject of land. One of these ordered that all grants should be paid for within three months. This act was criticised by the proprietors but was allowed to stand. In 1726 an act declared that the fee of twenty shillings which had been allowed to the governor for each patent should henceforth be illegal.

Land in North Carolina has thus been seen to have been at first wholly under the direct control of the proprietors, and was granted direct from them. As the colony prospered and population grew, the proprietors lost a great deal of their control, the direct government of the colony and the direct control of the land passing into the hands of the council and assembly. These bodies, with the governor, it is true maintained a semblance of acting under the directions of the proprietors, but in

fact land, its granting, sale, and conveyance, was practically in the hands of the legislative body of the colony with only a small control by the proprietors. This became more and more true as the proprietors lost interest in their great grant from the Crown and with it the power to control its destiny. In 1729, the proprietary government came to an end, the Crown taking control of the colony, and henceforth to the Revolutionary War, in the matter of land tenure the colony was to deal directly with the Crown of England.