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NEW JERSEY AS A ROYAL  
PROVINCE

1738 to 1776

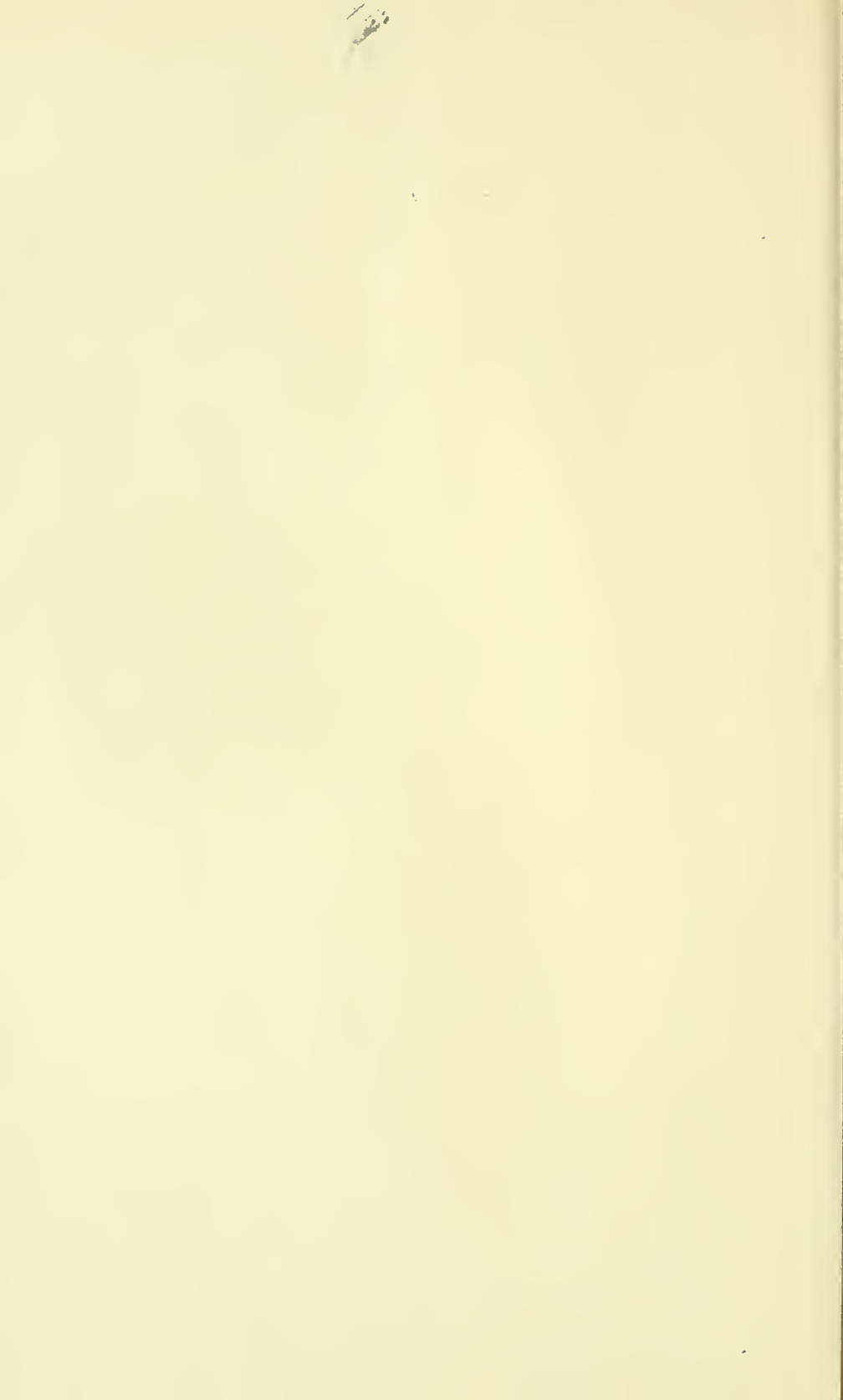
BY  
EDGAR JACOB FISHER, A. M.

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY  
IN THE  
FACULTY OF POLITICAL SCIENCE  
COLUMBIA UNIVERSITY

NEW YORK  
1911









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To  
MY FATHER



## PREFACE

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WITH the publication of this monograph, there is completed a detailed study of the colonial history of New Jersey. Dr. Tanner's exhaustive and admirable treatment of the subject comprises the period from the early settlements to 1738, when the executive union with New York was terminated. From that time until the Revolution, the compass of this study, New Jersey enjoyed a separate royal establishment in all departments. The purpose of this work is twofold. An attempt has been made, first, to outline the political history of the province, and, second, to show the part taken by New Jersey in the Third and Fourth Intercolonial Wars and in the preliminaries of the Revolution. The subject has been pursued to the threshold of the convention which formally declared the overthrow of the royal provincial government and adopted the first constitution of the state.

In the preparation of this volume, the available manuscript and printed sources have been used. The published volumes of the *New Jersey Archives* include documents relating to the colonial history, the journal of the governor and council in administrative session, of the council in legislative session, and newspaper extracts pertaining to the province. The Nevill and Allinson editions of the colonial laws, *The Papers of Lewis Morris*, and selections from the correspondence of William Alexander, Earl of Stirling, are some of the other im-

portant printed original sources. There is a wealth of manuscript material for the later colonial history of New Jersey. The following are in the State House at Trenton: the *Journal of the General Assembly* in the State Library, the *Minutes of the Supreme Court* in the office of the Clerk of the Supreme Court, and *Liber A A A and Liber A B of Provincial Commissions* in the office of the Secretary of State. The *Minutes of the Council of Proprietors of East Jersey* and the *Minutes of the Council of Proprietors of West Jersey* are still kept at Perth Amboy and Burlington, respectively. These records are of such value to the student of New Jersey history that they should be acquired by the state for preservation in the State Library. In the library of the New Jersey Historical Society at Newark, the manuscript sources include the papers of Lewis Morris, Robert Hunter Morris, James Alexander, Ferdinand John Paris and Joseph Sherwood. In the same library there are also copies of the original papers of Governor Belcher referring to New Jersey. The originals are in the possession of the Massachusetts Historical Society. In the library of the Pennsylvania Historical Society at Philadelphia there are two volumes of New Jersey manuscripts, and miscellaneous letters from the Penn Collection, that are of value and interest for this subject.

To those who have aided him in gaining access to the sources, the author is deeply indebted. The kindness and courtesy of the librarians and their assistants of the State Library at Trenton, the New Jersey Historical Society Library at Newark, the Pennsylvania Historical Society Library at Philadelphia and the Jersey City Public Library, is most gratefully acknowledged. He is likewise under obligations to Mr. Adriance Lyon, Register of the East Jersey proprietors, and Mr. H. S. Haines,

Surveyor General of West Jersey, for the use of the proprietary records. Dr. Tanner's suggestions regarding the primary sources were of distinct service, and his work upon the earlier period of the history of New Jersey has been of great assistance in interpreting the later period. To Professor Herbert L. Osgood, of Columbia University, the author's most grateful thanks are due. The work was pursued under his guidance and helpful criticism, and he gave generously of his time to reading and preparing the manuscript for the press.

EDGAR J. FISHER.

NEW YORK CITY, *February 14, 1911.*





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## CHAPTER I

### THE GOVERNOR—POSITION AND PERSONNEL

WITH the growth of the English colonies in America in influence and wealth, the royal officials became more active in their endeavors to bring about a greater dependence of the colonies upon the crown. To obtain this end, the system of royal provinces was developed, that is, provinces in which there was a body of officials, appointed by and receiving instructions from the crown. The particular circumstances attending the transition, of course, differed in the different colonies, but the object of the royal officials in each case was the same.

In the case of New Jersey, which became a royal province in 1702, the disordered condition of the proprietary affairs made the change not altogether unwelcome. Title to the soil of New Jersey had been granted by the Duke of York to Berkeley and Carteret in 1664. By subsequent transfers this territory became subdivided, Berkeley receiving West Jersey and Carteret East Jersey, the former division after different sales coming into the hands of a large number of proprietors, and the latter division by a somewhat similar process coming into the possession of twenty-four proprietors. East Jersey affairs were managed by the twenty-four acting as a board of proprietors, while territorial matters in West Jersey came to be managed by an annually elected council of proprietors.<sup>1</sup>

<sup>1</sup> For the details of these various transfers see Tanner, *Province of New Jersey*, ch. i.

The deeds of lease and release given by the Duke of York to Berkeley and Carteret granted territorial but not political rights. Inasmuch as maintaining political authority was a necessary accompaniment to the success of the enterprise, the proprietors assumed to exercise the rights of government, issuing in 1665 the Concessions and Agreements under which New Jersey was to be governed. With the increase in the number and character of the proprietors came a natural divergence of interests, resulting in the formation of hostile factions. The doubts regarding the legality of the proprietors' claims to exercise political authority added to the unrest in the provinces. A contest for the governorship of East Jersey between Andrew Hamilton and Jeremiah Basse brought matters to a climax by practically nullifying political authority. In 1702, surrender was made to the crown and New Jersey became a royal province.

The authorities in England did not see fit at this time to appoint a separate royal governor for New Jersey, but gave the commission of governor to Lord Cornbury, who was in May, 1702, appointed governor of New York. The governorship was thus held jointly with New York, but in other respects New Jersey had its own separate and distinct organs of government. It was soon realized that the joint governorship was not without its disadvantages, so that there developed a decided movement for the appointment of a separate governor for New Jersey.<sup>1</sup>

Although surface indications of this movement had appeared before 1736, it was not until that year, when Governor Cosby died, that earnest and concerted efforts were made for the desired end. John Anderson, who as

<sup>1</sup> Tanner, *op. cit.*, ch. xiii.

president of the council, became acting governor of New Jersey at Cosby's death, sent a petition to the king signed by himself, the council, and some assembly members.<sup>1</sup> The petition cited New Jersey's disappointment that Queen Anne had not appointed a separate governor when the royal government was instituted, and mentioned the chief arguments that were used to support New Jersey's contention. The governor resided in New York and preferred the interests of that colony to those of New Jersey. He was absent from the latter province for sometimes an entire year, with consequent neglect of public affairs. It was detrimental to have one governor for the two provinces, and New Jersey could support a separate governor. For those reasons, in general, was the king humbly petitioned to appoint a distinct governor. At the same time the Grand Jury of Middlesex County sent a petition in hearty accord with the petition sent by the governor, council and assembly.<sup>2</sup>

Two months later, in May, 1736, the Lords of the Committee of Council submitted to the Lords Commissioners for Trade and Plantations for their examination and report, a petition to the king from Richard Partridge, the colonial agent of New Jersey, adding his influence in support of the New Jersey idea.<sup>3</sup> Sir William Keith, a former governor of Pennsylvania, in a memorial to the lords of trade, insisted that it was impracticable to faithfully discharge the duties of governor of both provinces and regarded himself as a fit person to explain the petitions that had been laid before the crown.<sup>4</sup> In August, 1736, Partridge again urged the matter upon the author-

<sup>1</sup> *New Jersey Archives*, vol. v, p. 441.

<sup>2</sup> *Ibid.*, p. 144.

<sup>3</sup> *Ibid.*, p. 448.

<sup>4</sup> Keith had previously applied for the separate governorship of New Jersey.

ities in a long petition, giving "Reasons Humbly offer'd why a Separate Governor should be appointed for New Jersey, and ordered constantly to reside there."<sup>1</sup>

But notwithstanding this continued petitioning, when in June, 1737, Lord Delaware was appointed governor of New York, he was given the commission of New Jersey also. Delaware subsequently resigned, however, and upon the appointment of Admiral George Clinton as governor of New York, the home authorities decided to grant New Jersey's prayer for a separate governor, appointing Lewis Morris to that office. Duly grateful for this concession, the council and representatives of the province sent an address to the king, acknowledging the granting of their petition, expressing the hope that trade and commerce would now flourish, justice be speedily administered, and with the blessing of happiness an increased population result. Entire confidence was expressed in the person whom the king had appointed.<sup>2</sup>

Upon his appointment as chief executive of a royal province, a governor was given a commission and instructions, the former of which was published upon his arrival in the colony, while the latter were regarded as secret. The commission defined in general the powers of the governor and remained essentially unchanged as issued to the different governors of the province. Morris's commission in 1738 was practically the same as Cornbury's of 1702.<sup>3</sup> "To execute all things in due manner that shall belong unto your said command" is the general executive power granted to the governor.

The governor's powers in his relations to the council

<sup>1</sup> *New Jersey Archives*, vol. v, p. 451.

<sup>2</sup> *Ibid.*, vol. vi, p. 58.

<sup>3</sup> *Ibid.*, p. 1. Morris's commission was doubtless copied from Gov. Montgomerie's, because the latter's name appears in it about a dozen times.

and assembly were stated, and then in turn his judicial, ecclesiastical and military duties considered.<sup>1</sup> As with the commission, the instructions which were given to successive governors also remained in most particulars the same. What changes did occur were usually in the form of additional instructions issued to meet particular circumstances arising in the colony, rather than changes in the long list of instructions given to each governor at his appointment. The instructions supplemented the commission and furnished the governor with more detailed rules for the conduct of his office.<sup>2</sup>

Although Morris had been recently engaged in an unfortunate quarrel with John Hamilton, the president of the council, his past services to the province rendered his choice a most welcome one to the people of New Jersey. For a just estimate of his career it is necessary to review the earlier period of his public activity. A man of bold and decided principles, he was a prominent figure in the affairs of New York and New Jersey for many years. Although a shrewd politician, Morris was no less a statesman. His fearless stand against arbitrary officials upon more than one occasion during the early part of his public life commands admiration.<sup>3</sup>

In 1692, he was appointed a judge of the court of common right in New Jersey. Six years later, while Morris was a member of Governor Hamilton's Council, Jeremiah Basse arrived in the province, and claimed the governorship, although elected by an insufficient number of proprietaries. For resisting the arbitrary conduct of Basse, Morris was expelled from the council. With the over-

<sup>1</sup> Tanner, p. 148 *et seq.*

<sup>2</sup> For an analysis of Cornbury's instructions, see Tanner, p. 150 *et seq.*

<sup>3</sup> See *Morris Papers*, "Introductory Memoir," and "The Morris Family of Morrisania," *Am. Hist. Magazine*, vol. i, p. 33.

throw of Basse, and the return of Hamilton, however, he was returned to the council. His probity and uncompromising conduct won him the hatred of Lord Cornbury, the first royal governor of New Jersey. Morris opposed the tyranny of Cornbury, only to find himself suspended from the council by that unworthy official in 1704. Queen Anne reinstated him, but a second suspension at the hands of Cornbury almost immediately followed. Excluded from the upper house, Morris was elected to the popular branch of the legislature, where his influence was largely instrumental in securing the removal of the corrupt and unscrupulous governor. He was again restored to his seat in the council under the next executive. Except for a brief period, when Lieutenant Governor Ingoldsby attempted to drive him from the council, Morris continued in the upper house of New Jersey for many years.

With the appointment of Hunter, as governor of New York and New Jersey, the scene of Morris's activity was transferred to the former province. Hunter and his successor Burnet were able and respected executives, whose administrations Morris supported with dignity and ability. In 1715, he was appointed chief justice of New York under Governor Hunter. He continued to support the administrations, until the arrival of the arbitrary Cosby, as governor. Cosby and Rip Van Dam, the president of the New York council, became involved in a quarrel over salary, for the determination of which, the governor insisted on proceeding before the equity side of the Court of Exchequer. Chief Justice Morris refused to be a partner to Cosby's scheme, and opposed the action by delivering an opinion that the court was not regularly created and hence was illegal. Morris's suspension resulted from this bold defiance of the executive.



Thereupon the colony was divided between two bitterly hostile factions. Deprived of his judicial position, Morris, now a popular idol, carried his case on appeal to England, while his son was sent to the assembly, where he led the opposition against Cosby. Before the crown officials, the ex-chief justice vindicated himself, and was still urging the necessity of Cosby's removal, when, in 1736, that worthy died. Morris then returned to America, where, in New York, he was received with great acclaim. Upon his return to New Jersey, he laid claim to the presidency of the council, by virtue of the royal instructions to the late governor, in which Morris was named as eldest councillor.<sup>1</sup> The council sustained Hamilton's contention, inasmuch as Morris was not residing in the colony when Cosby died, nor at the demise of Anderson, the president of the council who became acting governor at Cosby's death. The government properly devolved upon Hamilton, whom only an express order of the king could divest of the presidency.<sup>2</sup>

Morris's main argument was that he had received certain instructions addressed to him as president of the council. This discrepancy was readily accounted for from the fact that the home authorities had had notice of Cosby's death, but not of the swearing in of Anderson and Hamilton. The official documents were on that account addressed to Morris, whose name still headed the list, because of a lack of information on the part of the home authorities.<sup>3</sup> Morris made some lengthy "Observations on the Reasons given by Hamilton's advisers," but hardly substantiated his position against the clear reading of the royal instruction.<sup>4</sup> President Hamilton

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 538.

<sup>2</sup> *Ibid.*, vol. v, p. 474.

<sup>3</sup> *Ibid.*, p. 481.

<sup>4</sup> *Ibid.*, p. 491.

issued a proclamation against Morris, which at least led the testy councillor to desist from making good his threat to resort to force in support of his claims.<sup>1</sup> The report of the lords of trade, January, 1737, was against Morris.<sup>2</sup> This decision was based chiefly upon his violation of a royal instruction, which forbade a councillor absenting himself from the province for one year without the permission of the governor. His conduct was declared improper and such as to warrant the forfeiture of his seat in the council.

Morris had doubtless made many influential friends during his long visit to England, and consequently, notwithstanding the unfavorable report of the lords of trade in the above dispute, received the appointment as governor of New Jersey. It was a position which he had some years before declared himself in favor of having.<sup>3</sup> The people expressed real and evident satisfaction at this appointment, for during the recent contests with Cosby, Morris had become very popular.

But the administration was still young, when the people learned by experience that the new governor assumed a different attitude upon public questions from that which he had previously taken. With the governorship in his own hands, no one was more insistent upon and careful of prerogative than he was. "Tandem Vincitur" the Morris family motto is said to have read, and in Lewis it had an able exponent. With a strong will and a restless disposition, power having come into his hands, he was intolerant of the views of others when in opposition to his own, and insisted upon the execution of his own plans. The governor became involved in violent and

<sup>1</sup> *N. J. Archives*, vol. v, p. 469.

<sup>2</sup> *Ibid.*, p. 479.

<sup>3</sup> *Ibid.*, p. 314.

unseemly quarrels with the assembly, sending to the legislature long messages, well calculated to induce fruitless wordy warfare. With advancing age his egotism led him to believe that his worth was not appreciated, and his administration, instead of being a popular one, was a disappointment to the people. Although his administration was a struggle with unwilling assemblies, it was a beneficial period for the province. This man, who had waged so many contests against unpopular executives, himself became one of the most unpopular. But it was neither corruption nor questionable political deals that caused his popularity to wane. The constant quarrels with the lower branch of the legislature were in large part aggravated by the eccentric and harsh temperament of the governor.

That Morris was actuated by only the best motives cannot be doubted. In the exercise of his powers he adhered scrupulously to what he regarded as his duty to the king and compromised with none. A man of undoubted ability, had he infused some tact into the exercise of his authority, his administration would have been far more successful. In religion, he was early in his career a strict conformist, but later his conformity waned. He disliked the Quakers, and was continually making assertions to the authorities in England against them, urging that none should be allowed to hold office. He died at Kingsbury, his estate near Trenton, on May 21, 1746. The Morris administration was so unpopular that in the succeeding administration, an attempt on the part of the Morris family to obtain the governor's back pay was successfully frustrated by the assembly.

The commission and instructions under which Morris governed New Jersey followed closely those of the former

executives.<sup>1</sup> In the commission there were only the necessary verbal changes, while the instructions show a few minor changes, in part caused by the institution of a separate governor for the province. A former instruction providing that all goods imported or exported from New Jersey should pay as high duties as those from New York was withdrawn, as contrary to the royal instructions to other governors. The instruction relating to the affirmation of Quakers was omitted, inasmuch as that was provided for by an act of the province. Morris's instructions consisted of ninety-three articles.

After the death of Governor Morris, John Hamilton, president of the council, took the oath, June 4, 1746, to act as governor until the appointment of a successor to Morris.<sup>2</sup> A year later he died, and no governor having as yet arrived in the province, John Reading as eldest councillor assumed office, assuring the crown that it would be administered as faithfully as possible.<sup>3</sup> The authorities in England had decided on the new governor as early as July, 1746, when the lords of trade were directed to prepare the commission and instructions for Jonathan Belcher.<sup>4</sup> For some reason Belcher had neglected the payment of certain fees in connection with their issuance, and the proceedings were delayed for almost half a year.<sup>5</sup> Upon payment of the fees, the documents were signed and approved early in 1747, and New Jersey's new royal governor set sail for his new field of activity.

<sup>1</sup> *N. J. Archives*, vol. vi, p. 2.

<sup>2</sup> *Ibid.*, vol. x, p. 452.

<sup>3</sup> *Ibid.*, vol. vi, p. 462.

<sup>4</sup> *Ibid.*, vol. vii, p. I.

<sup>5</sup> *Ibid.*, vol. vi, p. 422. Mr. Paris, the agent of the East Jersey proprietors in England, thought that the fees had been paid with money collected by Partridge from Quakers, he having represented to them Belcher's services to the Quakers in Boston, as governor of Mass., and that the Quakers might reasonably expect his favor in N. J. In the

From the brief sketch of Governor Morris's life, it was seen that the period of his popularity was during that part of his public career previous to the appointment as governor of New Jersey. In the case of Governor Belcher the opposite was true. His conduct as governor of Massachusetts and New Hampshire became so obnoxious to the people, that no steps, proper or improper, were omitted to secure his removal from his position. With Belcher, as was also the case with Morris, a proper estimate of the man is possible, only after a consideration of his work in New England.<sup>1</sup>

Born in Cambridge, January 8, 1682, the son of Andrew Belcher, a wealthy Massachusetts merchant, Jonathan was educated at Harvard, where he was graduated in 1699. Having traveled abroad for several years after the completion of his college course, he returned to New England to become his father's business partner. In 1718, he became a member of the Massachusetts council, at which board he served for seven years. His election to that body was vetoed by Governor Burnet in 1729. Although Belcher had formerly had the reputation of being a prerogative man, he managed to ingratiate himself with the popular party at about this time. When the contest between the representatives and Burnet over the question of a permanent salary for the governor was most acute, Belcher was sent to England by the lower house to aid the regular provincial agent in converting the royal authorities to the colonial viewpoint.

Belcher Papers under date of Nov. 16, 1747, there is a letter which Belcher wrote to his son in Boston, urging him to treat with kindness and respect "such as you fall in with from my Government (the Quakers especially)."

<sup>1</sup> For Belcher's career, see "Preface" to *Belcher Papers*, published by the Mass. Historical Society, series vi, vols. vi and vii.

It is not evident that Belcher's influence counted for much in the affair on account of which he was sent abroad, but the trip resulted to his own personal good fortune. The special agent of the Massachusetts assembly had not been long in England, when Governor Burnet died. As soon as the news of that gentleman's demise had crossed the ocean, ex-councillor Belcher turned his chief attention to securing the appointment as Burnet's successor in America. With evident ability in that direction, he successfully pulled the official wires, and received the coveted appointment. It is said that former Governor Shute might again have received the appointment, but he refused the honor, and surrendered his interests to Belcher.<sup>1</sup> Shute was Belcher's debtor to the amount of £500, as the result of a fourteen-year-old transaction.

The flop, which the newly appointed governor of Massachusetts had made in 1729 from the prerogative to the popular party, was characteristic of his subsequent conduct in New England politics. As with Morris later in New Jersey history, so with Belcher in Massachusetts and New Hampshire, his popularity was of short duration after he became the royal executive. Having returned to the colony with an instruction upon the question of a fixed salary, more distasteful to the New Englanders than Burnet's had been, Belcher determined to enforce it with as much exactness as his predecessor had done. His position was incongruous, to say the least. He was attempting to persuade the assembly of the colony of the propriety and necessity of a plan, which the preceding year he had been appointed and sent to England to oppose. Upon the question of the emission of paper

<sup>1</sup> Hutchinson, *History of Mass. Bay Colony*, p. 367.

money, Belcher also opposed the popular party. In Massachusetts, the governor was especially arbitrary in the matter of appointments, his conduct upon occasions being neither consistent nor warrantable.

Nor was the governor's conduct unpopular in only the more powerful of the two colonies under his jurisdiction. His activities were resented in New Hampshire, where his indiscretions loomed perhaps larger than in the neighboring colony. His attitude toward New Hampshire in the boundary dispute with Massachusetts was a subject of complaint. It was the treatment of the lieutenant governors of the smaller colony that aroused the greatest opposition against Belcher. John Wentworth, who was lieutenant governor when Belcher was commissioned, soon felt the enmity of his superior. After the lieutenant governor's death, the most active opposition to Belcher in New Hampshire came from a party of Wentworth's adherents. David Dunbar, the next lieutenant governor, was so denuded of authority by Belcher that he became a mere nonentity in the government. The governor actually convened the council in Dunbar's house, without so much as noticing the latter.<sup>1</sup>

The complaints against Governor Belcher, because of the disputes in both provinces, were naturally carried across the ocean. Every opportunity was taken to render his position precarious with the home officials, in order that he would be removed. To effect this purpose, his opponents did not content themselves with stating only the facts, but sent forged and anonymous letters also to England. He was removed in May, 1741, and Shirley was appointed to succeed him.

After retiring for a while to his estate at Milton,

<sup>1</sup>Fry, *New Hampshire as a Royal Province*, p. 93.

Belcher went to England and succeeded in so far vindicating himself before the royal authorities that he was appointed to succeed Morris in New Jersey. This appointment was doubtless due in part to the influence of his brother-in-law, Richard Partridge, the agent of New Jersey at court. Upon his arrival in America, as governor of New Jersey, he made Burlington his home, but in 1752 removed to Elizabethtown on account of his health.

The usual congratulatory addresses were sent to the new governor, and indications pointed to a harmonious administration.<sup>1</sup> Throughout his term of office in New Jersey, he adopted a consistently mild and conciliatory policy, which made his administration deservedly popular. His conduct was in great contrast to that of his predecessor in New Jersey, and to his own attitude in his former executive position. He would resist popular measures only when they brought him into conflict with positive instructions from the crown. Belcher believed in his popularity also, for he writes in 1750, "I believe I am not Vain while I tell you were the Governor elective I believe I shou'd have 19 votes in 20 throughout the Province."<sup>2</sup>

It was Belcher's misfortune, however, to hold office during the period when the land riots of the people against the proprietors became most violent. His evident desire to remain neutral in the quarrel and to act justly, led to representations being made against him in England by some of the proprietors, who charged him with countenancing the rioters.<sup>3</sup> Robert Hunter Morris, mis-

<sup>1</sup> *N. J. Archives*, vol. iii, p. 13.

<sup>2</sup> *Belcher Papers*, Nov. 7, 1750.

<sup>3</sup> *Ibid.* The letters written during August, 1757.



interpreting Belcher's neutrality in the land disputes for partiality, exerted his powerful influence while in London to secure his removal, but was unsuccessful. The governor attributed Morris's conduct in part to jealousy that "his late Father's administration was so imprudent and so abhorrent to the whole people and mine should be so much the reverse."<sup>1</sup> An able defense of Belcher's conduct was made by the Presbytery of New Brunswick at their meeting in December, 1751, and a letter was addressed to the Earl of Holderness declaring as groundless reports against him, and asserting as the "current sentiments of the people" that Governor Belcher had done all in his power to suppress the lawless tumults.<sup>2</sup> The governor compared his difficult situation to steering "between sylla and charibdis that is to please the King's Ministers at home and a touchy People here or as we say at Sea to Luff for one and to bear away for another."<sup>3</sup> The fear of removal was naturally distasteful to Belcher, and he wrote frequently to the Secretary of State defending his conduct, and urging that he should not be censured without first having the privilege of answering for himself the charges against him.<sup>4</sup> In the conduct of public affairs, Belcher was passive rather than active. He may justly be censured for not having had a definite constructive policy to cope with the difficult conditions in the province. His attitude was not assertive and he clearly lacked those qualities which make for leadership. The governor's interests were, in the main, those of the colonists, and he frequently urged the encouragement of trade, agriculture and manufacturing.

<sup>1</sup> *Belcher Papers*, Aug. 16, 1751.

<sup>2</sup> Hageman, *Princeton and Its Institutions*.

<sup>3</sup> *Belcher Papers*, June 8, 1751.      <sup>4</sup> *N. J. Archives*, vol. vii, p. 571.

A great degree of inconsistency cannot be charged against Governor Belcher in New Jersey affairs.

His was a most interesting personality. It is revealed in the voluminous correspondence of this tireless letter-writer. Belcher's actions frequently fell far short of his professions. This was especially true of his career in New England, where he was not above duplicity. His extreme obeisance to his official superiors is hard to reconcile with the often unkind arbitrariness to those over whom he was officially superior. The governor was a very emotional man. The fervent religious spirit of Belcher's letters may sound like cant and ostentatious piety, but in judging him the character of the age in which he lived should be considered. None of the New Jersey governors of this period did more to encourage and promote the religious and educational life of the province than did he. The founding of the College of New Jersey, now Princeton University, was due in no small degree to the earnest and patient efforts of Jonathan Belcher.

Although Belcher was satisfied with the life in New Jersey, once writing, "If God and the King please I shou'd be glad to dye Gov of New Jersey," he longed to return at least for a visit to his relatives in New England.<sup>1</sup> In 1747 he had applied to the crown officials for a general leave of absence which would enable him to go to New England for two or three months when necessary. This general leave was not granted, but he was ordered to apply for a special license whenever it was necessary for him to go to New England.<sup>2</sup> A leave of

<sup>1</sup> *Belcher Papers*, June 8, 1751. We find in one of his letters the assertion that his tongue would cleave to the roof of his mouth when he forgot New England.

<sup>2</sup> *N. J. Archives*, vol. ii, pp. 449, 453.

absence was obtained early in 1750, but owing to the state of affairs in the province it remained unused.<sup>1</sup>

In his later years Belcher was in declining health. Benjamin Franklin offered to aid him by electrical treatments, and after having consulted noted physicians in the colonies, the offer was accepted by the prospective patient, convinced that the experiment could be made "in moderation, without any fear of Injury."<sup>2</sup> The honored governor died in 1757, his death causing genuine grief on the part of the people. We are told that the funeral service in the Presbyterian church at Elizabethtown, at which President Burr of the College of New Jersey preached the sermon, was very impressive. The sermon was later published with the title "A Servant of God dismissed from Labor to Rest."

The commission which Governor Belcher brought with him to America was in the usual form, and the modifications in the instructions were few.<sup>3</sup> An additional instruction to Morris directing him to send aid to Nova Scotia was inserted in the present set, but owing to the war with France an instruction was now omitted relating to the treaty of neutrality between England and France in 1686. The titles of three acts of the 15th, 17th and 19th years of George II relating to the Acts of Trade and Navigation were in Belcher's instructions.

Upon the death of Governor Belcher an interesting situation arose in connection with the administration of the government. In 1755 Thomas Pownall had been appointed lieutenant governor of New Jersey, upon the expectation that he would soon become governor by

<sup>1</sup> *Belcher Papers*, Jan. 8, 1750.

<sup>2</sup> *Belcher Papers*, Oct. and Nov., 1751.

<sup>3</sup> *N. J. Archives*, vol. vii, p. 2 *et seq.*

Belcher's death.<sup>1</sup> The New Jersey governor not dying as soon as had been anticipated, Pownall was appointed to succeed Shirley of Massachusetts. In September, 1757, he was duly notified by Secretary Read of New Jersey of the governor's death.<sup>2</sup>

As Pownall was absent from New Jersey, the administration fell to Reading, the oldest councillor, who refused to assume the chief authority, as he was aged and infirm and "not fit to bear the Weight or Burthen of Government."<sup>3</sup> At the earnest behest of the council and secretary, Reading did qualify by taking the oaths in order to prevent confusion in the colony, but urged that he be superseded or relieved by the appointment of some other person. Pownall came to New Jersey, but inasmuch as there was no unusual business requiring his attention, returned to Massachusetts, after having met the council and continued Reading in charge. He generously promised to make the trip from Boston at any time that necessity required "more vigorous exertion" than Reading's state of health would allow.<sup>4</sup> To the lords of trade Pownall urged the immediate appointment of some person as governor of New Jersey, "with no connections with this country," especially because if Reading should die the administration would devolve upon Robert H. Morris, one of the chief proprietors, an event which he quite reasonably regarded would be most improper, at a time when the proprietors and people were at odds.

There now followed in rapid succession three royal governors, with administrations so brief as scarce to leave any distinct impression on the colony. In June, 1758,

<sup>1</sup> *N. J. Archives*, vol. viii, pt. ii, p. 102.

<sup>2</sup> *Ibid.*, p. 257.

<sup>3</sup> *Ibid.*, p. 260.

<sup>4</sup> *Ibid.*, vol. xvii, p. 133.

Francis Bernard took the oaths as governor of New Jersey.<sup>1</sup> A cultivated gentleman, having been educated at Oxford, Bernard was enthusiastically received in the province. But in November, 1759, he was appointed governor of Massachusetts Bay leaving New Jersey the next year, to the great regret of the assembly which esteemed his going "as a public loss."<sup>2</sup> The departure was in marked contrast to his leave-taking at Boston, in August, 1769.

In less than a month after the notification to Bernard of his new appointment, the representation of the lords of trade proposing Thomas Boone, a citizen of South Carolina, as governor of New Jersey was approved.<sup>3</sup> The honor thus conferred upon him was acknowledged by a letter from Charleston, South Carolina, to the lords of trade and another letter to those honorable gentlemen notified them of his arrival in New Jersey, and the publication of his commission at Perth Amboy and Burlington.<sup>4</sup> Before he had been in New Jersey a year, Boone was, in April, 1761, appointed governor of South Carolina.

Josiah Hardy, who had not had any previous connection with the colonies, was the next person tried in New Jersey by the crown authorities. He arrived late in October, 1761, and after publishing his commission, met the legislature.<sup>5</sup> Conduct on the part of the governor, which the authorities regarded as illegal and unwarranted, cut short the administration of Hardy. He had granted commissions to the justices of the Supreme Court of the province to hold office during good be-

<sup>1</sup> *N. J. Archives*, vol. xvii, p. 173.

<sup>2</sup> *Ibid.*, vol. ix, p. 188.

<sup>3</sup> *Ibid.*, p. 189.

<sup>4</sup> *Ibid.*, pp. 205, 234.

<sup>5</sup> *Ibid.*, p. 316.

havior. The lords of trade spoke very sternly against "so premeditated and unprecedented an Act of disobedience" on the governor's part,<sup>1</sup> and the attorney general reported that the appointments during good behavior were contrary to the royal instructions, illegal and invalid.<sup>2</sup> Hardy was notified of his removal, and replying in a brief and dignified note, acknowledged the letter of removal from Egremont, but mentioned his ignorance as to the representations against him, and his never having been given an opportunity to justify his conduct.<sup>3</sup>

The removal of Hardy was another disappointment to the people of New Jersey; not only because they were inclined to the governor personally, but because the frequent changes in administration were felt to be injurious to the colony. The purse-strings were affected also, because it was customary to grant an extra £500 to each governor at the beginning of a new administration, as an aid to the payment of his transportation expenses. The assembly was beginning to count up these extra requisitions of the past few years, and as a matter of fact, the next governor did not receive one.

The commissions granted to Bernard, Boone, and Hardy were in the usual form, indeed there would have been scant time to draft new ones, had there been any inclination, considering the slowness with which the machinery of government worked at that time in colonial affairs. In Bernard's instructions, one suspending the execution of laws emitting bills of credit until the royal pleasure was known was omitted, and for it substituted an instruction allowing the governor to assent to such acts in times of war or cases of emergency, under condi-

<sup>1</sup> *N. J. Archives*, vol. ix, *Ibid.*, p. 360.

<sup>2</sup> *Ibid.*, p. 380.

<sup>3</sup> *Ibid.*, p. 379.

tions prescribed by the act of parliament of 1750.<sup>1</sup> Articles which seemed obsolete were omitted, and others similar to those given to other royal governors inserted. The instructions to Boone were granted with only necessary verbal alterations. An important addition was made to the 27th article of Boone's instructions, when Governor Hardy's were issued.<sup>2</sup> It directed the governor to discourage attempts to set up manufactures or trades prejudicial to England. Some instructions had become useless because their objects were now provided for by provincial laws. Such were omitted. One of these was to secure the life, limb and property of the subject; another directed proofs to be sent with prisoners to England; and a third provided that inhuman severities towards servants and slaves should be restrained.

When William Franklin was appointed governor of New Jersey, there were in some quarters pronounced expressions made against him, one gentleman going so far as not to doubt but that New Jersey would make a remonstrance against the appointment.<sup>3</sup> The ability which Franklin showed in governing New Jersey during a most trying period leaves one to conclude that the gross aspersions against him were due not to a lack of confidence in his abilities but on account of a feeling hostile to him because of his illegitimate birth. Born in 1731, the son of Benjamin Franklin, William had the opportunity of improving himself in the companionship of his learned parent, an advantage also which he did not neglect.<sup>4</sup> When his father went to England as Pennsylvania's colonial agent, the younger Franklin accom-

<sup>1</sup> *N. J. Archives*, vol. ix, p. 38.

<sup>2</sup> *Ibid.*, p. 272.

<sup>3</sup> Duer, *Life of Lord Stirling*, pp. 68-71.

<sup>4</sup> See the excellent biographical sketch of William Franklin by W. A. Whitehead, *N. J. Hist. Soc. Proc.*, series i, vol. iii, p. 137.

panied him. While in Europe he traveled extensively with his father and must have come in contact with many of the leading personages of the time. In 1762 he was given an honorary degree of Master of Arts at Oxford. Through the influence of Lord Bute, William Franklin was appointed in August, 1762, to succeed Hardy as governor of New Jersey, and was the last royal governor of that province. Arrived in the colony in February of the next year, he was greeted with a demonstration "equal to his utmost wishes."<sup>1</sup>

Governor Franklin's endeavors for the prosperity and welfare of the province were earnest and unremitting. Arriving in America at the conclusion of a long and expensive war, he urged upon Jerseymen the cultivation and promotion of the arts of peace. He himself became an active agriculturist, caring for a farm of considerable extent at Burlington, where he lived until 1774. At that date he moved to Perth Amboy, in order to call the council more freely during that critical period.<sup>2</sup> Numerous measures of economic and social value to the colony secured his active support and encouragement.

Had Franklin been governor of New Jersey a decade earlier, there is no reason to doubt that his administration would have been far more successful than it was. It was upon that momentous question, dearest to the hearts of the patriots, that Franklin was a stranger to his people. He stood firmly in favor of the acts of the English ministry. His noted father aptly described him as "a thorough government man."<sup>3</sup> It was the opposition of the governor to the people on this vital subject

<sup>1</sup> *N. J. Archives*, ix, p. 383.

<sup>2</sup> *Ibid.*, vol. x, p. 459.

<sup>3</sup> Letter of Oct. 6, 1773, to Wm. Franklin. Smyth, *Life and Writings of Benjamin Franklin*, vol. vi, p. 144.



which brought him into conflict with them on other matters, in which under ordinary circumstances they would have supported him. But determined upon his course in favor of the royal officials in their contest with the colonies, Franklin saw it through to the bitter end, enduring separation from his wife and estrangement from his father. It is a tribute to his ability, that holding such pronounced royalist views, Franklin maintained himself as long as he did as governor of the province. The detailed account of Franklin's conduct during the Revolution will be reserved for a later chapter.

Attention may here be called to the minor executive officers in the colony. Reference has been made to the appointment of Thomas Pownall in 1755 as lieutenant governor. His was the second and last royal commission to such an office in the province. The only other lieutenant governor had been Richard Ingoldsby, commissioned as such at the institution of royal government in New Jersey. The office seemed to have proven itself a useless expense and was abolished until the appointment of Pownall. The apparent motive in the appointment of Pownall was to have a competent person "upon the Spot" to succeed Belcher at his death,<sup>1</sup> but this great anxiety to insure the smooth succession of governors in New Jersey does not appear to have troubled the lords of trade after Ingoldsby's time. Perhaps Pownall wanted a colonial office and it was awarded to him through the influence of his brother, then secretary of the lords of trade.

Belcher, though congratulating Pownall upon his appointment, advised Partridge, the London agent, to be watchful "in a silent manner" that the new officer should

<sup>1</sup> *N. J. Archives*, vol. viii, pt. ii, p. 102.

not attempt anything prejudicial to him.<sup>1</sup> His suspicions that Pownall would not scruple anything for his own advancement, he declares to be not without reason.<sup>2</sup> What his apprehensions were does not appear. In view of the fact that a lieutenant governor had not been commissioned for New Jersey for over half a century, and that representations had been made against the governor, it does not seem unnatural that Belcher should have been apprehensive.

Pownall's commission had given him authority to act as governor in case of the latter's death or absence.<sup>3</sup> In May, 1756, Belcher was directed to authorize the lieutenant governor to act in his stead, whenever his age and infirmity made it "painfull and hazardous if not impracticable" for him to attend any meetings of the governors which the Earl of Loudoun, commander of the royal troops in America, might appoint.<sup>4</sup> Pownall's subsequent connection with New Jersey affairs has been mentioned, and after him no other lieutenant governor was appointed. Thereafter the administration of affairs during the intervals between governorships was intrusted, according to the royal instructions, to the oldest councilor, who as president of the council thus came to have a definite and distinct position in fact, as well as in name.<sup>5</sup>

The provincial secretary and attorney general held office by royal patent. It was common practice for the royal appointee to farm the office of secretary out to a deputy, who in turn might entrust the actual conduct of affairs to clerks. This method was not conducive to the

<sup>1</sup> *N. J. Archives*, vol. viii, pt. ii, pp. 135, 139.

<sup>2</sup> *Ibid.*, p. 190.

<sup>3</sup> *Ibid.*, p. 106.

<sup>4</sup> *Ibid.*, p. 215.

<sup>5</sup> Before the issuance of Pownall's commission such had been the practise after Ingoldsby's time.

attainment of the best results. In 1769 Governor Franklin wrote that the secretary came to Burlington only during the sessions of the court, but that he desired the next appointee to reside in the capital city.<sup>1</sup> The governor referred to Joseph Reed, deputy at that time, who shortly thereafter did resign, and was succeeded by a person concerning whom there was less cause for adverse criticism.

The secretary's commission was held by an English gentleman named Burnet in 1739, Archibald Home acting as deputy in the province.<sup>2</sup> William Peters of Pennsylvania sought the commission as secretary in 1741, but the best efforts of John Ferdinand Paris in his behalf were of no avail.<sup>3</sup> After the death of Burnet, Home continued to hold the deputyship until his own demise. In order that the public business should not be inconvenienced, James Home was appointed deputy-secretary on the decease of his brother Archibald.<sup>4</sup> The date of his commission was March 13, 1744. Then Christopher Coates, became secretary of the province.

In 1745 Charles Read received a commission to hold the deputyship during the royal pleasure.<sup>5</sup> It is recited that James Home intends to remove to another colony, doubtless South Carolina. The new deputy secretary took the oaths to the government and for the due execution of the offices of secretary and clerk of council on November 10, 1744. For the next two or three decades Read held other prominent official positions. His signa-

<sup>1</sup> *N. J. Hist. Soc. Proc.*, vol. i, p. 109.

<sup>2</sup> *N. J. A.*, vol. xii, p. 154.

<sup>3</sup> *N. J. MSS.*, pp. 101, 107, in the Pennsylvania Hist. Soc. Library.

<sup>4</sup> *Liber A A A of Provincial Commissions*, p. 254.

<sup>5</sup> *Ibid.*, p. 258.

ture was affixed to documents until 1767. Inasmuch as he was re-commissioned secretary in 1762,<sup>1</sup> Read's incumbency in the office doubtless was not continuous from 1745 to 1762. Under date of March 17, 1761, an order of council directed the lords of trade to prepare a warrant continuing Christopher Coates in the office of secretary.<sup>2</sup>

Maurice Morgan, "of Parliament Street, Westminster," was granted the commission of secretary of New Jersey on June 18, 1767.<sup>3</sup> As his agent in the province he deputed Joseph Reed later in the same month. In January of the following year Morgan was confirmed in his position by a commission which appointed him to the "Offices or Places of Secretary, Clerk of the Council, Clerk of the Supreme Court, Clerk of the Pleas, Surrogate and Keeper and Register of Records."<sup>4</sup> Morgan apparently retained his commission to the end of the provincial era. In October, 1769, Deputy Secretary Reed retired in favor of Charles Pettit, his brother-in-law, who had been associated with Reed in the duties of his numerous offices.<sup>5</sup> The new deputy took the oaths before Chief Justice Smyth on November 3, 1769, the day upon which he was licensed as an attorney-at-law.<sup>6</sup> Continued in office by the council and assembly of the State of New Jersey in 1776, he resigned two years later in favor of his brother-in-law, Bowes Read.<sup>7</sup>

Provincial New Jersey boasted of two receivers-general or treasurers appointed by the governor for unlimited

<sup>1</sup> *Liber A A A of Provincial Commissions*, p. 366.

<sup>2</sup> *N. J. A.*, vol. ix, p. 357; vol. x, p. 366.

<sup>3</sup> *Liber A B of Provincial Commissions*, p. 4.

<sup>4</sup> *Ibid.*, p. 1.

<sup>5</sup> *Ibid.*, p. 37; *N. J. A.*, vol. x, p. 133.

<sup>6</sup> *Ibid.*, p. 40.

<sup>7</sup> *Ibid.*, p. 186.

terms. There was a treasurer for each division of the province with a salary of £40 per annum. As will be seen, the assembly of New Jersey practically gained the power of dictating the appointments to this office. The East Jersey treasurer in 1738 was Andrew Johnston. Upon his death, in 1762, Stephen Skinner received the appointment at the hands of Governor Hardy.<sup>1</sup> After the robbery of the treasury chest in his house, Skinner's resignation was forced by the assembly in 1773, and John Smyth appointed. Stirred by the treasury theft, the assembly passed an act obliging the treasurers to enter into bonds for the faithful execution of the office. Smyth was the first treasurer appointed during the operation of this law. In West Jersey John Allen, who had been appointed by Governor Burnet, retained the office until 1750. For the twenty-five years following, Samuel Smith, the historian, acted in a like capacity. Upon his resignation in 1775, Franklin appointed Joseph Smith to the office, and on May 20th of that year the assembly pronounced his bond satisfactory.

Many of the other officers received commissions from the governor. These included the provincial and county judges and justices of the peace, sheriffs and militia officers. Customs officers for New Jersey were usually commissioned by the surveyor general of customs for the colonies. The proprietary surveyors general will be mentioned in a later chapter.

<sup>1</sup> *N. J. A.*, vol. ix, p. 366.

## CHAPTER II

### THE COUNCIL—POSITION AND PERSONNEL

THE council acted in a dual capacity, as an advisory body to the governor, and as the upper house of the legislature.<sup>1</sup> In the former capacity it had many important functions, among them the necessity of giving advice in and consent to the establishment of courts, the erection of forts, expenditures of the public money and other important matters. The council had a general supervision over the administration. In legislation it was the theory that the council and assembly stood on an equality, but in practice this was not the case. With success, the assembly stubbornly maintained the principle that the council could neither originate nor amend money bills. This position was deprecated by governors and home authorities, but the assembly would not abate one jot. This naturally gave rise to serious legislative conflicts, which were, however, not unique in the history of any one English colony. The council also had judicial duties in cases of appeal to the governor and council from the provincial courts.

The governors before Morris had presided at the legislative, as well as the administrative, sessions of the council. The serious objection to this practice was that it gave the executive undue influence in legislation. It was one of the complaints which Morris had made against Governor Cosby,<sup>2</sup> and when the former became

<sup>1</sup> Tanner, *op. cit.*, ch. xvii, and ch. xviii.

<sup>2</sup> *N. J. A.*, vol. vii, p. 77.

<sup>3</sup> *Ibid.*, vol. xv, p. 19.

governor he consistently desisted from presiding over the legislative deliberations of the upper house, an action which deservedly merited the approval that it received from the legislature. The assembly was conscious of the advantage of having the council sit "as a separate and distinct part of the legislature; for all former governors have presided in that House, in a legislative capacity, which not only very much influenced their debates, but often produced very bad effects, and greatly thwarted and obstructed the despatch of public business."<sup>1</sup> That Morris believed in their right to act in a legislative capacity apart from the governor, the council had no reason to doubt, and reminding him "of the ill consequences which have ever attended and again may attend a Governor's presiding, and voting amongst us in a Legislative Capacity," expressed their gratitude for the action he had taken.<sup>2</sup> This action of Morris's was most commendable, decreased his power not in the least, while it did encourage legislative harmony.

Gov. Belcher, however, deemed it to be "for the good of the Province, that he should be present when any Bill was Debating in Council,"<sup>3</sup> and coming to the council on New Year's Day, 1746, informed his councillors that he wished merely to listen to the debates in order better to judge of the necessity of any measure, would continue to attend for that purpose, but "did not intend to vote or otherwise to Intermeddle with or Direct any of the Proceedings of the Council in their Legislative Capacity." The next day Morris moved that a committee might be appointed to consider the governor's claim, because compliance would affect the rights of the upper house. What the committee report was is not known,

<sup>1</sup> *Assembly Journal*, Oct. 28, 1738.

<sup>2</sup> *N. J. A.*, vol. xv, p. 19.

<sup>3</sup> *Ibid.*, vol. xv, p. 567.

but there is no indication that the governor persisted in his purpose, doubtless concluding that the king's service would not be best conserved by stirring up needless opposition in the council. There is, however, a letter from James Alexander to Joseph Murray, an eminent lawyer and member of the New York council, asking him for information as to the motives that "induced Mr. Clark to Desist from Setting with the Council in their Legislative Capacity," and submitting certain queries upon the subject to which answers are requested.<sup>1</sup> It was the intention also to send a copy of these queries to each of the royal governments asking for the desired information.<sup>2</sup>

A relic of the former recognized division of the territory into East and West Jersey remained in the make-up of the council also. There were six councillors for each division, an arrangement frequently provocative of annoyance and a source of difficulty in making appointments. In accordance with a royal instruction to the governors, a list of twelve persons qualified to act as councillors, six from each division of the province, was to be at the disposal of the authorities in England. According to the instructions to both Morris and Belcher, the royal Surveyor General of Customs was to "sit and vote in the Council as a Councillor Extraordinary."<sup>3</sup> It was usually difficult to obtain a quorum, which was three members.<sup>4</sup> At such times, much to the detriment of the public service, as well as the annoyance of the faithful

<sup>1</sup> *N. J. A.*, vol. vii. p. 77.

<sup>2</sup> *Ibid.*, p. 70.

<sup>3</sup> *Ibid.*, vol. vi, p. 15.

<sup>4</sup> Morris's commission said that three should be a quorum, but in the instructions he was directed not to act with a quorum of less than five, "unless upon Extraordinary Emergencies, when a greater Number cannot be conveniently had."



members, adjournment would be made from day to day, until the requisite number appeared. In some cases there were proper excuses for absence but frequently it was neglect. At the beginning of Morris's administration the annoyance was such that the council asked the governor to lay before them the royal instructions in the matter, and ordered the absent members to attend.<sup>1</sup> In November, 1739, after certain members had been summoned thrice, they were warned that all excuses were futile, and that persisting to be neglectful, their cases would be laid before the king.<sup>2</sup> A recommendation of Governor Morris that stated council meetings should be held quarterly on the last Tuesday of March, June, September and December at the governor's residence, was agreed to by the council, December 4, 1739.<sup>3</sup> The object was to obviate the difficulty of members attending meetings upon short notice, the agreement being regarded as a summons to meet on the days indicated. Extra sessions were, of course, to be held in the discretion of the governor. This simple arrangement overcame in great part the difficulties which it had been sought to remedy. The attendance of councillors, however, was even later, in 1744, a matter of caustic comment on the part of the assembly.<sup>4</sup>

The personnel of the council was in general high, its membership including many of the most able and influential men in the province. In no small degree was the governor responsible for the character of his council, for his recommendations of persons qualified to act as councillors were almost without exception accepted.<sup>5</sup>

<sup>1</sup> *N. J. A.*, vol. xv, p. 25.

<sup>2</sup> *Ibid.*, p. 94.

<sup>3</sup> *Ibid.*, p. 104.

<sup>4</sup> *Ibid.*, p. 369.

<sup>5</sup> The majority of Belcher's recommendations, however, were rejected.

The governor also had the power to suspend councillors, but in cases of suspension was to transmit a detailed account to the king. Although from these circumstances it might appear that the royal executive exercised considerable influence over the council, as was indeed the case, they were by no means servile to him. In upholding the royal prerogative against popular encroachments, their interests were common, but when those interests diverged, governor and council frequently came into conflict.

Exclusive of John Peagram, Surveyor General of Customs and Councillor Extraordinary, the following were appointed to the council by Morris's instructions: John Hamilton, John Wills, John Reading, Cornelius Van Horn, William Provost, John Schuyler, Thomas Farmer, John Rodman, Richard Smith, Robert Lettice Hooper, Robert Hunter Morris, and Jeremiah Lyell, the first five of whom had been councillors under the old administration, the others being newly appointed. Of these, Hooper, who was chief justice of New Jersey from 1725 to 1738 with the exception of about a year and a half, had died a month before the lords of trade had submitted the list to the king. Wills, because of old age, and Van Horn, because of business affairs, were dismissed at their own request.<sup>1</sup> Provost was suspended in 1740 because of persistent refusals to attend, and Schuyler being part owner "of the famous Jersey coppermine" was discharged because council attendance prejudiced his private affairs.<sup>2</sup> Among the discharged members, Morris thought the public service suffered only in the loss of Schuyler, which may account for his readiness to dismiss them.

<sup>1</sup> *N. J. A.*, vol. xv, p. 121.

<sup>2</sup> *Ibid.*, vol. vi, p. 105.

Thomas Farmer had been chief justice from March, 1728, to November, 1729, but had probably been removed because of insanity. Cosby had recommended him for the council in 1734, and his name appears in Morris's instructions, but representing Middlesex County in the assembly at that time, he retained that position, and did not move to the other house. Thus reduced to but six members resident in the province, Morris, consistent with his instructions, appointed Peter Baynton, who of all the trustees appointed by the assembly to furnish certain supplies for the troops acted according to the governor's ideas of proper conduct.<sup>1</sup> Smith and Rodman were both West Jersey Quakers, the former having been characterized by Morris at an earlier time as "a quiet inoffensive person," the latter as "a man of good temper of a good estate in Jersie and Pensilvania and generally well esteemed both by Quakers and others."<sup>2</sup> Regarding Lyell little is known, except that he was a Perth Amboy merchant.<sup>3</sup> Reading, a West Jersey proprietor, was an influential member of the council, having been councillor since 1720 under Burnet. He it was who objected to assuming the administration at Belcher's death. Princeton College received freely of his wealth and energies, and indeed his death deprived the province of one of its most honored servants.<sup>4</sup> Of three other councillors, John Hamilton, R. H. Morris,

<sup>1</sup> *N. J. A.*, vol. vi, p. 106.

<sup>2</sup> *Ibid.*, vol. v, p. 317.

<sup>3</sup> *Ibid.*, p. 155.

<sup>4</sup> There is a letter in the Belcher Papers, under date of Dec. 16, 1747, showing that Reading asked permission to resign as early as that date, but he was not actually relieved from duties until 1758. The letter is such a characteristic Belcher epistle that an extract is here given. After regretting the necessity of Reading's resignation, the governor continues, "I wish your Fears," evidently regarding his own and Mrs. Reading's health, "may be turned into Joye and thanksgiv-

and James Alexander who served from the beginning of Morris's administration, a more extended account should be given.

The son of Andrew Hamilton, the last provincial governor under the proprietors, John Hamilton was appointed to the council under Hunter.<sup>1</sup> This was his first appointment to public office, but as early as 1694 his name became known in connection with the first establishment of post offices in America. He was appointed second judge of the Supreme Court in 1735, but later resigned the position because the salary would "scarce maintain a foot-man."<sup>2</sup> The result of the contest for the council presidency did not leave Morris kindly disposed to Hamilton, and we find the governor mentioning to the lords of trade in May 1739, that Hamilton though a councillor for West Jersey, lives in East Jersey, and to his knowledge has never had an estate in the former division, evidently not unwilling that the Lords should regard such a course as improper.<sup>3</sup> In fact Morris with questionable dignity soon became involved in a more pronounced contest with Hamilton. After the warrants for salaries had been signed in 1739, Hamilton applied for the portion of his salary as council president, up to that time unpaid. Morris not only refused to grant that, but notified the councillor, that he should pay Morris the money received by him as president of the upper house since Morris's arrival in 1736.<sup>4</sup> After an in-

ing, on Mrs. Reading's acc<sup>t</sup>—you know Its easy for our Bless'd Saviour to Say to you as to the Noble man in the Gospel in a Like occasion—thy Wife Liveth—and in your own Case as to the poor Paralitick—Arise and take up thy Bed and Walk. But these things Sir we Are to humbly hope for in Faith and Prayer."

<sup>1</sup> *N. J. A.*, vol. iv, p. 182.

<sup>2</sup> *Morris Papers*, p. 48.

<sup>3</sup> *Ibid.*, p. 54.

<sup>4</sup> *N. J. A.*, vol. vi, p. 69.

terval of four years the governor, in March 1743, brought suit against Hamilton for £3,000 damages, and the latter asked the lords of trade for a letter certifying the incorrectness of the governor's attitude.<sup>1</sup> To his satisfaction, the lords of trade informed Hamilton that from March 1736 until the issue of Morris's commission they had regarded him as "the legal President and Commander in Chief of the Provinces of East and West Jersey."<sup>2</sup> The governor's position in that matter was clearly unwarranted. It was perhaps the irony of fate that John Hamilton should outlive Morris and become acting governor again at the latter's death.

Robert Hunter Morris, one of the new members of his father's council, having great natural ability and favored with unusual advantages, developed into one of the ablest men of this period of New Jersey's history. Upon the death of Hooper, young Morris was appointed by his father, with the approval of the council, as chief justice of the province, a position which he held for twenty-six years. During this time he was absent for five years in England, going on a mission for the council, but also doubtless interested in the appointment as lieutenant governor of New York. He returned, however, in 1754 with the commission of governor of Pennsylvania, a position which proved uncongenial and was resigned after two years. One of the most active of the East Jersey proprietors, he was constantly solicitous for their interests. Opposed to Belcher's conduct in the land riots, he became an aggressive opponent of that governor, influencing the crown's appointments to that gentleman's council, and making him fear lest he should lose the governorship. He died suddenly while attend-

<sup>1</sup> *N. J. A.*, vol. vi, p. 151.

<sup>2</sup> *Ibid.*, p. 153.

ing a dance at Shrewsbury, in January, 1764. The historian Smith wrote, "Unhappy Jersey has lost her best ornament."<sup>1</sup>

At a time when the rights of the New Jersey proprietors were so violently opposed, they were fortunate to have two such able intercessors in the government as Robert Hunter Morris and James Alexander. Not only is Alexander's name omitted from the list in Governor Morris's instructions, but the lords of trade in reporting to the king remarked that "We have been informed that he is a Person not proper to serve in that Station." Their informant had been Governor Cosby, to whom Alexander became particularly obnoxious in connection with the famous Zenger trial, in which trial he had volunteered his services in defence of John Peter Zenger. Although he came to America in 1716 in order to escape the possible consequences of his having aided the English Pretender, he appeared to have Whig principles in the colonies, where his advancement was rapid. He was surveyor general of both New York and New Jersey, as well as a councillor in both provinces. An order reinstating Alexander in the council does not appear, but Morris improperly regarded him as a member in May, 1739,<sup>2</sup> and at that time included his name in a list of councillors submitted to the lords of trade.

The truth is there was some questionable maneuvering on the part of the proprietary interests regarding Alexander's appointment to the council. Paris, the proprietary agent, stated that clerical blunders caused the omission of Alexander's name from the Morris instructions, but this cannot be reconciled with the statement

<sup>1</sup> For an excellent sketch of Mr. Morris, see Field, *Provincial Courts*, p. 144.

<sup>2</sup> *Morris Papers*, p. 54.

regarding Alexander when Morris's instructions were sent to the king for approval. Charles Read, at Belcher's suggestion, was named a councillor in the original instructions of that official. Paris represented, or misrepresented, the facts in such a way to the lords of trade that they recalled Belcher's commission and instructions, destroyed the first sheet, engrossed it with Alexander's name, and omitted Read's.

Residing in New York, he rarely attended council meetings and Morris excused his absence to the home authorities on the ground that he was building a house.<sup>1</sup> Alexander was an able supporter of the governor and his loss on the council would have been felt. In the legal profession he stood high, having been the author of the Elizabethtown Bill in Chancery, while he was a scientist of ability, and one of the founders of the "American Philosophical Society." In connection with the New York and New Jersey boundary dispute, and the efforts of the proprietors to assert their claims against the people, the name of James Alexander must ever be recorded in New Jersey history. He died in 1756 while on a trip to Albany, his place on the New Jersey council being filled by the appointment of his illustrious son, William Alexander, Earl of Stirling, one of the generals of the Revolution.

As the council stood in October, 1749, there were only four members from each division, making it difficult to obtain a quorum. Morris urged the appointment of Archibald Home and John Allen, for the western division, and Edward Antill and Richard Ashfield for the eastern division. Allen, who was the West Jersey treasurer, and Ashfield, who had been recommended by Morris to give

<sup>1</sup> *N. J. A.*, vol. vi, p. 107.

the proprietors additional influence, were not appointed.<sup>1</sup> Home, whose special qualification seemed to be that as he was clerk of the council and obliged to attend, a quorum would be more readily obtained, was appointed and served until his death in 1745.<sup>2</sup> Antill, who was Governor Morris's son-in-law, and an East Jersey proprietor, was also appointed. Morris hoped and believed he "would prove a useful and deserving member," as indeed he had up to this time in the assembly.<sup>3</sup> He served until suspended by Boone in 1761 for non-attendance, which suspension was confirmed by the royal officials.<sup>4</sup>

By 1745 the deaths of Lyell, Baynton and Home had depleted the council, rendering the conduct of business so difficult that the assembly complained.<sup>5</sup> Consequently the governor urged upon the lords of trade the desirability of having a full council, in order to leave as little room as possible to "the Assembly for murmur or clamor."<sup>6</sup> To complete the twelve, in January, 1745, Andrew Johnston, Peter Kemble, James Hude, John Coxe, and Thomas Leonard were recommended, all of whom subsequently were appointed.<sup>7</sup> Andrew Johnston was a Perth Amboy merchant, a prominent East Jersey proprietor, and was speaker of the assembly from 1740 until his entrance upon duties as a councillor. His reputation was of the highest, the New York "Mercury" printing at his death the statement that "he was really equal to what Pope means when he says: 'An honest man is the

<sup>1</sup> *N. J. A.*, vol. vi, p. 109.

<sup>2</sup> *Ibid.*, p. 127.

<sup>3</sup> *Ibid.*, p. 110.

<sup>4</sup> *Ibid.*, vol. ix, p. 299.

<sup>5</sup> *Ibid.*, vol. vi, p. 232.

<sup>6</sup> *Morris Papers*, p. 220.

<sup>7</sup> *N. J. A.*, vol. vi, p. 233. Of these five men, four were pallbearers at Morris's funeral.



noblest work of God!''<sup>1</sup> Peter Kemble was an East Jersey merchant. Hude was a prominent citizen of New Brunswick, who performed with credit the duties of numerous public offices, and was according to the New York "Mercury," distinguished "for his great probity, justice, affability, moral and political virtues."<sup>2</sup> The John Coxe whom Governor Morris recommended was the grandson of the Dr. Daniel Coxe, prominent in the earlier history of the province. His appointment added to the council another influential proprietor, as he was a prominent member of the West Jersey council of proprietors. During the land disputes in Governor Belcher's administration he was so active in support of the proprietors, that threats were made against his person and property.<sup>3</sup> With Robert Hunter Morris and James Alexander, he became one of Belcher's bitter opponents, unbridling his tongue to such an extent that the governor suspended him from the council. The affidavits which were sent to England readily convinced the authorities of the propriety of the suspension, and Belcher was upheld by Coxe's removal in 1751.<sup>4</sup> As early as Governor Hunter's administration, Thomas Leonard had been recommended in 1718 for the council.<sup>5</sup> He was a prosperous land holder living near Princeton, who served the community in public office, and as trustee of Princeton College for many years. Because of infirmity he resigned his seat in the upper house in 1759.<sup>6</sup> There were no other changes in the council under Morris.

<sup>1</sup> *New York Mercury*, July 5, 1762.

<sup>2</sup> *Ibid.*, Nov. 1, 1762. The quotation may be recognized as an abstract from an obituary notice.

<sup>3</sup> *N. J. A.*, vol. vi, pp. 467, 470; vol. vii, p. 450.

<sup>4</sup> *Ibid.*, vol. vii, pp. 540-550, 589.

<sup>5</sup> *Ibid.*, vol. iv, p. 377.

<sup>6</sup> *Ibid.*, vol. ix, p. 127.

It was without doubt Morris's desire to surround himself in the council with some of the ablest men in the colony. The difficulty of inducing men of the proper calibre to act as councillors was aggravated, Morris complained, because of the insufficient salary. The governor, however, was a politician, in the ordinary sense of the word, and sought to have his council first of all friendly to government. The council, as constituted during the latter part of his rule, gave the proprietary interests a predominating influence, and made it an object of suspicion on the part of the people who were opposing the proprietors. That was perhaps a natural result, and it cannot be said that the governor used his power improperly. He acted the part of a shrewd politician, safeguarding his interests. To a man like Belcher, who sought to conciliate the opposing elements in the province, the council which Morris bequeathed him was a handicap, a source of annoyance, if not indeed a menace.

The royal instructions to Belcher properly named as his councillors Hamilton, Reading, Alexander, Rodman, Smith, Morris, Antill, Hude, Coxe, Johnston, Kemble and Leonard, all of whom except the three first named had been appointed upon Governor Morris's recommendation.<sup>1</sup> The Surveyor General of Customs, Thomas Lechmere, was appointed Councillor Extraordinary. The first change was occasioned by the death of Hamilton. There now began a contest between Belcher and the proprietary interests for the control of council appointments, a contest in which the advantage was gained by the proprietors.

In June, 1748, Belcher recommended that Charles

<sup>1</sup> *N. J. A.*, vol. vii, p. 6.

Read, a deputy secretary of the province and collector of customs at Burlington should be appointed.<sup>1</sup> He resided in West Jersey, and about the same time the governor recommended him to the West Jersey proprietors as an agent qualified to look after their interests.<sup>2</sup> On the other hand, his appointment was so vigorously opposed by Paris, the East Jersey proprietary agent and Robert Hunter Morris in London, that their man, Richard Salter, was appointed.<sup>3</sup> The "imaginac'ons" of the lords of trade, that Belcher had submitted for confirmation certain acts of the legislature in which he was interested, were encouraged by Paris, and he consummated this "bold Stroke," as he terms it. Belcher complained of this appointment on the ground that a West Jerseyman should have received it in order to maintain the equality of the provincial divisions, the appointment of an East Jerseyman at this time not being in conformity to his instructions.<sup>4</sup> The appointee was a man of considerable ability, and served also for almost ten years as associate judge of the Supreme Court.<sup>5</sup> He served in the council until his death in 1763.

The struggle for control of the council continued with the subsequent recommendations. In the place of Coxe, whose suspension has been mentioned, the governor recommended William Morris, a Hunterdon County judge, at the same time warning agent Partridge that "the young Gentl<sup>n</sup><sup>6</sup> on y<sup>r</sup> Side the Water Perhaps May Oppose it at y<sup>e</sup> Board of Trade and Say he is a Quaker

<sup>1</sup> *N. J. A.*, p. 139.

<sup>2</sup> *Ibid.*, p. 150.

<sup>3</sup> *Ibid.*, pp. 169, 175.

<sup>4</sup> *Ibid.*, p. 247.

<sup>5</sup> Read himself urged Salter for the chief justiceship, so that there evidently was no hard feeling between the two men.

<sup>6</sup> Robert Hunter Morris.

&c.”<sup>1</sup> The recommendation was successfully opposed, and David Ogden, an associate with Alexander and R. H. Morris in extensive land deals, was appointed.<sup>2</sup> Ogden was a distinguished lawyer, and as one of the counsel for the proprietors in suits against the Elizabethtown associates became unpopular with the people. A man of conspicuous ability and integrity, he was in 1772 appointed a judge of the Supreme Court, which position he filled until his opposition to open resistance against the mother country led him to seek safety within the British lines in New York City, where he became an active loyalist. “He was looked upon as an oracle of the law, and his opinions had almost the weight of judicial decisions.”<sup>3</sup>

Upon the death of Richard Smith in November, 1750, Belcher recommended his son Samuel for the position. He was a West Jersey Quaker, and both he and his father had always supported the people against the proprietors. Consequently opposition to Samuel Smith’s appointment was a foregone conclusion, and the proprietors succeeded in having Lewis Ashfield appointed to fill the vacancy. Governor Belcher was reprovved for recommending Samuel Smith, and for having previously recommended William Morris, because, in the opinion of the lords of trade, they were “Persons disaffected to His Majesty’s Government.”<sup>4</sup> Lewis Ashfield, nephew of Robert H. Morris, was recommended by the lords of trade to supply the vacancy, and was appointed April 30, 1751.<sup>5</sup> The reproof administered by the home officials quite naturally displeased the governor, and affi-

<sup>1</sup> *N. J. A.*, vol. vii, pp. 575, 577.

<sup>2</sup> *Ibid.*, pp. 578, 588.

<sup>4</sup> *N. J. A.*, vol. vii, p. 585.

<sup>3</sup> Field, *op. cit.*, p. 182 *et seq.*

<sup>5</sup> *Ibid.*, pp. 585, 590.

davits testifying to the uprightness of Morris's character were sent for Partridge to lay before the lords of trade.<sup>1</sup> With the discrediting of Belcher's nominations, a lack of harmony in the government naturally resulted, and Partridge was urged to secure Morris's appointment to the next vacancy.<sup>2</sup> Belcher wrote repeatedly to the royal officials that government was weakened when private persons and subordinate officials directed the council appointments, and urged that his administration be not misrepresented to them by Morris "or any other Splenetick Gentl."<sup>3</sup>

It was only after a long contest, however, that Governor Belcher allowed Ashfield to take his seat in the council. The governor's opportunity came, when, in October 21, 1751, a bill of indictment was brought against Ashfield for having profanely sworn against the king's laws, and having at the same time made an assault upon John Hite, a Middlesex County constable.<sup>4</sup> The alleged assault was committed on August 4, 1751, and on September 24 Ashfield presented his mandamus to the council to the governor, who notified him, however, that not until he was acquitted of the charge of which he stood indicted, would he be admitted to his seat.<sup>5</sup> The council asked Belcher to lay before them proofs to show his authority in refusing the would-be councillor admission, but the governor refused to comply with their request.<sup>6</sup> Ashfield memorialized the council with his side of the case, submitting certain affidavits in his favor, after the consideration of which, the council pro-

<sup>1</sup> *N. J. A.*, vol. vii, p. 602; *Belcher Papers*, June 3, 1751.

<sup>2</sup> *N. J. A.*, vol. vii, p. 600.

<sup>3</sup> *Ibid.*, pp. 594, 607, 611.

<sup>4</sup> *Ibid.*, p. 612.

<sup>5</sup> *Ibid.*, p. 617.

<sup>6</sup> *Ibid.*, p. 617.

nounced for him.<sup>1</sup> Boldly declaring the council's action an encroachment upon his authority and an indignity to the king, Belcher charged the council not to meddle in a concern in which he alone was accountable to the crown.<sup>2</sup>

Meanwhile the case was tried in March, 1752, in the Supreme Court at Perth Amboy. Ashfield was acquitted by what the attorney general called a "Nice Distinction in Law." The identical words charged in the indictment were not supported by any witnesses for the king, except three, whom Judge Nevill, one of the Supreme Court Judges, writing to Belcher after the trial said were "all in the Heat of Blood, and warmly engag<sup>d</sup> in the Quarrel."<sup>3</sup> The court mentioned that to the jury, and after only a brief deliberation, the accused was acquitted. Notwithstanding the acquittal, the governor maintained that the testimony brought out at the trial proved Ashfield to be an undesirable citizen and unfit for the council.<sup>4</sup> To support his contention he transmitted some papers regarding the trial to the lords of trade, among them the "Notes of Mr. Warrell, the King's Attorney-General, upon the Trial of Mr. Lewis Morris Ashfield," which spoke strongly of "his Irregular and Outrageous Behaviour," "His gross Vulgar unseemly Language."<sup>5</sup>

After his acquittal, the council again sought to hasten Ashfield's entrance into their midst, but the governor gave them scant satisfaction.<sup>6</sup> Despite the fact that Governor Belcher had urged Lord Halifax to let Robert

<sup>1</sup> *N. J. A.*, vol. xvi, p. 324.

<sup>2</sup> *Ibid.*, vol. vii, p. 634.

<sup>3</sup> *Ibid.*, vol. viii, p. 40.

<sup>4</sup> *Ibid.*, vol. viii, p. 111.

<sup>5</sup> *Ibid.*, p. 102. Ashfield was the grandson of Gov. Lewis Morris

<sup>6</sup> *Ibid.*, p. 101.

Hunter Morris "cast no mist before your eyes" in palliation for his nephew's misconduct, the royal authorities disapproved of Belcher's attitude towards Ashfield. The acquitted gentleman's indiscretion was granted, but not deemed sufficient to cause him the loss of his seat in the council.<sup>1</sup> His immediate admission was ordered, which event occurred on May 23, 1753.<sup>2</sup>

During this controversy, Governor Belcher had proposed an additional reason against the admission of Ashfield to the council, namely, that it was contrary to his instructions, because it gave East Jersey a majority of councillors. A petition from some West Jersey inhabitants complained against this, and the governor continued to notify the lords of trade.<sup>3</sup> Partridge also at Belcher's request notified the authorities of this disparity, claiming that nine lived in East Jersey, two in West Jersey, and one contrary to all precedent in New York, which resulted in an injurious inequality.<sup>4</sup> James Alexander's figures indicated, on the other hand, that West Jersey could lay claim to seven councillors, and cited the cases of Lewis Morris, Thomas Byerly, and William Provost as precedents for councillors living in New York.<sup>5</sup> Robert Hunter Morris notified the lords of trade to that effect.<sup>6</sup> In the case of the unequal representation the proprietors went too far in proving their contention, while in the citation of precedents of allowing a New Jersey councillor to reside in New York they were doubtless correct. Alexander maintained that "as the Law of England Esteems one Resident where he has a Freehold," and seven councillors owned property in

<sup>1</sup> *N. J. A.*, vol. viii, p. 124.

<sup>2</sup> *Ibid.*, vol. xvi, p. 402.

<sup>3</sup> *Ibid.*, vol. viii, pt. ii, p. 13.

<sup>4</sup> *Ibid.*, pt. ii, p. 18.

<sup>5</sup> *Ibid.*, vol. vii, p. 644.

<sup>6</sup> *Ibid.*, vol. viii, pt. ii, p. 13.

West Jersey, that division was not at any disadvantage. On the same principle, of course, East Jersey might be said to have had a decided advantage. As a matter of fact the whole affair was somewhat of a quibble, for the division was at this time little more than a name, and in the case of the council membership was kept up as a handy argument in case of need. Technically according to his instructions Governor Belcher, however, was right.

There were two other council appointments during this administration, the earlier one the appointment of William Alexander, Earl of Stirling, to succeed his father James Alexander. This was the first council recommendation of Belcher's that was approved.<sup>1</sup> Opposition to this excellent appointment, however, there was none, because the young Alexander succeeded to the large proprietary holdings of his father.<sup>2</sup> Going to England in 1756, with General Shirley, whose aide-de-camp and private secretary he had been during the Fourth Intercolonial War, Alexander successfully strove for the earldom of Stirling, to which his father, though entitled, had never laid claim.<sup>3</sup> It was in April, 1756, that Belcher recommended Alexander for the council, but it was not until 1761 that he returned from England and took his seat.<sup>4</sup> A residence at Baskingridge, New Jersey, at first used only in summers, later came to be his permanent abode. From the time that the Earl of Stirling entered the council, it was not the affairs of the proprietors but the resistance to parliamentary taxation that was of prime importance. His attitude of bold and active opposition to the obnoxious measures of Parliament and his

<sup>1</sup> *N. J. A.*, vol. viii, p. 214.

<sup>2</sup> Duer, *Life of Earl of Stirling*, p. 10.

<sup>3</sup> *Ibid.*, pp. 10-26.

<sup>4</sup> *N. J. A.*, vol. viii, pt. ii, p. 214.



able services to the patriot cause during the Revolution are matters of common knowledge, to which reference will necessarily, however, subsequently be made. The Earl of Stirling was suspended from the council in 1775 by Governor Franklin because he accepted a commission as colonel in the continental army.<sup>1</sup>

A vacancy caused by the death of John Rodman, was filled in 1757 by the appointment of Samuel Woodruff, a prominent Elizabethtown Presbyterian and close friend of Governor Belcher's.<sup>2</sup>

Belcher wrote to Partridge in November, 1751, "that while so many of the Council were such large Proprietors of Lands & are so partial in managing the Affairs of the Legislature I expect noth<sup>g</sup> but Confusion in the Government."<sup>3</sup> The governor felt that the interests of both parties should be more equally represented in the council. The proprietors believed that during this period, so critical for their interests, they should absolutely control the council to offset the popular tendency of the lower house. Governor Morris was if anything partial to the proprietors, and they failed, or refused, to appreciate the attempts of his successor to maintain an impartial attitude in the land disputes. The fact that all of Governor Belcher's recommendations to council except two were refused, is evidence sufficient of the superiority of proprietary influence at the court. It is doubtless true, certainly so in the cases of Ogden and Salter, that the proprietary nominees were men of ability superior to those recommended by Belcher.

It was quite natural that during the brief rules of Bernard, Boone, and Hardy there should be no alignment

<sup>1</sup> *N. J. A.*, vol. x, p. 665.

<sup>2</sup> *Ibid.*, vol. viii, pt. ii, p. 236.

<sup>3</sup> *Belcher Papers*, Nov. 11, 1751.

of parties in connection with council appointments. The administrations were too brief and domestic affairs within the province came to be of less importance in the excitement of the Fourth Intercolonial War and with the approach of the Revolution. The resignations of Reading and Leonard because "of their Age and Infirmities" were accepted, and Charles Read and John Smith were appointed, upon the recommendation of Governor Bernard.<sup>1</sup> Read was the Burlington collector of customs and provincial secretary who had been recommended for the council by Belcher. He was in 1764 appointed as chief justice to succeed Morris, but held the position only a short time, perhaps because he did not satisfy. Smith, learning of the appointment, had written: "Franklin after Boone—after Morris, Read! Patience, kind heavens!"<sup>2</sup> John Smith, a liberal Quaker, before his removal to Burlington was a prosperous Philadelphia trader. He removed to Burlington and after the death of his beloved wife retired from business, and lived a quiet but useful life until his death in 1771. After Boone and Hardy had both recommended the suspension of Antill, he was superseded in the council in 1776 by John Stevens.<sup>3</sup> Stevens was an East Jersey proprietor, but lived in New York City from 1761 to 1771. For ten years previous to his removal to New York he had been a prominent member of the New Jersey assembly, and after resuming his residence in New Jersey was closely identified with the American cause in the Revolution, being president of the Convention which ratified the Constitution of 1787.<sup>4</sup> Johnston died during Gov-

<sup>1</sup> *N. J. A.*, vol. ix, p. 151.

<sup>2</sup> Field, *op. cit.*, p. 158.

<sup>3</sup> *N. J. A.*, vol. xvii, p. 239; vol. ix, pp. 317, 335.

<sup>4</sup> *Ibid.*, vol. ix, p. 335, note.

ernor Hardy's administration, but the vacancy was not filled until after Franklin had taken charge.

Early in Franklin's administration there were three vacancies to be filled, those caused by the death of Johnston, Salter and Hude. Governor Hardy had told the lords of trade that in West Jersey he could not find persons "fit for the Council," and Governor Franklin made the same complaint.<sup>1</sup> He said that West Jersey had only two councillors, but to fill these three vacancies he could find only two in that division suitable for the place, namely Samuel Smith and John Ladd, and would doubtless have to recommend an East Jerseyman for the third place.<sup>2</sup> Smith and Ladd were subsequently appointed, by an order in council dated August 31, 1763.<sup>3</sup> The former was the same gentleman, who, when previously recommended by Belcher, had been condemned as "a Wellwisher to the Rioters and his family Active in that Faction."<sup>4</sup> Samuel Smith, the brother of John, appointed to the council in 1758, was the pioneer historian of New Jersey. He was a benevolent Quaker whose influence for good was potent in the province. Ladd, son of the gentleman of the same name, was a prominent surveyor, who had represented Gloucester County in the assembly. Franklin recommended him as "a Gent<sup>n</sup> of Fortune and unblemished Character."<sup>5</sup> The place of Salter was filled by an East Jersey proprietor, James Parker, of Perth Amboy, whose appointment was approved by the lords of trade in July, 1764.<sup>6</sup> Although his military proclivities led him to serve as captain in the Canadian campaign of 1746, during the American Revo-

<sup>1</sup> *N. J. A.*, vol. ix, p. 364.

<sup>2</sup> *Ibid.*, p. 386.

<sup>3</sup> *Ibid.*, p. 394.

<sup>4</sup> *Ibid.*, p. 586.

<sup>5</sup> *Ibid.*, p. 387.

<sup>6</sup> *Ibid.*, p. 442.

lution he endeavored to remain neutral. His neutrality was the cause of his spending some of his time in the common jail.

Upon the death of Robert Hunter Morris, the authorities in England appointed Frederick Smyth to the council, July 3, 1764.<sup>1</sup> A few months later he was appointed chief justice of the province, which position he held until the overthrow of royal authority. His attitude during the Stamp Act excitement won him deserved popularity, but later the disapproval of active opposition to the crown, which he strongly voiced in charges to two Grand Juries, brought upon him popular odium.<sup>2</sup> During and after the Revolution he remained quietly at Philadelphia until his death in 1815. He was an able judge. Richard Stockton, one of Smyth's associates on the Supreme Court bench, became a member of the council in 1768 upon the decease of Woodruff.<sup>3</sup> Stockton was born at Princeton and was graduated in the first class from the College of New Jersey. He soon attained eminence as a lawyer. He was one of New Jersey's ablest public servants during the troublous period from 1770 until 1778, when his health was broken down because of the vile and shameless treatment to which he had been subjected while a prisoner in the hands of the British.

During the rest of Franklin's administration there were four other changes in the council. The first of these was the appointment of Stephen Skinner to succeed Ashfield, deceased. The governor had recom-

<sup>1</sup> *N. J. A.*, vol. ix, p. 442.

<sup>2</sup> For his charge to the Essex Grand Jury in 1774, and their spirited reply, see Force, *American Archives*, Fourth Series, vol. i, p. 967.

<sup>3</sup> *N. J. A.*, vol. x, pp. 44, 59.

mended William Bayard for the vacancy, but the lords of trade had appointed Skinner, because Bayard was not resident in the colony and the appointee had been long on their list.<sup>1</sup> Skinner presented his mandamus and was admitted to council, September 28, 1770.<sup>2</sup> He had been the East Jersey treasurer, but his appointment came at a most unfortunate time. The treasury had been robbed, and the assembly, charging Skinner with negligence, had been engaged in a hot wrangle with the governor upon the matter, at last forcing Skinner's resignation as treasurer. Following directly after the enforced resignation, this appointment to the council irritated the lower house. The former treasurer turned loyalist during the war, and first going to New York removed from there to England.

In November, 1771, Daniel Coxe and John Lawrence were admitted to the council, succeeding Ladd and John Smith.<sup>3</sup> This Daniel Coxe was the fifth of the same name in that family so prominent in New Jersey history, and was, of course, associated with the proprietors. He was an ardent and active Tory during the war, and at its close went to England.<sup>4</sup> The last recommendation made to fill a vacancy in the New Jersey council was that of Francis Hopkinson, to take the seat of Charles Read, who moved to the West Indies. He was appointed April 21, 1774.<sup>5</sup> A native of Pennsylvania, his connection with New Jersey history was slight. He was a gentleman of remarkable versatility, being at one time or another prose-writer, poet, statesman, and church organist. As a New Jersey delegate to the Continental Congress in 1776, he signed the Declaration of Independ-

<sup>1</sup> *N. J. A.*, vol. x, p. 139.

<sup>2</sup> *Ibid.*, vol. xviii, p. 185.

<sup>3</sup> *Ibid.*, p. 259.

<sup>4</sup> *Ibid.*, vol. x, p. 225.

<sup>5</sup> *Ibid.*, pp. 426, 455.

ence. On October 3, 1775, Governor Franklin notified the Earl of Dartmouth that Samuel Smith had resigned his seat because of old age, but that he had been unable to induce anyone, whom he thought qualified, to fill the vacancy.<sup>1</sup> And he was spared further pains in the matter, for the people of New Jersey soon called upon the faithful Franklin to relinquish his authority.

<sup>1</sup> *N. J. A.*, vol. x, p. 665.

## CHAPTER III

### THE ASSEMBLY—POSITION AND PERSONNEL

EAST and West Jersey had had an elective assembly almost from the earliest part of the proprietary period. Consequently, when the royal charter was granted, in 1702, it was not only natural, but was also necessary, that there should be an assembly elected by the people. The assembly and council theoretically had coördinate powers in legislation, but in practice the lower house came to be the more influential.<sup>1</sup> The usual and necessary rights and powers of legislative bodies were given to the assembly, but all acts were to be reviewed by the crown and might be disallowed. Restrictions were made in the case of certain acts, however, providing that the governor should not assent to them unless added thereto was a clause suspending their operation until the royal will was known.

A peculiar feature in New Jersey was that the sessions of the General Assembly were held alternately at Perth Amboy and Burlington. This was a relic of the early divisions of East and West Jersey, but it was a distinction idly retained and a source of annoyance and expense to the province. The governor, with the advice of council, might appoint a different place in case of extraordinary necessity. Whenever this was done, however, the assembly showed a very petulant and disagreeable

<sup>1</sup> See Tanner, *op. cit.*, ch. xx.

spirit. The governor's house-rent was allowed by the assembly only if the executive lived at Perth Amboy or Burlington, and the inconvenience of having two capital cities was a subject of frequent complaint by the governors.

The first assembly to meet Morris resolved that it was advantageous for the province to have but one place of residence, and urged the governor to live near the center of the province.<sup>1</sup> Morris refrained from answering the resolution, hoping the legislature would fix upon one place for the capital and erect suitable buildings there.<sup>2</sup> The governor reminded the lords of trade of the disadvantages of the plan then existing, to all of which they agreed but refused to advise the king to order a change unless the council and assembly concurred in a humble petition for that purpose.<sup>3</sup> The meaningless excuse that the affairs of the province would not admit of a sudden alteration, was pleaded by the assembly as their reason for not agreeing to the governor's proposal.<sup>4</sup>

Morris, despairing of the assembly's ever erecting suitable buildings for a capital in some centrally located town, leased the Kingsbury estate of Governor Thomas of Pennsylvania. It was less than a mile from Trenton. Toward the end of his administration the old and enfeebled governor was obliged to summon the legislature to Trenton. This was the case in December, 1744, and from August, 1745, to the end of his administration. Upon one occasion the assembly was called to Kingsbury to be dissolved in person by the governor. Sharp messages passed between the governor and assembly because of the latter's inquisitiveness regarding the

<sup>1</sup> *Assembly Journal*, Dec. 4, 1738.

<sup>2</sup> *Ibid.*, Apr. 16, 1740.

<sup>3</sup> *Morris Papers*, p. 137.

<sup>4</sup> *Assembly Journal*, Oct. 3, 1741.



authority by which they were called from the regular meeting-place. That Morris's action might not be deemed a precedent, the assembly hoped "their removal to other Places will not be drawn into practice, oftener than the extraordinary Occasions of his Majesty's service require it."<sup>1</sup>

Governor Belcher also realized the inconveniences of alternate meeting-places for the legislature, but did not obtrude his view upon an unwilling assembly. When it was necessary for him to alter the regular alternation of meetings, it was done with care and conciliation. If too much opposition was expressed, he would usually prorogue the assembly until such time as he believed it possible for him to meet the legislature at the regular place.<sup>2</sup> Believing that it would be beneficial to his health, Governor Belcher moved to Elizabethtown in 1751, to which place the legislature was later frequently called. In May, 1753, the assembly resolved that after the death or removal of Belcher it should be provided in the support bills that sums would be appropriated only on condition that the governor resided at Amboy or Burlington.<sup>3</sup> Opportunity was never given to test this resolution, for all subsequent governors lived at one or the other city. It actually pained Belcher that the assembly acted with such bad grace about meeting at Elizabethtown.

When, after Belcher's death, the aged Reading unwillingly assumed the administration, his indisposition threatened the necessity of an adjournment to Trenton.<sup>4</sup> The house, however, firmly refused to be adjourned to that city. They intended now to reassert their consti-

<sup>1</sup> *Assembly Journal*, Mar. 11, 1746.

<sup>2</sup> *Ibid.*, Dec. 22, 1752; Aug. 3, 1755.

<sup>3</sup> *Ibid.*, May 3, 1753.

<sup>4</sup> *Ibid.*, Oct. 10, 1757.

tutional right of sitting at Perth Amboy and Burlington, though they had recently dispensed with this out of "tender Compassion to the advanced Age and great Infirmary" of their late governor.<sup>1</sup> Thoroughly aroused to duty, they intended to assert their right "lest a continued Suspension of an unalienable Privilege, should hereafter prompt future Governors to repeat the Precedent of calling their Assemblies to unconstitutional Places, to the great Prejudice of the Publick Good." What high-sounding language over a trifle! One does not wonder that men capable of such sentiments under such circumstances and so sensitive regarding their unalienable privileges and constitutional rights, refused upon principle to pay the stamp tax and a much smaller tax on tea.

Bernard, Boone and Hardy did not stay long enough to test the assembly upon this subject, but Franklin did, to his sorrow rather than to his satisfaction. At every opportunity Franklin endeavored to impress the assembly with the desirability of having one capital. Failing in that, he believed that the intention to build a governor's residence implied in the support bill should be acted upon.<sup>2</sup> When the royal assent was finally obtained to the bill for the emission of £100,000 in bills of credit, the assembly was urged by the home authorities to make proper provision for the erection of suitable buildings for the use of the governor, council and assembly. That was in 1775, and the assembly excused themselves and made noble promises for the next session. Governor Franklin actually believed that something would occur to move the stolid lower house from its lethargy of decades in this matter. But plans miscarried! The royal

<sup>1</sup> *Assembly Journal*, Oct. 18, 1757.

<sup>2</sup> *Ibid.*, June 3, 1765.

fabric tumbled down, and the assembly never met again under the authority of the royal charter.

The first assembly which met Governor Morris had twenty-four members, two representatives from each of the ten counties and two members each for the cities of Perth Amboy and Burlington. Such had been the constitution of the assembly from 1727. Its members were chosen by freeholders, who had 100 acres of land in their own right, or real or personal property to the value of £50 sterling. The representatives elected were obliged to have 1000 acres of land or £500 sterling. The governor was forbidden to assent to any law which changed the number or duration of the assembly, the qualifications of electors or elected, or altered in any way regulations previously established regarding the character or position of the lower house of the legislature.

With the growth in population and the development of the colony, the erection of new counties for the convenience of administration became necessary. This first became apparent in Hunterdon County, where the residents of the upper part of the county were inconvenienced by their living at a considerable distance from Trenton, where the courts were held. In March, 1739, an act was passed "erecting the upper Parts of the County of Hunterdon" into Morris County, named after the governor.<sup>1</sup> The new county was not to be given representation as such in the assembly until the royal pleasure was known, but the freeholders were to continue to vote for representatives with Hunterdon County.<sup>2</sup> The actual division of the province was so real that, had two added representatives been given to West Jersey,

<sup>1</sup> Allinson, *Statutes of New Jersey*, p. 109.

<sup>2</sup> *Morris Papers*, p. 55.

Morris declared that East Jersey must necessarily also have two more.

In 1748 the southern parts of Salem County were erected into a separate county because of the inconvenience to the inhabitants of living at a distance from Salem Town, the county seat.<sup>1</sup> It was called Cumberland, in honor of the then popular hero, the Duke of Cumberland. This new division had all the liberties and privileges of any other county, except the right to choose members to represent them in the General Assembly.

By 1753 the inhabitants of the newly erected Morris County had found it inconvenient to attend the courts at Morristown, in consequence of which the new county of Sussex was established by act of June, 1753.<sup>2</sup> The freeholders were to join with Hunterdon and Morris Counties for choosing representatives. Morris and Sussex were to unite in raising taxes until it was otherwise ordered.

It was but natural that these newly erected counties should desire separate representation in the provincial legislature. As if by a preconcerted plan, all three counties petitioned the assembly in the October session of 1760 for representation.<sup>3</sup> The petitions, similar in tone, urged that the privileges of the other counties be granted them, and cited the hardships of being represented by persons who were not fully cognizant of the circumstances and needs of their constituents. The petitions were at this session ordered to lie on the table.

Morris County petitioned again in 1768, and at this session an act was passed, May 10, "for choosing Representatives in the Counties of Morris, Cumberland and

<sup>1</sup> Allinson, *op. cit.*, p. 153.

<sup>2</sup> *Ibid.*, p. 194.

<sup>3</sup> *Assembly Journal*, Oct. and Nov., 1760.

Sussex; and directing the Morris County Taxes to be paid into the Eastern Treasury.”<sup>1</sup> Each county was to have two representatives, having the same qualifications as those from the other counties, and of course elected by freeholders with the same qualifications as in the other counties. The provision regarding the Morris County taxes was made necessary because that county was not wholly in either division of the province. The most settled parts had grown up in the Eastern division. The act had a suspending clause, and was confirmed in December, 1770. In his speech on August 20, 1772, at the opening of the session, Governor Franklin felicitated the assembly upon the addition to their numbers.<sup>2</sup> This was the last assembly elected, on account of which neither did the province nor the three counties reap great benefits from the added representation. The disadvantage of keeping alive the distinction between East and West Jersey is apparent, because it was largely the jealousy between the two sections that had retarded representation in these three counties.

The same assembly that passed the act granting representation to Morris, Cumberland and Sussex counties also passed an act “for the septennial Election of Representatives to serve in the General Assembly.”<sup>3</sup> An unsuccessful attempt had been made by the assembly to have a similar bill enacted in 1740. The council advised the governor to assent to the act, inasmuch as a suspending clause had been added.<sup>4</sup> The assembly urged the agent in London to solicit the royal assent, but the lords of trade saw no reason for haste, inasmuch as septennial elections had been held without the measure.<sup>5</sup>

<sup>1</sup> Allinson, *op. cit.*, p. 306.

<sup>2</sup> *N. J. A.*, vol. xviii, p. 298.

<sup>3</sup> Allinson, *op. cit.*, p. 306.

<sup>4</sup> *N. J. A.*, vol. xvii, p. 508.

<sup>5</sup> *Ibid.*, vol. x, p. 142.

The act never received the royal approval. In 1770 the Monmouth County representatives had received instructions from their constituents for leave to introduce in the assembly a bill for annual elections.<sup>1</sup> This was too radical for the assembly, and the permission was denied by a substantial majority.

The governors frequently found it difficult to obtain a quorum, and in some cases no business could be conducted for days after a session had been called, because of the necessity of waiting for a quorum. Three was the usual number, who could meet and adjourn, but the attendance of sixteen or eighteen was usually required for the transaction of other business. In 1772 the rule was adopted that twenty constituted a quorum for ordinary business, and twenty-four when money was to be raised. On October 30, 1746, when sixteen was necessary for a quorum, only fifteen could be corraled. Thereupon adjournment was taken to the home of Mr. Heard, at Woodbridge, where he was sick. Sixteen being then present, the resolution was passed that fifteen should be the quorum for the transaction of business. The house then adjourned to Perth Amboy and passed a necessary act for supplying the New Jersey troops in the expedition against Canada. On October 18, 1747, when the legislature stood adjourned to the seventeenth of the next month, important business having arisen, Belcher doubted the possibility of getting a quorum together before the fixed date, a month ahead.<sup>2</sup>

The assembly, of course, made other rules as necessity required. From 1744 a committee on grievances was appointed at the beginning of each session, with power

<sup>1</sup> *Assembly Journal*, Mar. 22, 1770.

<sup>2</sup> *Belcher Papers*, Oct. 18, 1747.

to send for persons and records, and gather whatever information might be necessary for deciding the complaints and other matters referred to it.<sup>1</sup> It was unanimously resolved, in October, 1769, that the sessions should be public and all who wished might attend.<sup>2</sup> An earlier attempt to have the sessions public had been voted down. The assembly never tired of conforming to the custom of the British Parliament, and the resolution of 1769 was passed as being conformable to the custom of the House of Commons. The number of private bills, such as naturalization acts, and acts relating to private meadows and marshes, had constantly increased with the growth of the province. It became absolutely necessary to restrict the petitions for private matters in some way. A resolution was passed in 1772, that petitions for private bills would only be received within the first ten days of any session. This was of course to avert the threatened danger of having the public business impeded because of the multitude of private bills. The legislature always took a Christmas recess. On December 15, 1747, Belcher wrote "it has been their Custom to adjourn for a frolick about this Season."<sup>3</sup>

It will be profitable briefly to consider the personnel of the representative branch of the legislature before entering upon an account of the course of legislation during this period. Without doubt the New Jersey assemblies of that day were more responsive to the will of the people than are those of our own time, for the physical conditions were such as to make a greater degree of responsibility possible; the interests at stake were less diversified and less extensive. The qualifications for

<sup>1</sup> *Assembly Journal*, Oct. 5, 1744.

<sup>2</sup> *Ibid.*, Oct. 12, 1769.

<sup>3</sup> *Belcher Papers*, Dec. 15, 1747.

membership insured the election of men of means to the assembly. They were for the most part men little experienced in public affairs, for whom the date of holding the General Assembly was ordinarily arranged whenever possible so as not to conflict with their private concerns. Not a body of lawyers was the colonial assembly, although some of the ablest of that profession were from time to time members of the lower house.

The members of the eleventh assembly elected in 1738, were Andrew Johnston, Lewis Johnston, James Hude, Edward Antill, John Eaton, Cornelius Vandervere, Joseph Bonnell, Josiah Ogden, George Van Este, Peter Dumont, Lawrence Van Buskirk and David Demarest from East Jersey; Richard Smith, Isaac Pearson, Mahlon Stacy, William Cook, Joseph Cooper, John Mickle, William Hancock, Joseph Reeves, Aaron Leaming, Henry Young, Benjamin Smith and John Embly for West Jersey. Those who had not been members of the previous assembly elected in 1730, were Lewis Johnston, Antill, Vandervere, Bonnell, Ogden, Demarest, Cook, Mickle, Hancock, Reeves, Benjamin Smith and Embly. A decided minority of the members was directly interested in the affairs of the proprietors. Regarding the most prominent members a few facts may be given.

Joseph Bonnell, of Essex County, was chosen speaker. His name frequently appears upon committees of Elizabethtown claimants pressing their claims against the proprietors. The same year he was appointed second judge of the Supreme Court, but was again elected to the assembly in 1743.<sup>1</sup> The representatives from Perth Amboy were the two brothers, Andrew and Lewis Johnston, the former of whom has been mentioned as a

<sup>1</sup> Hatfield, *History of Elizabeth*, p. 372.



member of the council. Both Andrew and Lewis were for many years influential members of the council of East Jersey proprietors, having succeeded to the extensive interests of their father, Dr. John Johnstone.<sup>1</sup> Lewis became a physician also, having received his education at Leyden, Holland, and served the community ably for many years until his death in 1773. Hude and Antill, from Middlesex County, the latter a proprietor, later became members of the council. Col. Josiah Ogden, now serving his last term in the assembly, was the father of the more famous David Ogden.

Four of the representatives from West Jersey, Pearson, Cooper, Stacy and Mickle, were prominent members of the council of the West Jersey proprietors.<sup>2</sup> Doubtless the most influential member from West Jersey was Richard Smith, one of the wealthy Smith family from Burlington, and father of Samuel Smith, the historian. He served the city of Burlington in the assembly continuously from 1730 to 1748. James Alexander, an excellent critic, writing to Agent Paris, paid a splendid, if unintended, tribute to the Burlington representative. Alexander mentioned Belcher's tendency to enter into the advice of Quakers in the assembly, especially relying upon Richard Smith, "the Man of the best Sense and Interest in that house; and if he keeps his advice, I doubt not, he will make himself, and the Province both happy and Easy."<sup>3</sup> Cape May County had an able representative in another Quaker, Aaron Leaming, who after having been bound out a shoemaker in Long

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 72.

<sup>2</sup> *Minutes of the Council of West Jersey Proprietors*.

<sup>3</sup> *N. J. A.*, vol. vii, p. 121.

Island, decided to go to New Jersey, where, in 1734, he was admitted to practice law in the Cape May courts.<sup>1</sup> He was a member of the assembly from 1727 to 1744.

Their sins of omission led Morris to dissolve the eleventh assembly after but one session was held, the twelfth assembly convening in 1740. Thomas Farmer and Thomas Leonard again appear in the assembly, both having served in earlier legislatures. Both of these gentlemen have been referred to as members of the council. Aaron Leaming, Jr., was elected to the assembly from Cape May County, which at this session entrusted its assembly delegation to members of the Leaming family.<sup>2</sup> Indeed, from 1727 to 1772, there was always a Leaming from Cape May in the assembly, save for one year, 1744. At this time a young Quaker of but twenty-five, he was possessed of a good education and a spirit of industry. He was a large landholder in West Jersey. Ability and interest brought him into prominence for many years. Together with his colleague in the assembly, Jacob Spicer, he was most instrumental in compiling the Grants and Concessions of East and West Jersey under the lords proprietors. This arduous task occupied the attention of the Cape May members for many years. The record of Leaming's votes in the assembly shows that he habitually voted negatively, an attitude which was likewise somewhat characteristic of his friend Spicer.

The thirteenth assembly was elected in 1743, Andrew Johnston being chosen speaker. This was the first of the annual assemblies of the end of the Morris administration. The East Jersey proprietary interests were strengthened by the return of Samuel Leonard to the

<sup>1</sup> *N. J. A.*, vol. xix, p. 393, note.

<sup>2</sup> *Ibid.*, p. 393, note; Stevens, *History of Cape May County*, p. 100.

assembly from Perth Amboy, and the election of Samuel Nevill. Among the other newly elected members were Robert Lawrence, Joseph Bonnell, George Vreeland, Derick Van Este and William Mott. Leonard was a prominent East Jersey proprietor, and ardent supporter of Governor Morris. His father had been a member of Cornbury's council. Lawrence, a member of the assembly from 1743 to 1761, during part of which time he was speaker, sympathized with the people in contests with the royal executive or the proprietors of the land.<sup>1</sup> Although Vreeland was one of the representatives from Essex in this assembly, he later removed to Bergen County, representing that county in the nineteenth assembly. Changes in the personnel of the West Jersey representation were neither so numerous nor so important as in East Jersey.

The election of Samuel Nevill to represent Middlesex brought to the lower house one of the most talented men in the colony.<sup>2</sup> The death of his sister, Mrs. Peter Sonmans, who had inherited from her husband extensive proprietary interests in New Jersey, brought Nevill to America in 1736. Coming into possession of part of the Sonmans estate, he settled at Perth Amboy. A gentleman of marked attainments and high character, his rise to eminence in the province was rapid. In the land disputes, he naturally took the proprietary viewpoint, but favored the adoption of conciliatory measures against the rioters.<sup>3</sup> Although Nevill supported the unpopular side in the land disputes, he championed the assembly in

<sup>1</sup> *N. J. A.*, vol. xix, p. 390.

<sup>2</sup> *Ibid.*, vol. vi, p. 323; vol. xi, p. 469; Whitehead, *op. cit.*

<sup>3</sup> *N. J. A.*, vol. vi, p. 323. See Nevill's speech in the assembly in answer to the rioters' petition, 1746.

the protracted contests with Governor Morris. Among the public offices which he filled with ability were those of speaker of the assembly, mayor of Perth Amboy, and second judge of the Supreme Court. Before coming to America, Nevill had been editor of the London "Morning Post;" while in this country he distinguished himself as editor of "The New American Magazine," the second periodical published in America.<sup>1</sup> A compilation of the laws of New Jersey in two volumes was published by him.

The refusal of the assembly to amend the militia act resulted in a dissolution and the election of the fourteenth assembly in 1744. Robert Hude and William Ouke were sent from Middlesex; Samuel Nevill was returned by the city of Perth Amboy in the place of Andrew Johnson and was elected speaker. Both Hude and Ouke were staunch supporters of Morris in the house. The only other new member from the East Jersey counties was John Crane from Essex, who had been elected to succeed Joseph Bonnell. From Cape May came Henry Young, and from Hunterdon, Daniel Doughty, both consistent Morris supporters. The other Cape May representative was Jacob Spicer, previously mentioned as engaged with Aaron Leaming in the compilation and publication of Leaming and Spicer's "Grants and Concessions of New Jersey."<sup>2</sup> Spicer, the son of a former assemblyman, was an ambitious and wealthy merchant. Elected to the assembly in 1746, he served his county in the lower house until his death in 1765. Sharp rivals in their home county, Leaming and Spicer continually acted in concert when representing that county in the legislature.

<sup>1</sup>Copies of this old magazine are in the Penn. Hist. Soc. Library.

<sup>2</sup>*N. J. A.*, vol. xix, p. 393; Stevens, *op. cit.*, p. 106.

Experience proved that the former election had in nowise altered the complexion of the assembly better to suit the needs and desires of the governor. Consequently another election was held in 1745. Changes in the membership did not produce the altered conduct which the governor so earnestly desired. Pontius Stelle, John Heard and John Moores were among the new members from East Jersey favorably disposed to Morris. John Low was again sent from Essex after an absence of two years. The name of Hendrick Fisher first appears in the list of representatives in this assembly. Somerset County had chosen him for the assembly in 1740, but he was expelled from the house because his election had followed too closely upon his naturalization.<sup>1</sup> Taking his seat in 1745 he continued to represent his county in the assembly until the end of the royal period. He had come to America from the Palatinate early in the eighteenth century, and became actively identified with the Dutch Church near Bound Brook. By his conduct in the assembly, Fisher showed the ability to think independently and act without considering the popularity of his conduct. During his service in the assembly he was appointed to membership upon several important committees of the house. Fisher was president of the May session of the first New Jersey Provincial Congress in 1775, and was also a member of the Provincial Committee of Safety. Among the five newly elected members from West Jersey was Aaron Leaming, who had not been returned to the thirteenth and fourteenth assemblies.

The contest between Morris and the assembly was waged as fiercely as ever in 1745, and the governor again sought to

<sup>1</sup> *Assembly Journal*, April 10, 1740; *Morris Papers*, p. 85, note.

strengthen his position by an election. The sixteenth assembly met in February, 1746, but the personnel was altered in only two cases. Middlesex sent Philip Kearney instead of Moores, while Hunterdon returned John Embly to succeed Daniel Doughty. Kearney was an eminent lawyer of that time. This was the last election under Morris.

Dissatisfied with the attitude taken by the assembly in regard to the land riots and counterfeiters, Governor Belcher dissolved the sixteenth assembly. The newly-elected house, however, which met in February, 1749, proved to be no more tractable. Among the new members were John Wetherill from Middlesex, Derick Dey from Bergen and James Hinchman from Gloucester. Of these Wetherill deserves notice. He continued a member of the assembly during the remainder of the colonial period, engaging actively in the public affairs of the colony. In 1774 Wetherill was appointed upon the Standing Committee of Correspondence and Inquiry of the colony and was also a member of the provincial congress during the next two years.

The sessions of the seventeenth assembly found the council and assembly in violent contest over the act to settle the quotas of taxes upon the different counties. Convinced that an agreement was impossible, Governor Belcher ordered the election of a new legislature in February, 1751. John Johnston, the grandson of Dr. John Johnstone, of Perth Amboy, was one of the new East Jersey delegates.<sup>1</sup> He continued to serve in the legislature until he was commissioned colonel of the provincial troops sent to Canada in 1758. After his death at Ticonderoga in July of that year, Andrew Smyth, a Perth Amboy surrogate, filled his seat in the house. John Stevens appeared as the other representative from Perth Amboy at this session

<sup>1</sup>*N. J. A.*, vol. xix, p. 389.

and continued an active and useful assemblyman until summoned to the upper house in 1763.<sup>1</sup> Essex County was represented by John Low and Robert Ogden. The latter was chosen speaker in 1763, but was forced to resign his seat in the assembly, because of his refusal to sign the addresses prepared by the New York Stamp Act Congress.<sup>2</sup> Many of the East Jersey towns burned him in effigy.

The West Jersey representatives sent to the assembly for the first time were Charles Read, John Deacon, Barzillai Newbold, William Mickle and Joseph Ellis. Read, to whom reference has been made as a councillor and justice of the Supreme Court, was elected speaker.<sup>3</sup> He continued to represent the city of Burlington in the assembly until called to the council in 1758. Mickle and Ellis, like Read, were interested in West Jersey proprietary affairs.

The former assembly having been dissolved, because of its refusal to provide for sending commissioners to the Albany Conference of 1754, the nineteenth assembly met in October of that year. Robert Lawrence was chosen speaker. Of the new members the most prominent were from West Jersey. Samuel Smith, the historian, began his career as an assemblyman at this time, continuing in the lower house until his appointment to the council in 1767. Gloucester sent John Ladd, who was then vice-president of the West Jersey council of proprietors, and was later elevated to the council. Samuel Clement and Ebenezer Miller, both consistent Quakers, were also prominent West Jersey proprietors and members of this house.

A new election for representatives was not held until early in 1761, when, apparently in response to a request from the assemblymen, Governor Boone ordered the election of the twentieth assembly. East Jersey was represented by an

<sup>1</sup> *N. J. A.*, vol. ix, p. 335.    <sup>2</sup> *Ibid.*, p. 525.    <sup>3</sup> *Ibid.*, vol. x, p. 426.

unusually large number of influential citizens in this assembly, among them Stevens, Nevill, Wetherill, Richard Lawrence, Robert and John Ogden and Fisher. Richard Lawrence, a member of the prominent family of that name in Monmouth County, succeeded to the seat of Robert Lawrence. He was also a friend of the liberties and privileges of the people.<sup>1</sup> John Ogden had served from Essex during part of the previous assembly, continuing in the house until 1772. Upon the resignation of Robert Ogden, Stephen Crane was elected to the lower house, retaining his membership in that body for the remainder of the colonial period. He was speaker in 1771 and 1772. One of the leaders of the Elizabethtown claimants against the proprietors, he was also an ardent patriot during the revolution. He was one of "the two Elizabeth Town Ambassadors" appointed by his fellow townsmen to carry a protest against the proprietors to the king.<sup>2</sup> Among the other positions of trust which he filled were those of county judge, county high sheriff, and delegate to the Philadelphia Continental Congress. He was known as a man of unusual integrity and courage.<sup>3</sup>

Numbered among the West Jersey representatives were Samuel Smith, John Lawrence, Joseph Borden, David Cooper, George Reading, Leaming and Spicer. The vacancy caused by Samuel Smith's removal to the upper house was filled by Thomas Rodman, who held office in the council of West Jersey proprietors. Burlington city's other representative was the same Lawrence who was appointed to the council in 1771.<sup>4</sup> The other new West Jersey members were of no especial prominence.

<sup>1</sup> *N. J. A.*, vol. x, p. 459.

<sup>2</sup> Matthias Hatfield was the other. *N. J. A.*, vol. vii, p. 651.

<sup>3</sup> Hatfield, *History of Elizabeth*.

<sup>4</sup> *N. J. A.*, vol. x, p. 302.



To the twenty-first assembly which met in October, 1769, Cortland Skinner and John L. Johnson were sent as the representatives of the city of Perth Amboy. The former gentleman had been elected to complete the unexpired term, in the twentieth assembly, of Andrew Smyth, deceased. Skinner's election as speaker, which position he held, except during Crane's incumbency, until the overthrow of royal rule, first occurred in November, 1765. An influential member of the council of East Jersey proprietors, attorney general of the province for many years until the Revolution and an eminent lawyer, Skinner was a man of authority in the colony. Johnson was a Perth Amboy merchant, East Jersey proprietor, the son of Andrew, who had been a member of the council, and treasurer of the eastern division of the province.<sup>1</sup> Monmouth was represented by Robert Hartshorne and Edward Taylor, the former a descendant of Richard Hartshorne, one of the original twenty-four proprietors of East Jersey named in the Duke of York's grant of 1682.<sup>2</sup> Somerset County sent Fisher and Berrien. Fisher mistakenly believed that this would be his last election to the assembly.<sup>3</sup> The other gentleman was the same who was justice of the Supreme Court, and trustee of Princeton College.<sup>4</sup>

From the city of Burlington came Abraham Hewlings, then president of the council of West Jersey proprietors, while old Gloucester sent John Hinchman, the then vice-president of that proprietary board.<sup>5</sup> The other member from Gloucester County was Robert Friend Price, regarded as a friend of the people in the assembly.<sup>6</sup> Another Quaker

<sup>1</sup> Whitehead, *op. cit.*, p. 68.

<sup>2</sup> *N. J. A.*, vol. xx, p. 150.

<sup>3</sup> *Ibid.*, vol. xxvi, p. 209.

<sup>4</sup> *Ibid.*, p. 208.

<sup>5</sup> *Minutes of the Council of N. J. Prop.*, 1767-1768.

<sup>6</sup> *N. J. A.*, vol. xx, p. 154.

proprietor from West Jersey among the new members was Isaac Sharp, a Salem County judge and founder of the "Sharpsborough Iron Works."<sup>1</sup>

The representatives from Hunterdon County, John Hart and Samuel Tucker, deserve particular mention. Without having even the educational advantages afforded in that day, by dint of his own ability, Hart rose to positions of prominence in public affairs.<sup>2</sup> A champion of the privileges of the people he was a prominent member of two assemblies, having been elected for the first time in 1761. This staunch Presbyterian rendered eminent services to the patriot cause during the Revolution. Committees of correspondence and safety, congresses, provincial and continental, included John Hart in their membership. He was one of the signers of the Declaration of Independence. Elected to the assembly under the state constitution in 1776, he was the first speaker of that body, retaining that position until his retirement from public life.

A successful merchant of Trenton and a justice of the peace, Samuel Tucker was elected to the assembly in 1769 and 1772.<sup>3</sup> It was he, who, attempting to reform legal practise in the colony, had the light of publicity turned upon his own misdeeds, the acceptance of excessive fees. However untimely and inconvenient, this exposure did not appear to materially lessen his influence. An active patriot, and a man of no mediocrity, Tucker was a valuable member of the New Jersey provincial congresses, acting as president in October, 1775, and June, 1776. Stigma attaching to his conduct as treasurer of New Jersey, when the state chest of valuables was captured by the British in December, 1776, forced him to retire from public life.

<sup>1</sup> *N. J. A.*, vol. xv, p. 97; vol. xxvii, p. 72.

<sup>2</sup> *Ibid.*, vol. x, p. 369.

<sup>3</sup> *Ibid.*, vol. x, p. 270.

Refusing barrack supplies for the royal troops, the assembly was dissolved in December, 1771. The twenty-second and last assembly to be elected under royal authority met August 19, 1772. There appeared at this session the first representatives to be elected from Morris, Cumberland and Sussex Counties. One of the Morris County representatives was William Winds, who was commissioned in 1776 to arrest Governor Franklin, in accordance with an order of the Continental Congress. During the Revolution he proved himself to be a zealous and efficient officer.<sup>1</sup> Jacob Ford, of Morristown, was the other representative from Morris County. He was one of the pioneer iron merchants of New Jersey and a county judge from the organization of Morris County in 1740 almost until his decease.<sup>2</sup> Other new members from the eastern division were John Coombs, John Moores and Henry Garriste.

Cumberland County elected John Shepherd and Theophilus Elmer; Sussex County, Thomas Van Horne and Nathaniel Pettit. One of the most distinguished members of this legislature was the Quaker James Kinsey, of Burlington, son of John Kinsey a former speaker of the New Jersey assembly.<sup>3</sup> In leading the opposition to Governor Franklin upon the question of treasurer Skinner's responsibility in the treasury robbery, later to be mentioned, the abilities of the younger Kinsey were displayed to great advantage. Elected as a delegate to the Continental Congress of September, 1774, he later resigned the appointment. From 1789 to 1803 he was chief justice of the Supreme Court of New Jersey. Kinsey's colleague from the city of Burlington was Thomas P. Hewlings.

<sup>1</sup> *N. J. A.* (Second Series), vol. i, p. 321.

<sup>2</sup> *Ibid.*, vol. xii, p. 665.

<sup>3</sup> Elmer, *Reminiscences of New Jersey*, p. 275 *et seq.*

Even this necessarily cursory sketch of the activities of the most prominent assemblymen convinces the student that men of capacity and ability were included among the ranks of the colonial lower house. On the other hand, it is indisputable that many of the would-be legislators were ill-accomplished, uneducated farmers, who perhaps felt better at ease guiding the plow through the furrow than legislating for their country's good. Morris, with no intention to compliment, alluded to the assemblymen as "ploughmen representatives,"<sup>1</sup> but he was not alone among royal governors in experiencing a setback at their hands. In each assembly, personal leaders appeared, men of prestige and zeal, to whom particular credit was due for bringing things to pass.

It has been observed that the re-election of members to successive assemblies was of frequent, if not usual, occurrence. This does not necessarily indicate that the elections were placid formalities. The polls were open for successive days, until a choice was made. The Somerset County election of 1768 is described as having been "carried on with the greatest coolness and good order; no reflecting or abusive words were heard during the whole election."<sup>2</sup> By inference, it might be supposed that reflecting and abusive words were not foreign to such occasions. There is a report, the authenticity of which is not guaranteed however, of an unusually exciting election in Hunterdon for representatives in 1772.<sup>3</sup> The race for public honor was between Tucker and Hart, the former gaining the victory on the third day after a generous body of Episcopalians had been induced to cast their votes for Tucker in opposition to the

<sup>1</sup> *Morris Papers*, p. 276.

<sup>2</sup> *N. J. A.*, vol. xxvi, p. 209.

<sup>3</sup> Sedgwick, *Life of Livingston*, p. 143.

Presbyterian candidate. The election of members to the eighteenth assembly, after the dissolution of the previous house due to the disagreement upon the quotas act, caused animated discussion. The New York and Philadelphia weeklies contained earnest articles upon the approaching election.<sup>1</sup> In August, 1754, "the greatest Struggles in electing Representatives in some of the Counties, that ever were known," were reported by the "New York Gazette."<sup>2</sup> Middlesex and Hunterdon Counties required four days to conclude the election; while in Somerset there were six candidates and it was necessary for the "Gazette" to go to press before the returns were received.

An agent representing the province at the court in England was a well-established institution in New Jersey in 1738. Communication between the two continents was so irregular and uncertain, that the necessity of maintaining an active agent in London had become recognized. Whereas the desire of the royal authorities was that such an officer should represent the entire provincial government, that official became a representative of the assembly alone. Complaints against this assumption of power were no less frequent than vehement, but the fact of the agent's responsibility to the lower house continued and the representatives referred in documents to "their agent at Great Britain."<sup>3</sup>

The method by which the agent was made responsible to the assembly was through that body's control of the public purse. In the salary appropriation the recipient was expressly designated and hence virtually appointed, for the right of the council to alter or amend a money bill was successfully opposed. One of the objections urged by the

<sup>1</sup> *N. J. A.*, vol. xix, pp. 34, 48, 53.

<sup>2</sup> *Ibid.*, p. 382.

<sup>3</sup> *Assembly Journal*, Feb. 22, 1750.

council in 1749 against the government support act was, that to allow the assembly the sole nomination of an agent paid by public money, required an application to the king by the council to be made at a private charge.<sup>1</sup> Against such an unreasonable arrangement the upper house complained, but in vain. When reproached by the governor for wasting time in disputes, he is informed by the assembly that the councillors were at fault for they "tried to encroach on the constitution by altering a money bill, so that the House would be deprived of the appointment of their Agent."<sup>2</sup>

In 1769 the lords of trade indirectly owned that the colonial agent was an officer of the assembly only. The clause in the support act appointing the agent "for the Province at the Court of Great Britain" was harshly criticized as "a ridiculous Affectation in the Assembly to cloath an Officer, who is merely an Attorney to transact their Affairs, independent of the general Interests of the Colony, with a character that belongs only to the Minister of a Foreign Prince."<sup>3</sup> The lords accepted agents responsible only to the assembly, but they did this unwillingly. June 21, 1771, Governor Franklin was ordered by the lords of trade to refuse his assent in future to any support bill which carried with it the implication of the assembly's right solely to appoint the colonial agent.<sup>4</sup> The lords would now permit no colonial agent to appear before them who was not appointed by a concurrent act of the whole legislature. The governor doubted that the assembly would recede from their claim, which he believed had "been long acquiesced with in this Province as well as in most other of His

<sup>1</sup> *N. J. A.*, vol. xvi, p. 196.

<sup>2</sup> *Assembly Journal*, Feb. 22, 1750.

<sup>3</sup> *N. J. A.*, vol. ix, p. 445.

<sup>4</sup> *Ibid.*, vol. x, p. 301.

Majesty's Colonies in North America," but he sought to convert the lower house to the official viewpoint.<sup>1</sup> Much persuasion and many private interviews with the representatives rewarded Franklin's efforts, for in the support act of 1771, the assembly consented to the omission of those words in the bill which seemed to establish their claim to the complete control of the provincial agent.

The agreement was more formal than essential and effected no change in the agency. "That Doctor Benjamin Franklin be and he is hereby appointed Agent for transacting the affairs of this Colony in Great Britain" was a resolve of the council on December 11, 1771.<sup>2</sup> It merely ratified the appointment of the man, with whom a committee of the assembly had been corresponding as colonial agent for two years.<sup>3</sup> Strict compliance with the regulation of the lords of trade was made, when the governor concurred with the council and assembly resolves appointing his father agent.<sup>4</sup> When the next agent was appointed, in November, 1775, however, there is no record that a similar formal concurrence of the governor and council with the assembly was given.

Benjamin Franklin was strongly opposed to the appointment of agents by concurrent action of the whole legislature.<sup>5</sup> Evidently believing that the ministerial scheme required the passage of a separate legislative act, he thought this device granted the royal officials effectual power to control the agents by a repeal of the appointing act. That the new resolution of the Board of Trade would operate to render the agents subservient to the Secretary of State was the elder Franklin's contention. He declared the deter-

<sup>1</sup> *N. J. A.*, vol. x, p. 315.

<sup>2</sup> *Ibid.*, vol. xviii, p. 235.

<sup>4</sup> *Ibid.*, vol. xviii, p. 271.

<sup>3</sup> *Ibid.*, vol. x, p. 135.

<sup>5</sup> *Ibid.*, vol. x, p. 330.

mination to decline serving as a provincial agent under any such uncertain appointment. Fortunately for the colony Benjamin Franklin did not adopt this extreme course, but retained the New Jersey agency until 1775.

Not only was the agent in effect appointed by the assembly, but he advised and kept in touch with the affairs of the province by a committee of correspondence of that house. This committee, ordinarily numbering four or five, of whom the speaker was one, was authorized to correspond with the agent, and transmit to him the assembly minutes.<sup>1</sup> Thus the representative at the court was constantly given official notification of the conduct of affairs in the colony and especially from the assembly viewpoint. In 1738 the lower house ordered that two books should be provided, one for East Jersey and one for West Jersey, wherein all letters sent to and received from the London agent in relation to the affairs of the province should be entered.<sup>2</sup> The custodian of these important volumes was not announced, although they might naturally be supposed to have been intrusted to the committee of correspondence.

The first agent appointed for the province was Peter La Heupe, who having held the post for about four years was succeeded in 1727 by Richard Partridge, a Quaker of not exceptional ability.<sup>3</sup> He was Belcher's brother-in-law and active agent during that governor's administration in New Jersey. The East Jersey proprietors were not well disposed toward Partridge, suspecting him of encouraging the people in the land troubles, and his management of funds entrusted to him evoked bitter criticism. Belcher was con-

<sup>1</sup> For the business of the assembly in connection with the appointment of an agent, see *Assembly Journal*, Nov. 17, 1742.

<sup>2</sup> *Assembly Journal*, Mar. 21, 1738.

<sup>3</sup> Tanner, *op. cit.*, p. 375 *et seq.*



stantly admonishing him to have no connections with the anti-proprietary rioters, lest he lose influence with the ministry.<sup>1</sup> And in 1752 powerful enemies in England temporarily prevented his having access to the king's ministers or public officers.<sup>2</sup> October 22, 1751, the council declared that some other person should be appointed, and by legislative act,<sup>3</sup> but Partridge retained the New Jersey agency until the end of 1760.

On November 19, 1760, the assembly resolved that Joseph Sherwood, a London attorney-at-law, should be appointed provincial agent, and there was designated a committee to correspond with him.<sup>4</sup> He may have received the position through the good offices of Samuel Smith, the treasurer.<sup>5</sup> In 1766 the influence of Lord Stirling secured the appointment of Henry Wilmot, and Sherwood was ordered to transmit his accounts to the assembly.<sup>6</sup> These accounts were not laid before that house until 1770, when the former agent's request for an allowance of £43 was unanimously rejected.<sup>7</sup> No charge of misconduct had been made against Sherwood, who himself expressed the desire "to know how the Revolution came about."<sup>8</sup>

Wilmot was an eminent solicitor and secretary to the Lord Chancellor. He was apparently careful of the interests of the colony, but was continued in the office for but three years, being superseded by the appointment of Benjamin Franklin in 1769.<sup>9</sup> The committee of correspondence

<sup>1</sup> *Belcher Papers*, Dec. 6, 1751.

<sup>2</sup> *Ibid.*, Aug. 28, 1752.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 342.

<sup>4</sup> *Assembly Journal*, Nov. 19, 1760.

<sup>5</sup> *Sherwood Letters*, Mar. 14, 1761; *N. J. Hist. Soc. Proceedings*, vol. v, p. 133.

<sup>6</sup> *Assembly Journal*, June 18, 1766.

<sup>7</sup> *Ibid.*, Oct. 26, 1770.

<sup>8</sup> *Sherwood Letters*, Aug. 21, 1766, *op. cit.*

<sup>9</sup> *Assembly Journal*, Nov. 8, 1769.

did not deem it necessary to press upon the newly-appointed agent the matter of diligence, because he had been found inclined to the American service.<sup>1</sup> The last provincial agent, appointed in November, 1775, was Dennis De Berdt, the father-in-law of Deputy Secretary Reed. Governor Franklin believed his appointment resulted chiefly from his diligence in obtaining for the New Jersey assembly the contents of a letter sent by the governor to the Earl of Dartmouth.<sup>2</sup>

<sup>1</sup> *N. J. Hist. Soc. Proceedings*, vol. x, p. 168.

<sup>2</sup> *N. J. A.*, vol. x, p. 681.

## CHAPTER IV

### LEGISLATIVE HISTORY—THE MORRIS ADMINISTRATION

MANY of the constitutional conflicts, which a study of the history of legislation in the province reveals, were not peculiar to New Jersey alone. The constant struggles over the support of government and the paper money issue were common to the other English colonies in America, and the case of one is typical of the others. Thrown upon their own resources, and left to solve problems with an almost free hand, the colonists had naturally profited by the negligence of the crown officials, and the great distance from the mother country. The royal executives became objects of suspicion, representatives of an external authority, against whose encroachments, fancied or otherwise, they must constantly be on their guard. As to what constituted an encroachment, a violation of a cherished liberty of the people, there was much room for a difference of opinion, because the relation between the realm and the dominions had never been exactly defined.<sup>1</sup> The unsympathetic relations that usually existed between the branches of government were manifestly not conducive to harmony. The assembly evidently had an insatiable love of power, and encroached upon the other departments as much as possible. Such invasions of the prerogative of the governor, council, or courts, was protested against, but usually acquiesced in lest the necessi-

<sup>1</sup> See Osgood, *The American Colonies in the 17th Century*, vol. iii, chap. i.

ties of the public service should be hampered. Notwithstanding frequent and earnest protests on the part of the royal officials, both in England and America, the assemblies practically forced the governor and council to comply with what they pleased to direct. To gain this point, withholding the funds for the support of the civil establishment was a big stick, of which the assembly made frequent use. This was a cudgel of the assembly alone, for they maintained, and made good their claim, that the council could neither amend nor alter money bills. As the council in most of the colonies was composed of royal appointees, selected upon the recommendation of the governor, and consequently dependent upon him, the assembly and council were in frequent conflict. The particular reasons for the contests between the two houses in New Jersey will presently be noted. It was unusual, but not unknown, for the governor and council to be at odds. From what has been said, some of the fundamental defects of the system of government that prevailed in the colonies are evident, and it is apparent that they were magnified by the negligence of the home authorities, the remoteness of the dominions from the realm, and the naturally acquired love of power in the assemblies.

There were particular conditions in the different colonies that encouraged a more or less bitter spirit of rivalry and conflict in the legislative sessions. Chief among these in New Jersey may be mentioned the land system, Quakerism, and the place for the meeting of the legislature. That the first of these should have been an added cause of controversy in this province was due to the fact that after 1702 titles to land were vested in private landowners and not in the governing power of the province, and that the proprietary title to large tracts of land was actively disputed. The majority of the people viewed the proprietors as a wealthy, landed aristocracy wielding an undue and selfish influence in the

affairs of the province. Their gain was improperly regarded as the people's loss. As the strength of the proprietors was in the council and that of the people in the assembly, an almost constant strife between the two bodies was not unnatural. It was this influence more than any other that lent zest to the relations between the council and assembly of New Jersey, and made it unusually difficult for the two houses to "keep sweet between themselves," as Belcher put it. Under the circumstances it is apparent that the attitude of the governor toward the proprietors was important. This was also true of what may be called Quakerism. Members of that sect constituted a large number of the inhabitants of the province, the great majority in West Jersey. It was in their opposition to war and military service that their attitude was a matter of public importance. Orthodox Friends believed in the unlawfulness of war, and whenever it became necessary to raise troops or regulate the militia, their presence in official positions was regarded by many as a detriment to the public service. Frequent complaints were made to the royal officials, especially by Governor Morris, that the obstinacy of the Quakers prevented the enactment of necessary laws for establishing the militia upon a proper footing for the defense of the province. The Quaker element was much stronger in the assembly than in the council. The third condition mentioned as productive of strife was the determination of the place for holding the legislative sessions. This has been considered in the preceding chapter and the mere mention of it is necessary here. Holding alternate sessions of the legislature at Burlington and Perth Amboy was expensive and inconvenient, but the assembly could not be persuaded to alter the system. In itself the place of meeting was not of serious consequence, but it was frequently made an issue for opposing the governor, when he attempted to deviate from the regular alternation.

The most violent constitutional conflicts during this period of New Jersey's colonial history were during the Morris administration. Both governor and council arrayed themselves against the most popular measures that the lower house proposed, such as the bills for the emission of paper money, for obliging sheriffs to give security, and for preventing actions under £15 from being tried in the Supreme Court. On the other hand, the assembly steadfastly refused to support the government or regulate the militia until their measures were granted. The arbitrary attitude of the governor embittered these conflicts and legislative deadlocks were of frequent occurrence. The alignment of parties during Morris's régime was clearly proprietary and anti-proprietary, but this division was even more pronounced during Belcher's term. Then the contest between the proprietors and the associates became most acute, and the council, dominated by proprietary interests, was obliged to oppose the popular house without the active aid of the governor. Consequently during this administration the two houses were engaged in single-handed contests with one another, and the executive was unsuccessfully attempting to restore harmony. Governor Belcher was in an unusually unfortunate plight. The assembly refused to support the government because of the conflicts with the council; and the upper house opposed the governor, because he refused to take sides actively with them. Neutral ground was hard to maintain and the governor suffered in the attempt. Before William Franklin became governor of the province the land troubles had so far subsided that party lines became less marked. The chief concerns of his administration were not such as to lead to disputes between the council and assembly. Legislation regarding an important boundary controversy with New York was passed without difficulty, although it was chiefly a proprietary affair. Finan-

cial and military measures were the most important while Franklin was governor. The assembly wished to exchange the former for the latter, namely, to supply barracks for royal troops and aid the king's military operations in return for the permission to emit a large amount of paper money. Naturally as the opposition to the obnoxious acts of the English Parliament increased, the loyalty of the people to their royal governor, who continued a thorough government man, decreased.

There had been a long period of legislative apathy previous to the first session of the eleventh assembly, which was the first assembly to meet Governor Morris. Since 1730 there had been but one session of the legislature, the second session of the tenth assembly, which met under Governor Cosby, in April, 1733. Over five years elapsed between the last adjournment of that assembly and the first legislative session, with Morris as governor, in October, 1738. During this long interval, and especially after Cosby's death in 1736, the efforts of influential Jerseymen were chiefly occupied in the important but difficult task of securing a separate governor for their province. Success having crowned their efforts, the first meeting of the assembly under the new conditions was an event of interest and importance to the province.

The elections of 1738 had returned to the lower house less than half of the membership of the former assembly. Although the house met at Perth Amboy on October 27th, and Joseph Bonnell, of Essex, was elected speaker, no further business was transacted. Adjournment was taken to November 13th, two days after which the governor addressed the legislature.<sup>1</sup>

It was natural that the governor should first allude to

<sup>1</sup> *Assembly Journal*, Nov. 15, 1738.

the king's condescension in having granted the prayer of the colony for a separate governor. This fact led Morris to animadvert upon the propriety of a necessarily grateful legislature making an ample and suitable provision for the support of the government. The council was properly congratulated upon meeting for the first time as a distinct branch of the government, separate from governor and assembly in their legislative capacity. In addition the legislature was exhorted to pass good and necessary laws, to maintain calmness in debate, and to make it dangerous for men to be otherwise than just and honest—the last, it would seem, a rather difficult task. A change from the old method of having alternate sittings of the legislature was urged.

A great degree of calmness proved to be distinctive neither of this nor of any other session of the legislature during Morris's administration. It is true, that the assembly's address, to which the governor listened on December 16th, was harmoniously worded, and the effusive applause which it showered upon him might well have misled a gentleman of far less conceit.<sup>1</sup> And Morris might have relied too implicitly upon the assertions of the lower house, had he not read a resolution, which revealed the representatives as not generous toward him, at least when the public purse was concerned.

By a vote of ten to thirteen, the assembly resolved not to allow Morris a particular sum for the part he had taken in securing a distinct governor. The question was worded as if tacitly to imply that the governor had applied for a financial reward for his services. The assembly, generously inclined, promised duly to consider any account of such expenditures which the governor might lay before them. Representing this attitude, Morris declared he had never demanded

<sup>1</sup> *Assembly Journal*, Dec. 16, 1738.



any money for his services, but hoped that he dealt with people inclined to gratitude.<sup>1</sup> He reminded this assembly of a "deal" between Cosby and a former house, according to which his predecessor was to aid New Jersey in obtaining a separate governor, in return for which aid, Cosby was to continue to receive his salary from New Jersey, as long as he should continue as governor of New York. The message which the governor sent to the assembly was well calculated to irritate that body.

This session was marked also by a dispute between the two houses of the legislature regarding the support bill. After this measure had been passed by the assembly, the council asked for a conference upon the bill. Provided only the form and not the substance of the act was to be considered, was the assembly willing to confer?<sup>2</sup> As the council declared the right to request a conference upon any subject, whenever public interest required such a proceeding, the assembly asserted the equal right of each house to refuse a conference at any time. Only if no alteration in the substance of the support bill was desired, would the house agree to a conference.<sup>3</sup> To the reiterated terms of the assembly, the council returned a detailed answer, charging the assembly with the attempt to evade the issue, and maintaining that to give consent to a conference would impair no privilege of which the representative body could boast.<sup>4</sup> The general principle at issue was in the council's contention that each house had an equal privilege of proposing or amending any bill.

In this particular case the council desired to alter the measure by which part of the public money for the support

<sup>1</sup> *Assembly Journal*, Jan. 31, 1739.

<sup>2</sup> *N. J. A.*, vol. xv, p. 50.

<sup>3</sup> *Ibid.*, pp. 54, 57.

<sup>4</sup> *Ibid.*, p. 68.

of government was to be applied.<sup>1</sup> According to the governor, the assembly was particularly in error in this case, inasmuch as this support act was not to raise money, but merely to direct the application of funds already in the treasury. Even granting, for the sake of argument, said Morris, that the assembly might refuse a conference upon a bill raising money, "they had not the least colour for doing it" in the present case.<sup>2</sup> Rather than hazard the support of government, the council, as usual, passed the bill and contented themselves with a declaration of principle.

Morris regarded the conduct of the assembly as exhibiting an unusually dangerous tendency, and on March 15, 1739, dissolved the General Assembly.<sup>3</sup> The governor deplored the fact that instead of being a profitable session, this had been the longest and most expensive legislative sitting in the history of the colony. His supporters were thanked for what had been accomplished, but the other members were declared guilty of unbecoming conduct. Sceptical of the advantages of a second session of the eleventh assembly, Morris dissolved it in the hope that the newly-elected body would be more disposed to harmony, that is, more in sympathy with the governor.<sup>4</sup>

The session was not entirely devoid of results, but the great majority of the important bills considered were not passed at this time. Of the nine acts passed at this session, four were of particular importance.<sup>5</sup> These were acts to support the government, to settle the militia, to restrain extravagant and excessive interest, and to erect Morris County. Some of the bills that failed to pass both houses or did not receive the governor's assent included measures

<sup>1</sup> *Morris Papers*, p. 41.

<sup>2</sup> *Ibid.*, p. 42.

<sup>3</sup> *N. J. A.*, vol. xv, p. 79.

<sup>4</sup> *Morris Papers*, p. 51.

<sup>5</sup> Allinson, *op. cit.*, p. 99.

for the more frequent meeting and electing of representatives, for the regulation and preservation of the public roads, for shortening law suits and regulating the practise of the law, for obliging sheriffs to give security and take oaths, and for laying a duty on staves and shingles.<sup>1</sup>

The people of New Jersey had had their first legislative session under a separate governor. That the new régime had made for harmony did not appear. This, too, in spite of the fact that the new chief executive had previously in New Jersey met with the acclaim of a popular hero. The change had been effected in the case of Morris rather than the people. Looking to a larger field of history, the conduct of the people in this case is analogous to the revulsion of feeling which William Pitt experienced a generation later, when he was raised to the peerage and became the Earl of Chatham. Instead of Lewis Morris, champion of the people's rights, the populace beheld him in a position which they had come to regard with suspicion. With another type of man, this feeling could have been overcome, but in the case of Morris, whose extensive interests in the colony not unnaturally aroused the suspicion of possible partial judgments and whose temperament did not encourage conciliation, the distrust increased and the opposition became more marked.

The first session of the twelfth assembly met at Burlington on April 10, 1740, and elected Andrew Johnson speaker. Bonnell, the former speaker, had not been returned to this assembly, a fate which had befallen seven other members. Only one of the governor's consistent supporters in the East Jersey delegation was returned. Upon the whole, Morris had evidently not strengthened his position by the appeal to the people.

<sup>1</sup> *Morris Papers*, p. 39, note.

It was April 16th before the governor addressed the assembly.<sup>1</sup> In a characteristic message, Morris advised the representatives at great length to avoid the mistakes of the former house, and seek to exercise only those powers that were properly theirs. The advisability of laying import duties was suggested. The assembly was especially urged to co-operate in the expedition under Colonel Spotswood, which was to join forces sent from England against the Spanish colonies in the West Indies.

The reply of the assembly on April 25th was a cleverly-worded answer to all the subjects touched upon by the governor.<sup>2</sup> In some cases words of the governor's address were paraphrased to suit the purpose of the assembly. If the governor's professed hopes for a successful meeting were founded upon the assembly's address, events proved that they were built upon sand.

The governor's recommendation that aid be furnished to the West Indian expedition had passed unheeded by the assembly. On June 26, 1740, Morris sent a second message to the lower house upon this subject.<sup>3</sup> Ostensibly to consult their constituents upon this important business, the house asked for a fortnight's adjournment, but fearing the adjournment would be disastrous to his plans, the governor refused it.<sup>4</sup> Only after an act making current two thousand pounds in bills of credit for victualling and transporting troops was passed, was an adjournment permitted.

After a recess from the fifth to the twenty-first of July, Morris urged material changes in the bill, that had been passed, for supplying the troops. The assembly was obdurate, however, and not disposed to accede to the chief

<sup>1</sup> *Assembly Journal*, April 16, 1740.

<sup>2</sup> *Ibid.*, April 25, 1740.

<sup>3</sup> *N. J. A.*, vol. xv, p. 126.

<sup>4</sup> *Morris Papers*, p. 98.

executive's desires. The legislature was kept in session until the end of the month, when the house was prorogued without having altered the objectionable measure.

The second session of the twelfth assembly, which met at Perth Amboy, on October 2, 1741, was not marred by conflicts. The address to the council and assembly at the opening of the session, urged the further support of government, and renewed the periodical recommendation for the erection of a house suitable for the governor, and convenient meeting places for the legislative sittings.<sup>1</sup> The plea for one seat of government was made on the ground of economy. An interesting proposal made by Morris at this time was that the provincial laws should be revised by duly qualified and authorized persons to the end that a correct edition should be made of them. Proper measures of defence against Spain were declared necessary.

This session was brief, business-like and noticeably free from disagreeable wrangles between the branches of the government, the credit for which was modestly assumed by the governor.<sup>2</sup> The assembly, however, showed the usual independent spirit in regard to the militia act, which it refused to alter. The Quakers were blamed for the failure of the lower house to improve the militia law, in accordance with the recommendation of the governor. An act providing that actions under fifteen pounds should not be brought into the Supreme Court, was also passed at this session. Morris was in fact opposed to this measure, but assented to it, rather than endanger the harmony of the session. The support bill was passed without difficulty. That this peaceful session would be followed by another attended with even more success, was the expressed hope of the governor.

<sup>1</sup> *N. J. A.*, vol. xv, p. 200.

<sup>2</sup> *Morris Papers*, p. 140.

When the twelfth assembly met for the third session at Burlington, on October 16, 1742, His Excellency was pleased to make a brief and favorable speech.<sup>1</sup> The assembly was cognizant of the fact, said the governor, that another suitable provision should be made for the support of government. To amend old laws, where experience had showed defects, was declared to be as necessary as forming new ones. The better maintenance of the roads and bridges was recommended. In order that the public welfare might be advanced, which was the true end of their meeting, the preservation of a proper temper and agreement in the legislature was confidently desired.

The friendly tone of Morris's address may have led the assembly to seize this as a favorable opportunity for passing measures to test the governor. Council and assembly without difficulty agreed upon certain bills to which the governor later showed himself violently opposed. The absence of Robert Hunter Morris from the council at this time accounts in part for the harmony between the branches of the legislature.<sup>2</sup> The younger Morris was not only the ablest member of the council, but was also the most enthusiastic supporter of the administration. During this session, both because of the personnel of the council and the character of the measures under consideration, the upper house was less susceptible than formerly to the influence of the executive.<sup>3</sup>

Two acts were passed, one to declare how the estate or right of a feme covert might be converted or extinguished, and another concerning the acknowledging of deeds. Both were opposed by the governor.<sup>4</sup> Similar acts had previously been disallowed by the crown authorities, as encroachments upon the royal prerogative. Morris of course refused to as-

<sup>1</sup> *N. J. A.*, vol. xv, p. 246.

<sup>2</sup> *Morris Papers*, p. 154.

<sup>3</sup> *Ibid.*, p. 155.

<sup>4</sup> *N. J. A.*, vol. xv, p. 270.

sent to the bills, and suggested that his acquiescence might have been desired merely to expose him to the deserved censure of the king.<sup>1</sup>

The assembly had added a bill for the regulation of fees to the support bill in the hope that the governor, to obtain the support of government, would assent to the whole. The ostensible reason for altering the fees was in response to complaints against the law practitioners, but the real intention, according to Morris, was to reduce the income of the secretary and other officers of government.<sup>2</sup> It was only with difficulty that the governor succeeded in having the fee provisions omitted from the support act. The bill for the support of government was the only act passed at this session of the legislature.

It was the conduct of the assembly, regarding their bill to relieve the necessities of the people by emitting £40,000 in bills of credit, that most seriously irritated the sensibilities of the governor. An additional measure, which was to be passed to provide for printing and signing the £40,000 in paper money, granted £500 to the governor.<sup>3</sup> Hearsay had informed the governor, he told the assembly, that this act was intended to "be pass'd in a Secret manner, peculiar to itself, as usuall, and not sent home, that the ministry might not know I was to have 500 pounds for passing it." "You mistook your man," protested the governor, declaring the whole £40,000 would not have been a sufficient inducement.

His objection to the bill was that it failed to contain a proper provision for the support of the government. Only if provision was made for the erection of a governor's residence and houses for the meetings of the council and assem-

<sup>1</sup> *N. J. A.*, vol. xv, p. 272.

<sup>2</sup> *Morris Papers*, p. 152.

<sup>3</sup> *Ibid.*, p. 154; *N. J. A.*, vol. xv, p. 273.

bly and for the safe-keeping of the public records of the province, could an emission bill hope to find favor with him. There was a suspending clause to the act, but nevertheless Morris rejected it, as containing nothing which would recommend it to the king's ministers. A more tactful governor would have spared himself the unpopularity which this conduct courted, and have left the disallowances to the royal officials. But the Morris motto was prerogative rather than tact. The statesmanship and foresight of his contention, however, cannot be denied.

It was not only in the legislation which the assembly proposed that they ran counter to the governor. One of the representatives, Benjamin Smith from Hunterdon County, had had judgment against him by referees, to whom, according to a rule of the Supreme Court, the case had been referred.<sup>1</sup> Smith had complained to the assembly against the decision, and a committee on grievances was appointed to consider the case. This conduct was in the nature of an appeal from a judgment of the Supreme Court, an assumption of power totally unwarranted. On November 18, 1742, the matter was referred for further consideration. Morris properly informed the house that erroneous judgments of the Supreme Court might be reversed by the governor and council, but not by the assembly.

The lack of unanimity at this session convinced the governor that the people should be allowed a new choice of their representatives. He thought the present members were well-meaning, but were imposed upon and misled. After a long speech to the legislature, in which their misdeeds were enumerated and detailed, the governor dissolved the General Assembly.<sup>2</sup>

<sup>1</sup> *N. J. A.*, vol. xv, p. 276; *Morris Papers*, p. 152.

<sup>2</sup> *Ibid.*, p. 267.



There were ten new members in the thirteenth assembly, when it met for the first session at Perth Amboy on October 10, 1743, among them Samuel Nevill. Events showed that their attitude upon the public questions did not differ from that of the former house. Upon the first day of the session the governor addressed the houses, promising assent to beneficial laws and urging friendly intercourse between those who were concerned in making laws, and the discouragement of whatever might tend to create differences.<sup>1</sup>

The assembly complained that many beneficial acts had been passed at recent sessions only to be rejected. Encouraged by the assurance of the governor to assent to beneficial laws, when in his power to do so, they would again prepare such measures as they regarded necessary. As proof of his good intentions, the assembly intimated that the governor should assent to the bills laid before him, before the support act was passed. That was declared by the governor to be of no consequence, for "the one ought not to be given in exchange for, or to purchase the other," and he would not be influenced by the possible fate of the act for support.<sup>2</sup>

Two of the assembly's favorite bills received the executive approval, "an Act concerning acknowledging Deeds in the Colony of New Jersey, and declaring how the Estate or Right of a Feme Covert may be conveyed or extinguished," and "an Act for ascertaining the Fees to be taken by the several Officers." An act for the support of government for one year was also enacted. The council at this session rejected the assembly's bill to emit £40,000 in bills of credit.

The session did not end, however, without a quarrel. Although the bill for ascertaining the fees had a suspending clause attached, the assembly passed a formal resolution that

<sup>1</sup> *N. J. A.*, vol. xv, p. 279.

<sup>2</sup> *Assembly Journal*, Oct. 22, 1743.

it "ought to have due weight with the judges and all others concerned." This indiscretion led to the demand from the governor, that the assembly should justify such unwarrantable conduct. The lower house calmly stated that an opinion only had been vouchsafed, for which they did not regard themselves accountable to anyone and asked that the session be brought to a close. On December 10th, the governor told the assembly that their action in this matter was a contradiction of the suspending clause of the fee bill.<sup>1</sup> They were thanked for the support act and then prorogued.

War having been declared against France by King George II, the assembly was summoned to meet on June 22, 1744, for the express purpose of putting the provincial militia upon a better footing. As early as October 22, 1743, an administrative session of the council had advised a revision of the militia act, in order to make it more serviceable.<sup>2</sup> In his address of June 22d, the governor pointed out the danger of lax military discipline to public safety, and recommended a prompt and adequate consideration of the militia act and the state of the colonial defence.<sup>3</sup>

The assembly, in committee of the whole house, resolved by a vote of 16 to 6 that the militia law in force was sufficient.<sup>4</sup> In an address to the governor, notifying him of their decision, they asked for a recess because of the harvest season. This request was refused, and a militia act was thereupon prepared by the council, passed and then sent to the assembly.

This bill substituted a money payment instead of active militia service for Quakers, but was rejected in the assembly by the same 16 to 6 vote as above.<sup>5</sup> Although professing

<sup>1</sup> *N. J. A.*, vol. xv, p. 315.

<sup>2</sup> *Ibid.*, p. 282.

<sup>3</sup> *Ibid.*, p. 322.

<sup>4</sup> *Assembly Journal*, June 27, 1744.

<sup>5</sup> *Ibid.*, July 2, 1744.

willingness to provide for all necessary military expenses, the assembly testified to the uncertainty and difficulty of attending thereto beforehand!<sup>1</sup> The governor's interpretation of this message does not appear to be amiss. He credited the assembly with willingness to provide for the defence of the province, after the country was invaded. The assembly ordered the council's militia bill to lie upon the table. As the representatives persisted in their attitude, the governor brought the thirteenth assembly to an end by dissolution on July 3, 1744.

The election for members of the fourteenth assembly did not indicate an increase of prestige for the governor. Farmar, Leonard, and Bonnell were replaced by Hude, Ouke, and Crane, men of similar opinion. A like circumstance occurred in the changes in the West Jersey delegation. The house, which met at Perth Amboy on August 18, 1744, elected Samuel Nevill, a man of ability, as speaker.

A brief message from the governor, on the opening day of the session, recommended simply that the defects of the militia act should be remedied.<sup>2</sup> A week later, the assembly having taken the state of the militia into consideration, resolved that provision should be made from time to time for military expenses occasioned by calling out the forces.<sup>3</sup> Thereupon the assembly addressed the governor, promising to make the safety of the people as effectual as possible.<sup>4</sup> Although they hoped the need for forces would not arise, they would not hesitate to provide the means for repelling an enemy.

Having expressed the desire for an adjournment, the

<sup>1</sup> *Assembly Journal*, July 3, 1744.

<sup>2</sup> *N. J. A.*, vol. xv, p. 337.

<sup>3</sup> *Assembly Journal*, Aug. 25, 1744.

<sup>4</sup> *N. J. A.*, vol. xv, p. 338.

representatives were gratified that the governor should grant the request and leave the choice of the place of meeting to their decision.<sup>1</sup> Burlington, having been favored as the meeting-place for the next session, the assembly convened there October 4th. The apparent harmony between Morris and the assembly upon matters of routine was merely a surface peace. The transaction of the public business having begun, the former causes of dissension were revived. It was in order better to control the legislature than the governor, whose presence at Burlington had been prevented by illness, adjourned it to meet at Trenton on November 14th.<sup>2</sup> By a later adjournment the house was summoned to meet at Kingsbury, where the governor resided.

The opposition to the governor became more pronounced than before. The bill to oblige sheriffs to give security, the £40,000 act, and a measure for laying a duty upon Indian, negro, and mulatto slaves, were subjects of bitter discussion between the two branches of the legislature. The situation was made more difficult by an assembly report on the state of public affairs, agreed upon in a committee of the whole house on November 22d.<sup>3</sup>

This report, consisting of four resolutions, first declared that it was inconsistent with the proper freedom and privileges of the people that the same person should be both chief justice of the Supreme Court and a member of the council. This person, being none other than the governor's son and the most powerful councillor, the resolve was calculated to stir up at least two departments of the provincial government. Furthermore, the fact that there were only six or seven councillors was declared a hindrance to the public

<sup>1</sup> *Assembly Journal*, Aug. 25, 1744.

<sup>2</sup> *Ibid.*, Nov. 12, 1744.

<sup>3</sup> *N. J. A.*, vol. xv, p. 369.

business and the cause of great delay. With splendid economy and a tender forethought for their distant ruler, the assembly urged a frugal application of the money in the treasury, in order that the king might be assisted upon any emergency in the contests with France and Spain. Lastly, the colony was declared to be in such condition, as not to be able to support the government as largely as heretofore. Suiting the action to the word, the salaries of the officers of government were halved!

Such sentiments quite naturally evoked a reply from the council. Resolutions in answer to the assembly were passed on November 30th.<sup>1</sup> Resenting an attack upon the prerogative of the crown and reflections upon the character of the council, the upper house declared the appointment of the chief justice a duty for the king to perform, and not for the assembly to criticize. Likewise the king could appoint whatever number of councillors he desired, and might make such appointments whenever he saw fit. The governor's power in the appointment of councillors was restricted, as the council also mentioned, in that he could only fill vacancies when the number of councillors was less than seven. The assembly had previously stated that the action of the council had been improperly influenced upon certain measures, an assertion which the upper house at this time declared untrue, an affront, and liable to disquiet the minds of the people of New Jersey.

The wordy debate was continued by the assembly in rebuttal resolutions of December 5th.<sup>2</sup> Wordiness rather than argument characterized their answer. A disguise of epithets could not deceive, intimated the assembly, and conscious of having acted in accordance with the trust reposed in them, they would reply to no further groundless attacks

<sup>1</sup> *N. J. A.*, vol. xv, p. 374.

<sup>2</sup> *Ibid.*, p. 379.

upon their conduct. The incompatibility of the same person acting as chief justice and councillor was reasserted. In theory this would certainly be true, but the argument of the assembly was nullified by the fact that a chief justice was forbidden to sit as a councillor when that body was considering a case which he had determined in court.

The council did not reply directly to the assembly, but, on December 8, 1744, delivered an address to the governor in defence of their conduct in rejecting certain bills passed by the lower house.<sup>1</sup> The act to oblige sheriffs to give security was rejected because a provision allowed a sheriff's continuance in office for only three years; the bill to lay an import duty upon slaves, because it would injure the farmers; and the act making £40,000 current in bills of credit, because its preamble was a subterfuge, and the theory of raising funds by paper money loans was unreasonable and unjust to the poor. Furthermore the council protested against the refusal of the assembly to join in a conference upon the militia act, and declared the pretended frugality of the lower house to be misdirected zeal.

It is quite evident that the lower house was bidding for popular favor; was playing politics. Despite the assertion of the governor that he had not influenced the council in the slightest degree this seems improbable, for he was a clever manager, was in a tight place, and in desperate need of support.<sup>2</sup> The council at least was playing an inconsistent rôle. It is of course incontrovertible that opinions are subject to change, but that there should be such a direct and complete change of opinion in a short time on the part of the councillors is not a compliment to the stability of that body. This change was most marked in their altered notion of the beneficence of paper money.

<sup>1</sup> *N. J. A.*, vol. xv, p. 381.

<sup>2</sup> *Morris Papers*, p. 229.

The disputed election of a loan-office commissioner widened the breach between the governor and assembly at this session. The house received a petition from certain Hunterdon County inhabitants complaining that the election of Andrew Reed over Joseph Yard was a grievance and an evil precedent.<sup>1</sup> As the complaint was against justices of the peace, Morris's appointees, the representatives, with characteristic boldness, seized this favorable opportunity with avidity.

The facts, as represented by the justices, were that fifteen votes had been cast for Reed, ten by justices, and six for Yard, all by freeholders.<sup>2</sup> The only question apparently was as to the right of the justices to vote. If Yard felt aggrieved, he was advised by the governor to appeal to a court for redress.

An assembly committee appointed to investigate this matter reported, on November 9th, that an act of the 7 George II provided for the election of loan-office commissioners by a majority of the freeholders of the county, with the concurrence of three justices.<sup>3</sup> This report having been accepted, only Leonard, Ouke and Hude disagreeing, the house resolved that the Hunterdon election was "Arbitrary, Illegal, and in itself Void," and asked for the removal of the justices involved or the institution of legal proceedings against them. A statement of fact regarding the case, and the opinion of the assembly as expressed in the resolution, were embodied in an address to the governor.<sup>4</sup>

The governor, failing to discover the act of 7 George II, to which the committee had referred, addressed the house upon the subject.<sup>5</sup> His position was that, though the elec-

<sup>1</sup> *Assembly Journal*, Nov. 7, 1744.

<sup>2</sup> *Ibid.*, Nov. 7, 1744.

<sup>3</sup> *Ibid.*, Nov. 9, 1744.

<sup>4</sup> *Ibid.*, Nov. 10, 1744.

<sup>5</sup> *Assembly Journal*, Dec. 8, 1744.

tion might be voidable, it was not void until declared so by some competent authority. It was a question for the courts to decide, and legal measures were open to any one who felt aggrieved. His message was a long document in support of his position.

This was simply another attempt on the part of the lower house to exercise authority not legally delegated to it. Although Morris had been unable to unearth the act of the 7 George II, to which the assembly referred, that act was not a fiction of the house committee. The act of that year "for making Forty Thousand Pounds in Bills of Credit" regulated the election of loan-office commissioners.<sup>1</sup> Nevertheless, the position of the governor was correct in this matter. Although a dissolution put an end to the quarrel at this time, the question was later revived.

On December 7th the assembly asked to be dismissed, if the public business required no further attention at the time. The next day, after having stated his position in the Hunterdon election case, Morris dissolved the General Assembly, regretting that the session had been so unsatisfactory.<sup>2</sup> Unsatisfactory the session had been, many important measures had been under consideration, but had failed to pass. Such included the acts to oblige sheriffs to give security to keep actions of £15 or under from the Supreme Court, to emit £40,000 in bills of credit, to settle and regulate the provincial militia, to regulate the New York and New Jersey boundary line and to improve and encourage the manufacture of flour. As if to stamp the session as a comedy of errors, the only public act passed provided for the encouragement of the destruction of crows, blackbirds, squirrels and woodpeckers in three counties.<sup>3</sup>

<sup>1</sup> Allinson, *op. cit.*, p. 99.

<sup>2</sup> *Assembly Journal*, Dec. 8, 1744.

<sup>3</sup> Allinson, *op. cit.*, p. 138.



For the third successive year elections for assembly representatives were held. A large number of new members appeared at the first session of the fifteenth assembly, begun at Perth Amboy on April 4, 1745. Although the personnel of a part of the East Jersey delegation changed, Morris continued to draw his support from that section. The election had rather weakened than strengthened his position.

The address of the governor to the legislature on April 5th was a heated harangue against the shortcomings of the former assembly.<sup>1</sup> He reviewed the conduct of the assembly during the quarrel with the council at the last session, insinuating that the house was governed by the impetuosity of blind passions. They were ordered to take notice of his determination not to assent to any of their bills until the support of government had been properly provided. The incompatibility of uniting the offices of chief justice and councillor was declared no valid reason for denying the support of government. Little heeding his advice in practice, Morris urged that condescension and cool debate, rather than warm contentions, should regulate their conduct, when differing in opinion from the other departments. The only subject directly presented for their consideration was the plan of an expedition under Shirley against the French.

That the assembly could reply to the impassioned address of the governor with as much equanimity as they succeeded in exhibiting, reflects credit upon their patience. It was not delivered until May 2, 1745, its chief complaint being that the governor had taken pains to undervalue and explode some of the proceedings of the former house.<sup>2</sup> They not unnaturally wearied at having long tirades against the evil practises of a former house hurled at them. The governor was referred to the council for an explanation as to why the

<sup>1</sup> *N. J. A.*, vol. xv, p. 393.

<sup>2</sup> *Ibid.*, p. 410.

government had been unsupported, and his refusal to pass any bill until the government had been supported was regretted.

After the assembly address had been delivered the legislature was prorogued for five days, but upon reassembling was obliged to wait until May 13th before the governor replied to their address. In was another long account, longer than ordinary, of the misbehavior of recent assemblies, and an exposition of their unwarrantable conduct.<sup>1</sup> The action of the people's representatives in passing an act to emit paper money, when it was known that that subject was under the consideration of the parliament, received especially severe criticism. Resolved that no recent outrages should fail to be mentioned, the case of the Hunterdon County loan-office election was unearthed. They were enlightened as to their duty to the people. Simple, said Morris, was that duty. Their constituents wished them to support the government and not to quarrel with the governor.

Before the prorogation of May 2d the support bill had been passed, but it allowed the governor only £500 and was certain to be rejected on that account. The question of aiding the expedition had also been considered, but action was deferred, pending the attitude of the home government toward this affair, and because it was too late to render any naval assistance.<sup>2</sup> An act for settling the militia had also been passed. The prorogation, however, had nullified this business, and on May 18th, after the interchange of lengthy state documents, the assembly inquired if there was anything further to be transacted.<sup>3</sup>

Speaker Nevill waited upon the governor at Kingsbury, and in reply to the message was told that it was His Ex-

<sup>1</sup> *N. J. A.*, vol. xv, p. 418.

<sup>2</sup> *Assembly Journal*, Apr. 26, 1745.

<sup>3</sup> *Ibid.*, May 18, 1745.

cellency's privilege to prorogue the legislature when he wished to. The house was ordered to begin again on the business recommended at the previous session. On May 28th the assembly declared their refusal to answer the governor's long statement of May 13, 1745. The temptation was overmastering, however, and with beautiful inconsistency they attacked the chief executive regarding the support of government and the militia act.<sup>1</sup>

Meanwhile Shirley had renewed his application for aid from New Jersey.<sup>2</sup> With commendable promptness, the assembly prepared and passed a bill applying £2,000 for the king's service. It passed the council and received the governor's assent on June 1, 1745.

The assembly was favored with another long message from Morris on June 1st.<sup>3</sup> The same objects were treated in much the same way as before. The governor had been notified that the government would be supported in exchange, virtually, for his assent to the acts to emit £40,000, to oblige sheriffs to give security for their offices, and to prevent actions under £15 being tried in the Supreme Court. Morris said the sole cause of disagreement was the paper money bill, and he could give no assurance that the king would assent to it, even if he did.

The speaker was then directed to order adjournments of three weeks at a time, until he was otherwise notified.<sup>4</sup> It was the sixteenth of August when the house next met. Because of the governor's illness, the session had been adjourned to Trenton. On August 21st the assembly heard the governor's speech. It contained recommendations for a more suitable provision to effectually defend the country, and for the support of government, while the governor re-

<sup>1</sup> *Assembly Journal*, May 28, 1744.

<sup>2</sup> *Morris Papers*, p. 241.

<sup>3</sup> *Assembly Journal*, June 1, 1745.

<sup>4</sup> *N. J. A.*, vol. xv, p. 446.

gretted the impossibility of his meeting the legislature at Perth Amboy, the proper meeting-place for this session.<sup>1</sup> The assembly was urged also to repay to the treasury the £2,000 appropriated for the Cape Breton expedition.

The lower house was disinclined to contribute further for military affairs, but began a controversy concerning their meeting at Trenton. The governor was asked for his instructions as to the meeting-place of the legislature.<sup>2</sup> Refusing to comply with this request, Morris curtly told the house that the governor had the sole right to call, adjourn, prorogue and dissolve assemblies, that his commission might be inspected, but as for his instructions, they were secret. The assembly determined to elicit the desired information from the council, but before an answer could be returned to their request the legislature was prorogued to September 24th.<sup>3</sup>

Illness again having prevented the governor from personally attending the session at Burlington, he wrote to Speaker Nevill, that at the request of the representatives he had postponed the session to this time, when, it was hoped, "the business of their husbandry could not well obstruct their thinking calmly and effectually" upon what was recommended to them.<sup>4</sup> Repetition of the request for governmental support was made, and they were reminded of the unsettled condition of the militia. The governor had occasion to allude for the first time to the land riots. Before the meeting of the assembly Samuel Baldwin had been forcibly released from the Essex County jail, where he had been imprisoned for resisting an order of the council of East Jersey proprietors for surveying certain tracts of their lands. The anti-proprietary demonstration, of which this

<sup>1</sup> *N. J. A.*, vol. xv, p. 447.

<sup>2</sup> *Assembly Journal*, Aug. 23, 1742.

<sup>3</sup> *Ibid.*, Aug. 24, 1745.

<sup>4</sup> *Morris Papers*, p. 270.

was the first during this period, will be treated at length in a subsequent chapter. To cope with the situation, and prevent the riot from becoming a rebellion, the assembly was urged to take proper measures.

On October 3d the house replied to the governor's communication.<sup>1</sup> The successful enactment of bills, which they had prepared at both Trenton and Amboy, had been frustrated by the council or invalidated by prorogation of the governor. Confirmed in their former opinions by the sentiments of their constituents, the preparation of the desired measures would be deferred until a more favorable opportunity. Recourse might be taken to the militia act of 1738, still in force, but any ill-consequences due to the militia of the province should be chargeable to those who nullified the intentions of the lower house! It was likewise the opinion of the assembly that the existing laws, properly enforced, would check the deplorable Essex County disturbances.

The inability of the governor to attend the session at Burlington, led him to adjourn the legislature to Trenton, where it met on October 4th. Suspicious as to the legality of the procedure by which they were convened at Trenton, the assembly asked the council if the adjournment had been taken by advice of the council given to Morris.<sup>2</sup> With conscious importance, and an awful sense of their responsibilities, the council declared that advices given to the governor were private secrets of state, the divulgence of which they were bound to prevent. The desired information could not be given.

Such an answer was not calculated to turn away wrath. Messrs. Spicer and Fisher were appointed to wait upon the governor to obtain firsthand information regarding the im-

<sup>1</sup> *Assembly Journal*, Oct. 3, 1745.

<sup>2</sup> *N. J. A.*, vol. xv, p. 451.

portant matter.<sup>1</sup> Assembly messages must come to him through the speaker, thought Morris, who refused to receive the two representatives. By this time, fully convinced that the governor had neither received nor asked the advice of the council upon the question of the last adjournment, and because of the treatment accorded their committee, the assembly resolved that the refusal to receive their members was "a manifest denial of the Freedom of Access to the Governor and of the Privileges of this House," and that they would proceed no further on the public business until they were informed to their satisfaction under what conditions they were removed from Burlington to Trenton.<sup>2</sup>

After four more days of waiting it was resolved that the detention of the house for so long, without being informed as to the business which had brought them together, was "a great grievance to this House in particular, and to the Inhabitants of this Colony in general".<sup>3</sup>

Thereupon followed a typical lengthy and intemperate Morris message.<sup>4</sup> Certain of the expressions of the assembly, the governor was fully convinced, might "gratify the malicious temper of low minds, unacquainted with common rules of decency, and incapable of anything above the scum of the people". With apparent delight, Morris refers the plowmen representatives, whom he characterizes as "the inquisitive part of mankind", to Ecclesiasticus, chapter 38, verses 25, 26 and 33, to learn the part which they might expect to play in public affairs. Old matters of dispute were mentioned, and the recent misunderstandings reviewed at considerable length.

After such a show of temper on the part of the governor, one does not wonder that a future assembly stubbornly re-

<sup>1</sup> *Assembly Journal*, Oct. 11, 1745.

<sup>2</sup> *Ibid.*, Oct. 14, 1745.

<sup>3</sup> *Assembly Journal*, Oct. 18, 1745.

<sup>4</sup> *Ibid.*, Oct. 18, 1705.

fused to pay the Morris heirs, the arrears of his salary. Following the governor's long message, the assembly had been prorogued. It was later dissolved, however, and a new election held for members of the sixteenth assembly. As the election resulted in making but two changes in the house, it scarcely compensated the governor.

The regular meeting place for the first session of the sixteenth assembly was Perth Amboy, but on account of the governor's health the legislature was prorogued, on February 2d, to meet at Trenton, on February 26th. Robert Lawrence was chosen speaker.

Just as harsh as had been his last message to the former assembly, correspondingly conciliatory was the governor's first message to this new house.<sup>1</sup> On March 4, 1746, Morris told the assembly that their adjournment to Trenton had been by advice of the council. The unsupported condition of the officers of government, the need of defence against the enemy, and the land troubles in Newark were recommended to the consideration of the legislature, and despatches relating to the French and Indians were to be laid before the assembly. An earnest plea to promote the welfare of the province was made, the message concluding with the expressed hope that "the God of Peace direct your Consultations for the General Good".

The governor's ill-health and the advice of the council, the assembly graciously declared to be sufficient reason for meeting at Trenton.<sup>2</sup> Willingness to join with the other branches of government to settle the militia and repel invasions and to support the government was expressed. All departments seemed disposed to act in harmony.

The Hunterdon County representative complained on

<sup>1</sup> *Morris Papers*, p. 299.

<sup>2</sup> *Assembly Journal*, Mar. 11, 1746.

March 13th that the former grievance regarding the election of Reed as a loan-office commissioner, had not been rectified. The governor was asked to take measures to redress the grievance.<sup>1</sup> He replied as before, however, that if the choice was illegal, it should be determined by the courts. Nevertheless he promised to obtain the attorney general's opinion, and ask the advice of the council. This promise doubtless appeased the ardor of the house for the time being.

An act for better settling and regulating the militia was passed by both houses, and received the governor's assent on May 8, 1746.<sup>2</sup> The favorite measures of the assembly were also passed by that body, namely, the bill to prevent actions under £15 being brought into the Supreme Court, to emit £40,000 in paper money, and to oblige sheriffs to give security. A bargain could not be struck regarding the support act, and the harmony of the session was abruptly ended. On May 6th the assembly having promised to support the government if the governor would assent to the bills they had passed, Morris agreed to assent if they would support.<sup>3</sup> The less exacting attitude of Morris is apparent at this time, because he confessed at the time that on account of illness, he had been able to read only the militia act. His promise to assent to the assembly bills, in exchange for support, was evidently made before he had examined the acts.

The following day the governor received a message from the lower house, with the terms upon which the government would be supported. The governor's salary was halved for two years, but Morris or his executors were to

<sup>1</sup> *Assembly Journal*, Mar. 1796.

<sup>2</sup> Allinson, *op. cit.*, p. 139.

<sup>3</sup> *Assembly Journal*, May 6, 1746.



receive £1,000 from the first interest money arising out of the £40,000 emission, if the royal assent should be given. These conditions proved unattractive to the governor, and on May 8th he assented only to the militia act. Morris's last illness, which resulted in his death on May 21, 1746, doubtless saved the life of this assembly.<sup>1</sup>

From May 9th the assembly had met and adjourned from day to day until June 4th, when President Hamilton, who had succeeded Morris, prorogued the legislature to June 11th. His address of the ensuing day especially recommended the Canada expedition to the consideration of the council and assembly.<sup>2</sup> Both branches of the legislature responded with alacrity to provide New Jersey's share of men and money for the expedition into the enemy's country. Acts were passed in June, 1746, to encourage the enlisting of 500 volunteers, and to make current £10,000 in bills of credit to defray the expenses of the forces. Subsequent acts were passed in November, 1746, and May, 1747, to further provide for the troops.

In regard to the land disturbances that continued to plague the colony, President Hamilton was as unsuccessful in securing the co-operation of the assembly as Governor Morris had been. To guard against the ill-will of the king, they were urged to check the lawless spirit in certain sections of the province. But only the Canadian expedition received favorable action during this administration of President Hamilton.

There were three sessions of the legislature during Hamilton's administration, all at Perth Amboy. The second sitting of the sixteenth assembly ended on June 20, 1746. The next meeting continued from October 9th to November

<sup>1</sup> *Morris papers*, p. 311.

<sup>2</sup> *Assembly Journal*, June 12, 1746.

1st, when the assembly was dismissed upon their own desire. In May, 1747, the legislature was called together to provide for the support of government, to continue the supply of the troops in Canada, and to consider the disordered condition of the colony on account of the anti-proprietary outbreaks.<sup>1</sup> The only business consummated, however, was to grant a further supply for the New Jersey forces.

<sup>1</sup> *Assembly Journal*, May 6, 1747.

## CHAPTER V

### LEGISLATIVE HISTORY—THE BELCHER AND FRANKLIN ADMINISTRATIONS

THE next governor, Jonathan Belcher, met the legislature for a brief session on August 20, 1747. The assembly was told, in the opening address, of the new royal appointee's pleasure at coming to "this fine flourishing Province".<sup>1</sup> That the representatives would, in accordance with their privilege and duty, grant a proper support to the government, the optimistic Belcher had no reason to doubt. The confusion into which the province had been thrown because of the audacious attempts of seditious persons to subvert the government was deplored. To combat against this spirit was the evident duty of governor, council and assembly, and having restored peace to the colony, future generations would rise up and call them blessed. A beautiful ideal, but under the circumstances, difficult, if not impossible, of attainment, was pictured to the lawmakers of colonial New Jersey. The governor promised to make this session short, if it so pleased the legislature.

Both houses returned "handsome" addresses to His Excellency's speech. The council was heartily pleased with favorable sentiments which augured so much for the welfare of the people, and promised to strengthen Belcher's hands to the utmost of their ability.<sup>2</sup> The enthusiasm of the assembly's response must have gladdened Belcher's heart. No detail of the governor's address remained unan-

<sup>1</sup> *N. J. A.*, vol. vii, p. 19.

<sup>2</sup> *Ibid.*, p. 23.

swered.<sup>1</sup> Joy at his safe arrival was expressed and abundant promises were made. The exuberance which led them to state that it was "morally impossible" for the New Jersey paper money to sink in value, was doubtless a result of the general enthusiasm which led them into mistaken particulars. A short session was declared to be eminently acceptable at this time, but not simply for the convenience of the assembly members. With proper solicitude, such a course was declared to be desirable in order that their honored governor might "have some time of Ease from the Fatigues which so long a Voyage at Sea, and a Journey from Perth Amboy to this Place, must occasion." The legislature was in session at Burlington.

The session lasted but five days, and the only business transacted aside from the preparation of congratulatory addresses, was the appointment of a conference committee by each house to consider ways and means for suppressing the riots and disorders in the colony.<sup>2</sup> This committee did not meet until the November session of the legislature.

The sixth sitting of the sixteenth assembly began at Burlington on November 17, 1747, and continued to February 18, 1748. The favorable opportunity for enacting many measures opposed by Morris had at length come to the assembly. Since December, 1743, the only laws that had been passed, except the act to encourage the destruction of crows and the naturalization act of 1744, had been in connection with military affairs. Now, after the long and bitter conflicts with Morris, legislation was resumed, and the assembly brought in all their favorite measures.

The governor addressed the legislature on November 19, 1747, bringing to their attention four important subjects.<sup>3</sup>

<sup>1</sup> *N. J. A.*, vol. vii, p. 25.

<sup>2</sup> *Ibid.*, vol. xv, p. 530.

<sup>3</sup> *Ibid.*, vol. vii, p. 67.

An expedition against Canada, sponsored by Shirley, had been postponed, but the colony was expected by the king to continue providing for the troops already in the Canadian service, with the promise of an ultimate reimbursement by Parliament. The perpetrators of the violent outrages arising from the land controversies should be punished. Some counterfeit Jersey bills having been sent to the governor by a Rhode Island magistrate, Belcher was confirmed in the opinion that there existed a wicked combination of villains engaged in forging Jersey money. This matter certainly deserved a careful inquiry. The last recommendation was that the officers of government should be paid without unreasonable delay.

It was not until January 7, 1748, and after the support bill and other measures had passed the assembly, that the lower house answered the governor's speech of the preceding November.<sup>1</sup> The support bill had been dutifully passed, but the assembly regretted that the colony was in no condition to act as generously as their inclination tempted them to do in connection with supplying the forces. The riotous disturbances in the colony were under consideration, and it was the assembly's opinion that unusual vigilance on the part of the attorney general and other officers would be the most suitable expedient against counterfeiting.

Relations between the council and assembly were strained when the support act was under consideration. The council's demand for certain vouchers in connection with several accounts in the act started the trouble.<sup>2</sup> On January 1, 1748, the assembly began the New Year by enunciating the favorite doctrine of their absolute control of the public money. With extreme frankness it was declared to be solely the assembly's privilege to judge of the proper expenditures in the public service.

<sup>1</sup> *N. J. A.*, vol. xv, p. 574.

<sup>2</sup> *Ibid.*, p. 565.

The council claimed as their undoubted right the power to propose, alter, or amend any money bill.<sup>1</sup> This right was especially theirs in the present case, where the question was declared to be simply the application of money given to the king by former laws of the colony. Letters from the lords of trade were cited as evidence of the propriety and legality of their contention. Anxious to restore the peace of the province, the council decided to wait for a more favorable season before exerting this right. Meanwhile, this condescension on their part was not to be interpreted as a precedent!

The governor objected to the support bill, because it did not settle upon him a yearly salary as suggested by the king.<sup>2</sup> After the assembly refused to alter the act, however, it received Belcher's assent.

An expedition under General Shirley having been planned against Crown Point, the governor sent a message to the assembly, on January 19, 1748, urging that aid should be given to the plan.<sup>3</sup> To defend the colonies and to secure the fidelity of the Six Nations were plans which the house felt disposed to encourage. But this scheme of Shirley's seemed new and extraordinary, and they could furnish the governments concerned nothing more substantial than best wishes for the success of the enterprise.

The conference committee upon ways and means to suppress the riots met after much difficulty and drew up a statement of facts bearing upon the disorders. But only patient persistence on the part of the council brought about the desired conference. The assembly had displayed suspicious aptitude for excusing the non-appearance of their committee, and although the first meeting of the two committees in joint

<sup>1</sup> *N. J. A.*, vol. xv, p. 635.

<sup>2</sup> *Assembly Journal*, Feb. 17, 1748.

<sup>3</sup> *Ibid.*, Jan. 19, 1748.

session was fixed for November 30th, it was December 10th before it was held.<sup>1</sup> A direct result of the conference was a resolution passed by both houses declaring it dangerous and an infringement upon the privileges of the legislature for any number of persons to assemble in a riotous manner in order to lay petitions before either the council or assembly.<sup>2</sup> Each house entered into a separate resolution against riotous petitioning. This action had been taken because a mob at Trenton had threatened to proceed to Burlington to lay grievances before the assembly.<sup>3</sup>

At this session also two acts were passed designed to check the growing disorders. One was "an Act for the suppressing and preventing of Riots, Tumults and other Disorders".<sup>4</sup> Two earlier attempts, in May and August, 1747, had failed to secure the enactment of this measure. The disorders had increased so alarmingly that no difficulty in passing the bill was experienced at this session. It received the governor's assent February 18, 1748. On the same day Belcher assented to "an Act to pardon the persons guilty of the Insurrections, Riots, Tumults and other Disorders, raised and committed in this Province."<sup>5</sup> This act was of questionable utility, for very few of the disturbers availed themselves of the royal pardon.

The legislature also passed a bill to punish coiners and counterfeiters of foreign coins and of the provincial bills of credit.<sup>6</sup> It was disallowed by the royal authorities November 23, 1749.<sup>7</sup>

This had been a long but profitable session of the legislature. Nineteen acts were passed, among them some that

<sup>1</sup> *N. J. A.*, vol. xv, pp. 539, 545, 553.

<sup>2</sup> *Ibid.*, p. 559.

<sup>3</sup> *Ibid.*, p. 551.

<sup>4</sup> *Ibid.*, p. 634.

<sup>5</sup> Allinson, *op. cit.*, p. 171.

<sup>6</sup> *N. J. A.*, vol. xv, p. 572.

<sup>7</sup> *Ibid.*, vol. vii, p. 305.

had been most stubbornly opposed by Morris, and had led him to use harsh language freely against the representatives. Besides those already mentioned, the act to prevent actions under £15 in the Supreme Court, the act to oblige sheriffs to give security for the discharge of their office and the act to erect Cumberland County, were passed.

Three bills were enacted with suspending clauses. Although Belcher recommended that favorable action be taken upon all of them by the English officials, only one was allowed, that regulating the fees to be taken in the colony. The bill to emit £40,000 in bills of credit was disallowed, and also the one for running the New York and New Jersey boundary line. Opposition to the latter bill on the part of New York led to its disallowance. The troublesome boundary dispute between these two neighboring colonies will be considered in detail in a subsequent chapter.

On February 18, 1748, Governor Belcher prorogued the legislature.<sup>1</sup> The council and assembly were congratulated because of the unanimity that had characterized their deliberations and the success that had attended their efforts. The governor too hoped that the rioters would avail themselves of the lenity of the act of pardon.

It had become usual, although not without exception, for elections to be held for a new assembly upon the accession of a governor. This had not been done when Belcher began his administration, and after the long session which ended in February, 1748, sentiment in favor of a dissolution became evident. On the other hand, an election was opposed at this time, because of the disturbed condition of the province.<sup>2</sup> The latter view, which was held by the proprietary interests, prevailed and two more sittings of the sixteenth assembly were held.

<sup>1</sup> *N. J. A.*, vol. vii, p. 104.

<sup>2</sup> *Ibid.*, p. 122.



Governor Belcher sent a message to the legislature on July 7, 1748, the day it had convened at Burlington. The business which was at this time recommended was the appointment of commissioners to represent the colony at an Indian Conference at Albany.<sup>1</sup> For this one purpose only had the legislature been called together. New Jersey had not heretofore united with other colonies in Indian conferences, and the assembly, wishing the proposed conference well, refrained from sending delegates.<sup>2</sup>

The last session of the sixteenth assembly was begun at Burlington on October 21st. The governor's health, now impaired by old age, did not allow of his meeting the legislature at Perth Amboy, and the council had advised in favor of Burlington. Exaggerated regard for prerogative led several representatives to express the pronounced opinion that the sittings should be held at Perth Amboy. In deference to this sentiment, the General Assembly was adjourned, October 25th, to meet at Amboy on the tenth of the following month.<sup>3</sup>

The governor had addressed the legislature upon the opening day of the session at Burlington.<sup>4</sup> After reference had been made to the reason for holding the session there, the two important subjects mentioned were the support of government and the continued nefarious operations of the counterfeiters.

It was not until after the adjournment to Perth Amboy that the assembly returned an answer to the opening speech.<sup>5</sup> Their humble address presented on November 16th referred to the governor's willing accession to the request for

<sup>1</sup> *N. J. A.*, vol. vii, p. 149.

<sup>2</sup> *Assembly Journal*, July 8, 1748.

<sup>3</sup> *Ibid.*, Oct. 25, 1748.

<sup>4</sup> *Ibid.* Oct. 21, 1748.

<sup>5</sup> *N. J. A.*, vol. xvi, p. 2.

an adjournment as demonstrative of his justice and uprightness. The promise to consider the financial necessities of the province was made, but ambiguity and uncertainty characterized their attitude toward counterfeiting. The wicked practice was regretted, it was hoped that the counterfeiters would be punished, but the house avoided mentioning any rôle which it might be expected to play. As the last session was long, the assembly hoped that this one would be short.

Both branches of the legislature applied themselves to the consideration of the public business, but not to what had been recommended by the governor. That was in large part due to the unqualified rejection by the assembly of amendments which the council had made to an act to enable the legislature to settle the quotas as levied upon the counties.<sup>1</sup> The lack of consideration which the legislature had accorded his recommendations drew from Belcher a second message.<sup>2</sup> Counterfeiting and the support of government claimed only a portion of the communication. The renewal of land disturbances in Essex County led the governor to earnestly plead for the institution of such effectual measures as would restore order.

The proprietary influence of the council was engendering the opposition of the popular tendencies of the lower house. The tide of popular feeling against the proprietors was so intense at this time that it was inevitably reflected in the representative branch of the General Assembly. It was of course not a mere accidental coincidence that the coiners of false money plied their trade most industriously when the land troubles were most pronounced. Consequently the attitude of the assembly toward both counterfeiting and rioting was the same. The lower house professed mistrust

<sup>1</sup> *N. J. A.*, vol. xvi, p. 24.

<sup>2</sup> *Ibid.*, p. 25.

of many officials who executed the laws, who were to bring offenders under the law to justice. Not only to be consistent, but also as an added opportunity to evince opposition to distasteful office-holders, the office-holders and not the laws were declared to be at fault.

Under the circumstances a conflict between the two houses was inevitable. The council's address to the governor stated that instead of any laxity on their part as regarded the counterfeiterers, a council committee had vigorously investigated the subject, and new laws would be proposed.<sup>1</sup> Upon this subject, the assembly regarded the proper execution of the existing laws a sufficient obstruction to all offenders.<sup>2</sup> Quite naturally no legislation against counterfeiting was enacted at this session.

The land riots, however, provoked the most serious division in the legislature. To secure proper remedies upon this head was not only a part of the council's public duty, but in addition was a concern in which the majority was personally interested. The governor was asked by the council not to end the session until adequate remedies had been proposed.<sup>3</sup> Existing laws against the rioters should be more properly executed, repeated the assembly.<sup>4</sup> If a proper test proved their inefficiency, additional laws would be considered at the next session.

Reflections against some of the officers of government were discovered by the council in the reply of the assembly to the governor's address.<sup>5</sup> The council declared that the disorders in several counties prevented the administration of justice. Authority should be given to the governor to issue commissions, whenever necessary, for holding trials outside of the counties in which crimes were committed.

<sup>1</sup> *N. J. A.*, vol. xvi, p. 37.

<sup>2</sup> *Ibid.*, p. 41.

<sup>3</sup> *Ibid.*, p. 38.

<sup>4</sup> *Ibid.*, p. 43.

<sup>5</sup> *Ibid.*, p. 47.

The legislature should supply funds for maintaining troops to strengthen the government.

The assembly would join in no legislation, but declared the assumption of the council to direct the methods of raising money an infringement upon the rights of the lower house.<sup>1</sup> Accusing the representatives of neglecting their duty, the council resolved to lay the condition of the colony before the king.<sup>2</sup> Several curt resolves were then sent to the assembly in answer to their blunt refusal to join in any measures with the council.

The same day, December 16th, Belcher assented to six acts and prorogued the legislature to meet at Burlington on February 16, 1749.<sup>3</sup>

An unusual and novel incident happened immediately after the governor had prorogued the council. That body offered to give the chief executive advice, but received the unexpected reply that advice would be asked for when wanted.<sup>4</sup> A communication was sent to the governor on December 22, 1748, however, containing the advice which the council had been so brusquely prevented from offering.<sup>5</sup>

The avowed disagreement between the governor and his council at this time had more an apparent than a real influence. Belcher had consistently maintained an impartial attitude in the land difficulties and continued to believe that the troublesome question could be decided without an appeal to the home officials. It was this optimism which, if perhaps misdirected, was none the less sincere, that led to the dissolution of the sixteenth assembly. The new assembly, though changed somewhat in personnel, exemplified the same spirit as the preceding house.<sup>6</sup> The first session of the

<sup>1</sup> *N. J. A.*, vol. xvi, p. 64.

<sup>2</sup> *Ibid.*, p. 65.

<sup>3</sup> *Ibid.*, p. 68.

<sup>4</sup> *Ibid.*, vol. vii, p. 183.

<sup>5</sup> *Ibid.*, p. 185.

<sup>6</sup> There were seven new members.

seventeenth assembly began at Burlington, February 20, 1749.

Governor Belcher's address repeated his sentiments upon the distressed condition of the colony.<sup>1</sup> To his message, the assembly replied that the choice of representatives to this assembly demonstrated the satisfaction of the people with what had formerly been done.<sup>2</sup> Confidence was expressed that the governor, having no private claims in the colony, would not be induced to deviate from the impartiality heretofore shown in his administration.

The assembly during the session advocated extending a second offer of pardon to repenting evil-doers, but punishments, not pardons, were what the council planned for the rioters, and a conference with the assembly was refused.<sup>3</sup> Belcher's faith in a satisfactory adjustment of the dispute by the legislature was shattered; his patience was overcome. On March 28th the legislature was prorogued, and the governor later asked for special orders from the king, because the assembly refused to raise money to protect the jails.<sup>4</sup>

At this session the dispute over the quotas act was continued. The contention in respect to this measure involved the question of the taxation of unprofitable lands. According to the bill, "the whole of all profitable tracts of Land, held by Patent Deed or Survey whereon any improvement is made" was made taxable.<sup>5</sup> The council refused to pass the bill unless the declaration was clearly made that nothing in the act was intended to conflict with the royal instruction that no unprofitable lands should be taxed. This was a vital concern to the councillors, most of whom were large proprietary landholders.

<sup>1</sup> *Assembly Journal*, Feb. 21, 1749.

<sup>2</sup> *Ibid.*, Feb. 25, 1749.

<sup>3</sup> *Ibid.*, Mar. 21, 23, 1749.

<sup>4</sup> *N. J. A.*, vol. vii, p. 249.

<sup>5</sup> *Ibid.*, vol. xvi, p. 135.

Having been sent to the council, after it had passed the assembly, the bill was amended to coincide with the opinion of the councillors, and returned to the lower house. That the objectionable portion of the measure did not conflict with the governor's instructions was strongly maintained by the assembly. Even so the governor might be left to judge as to the worth of the bill, and no alteration which so nearly affected the precious privileges of the people could be tolerated. The lower house refused to so much as confer with the council upon the subject.

It was specious arguing which urged that the governor should be the proper judge when the houses disagreed upon a measure, and a course of conduct to which the assembly would have been the last to subscribe as a fixed principle. The object in view, however, to shoulder the council with the responsibility for the continued failure of the act, was easily accomplished. Facetious in the extreme was the assumption that when the governor and council were at odds, the latter would submit such an important measure solely to the judgment of the former. The words in the act to which the council objected do not appear to conflict with the royal instruction. Had the assembly been entirely sincere, the council amendment in itself could not have been objectionable, for it would not have altered the meaning of the act, unless it were repugnant to the royal instruction. The real object the lower house had in view was to prevent the council from amending the bill.

On September 25, 1749, the council and assembly met at Perth Amboy for the second session of the seventeenth assembly. Samuel Nevill was re-elected speaker. The governor's address was delivered three days after the opening of the session.

Although he had represented the condition of the province to King George, Governor Belcher hoped the assembly

might yet take action that they might not suffer severely for their misconduct.<sup>1</sup> An empty treasury, no support having been granted at the previous sitting, testified to the financial needs of the government. Harmony was recommended, that the session might be brief. With the consideration of the quotas act and the support bill, harmony vanished. An attempt to pass the former measure was a repetition of the quarrel of the last session. The council amended the act as before; the assembly refused a conference, and each house accused the other of obstructing the desired legislation.<sup>2</sup>

The council's efforts to amend the bill for the support of government also resulted disastrously. But more than the control of the purse was involved in this particular support act. According to the council, provision not only for the payment of the colonial agent in England, but for his appointment also, was made in this bill.<sup>3</sup> As long as the assembly denied the right of the council to amend a money bill, the council's assent to this particular support act would have carried with it the implication that the lower house had the sole right to nominate the colonial agent. Therefore the council amended the bill, so as to overcome the objectionable portions. The amended bill was rejected by the assembly, and the governor was notified that if the government could be supported only by the sacrifice of the people's privileges, the support would not be granted.<sup>4</sup> And it was not granted.

An interesting reminder of Governor Morris's administration was last considered at this session. The quarrels near the end of his administration had left the government unsupported from September 23, 1744, to his death in 1746.

<sup>1</sup> *N. J. A.*, vol. xvi, p. 157.

<sup>2</sup> *Ibid.*, p. 185 *et seq.*

<sup>3</sup> *Ibid.*, p. 196.

<sup>4</sup> *Ibid.*, p. 205.

His widow petitioned the New Jersey assembly, in 1747, for the salary arrears of the former governor and for the money that had been expended for house rent during that period.<sup>1</sup> The house rent was allowed, but the salary was refused by a vote of 20 to 2.<sup>2</sup>

The Morris executors having petitioned the lords of trade to act in their favor, Belcher was ordered to require of the assembly the payment of the arrears.<sup>3</sup> In a message of October 5, 1749, the governor recommended the subject to the consideration of the representatives. On October 17th the assembly answered the governor's message.<sup>4</sup> Their reply was a review of the grievances which they had come to cherish against their departed governor. His abuse of the powers of government was boldly proclaimed. It was claimed that none in the colony, save those personally interested, favored considering this a just debt. By a vote of 19 to 1 the house resolved that no just debt was due to Morris.<sup>5</sup>

The council was convinced that no further application on the part of the governor would alter the decision of the house, and advised him accordingly.<sup>6</sup> Belcher wrote to the lords of trade of the refusal of the assembly.<sup>7</sup> The representatives themselves sent a memorial to the lords stating that the governor lost his salary only because of his obstinacy in not accepting it as the assembly chose to grant it.<sup>8</sup> Although the lords of trade thought this conduct was

<sup>1</sup> *Assembly Journal*, Nov. 30, 1787.

<sup>2</sup> *Assembly Journal*, Dec. 17, 1747. The negative votes were cast to Nevill and Kearney.

<sup>3</sup> *N. J. A.*, vol. vii, p. 173.

<sup>4</sup> *Ibid.*, p. 335.

<sup>5</sup> *Assembly Journal*, Oct. 4, 1749. Dr. Johnston voted negatively.

<sup>6</sup> *N. J. A.*, vol. vii, p. 343.

<sup>7</sup> *Ibid.*, p. 363.

<sup>8</sup> *Assembly Journal*, Oct. 11, 1749.



“indecent and disrespectfull to His Majesty,” with which sentiments Belcher felt called upon to agree, the assembly never paid the bill.<sup>1</sup> The last that is heard of the affair is Chief Justice Morris’s petition to the lords of trade, in May, 1750. to grant relief for the unpaid arrears.<sup>2</sup>

The assembly had requested a dismissal at the same time that the governor had been apprized of the failure of the support act. On October 20th the legislature was prorogued to meet at Burlington on the last day of the next month.

It was the thirteenth of the following February, however, before the legislature was again convened. The governor’s brief message deplored the strife and contention of the last session, urged that the legislature join with the governor to suppress the tumults, and reminded them “that the Body Politic can no more subsist without Proper Provision for its Support, than the Body Natural can live without what is necessary to continue it in being”.<sup>3</sup>

Whatever strife and contention there had been in the previous session resulted, so the assembly told the governor on February 22d, from the attempts of the council to infringe upon the liberties of the lower house.<sup>4</sup> As the cases of several rioters were under prosecution, the assembly was not disposed to take any action in connection with the land troubles. The persistence of the council in clinging to the false supposition that they could alter a money bill accounted for the starvation of the body politic, was the retort of the representatives to the governor.

Nor was the empty treasury replenished at this time. For the fifth successive session a bill to settle the quotas was passed by the house, and amended by the council, only

<sup>1</sup> *Belcher Papers*, Feb. 1, 1750.

<sup>2</sup> *N. J. A.*, vol. vii, p. 401.

<sup>3</sup> *Ibid.*, vol. xvi, p. 210.

<sup>4</sup> *Ibid.*, p. 215.

to be rejected by the house. The assembly was effectually discouraged from attempting any further legislation and asked for an adjournment. Regretting the necessity of such a course, Belcher adjourned the legislature on February 27th.<sup>1</sup>

A short but unsuccessful session was held at Perth Amboy from September 20 to October 8, 1750. Belcher's speech on the 24th of September had repeated the plea for the support of government.<sup>2</sup> The dutiful assembly was aware of the evil consequences of an unsupported government, but had repeatedly tried to fill the treasury.<sup>3</sup> They promised to try again, but met with no better success. The only act passed at this session was for the purpose of naturalizing five persons.<sup>4</sup>

The case of five Burlington county justices was an added irritant at this time.<sup>5</sup> Robert Smith, Joseph Scattergood, Revell Elton, Thomas Shinn and Nathaniel Thomas had raised money without the authority of a majority of the proper freeholders. Elton, Thomas and Shinn, when examined by the lower house, promised to reform, paid their fees, and were dismissed. Smith and Scattergood did not satisfy the assembly as to their future conduct and the governor was asked to remove them. The two unbending justices, having even refused to pay the fees to the assembly for having been summoned, were entrusted to the custody of the sergeant-at-arms.<sup>6</sup>

The governor asked the council for advice regarding the removal of Smith and Scattergood. On March 1, 1750, the upper house declared that the assembly had assumed un-

<sup>1</sup> *Assembly Journal*, Feb. 27, 1750.

<sup>2</sup> *Ibid.*, Sept. 24, 1750.

<sup>3</sup> *Ibid.*, Oct. 3, 1750.

<sup>4</sup> Allinson, *op. cit.*, p. 189.

<sup>5</sup> *N. J. A.*, vol. xvi, p. 221.

<sup>6</sup> *Assembly Journal*, Feb. 26, 1750.

warrantable authority in censuring, imprisoning and taxing the justices.<sup>1</sup> The representatives were accused of attempting to seize power which was lodged in the hands of the governor, council and assembly. To continue the justices in office was the advice given to the governor, who acted accordingly.

This decision was announced to the assembly in a message on October 8, 1750.<sup>2</sup> The only reason given by the governor for not removing them was that a royal order prevented the removal of a justice without the consent of the council. It might be implied, from the wording of the message, that Belcher would not have continued Smith and Scattergood in office, had it been prudent to ignore the advice of the council. To encourage such an implication might have been intentional, as it would certainly lessen any possible odium which the nature of the ruling itself might have brought to the governor. It is not evident what Belcher's personal attitude toward these justices was.

The fifth and last session of the seventeenth assembly convened at Burlington on January 24th. The tardy arrival of the councillors delayed the opening speech of the governor until January 29th.<sup>3</sup> Prudent measures for overcoming the recent obstacles to the support of government were advised. The king wished a map of the province, which the governor believed should be promptly prepared and sent to England. Clinton's request that New Jersey should become a party to an Indian conference at Albany in June, 1751, was seconded by Belcher, who volunteered to act as a commissioner.

Before the session was far spent the assembly obtained

<sup>1</sup> *N. J. A.*, vol. xvi, p. 237.

<sup>2</sup> *Assembly Journal*, Oct. 8, 1750.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 240.

a favorable opportunity to attack the council by opposing a sheriff befriended by the upper house. Complaints of alleged maltreatment were made by Joseph Bonney against John Riddle, sheriff of Somerset County. The assembly directed their attack against councillor Leonard in particular, who was accused of having qualified the sheriff before proper oaths were taken and without the payment of proper sureties.<sup>1</sup> The assembly passed grave resolutions against such irregularities, and petitioned the governor for redress. Leonard, however, denied all the allegations made against him. The council refused to censure a fellow-member by advising the removal of Sheriff Riddle, and Belcher notified the house that the officer could not be deprived of his office.<sup>2</sup>

The session was occupied chiefly with the dispute over the quotas act, which developed even more acumen and temper than had been formerly displayed. The councillors attempted to pose as the champions of the poor against the rich, a rather anomalous attitude.<sup>3</sup> They feared that the assembly proposed to tax the poor who lived on poor lands, as much as the rich who lived on good lands. Such rank injustice could not be tolerated by the council! It is safe to assume that it certainly would not have been suggested, much less supported, by the assembly. To the lower house, the opposition to the quotas act was due less to the philanthropic solicitude of the councillors for the poor, than to the exemption of their large estates from taxation.<sup>4</sup>

Long messages and ponderous resolves passed between the houses, but neither party could bring conviction to the mind of the other.<sup>5</sup> Meanwhile the assembly had addressed the governor, on February 15th, to the effect that, as long as

<sup>1</sup> *Assembly Journal*, Feb. 9, 1751.

<sup>2</sup> *Ibid.*, Feb. 22, 1751.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 252.

<sup>4</sup> *Ibid.*, p. 254.

<sup>5</sup> *Ibid.*, p. 261, *et seq.*

the council continued to amend the act for settling the quotas, the government would continue without support.<sup>1</sup> Notwithstanding Belcher's appeal that the assembly recede somewhat from its position for the sake of the welfare of the province, his listeners were obdurate.<sup>2</sup>

Friendly communications between the council and assembly were broken off, and the legislature was prorogued on February 22, 1751. Only one bill had been passed, the act to regulate the militia. Three days later Belcher issued a proclamation dissolving the General Assembly.<sup>3</sup> The neglect to support the government and the open avowal on the part of the assembly that communication with the council had ended, made a new choice of representatives necessary. It was hoped, said the governor, that the new representatives would act dutifully and prudently in order to avert any possible resentment from the king for the non-support of his government in New Jersey.

The dissolution and prospective election was a matter of more than local or ordinary interest. Brief pamphlets for and against the conduct of the assembly in the recent session were published in the New York and Philadelphia weeklies.<sup>4</sup> Novel, at least, was one in the form of a dialogue between "Freeman", a representative of twenty years continuous service in the New Jersey assembly, and "Lovetruth", one of his constituents. The former furnished "Lovetruth" with what was declared to be an unprejudiced and impartial account of the dispute in the legislature. It is reasonable to suppose that the publicity given in this way to many facts, otherwise less generally known, aided in securing the salutary results of the next session. The election resulted in the return of eleven new members to the assembly.

<sup>1</sup> *N. J. A.*, vol. xvi, p. 259.

<sup>2</sup> *Ibid.*, p. 283.

<sup>3</sup> *Ibid.*, vol. xix, p. 30.

<sup>4</sup> *Ibid.*, vol. xix, pp. 13, 34, 50.

On May 20, 1751, the legislature met at Perth Amboy. Charles Read, one of the new delegates from the city of Burlington and secretary of the province, was elected speaker. The session was brief, continuing only to June 7th, but the quotas act was passed and the government was at length supported.

The governor's speech was brief, asking simply for support and suggesting the wisdom of following the practise of the House of Commons, by first voting the money for the officers of government and the payment of public debts, and then considering the ways and means for raising the funds.<sup>1</sup> Having passed the support bill, the assembly intimated to the governor that he could follow no better example than that of the king in redressing grievances, and would be glad if Belcher thought his power not so limited but that he might remove a justice without the consent of the council. The complaint of the assembly against the governor because of a too restrictive interpretation of his powers was unique indeed.

The much-discussed bill for settling the quotas was passed as the result of a compromise. In the seven former attempts to pass this measure the council had fought for a tax levied upon the quality of the land, the assembly for a tax levied upon the quantity of the land held by any person. The bill that passed at this session contained a declaratory clause that the intent was to tax "Lands hereafter according to value in Quantity and Quality between limited sums to be hereafter fixed, and that all land Purchased from a larger Survey or Patent, shall be Esteemed a Separate Tract, which being the proper business of a Taxation Bill, was not Explained by either of the said Seven Bills."<sup>2</sup>

Following the passage of the act to settle the quotas no

<sup>1</sup> *N. J. A.*, vol. xvi, p. 291.

<sup>2</sup> *Ibid.*, p. 309.

difficulty was experienced with the support bill. Belcher enthusiastically wrote to Bedford that the new assembly was fine, settled two points contested for two years, and he believed it presaged the recovery of peace and order in the province.<sup>1</sup>

Unfortunately the governor's visions of peace and plenty did not materialize. The act of the preceding session had enabled the legislature to settle the quotas of the several counties, in order that taxes might be levied, but the first actual levy of taxes according to the revised schedule of quotas had yet to be made. Attention to this business was recommended to the assembly by the governor in his opening speech at the session in September, 1751.<sup>2</sup>

By September 25th the lists of the taxable estates of the counties had been received by the assembly, so that the support of government and levying the proper quotas upon the counties could be taken into consideration.<sup>3</sup> One bill for both purposes was passed by the lower house and sent to the council. The act was amended by the council, chiefly because that house believed its preamble effectually invalidated the declaratory clause added to the quotas bill of the last session.<sup>4</sup> The assembly refused to allow the council to alter the bill and would not agree to a conference. The fact that the bill would have supported the government for the unusual term of five years leads one to believe either that the assembly had slight hope of its enactment into law, or were willing to risk its passage in return for undoubted benefits to be obtained.

The claim was now set up by the lower house to the right to deliver all support bills to the governor in person, in-

<sup>1</sup> *N. J. A.*, vol. vii, p. 598.

<sup>2</sup> *Ibid.*, vol. xvi, p. 310.

<sup>3</sup> *Assembly Journal*, Sept. 25, 1751.

<sup>4</sup> *N. J. A.*, vol. xvi, p. 342.

stead of sending them to the council, as had been the custom.<sup>1</sup> Certain precedents from the minutes of the House of Commons and the legislature of New Jersey purporting to substantiate this claim were given. The advantage of this plan was to give the governor an opportunity to peruse the support bills, in cases where the council had refused to pass them. The governor, failing to be convinced of the value of the plan, refused to become a partner to the scheme.

The support act was not passed, but some general legislation for the welfare of the colony received the governor's assent. The assembly was prorogued on October 23, 1751.

The session which began at Perth Amboy on January 25, 1752, allowed the legislature another opportunity to fill the treasury. Such a course was recommended by the governor, who hoped that the council and assembly would "become perfect Strangers, to any animosities, or Differences".<sup>2</sup> Inasmuch as the council did not attempt to amend the bill, no difficulty arose. The question of the propriety of sending the support act directly to the governor was revived at this sitting, but by a vote of 13 to 5 it was resolved to adhere to the usual practice of sending it to the council. This was evidently a setback for the ardent spirits who were too prone to antagonize the council.

At this session Joseph Bonney petitioned again for redress against Sheriff Riddle, claiming that the latter held his office illegally, in consequence of which his acts were void.<sup>3</sup> In response to a similar complaint during the previous session Governor Belcher had urged that a joint committee of the two houses consider this case, which had been

<sup>1</sup> *Assembly Journal*, Oct. 22, 1751.

<sup>2</sup> *N. J. A.*, vol. xvi, p. 353.

<sup>3</sup> *Assembly Journal*, Jan. 30, 1752.



pending so long.<sup>1</sup> An act for Bonney's relief had at that time been passed by the lower house, but failed to become a law, because the council amendments thereto were rejected.<sup>2</sup> The governor's attitude, in October, 1751, was favorable to Bonney, but in February, 1752, he refused to order the prosecution of the Somerset County officials, said to have been responsible for Bonney's distress.<sup>3</sup> The unfortunate debtor continued to petition the assembly for relief as late as the summer of 1755, but his efforts seem to have been unavailing.

The next sitting was occasioned by an additional instruction which His Majesty had sent the governor requiring a revised edition of the provincial laws to be sent to England.<sup>4</sup> In addition, the message of December 17, 1752, mentioned that the support had expired and that "the kissing of a Seditious Pack of Villains", who broke open the Perth Amboy jail the previous April pointed clearly to the need of legislation to protect the jails. Belcher, upon the advice of his physician as well as that of the council, had called this session to meet at Elizabethtown. However much such a course might have conformed to the royal instructions, the assembly did not regard it as necessary at this time and refused to proceed to business.<sup>5</sup> The governor was told, however, that as the laws had just been collected at great expense,<sup>6</sup> a circumstance of which the king could not have been aware when the additional instruction was issued, New Jersey should not be under the necessity of revising her laws. The house members were horrified at the breaking of the Amboy jail, but as the rescued prisoner,

<sup>1</sup> *Assembly Journal*, May 5, 1752.

<sup>2</sup> *Ibid.*, Oct. 4, 1752.

<sup>3</sup> *Ibid.*, Feb. 7, 1752. <sup>4</sup> *N. J. A.*, vol. xvi, p. 391. <sup>5</sup> *Ibid.*, p. 394.

<sup>6</sup> Nevill, *Acts of the General Assembly*, printed in 1752, were referred to.

Simon Wickoff, had voluntarily returned, the need for new laws was obviated! The wisdom of such reasoning is open to question.

The governor prorogued the assembly on December 22d, when he replied to the message of the lower house.<sup>1</sup> The farcical character of the assembly position regarding the Wickoff rescue and the need for safer jails did not pass unnoticed. Belcher professed surprise at the refusal to proceed to business at Elizabethtown, and submitted the royal instruction upon the subject to the assembly. He hoped he could meet the legislature at the regular meeting-place in the spring.

The fifth sitting of the eighteenth assembly began at Burlington on May 16, 1753. Owing to the tardy arrival of the councillors, the opening speech to the legislature was not delivered until a week later.<sup>2</sup> Except to advise an inquiry into the state of the paper money, the recommendations made at Elizabethtown were repeated. The opinion of the assembly had not changed regarding the revisal of the laws, or the steps necessary to lessen the violence in the colony.<sup>3</sup> A support act was passed.

The inquiry into the condition of the paper money was the most important question considered at this session. Responding to the governor's suggestion, a committee, consisting of Wood, Leaming, and Spicer, prepared an elaborate and able report upon the bills of credit. As a result of this report, a summary of which is given in a later chapter, it was resolved to petition the crown for permission to emit additional paper currency. The council refused to join in an address to the king for the purpose, but this did not deter the other house.<sup>4</sup> It was necessary to postpone further

<sup>1</sup> *N. J. A.*, vol. xvi, p. 396.

<sup>2</sup> *Assembly Journal*, May 23, 1753.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 412.

<sup>4</sup> *Ibid.*, p. 407.

action upon the subject of paper money until the fate of the petition should be known.

Another attempt to force the removal of a sheriff was made by the assembly at this time. It was claimed that Enoch Anderson's appointment as sheriff of Hunterdon County was a grievance, because he had not been a resident of that county for three years.<sup>1</sup> Declaring that to expound the law was a duty of the judges, and not of a single branch of the government, Belcher refused to take any action. The governor's reply was pronounced unsatisfactory, and the assembly promised to answer it properly at the next sitting.<sup>2</sup> During the interval Anderson having been removed, the assemblymen soothed their ruffled feelings by the mere declaration of their right to inquire into and complain of a breach of the law, if not to expound the law.<sup>3</sup>

There were eleven bills passed at this session, among them, besides the support act, acts to regulate the militia, to erect Sussex County, to redeem the outstanding bills of credit made current for the Third Intercolonial War, and to continue the act to prevent actions under £15 being brought into the Supreme Court.<sup>4</sup> The session was prorogued on June 8th.

The encroachments of the French became so bold in 1754 that the colonies most concerned sought to protect themselves and called upon their neighbors. To maintain the fidelity of the Six Nations was of great importance to the English interest. The famous Albany Conference of 1754 was planned, and New Jersey with the other colonies was urged to send delegates. The receipt of several important messages upon this head convinced Belcher of the necessity

<sup>1</sup> *Assembly Journal*, June 6, 1753.

<sup>2</sup> *Ibid.*, June 8, 1753.

<sup>3</sup> *Ibid.*, June 12, 1753.

<sup>4</sup> Allinson, *op. cit.*, p. 193.

of calling the legislature. His ill health required the meeting to be held at Elizabethtown, in April, 1754. The council and assembly were asked to assist the other colonies in the important crisis, and to consider whatever else the public needs demanded.<sup>1</sup>

The assembly was still unwilling to transact business away from the accustomed places, and sent a committee of two members to ask the governor to be dismissed to Amboy, when he could meet the legislature there. Such messages were usually sent through the council, so that Belcher censured the house for their present method of address, declaring it unprecedented and disrespectful.<sup>2</sup> He intimated a lack of tenderness and compassion in their unwillingness to continue the session at Elizabethtown. Despite his apparent displeasure the assembly was prorogued to Perth Amboy, where it met on June 3, 1754. With more intemperate language than had ever before been used by New Jersey assemblies to Belcher, the lower house protested against being considered guilty of disrespect and ingratitude.<sup>3</sup> The support bill was passed, but no provision was made for sending commissioners to Albany or aiding the forces in Virginia. As a result, Belcher regarded it as necessary to dissolve the eighteenth assembly.<sup>4</sup> The dissolution was ordered on June 21, 1754.

A cheerful activity in providing men and money against the French was the main subject recommended to the legislature by Belcher, on October 1, 1754.<sup>5</sup> The election had resulted in the return of less than half of the old members. Robert Lawrence was chosen speaker. This assembly resolved by a vote of 20 to 2 to grant aid to the king against

<sup>1</sup> *N. J. A.*, vol. xvi, p. 455.

<sup>2</sup> *Assembly Journal*, April 29, 1754.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 462.

<sup>4</sup> *Ibid.*, p. 474.

<sup>5</sup> *Ibid.*, p. 487.

the French.<sup>1</sup> £10,000 of a £70,000 paper money emission, for which the house would petition was to be set aside for this purpose.<sup>2</sup> The governor had received authority to assent to a bill emitting paper money, provided a suspending clause was added. The legislature drafted a £70,000 act, ignoring the legal tender condition, however, and petitioned the king for the royal assent. This was ineffectual and the bill was disallowed.<sup>3</sup> Thus the king's service did not receive the benefit of the seventh part of the expected emission.

The business of the second session of the nineteenth assembly, which continued at Elizabethtown from February 24th to March 3d, was chiefly regarding military affairs. Only the governor's health and the necessity of the business justified the assembly in altering the custom of alternate sittings.<sup>4</sup> Two acts were passed at the session, to prevent the exportation of provisions to the enemy, and to provide for the British regulars during their march through the colony.<sup>5</sup> At the last session the governor had strongly recommended the revision of the militia act, especially in respect to the number of musters. The assembly at that time regarded it as sufficient, but Belcher repeated the recommendation and elaborated his views at this session.<sup>6</sup> Consideration was again given to the militia bill, but the assembly continued to believe that its provisions answered the design intended by it.<sup>7</sup>

The vigor with which the Fourth Intercolonial War now began to be prosecuted necessitated frequent meetings of the

<sup>1</sup> *Assembly Journal*, Oct. 8, 1754. The negative votes were cast by Leaming and Spicer.

<sup>2</sup> *Ibid.*, Oct. 11, 1754.

<sup>3</sup> *N. J. A.*, vol. viii, pt. ii, p. 101.

<sup>4</sup> *Assembly Journal*, Feb. 24, 1755.

<sup>5</sup> Allinson, *op. cit.*, p. 203.

<sup>6</sup> *N. J. A.*, vol. xvi, p. 517.

<sup>7</sup> *Ibid.*, p. 524.

legislature. From this time until Belcher's death all the sessions were held at Elizabethtown, fifteen consecutive sessions being held at that place, because of the feeble condition of the governor's health. The legislature was called together in April, 1755, to raise men and money for the summer campaign of that year.<sup>1</sup>

After the defeat of Braddock, the assembly was called, in August, 1755, to increase the New Jersey quota of troops and amend the militia law.<sup>2</sup> Both of the recommendations were rejected, the vote on the latter being 18 to 2.<sup>3</sup> It was the rejection of their petition to have the bills of credit upon their own terms that was guiding the attitude of the lower house in the war.<sup>4</sup> The original quota of 500 troops was maintained, but beyond this the assembly refused to go. "We must be well Assured," said the assembly to the governor, on November 14, 1755, in response to his appeal for the defence of themselves and their neighbors, "the Occasion must be very Extraordinary to induce a Province, already loaded as this is, to add anything further".<sup>5</sup> And in December, 1755, the assembly made provision for the defence of the frontiers, but again asked to be excused from augmenting the New Jersey forces outside of the colony.<sup>6</sup> There was a slight change in the attitude of the assembly at the brief session in March, 1756. The legislature agreed to act in conjunction with New York and Pennsylvania against the Indians, pledging to support one-fifth of the troops raised for this purpose.<sup>7</sup>

The houses were summoned again in May of that year,

<sup>1</sup> *Assembly Journal*, April, 1755.

<sup>2</sup> *N. J. A.*, vol. viii, pt. ii, p. 128.

<sup>3</sup> *Assembly Journal*, Aug. 12, 1755.

<sup>4</sup> *N. J. A.*, vol. xvi, p. 543.

<sup>5</sup> *Ibid.*, p. 562.

<sup>6</sup> *Assembly Journal*, Dec. 23, 1755.

<sup>7</sup> *Ibid.*, Mar. 10, 1756.

and convened at Elizabethtown from May 20th to June 2d. During this short period much business was transacted. Emergency legislation in connection with the war was first passed, after which a vote was taken as to the propriety of entering upon the general public business there, or of requesting an adjournment to Perth Amboy. By a margin of one vote, it was decided to continue the sitting at Elizabethtown. The government was supported for one year, and several acts of the colony which would expire by their own limitation at the end of this session were continued.<sup>1</sup> The unanimity and dispatch with which the public business had been transacted resulted in an eminently profitable session.

A five day session was held in July and a three day session in October, 1756, at neither of which were any laws passed. The frequent sittings of the legislature prompted the assembly to ask the governor to put them under the necessity of making the journey to Elizabethtown as infrequently as possible. The insinuation that he was inconveniencing the legislators unnecessarily brought a mild rebuke from Belcher.<sup>2</sup> The October meeting had been called to enable the legislature to grant Lord Loudoun's request for a regiment from New Jersey.<sup>3</sup> That time might be given to consider the matter, a recess was allowed until December 23d. The assembly refused to raise the troops until Loudoun's exact plan was prepared and made known to the legislature.<sup>4</sup>

One thousand men was the quota which Loudoun wished from New Jersey. Half of this number was what the assembly resolved, on March 16, 1757, to raise, and despite the entreaties of the governor, and the personal appeal of the commander himself, it remained fixed in that determina-

<sup>1</sup> Allinson, *op. cit.*, p. 210.

<sup>2</sup> *Assembly Journal*, July 24, 1756.

<sup>3</sup> *N. J. A.*, vol. xvii, p. 62.

<sup>4</sup> *Assembly Journal*, Dec. 23, 1756.

tion.<sup>1</sup> The opposite point of view was consistently maintained by Belcher, who continually criticized the assembly for needlessly limiting their endeavors. His opposition was not so assertive as to antagonize the legislature, conduct which was in accord with his general policy in New Jersey. The house would regularly complain at being the recipients of the governor's disapprobation only, and then proceed to grant the usual supply, regardless of the urgent requests for augmentation.

Paper money was still the obstacle. Provision for the supply of the troops and necessaries was made by the emission of bills of credit in accordance with the act of the reign of Anne. The governor could assent to no emission which was not to be redeemed within five years from the date within which the bills of the last preceding emission were redeemable. When compliance had not been fully made with the quotas demanded, the assembly would protest that more would have been done, had the time for the redemption of the necessary money been extended.<sup>2</sup> That strict obedience to the royal orders forbade the extension beyond the five-year limit, was the response of the governor. This persistent disagreement, because of the desire of the people to push the reckoning day for the expenses of the war as far from themselves as possible, caused the friction in the government.

During this period practically no general legislation was enacted, except the support act, which was regularly passed. The war so completely absorbed the attention of the people that other matters were postponed. Governor Belcher died on August 31, 1757, while the fifteenth session of the nineteenth assembly was in progress. The administration there-

<sup>1</sup>*Assembly Journal*, Mar. 16, 30, 1757.

<sup>2</sup>*Ibid.*, June 2, 1757.



upon devolved upon John Reading. During the last few years of Belcher's administration the sessions had been so frequent that difficulty was often experienced in obtaining a quorum. In March, 1757, upon one day, Wetherill and Holmes were expelled, and Paxson, Clement and Hancock were reprimanded for absenting themselves without leave.<sup>1</sup> This difficulty was doubtless aggravated because of the apparent feeling that the governor, cognizant of the determined opinion of the assembly, nevertheless repeatedly summoned the legislature chiefly for the purpose of increasing the forces.

After Belcher's death the assembly, upon advice of the council, adjourned from day to day until the acting governor was sworn into office. The lower house grew impatient under the delay occasioned by the refusal of Reading to accept the office.<sup>2</sup> This may not have been unwarranted, for the president did not take the oaths until September 13th, following which the legislature was adjourned.

Two sessions were held during Reading's incumbency in office. Feeble in health, the president was inclined to adjourn the session to Trenton, but the assembly strenuously opposed such a course, determined to suspend no longer the treasured privilege of holding alternate sessions at the proper places.<sup>3</sup> With few exceptions the acts passed pertained to the conduct of the war. A more energetic and comprehensive prosecution of the war in the colonies followed the elder Pitt's accession to power in England and the New Jersey assembly in April, 1758, doubled the usual number of volunteers, augmenting its regiment to one thousand effective men.<sup>4</sup> This incitement to duty did not pass un-

<sup>1</sup> *Assembly Journal*, Mar. 31, 1757.

<sup>2</sup> *Ibid.*, Sept. 7, 1757.

<sup>3</sup> *Ibid.*, Oct. 18, 1757.

<sup>4</sup> Allinson, *op. cit.*, p. 216.

noticed, however, in their message to the executive on April 17, 1758.<sup>1</sup>

It had been evident that from the beginning of the Fourth Intercolonial War the interests and activities of the people of New Jersey, as with the other colonies also, were necessarily transferred beyond the confines of the province. To engage in offensive warfare against the French or to guard the provincial frontiers from the depredations of the Indians required the sustained effort of the colony. Except for a momentary interval after the close of the French war, conditions continued to be such that the old causes of strife between governor and assembly, or council and assembly, disappeared. Details of the rapid eddy of events induced by the broadened field of activity and interest are to be considered in subsequent chapters. The domestic concerns of the colony caused little difficulty in legislation, but for the sake of completeness, a survey should be given.

Francis Bernard, the new royal governor, met the legislature for the first time at Burlington, on July 25, 1758. The usual congratulatory addresses were exchanged, and as the assembly had already found "Opportunity to form Rational Prepossessions" in his favor, the governor was voted £500 to defray his expenses in coming to this grateful people.<sup>2</sup> The new governor appeared to be especially interested in frontier and Indian affairs. His services at the Easton Conference in October, 1758, were of value to the colony. During the first session of the legislature in his administration the act empowering the purchase of the Indian claims to land was passed.<sup>3</sup>

Only two other sessions of the legislature were held during his administration. The general public business was

<sup>1</sup> *N. J. A.*, vol. xvii, p. 175.

<sup>2</sup> *Ibid.*, vol. xvii, p. 181.

<sup>3</sup> Allinson, *op. cit.*, p. 221.

transacted with unusual rapidity at the sitting from the eighth to the seventeenth of March, 1759. There was a slight disagreement, however, regarding the selection of a speaker.<sup>1</sup> As Lawrence was indisposed, the governor recommended the election of a temporary speaker to act until Lawrence returned. The house disagreed and elected Samuel Nevill, as the regular speaker. In finally consenting to this choice, Bernard declared that it should not be made a precedent. At the sitting in 1759, and also in March, 1760, one thousand volunteers for the war were raised.

Bernard, transferred to the Massachusetts government, was succeeded in New Jersey by Thomas Boone. The new governor promised to guard the rights and privileges of the legislature from violation or infringement.<sup>2</sup> Even had he not been so disposed, it is doubtful if he could have made headway by acting otherwise. When he told the assembly that their methods of raising money deviated from the principles of the constitution, which he urged the representatives to consult and "yield to the Emotions of Gratitude," the retort was returned that those methods were doubtless capable of a better construction than first occurred to His Excellency.<sup>3</sup> Nevertheless Boone succeeded in obtaining the first two-year support act passed since 1749, which fact he proudly related to the lords of trade.<sup>4</sup>

It was the twenty-first session of the nineteenth assembly that began on October 29, 1760, and continued until December 5th, being the longest held since September, 1751. Twenty-two acts were passed, including measures to provide for the maintenance or construction of roads and public buildings, the continuance of acts about to expire, and sev-

<sup>1</sup> *Assembly Journal*, Mar. 8, 1759.

<sup>2</sup> *Ibid.*, Oct. 30, 1760.

<sup>3</sup> *Ibid.*, Nov. 21, 1760.

<sup>4</sup> *N. J. A.*, vol. ix, p. 248.

eral private acts.<sup>1</sup> One of the most interesting of the measures was for the preservation of the public records of the colony, an act which Governor Morris had urged years before.

On the last day of the session, the assembly asked for a dissolution to enable their constituents to declare their choice at the polls. A similar request had been submitted to Belcher in March, 1757, but had been ignored.<sup>2</sup> Boone at this time promised to exercise his authority in regard to a dissolution whenever the king's service demanded.<sup>3</sup> Although his reply offered no direct encouragement, an election was held, and the twentieth assembly met for the first time on March 27, 1761. Ten new members were returned to this house.

The chief business at the sessions in March and July, 1761, was to provide for raising troops. Meanwhile Boone had received an appointment as governor of South Carolina, and Josiah Hardy superseded him in New Jersey in October, 1761.

The new governor of course came resolved to make the people of the province the objects of his care, and to protect their sacred and inviolable privileges.<sup>4</sup> In an address the assemblymen naturally returned thanks for such favorable sentiments, hoping likewise that Hardy's administration by its length would end the rotation of governors sent in recent years to New Jersey.<sup>5</sup> The hope was expressed in vain, however, because his successor as governor was commissioned within a year from the date of its expression. Only four brief sittings of the legislature were held during Hardy's régime, the chief business of which was to raise

<sup>1</sup> Allinson, *op. cit.*, p. 226.

<sup>2</sup> *Assembly Journal*, Mar. 31, 1757.

<sup>4</sup> *N. J. A.*, vol. xvii, p. 244.

<sup>3</sup> *Ibid.*, Dec. 5, 1760.

<sup>5</sup> *Ibid.*, p. 252.

provincial troops, and to provide garrisons for the British regulars. Hardy's administration was characterized by the assembly as "disinterested, Candid and benevolent." It will be remembered that he was removed by the royal authorities owing to a disagreement relative to the tenure of judges.<sup>1</sup>

It was almost three months to a day after his arrival in the colony when the newly-appointed royal governor, William Franklin, met the legislature. The happy and glorious end of the long war against the French afforded a splendid opportunity, he told them, for giving "earnest attention to the Arts of Peace."<sup>2</sup> The necessary general legislation was recommended to the attention of the council and assembly, as was also the conspicuous unanimity which had characterized the legislative sessions of the recent past. The reply of the houses was marked by the usual flattering platitudes.

There were in general two chief reasons for the unanimity that had existed between the branches of the legislature in New Jersey during the five or six years preceding Franklin's accession. They were the united purpose in the war against the French, and the brief administrations of the governors during that period. In Franklin's administration the gap between himself and the people widened, just in proportion as did that between the mother country and the colonies. Inasmuch as the details of this administration are more properly considered in later chapters, only the general character of the legislative sessions need be here mentioned.

The twentieth assembly was not dissolved at Franklin's accession, no new election being held until 1769. This was consequently the longest assembly of the royal period in New Jersey, continuing from March, 1761, until May, 1768. Robert Ogden was elected speaker at the first sitting of the

<sup>1</sup> *N. J. A.*, vol. xvii, p. 352.

<sup>2</sup> *Ibid.*, vol. xvii, p. 344.

assembly under Franklin, and continued in that position until his resignation in 1765, as a result of the opposition in Essex County because of his refusal to subscribe to the resolutions of the Stamp Act Congress in New York.

The first serious difficulty between the governor and assembly resulted during the Stamp Act controversy, when the assembly in an extra-legal session held at Perth Amboy elected delegates to the general Stamp Act Congress above mentioned. The Stamp Act resolves passed in November, 1765, by the New Jersey assembly widened this breach, and brought upon the assembly a learned tirade from their governor. The subsequent repeal of the obnoxious act brought a return of apparent harmony to the government.

After Ogden's resignation, Cortlandt Skinner, of Perth Amboy, was elected speaker. The three sessions in 1766, 1767 and 1768 were of signal success. Much general legislation was passed for the welfare of the province, and also special legislation for the supply of the royal troops. In the session of 1766 public improvements, such as the repair of roads and bridges, received special attention as a result of numerous petitions presented to the house upon such subjects.<sup>1</sup> At this session twenty-two acts were passed. But this number was exceeded by one, in the session of 1768, when, among others, bills for the septennial election of representatives, and for choosing representatives in Morris, Cumberland and Sussex Counties were enacted.

The twenty-first assembly met on October 10, 1768. There were thirteen new members. No less than nine members of the former assembly had died, making necessary special elections from time to time for members to serve during the unexpired terms. In only two cases, however, were such members re-elected to the new assembly. Old

<sup>1</sup> *N. J. A.*, vol. xvii, p. 453, note.

age rather than dissatisfaction with their representatives doubtless accounts for the large number of new members returned by the people.<sup>1</sup> This assembly continued until December, 1771. Skinner was speaker until his indisposition in October, 1770, when Stephen Crane was elected, continuing as speaker until the election of the next and last assembly of the royal period.

The business of the legislature was largely occupied during 1769 and 1770 with the investigation and legislation occasioned by the demonstrations against the lawyers in Essex and Monmouth Counties. The disallowance of the bill that had been passed for the emission of £100,000 in bills of credit marked the beginning of a protracted struggle on the part of the assembly to force the royal assent to such an emission by refusing to grant funds, wherewith the barracks for the royal troops might be supplied. This contest seriously embarrassed legislation, and led to the dissolution of the assembly on December 21, 1771. The long controversy of this year elicited several long messages from the governor, and replies by the assembly, upon the financial circumstances of the colony.

The membership of the twenty-second assembly was enlarged to 30 members by the new delegations from Morris, Cumberland and Sussex Counties. The attitude of the new assembly was no more favorable to the governor upon the questions that provoked a division than that of the preceding house had been. At the opening of the first sitting in August, 1772, Stephen Crane was again elected speaker, but Cortlandt Skinner succeeded him at the next session, which met on November 10, 1773.

Legislation was interrupted from August, 1772, until early in 1774, because of the fruitless controversy regard-

<sup>1</sup> *N. J. Hist. Soc. Proc.*, series i, vol. v, p. 32.

ing the responsibility of the East Jersey treasurer in connection with the robbery of his office. Messages, pages in length, passed between the governor and the assembly, until Treasurer Skinner's resignation brought about an accommodation in the matter, which relieved the deadlock but did not settle the dispute.

Governor Franklin's fidelity to his British superiors was not consonant with the growing estrangement between the colonists and the mother country. As late as November, 1775, the assembly protested against independence, and there was an appearance of cordiality or courtesy between the governor and the house. On November 15, 1775, the fifth sitting of the twenty-second assembly began at Burlington. The act for the support of government, with seven other measures, was passed. After the public business had been transacted, on December 6th, "His Excellency was pleased to prorogue the General Assembly till Wednesday, the third day of January next, then to meet at Perth Amboy."<sup>1</sup> But the royal provincial legislature never reassembled.

<sup>1</sup> *Assembly Journal*, Dec. 6, 1775.



## CHAPTER VI

### THE PROPRIETARY SYSTEM AND THE LAND TROUBLES

ADJUSTMENT of conflicting land claims was the most annoying and distracting feature of New Jersey history during the colonial period. In large part, that issue precipitated the contests between the branches of government until the close of Governor Belcher's administration. The line of cleavage between the two rival factions, proprietary and anti-proprietary, was naturally aggravated, because frequently a majority of the council held large proprietary estates, while in the assembly opinion favored the people who claimed lands under counter-proprietary titles. Better to understand the land troubles during this period, it will be necessary briefly to consider the character of the proprietorship and review the early contests. The later dissensions grew out of, and had their inception in, the same general misunderstandings that characterized the early struggles.

In the opening chapter, mention was made of the transfers by means of which title to the soil of East Jersey became vested in a board of twenty-four proprietors, and that of West Jersey came into possession of a much larger number of owners. The fact that the governing power of the province after 1702 had no right or title to the soil, is the salient and distinctive feature of New Jersey, as distinguished from other colonies. Governmental power was held by the king, and actively administered by the gover-

nor, council and assembly; the title to land was held by the proprietors of East and West Jersey, whose affairs were actively administered by two councils or boards, one for each division. Members of the proprietary boards were, as has been shown, frequently officers of the government or members of the legislature. That the personnel of the provincial council might in large part be made up of members of one or the other council of proprietors is apparent. It was this interaction of proprietary influence in the government of the colony that encouraged popular distrust.

Proprietary ownership in East Jersey was much less democratic than in the sister division.<sup>1</sup> The council was an aristocratic organization of wealthy landowners. Any of the twenty-four proprietors, or their proxies, who had retained one-quarter of his propriety was admitted to a seat in the council. Where the process of sub-division had left no one person with a fourth part, the holders of the lesser interests chose one person as their representative. The council examined the right to land titles, purchased land from the Indians, rented land to the colonists, and transacted such other business as properly came to their attention.

The frequency of council meetings naturally depended upon the condition of proprietary affairs, although there were regularly two meetings yearly. Seven members constituted a quorum. A president was annually elected, usually at a meeting held in March or April. In 1730 John Hamilton succeeded Lewis Morris as president, and was annually re-elected until his death. In 1748 Andrew Johnston was elected president, acting in that capacity until his

<sup>1</sup> Tanner, *op. cit.*, chs. i, iii, and xxvii.

death in 1762, after which James Parker was chosen. He was the last president during the colonial era. The important office of surveyor general was held from 1716 to 1756 by James Alexander. For forty years the resourceful ability of this learned Scotchman was devoted with energy and zeal to further the interests of the proprietors.<sup>1</sup> His presence at council meetings appears to have been indispensable. On March 22, 1742, "Mr. Alexander being called away on extraordinary occasions, the council did not proceed on business."<sup>2</sup> William Alexander, Lord Stirling, became surveyor general after his father's death in 1756.<sup>3</sup> His successor was John Rutherford, chosen in 1771. In 1738 Lawrence Smyth was acting as register or secretary of the board of East Jersey proprietors. Ten years later he was succeeded in that office by John Smyth, who held the office until the Revolution, and carried the records to New York with him, upon his removal there.<sup>4</sup> In passing, it may be mentioned that the East Jersey proprietors maintained an agent at London to protect their interests at court. Ferdinand John Paris, an able and influential London lawyer, was a staunch and constant defender of proprietary rights, when acting as agent for more than thirty years prior to 1759.<sup>5</sup>

Although the surrender of the right of government to the crown greatly decreased the influence of the board, its personnel continued to consist of men of rank in the prov-

<sup>1</sup> See *American Historical Magazine*, Jan., 1906, p. 11.

<sup>2</sup> *Min. of Council of Prop. of E. J.*, Mar. 22, 1742. Upon Alexander's death, a eulogistic letter of condolence was sent to his widow, and spread upon the minutes of the board, June 17, 1756.

<sup>3</sup> *Min. of Coun. of Prop. of E. J.*, June 17, 1756.

<sup>4</sup> *N. J. A.*, vol. x, p. 420.

<sup>5</sup> *Ibid.*, vol. ix, p. 445; vol. vi, p. 424.

ince. Prominent among its members in 1738 were John Hamilton, James Alexander, Richard Ashfield, Andrew Johnston, Samuel Leonard, Lawrence Smyth, Fenwick Lyell, Joseph Murray, John Burnet and Michael Kearney, all of whom were active in the public life of the colony. The following year Samuel Nevill began his association with the proprietors in America, and in August, 1742, Robert Hunter Morris took his seat in the council, having succeeded to the estate of Richard Ashfield.<sup>1</sup> Elisha Parker appeared at the March meeting of 1745, and in later years James, his son, was closely identified with proprietary affairs. Between 1750 and 1760 Cortlandt Skinner, John Stevens, Dr. John Johnston, the Earl of Stirling and David Ogden, acting for the Penns, succeeded to membership. Before the Revolution came to interrupt the regular meetings of the board, Walter Rutherford, Oliver DeLancy and Henry Cuyler were counted as members. This mere catalogue of names prominent in New Jersey history is indicative of the degree of influence wielded by the proprietary interests.

In West Jersey the land was owned by a large number of persons.<sup>2</sup> There were one hundred proprietries, and the holding of only a thirty-second part of a propriety was requisite for a voice in proprietary affairs. The council was a representative body, five members being annually chosen at Burlington and four at Gloucester. There was little or no complaint by the people against the landholders, for they were in large part the people, and had an effective voice in the conduct of affairs. Hence, whatever contests there were, were chiefly due to the conflicting interests of

<sup>1</sup> *Min. of Coun. of Prop. of E. J.*, Aug. 16, 1742.

<sup>2</sup> Tanner, *op. cit.*, chs. i, vi, and xxviii.

the proprietors themselves, and were within the proprietary body.

Annually in May the council elected its own officers, a president, vice-president, and register. Except in the case of the surveyor general, who was usually chosen for successive terms of three years each, the offices changed hands frequently. No less than ten different men acted as president, eleven as vice-president, and seven as register between 1738 and 1776. Some of the most active proprietors served terms in each office. James Alexander was surveyor general of both East and West Jersey until his death, but he did not take the same keen interest in the affairs of the latter division which he devoted to the interests of the former. In 1743 complaint was made against his residing out of the province, and a similar complaint in 1752 charged that his deputies were not under his control.<sup>1</sup> Consequently William Alexander did not succeed his father as surveyor general in West Jersey, but Daniel Smith, of Burlington, was appointed to executive office. His conduct of the office gave general satisfaction, and resulted in his appointment for six successive terms of three years each. In May, 1744, he asked relief from the cares of the surveyor generalship, and Robert Smith, Jr., was elected.<sup>2</sup> He was recommissioned in 1777 for a second term of three years.

It was the frequent complaint of the governors that West Jersey did not contain sufficient men with proper qualifications for their recommendation to the provincial council. Comparing the public services and activities of the East Jersey proprietors with the proprietary representatives in West Jersey, the balance is largely in favor of the for-

<sup>1</sup> *Min. of Coun. of Prop. of E. J.*, Sept. 16, 1743; Feb. 18, 1752.

<sup>2</sup> *Min. of Coun. of Prop. of W. J.*, May 3, 1774.

mer. The great number of Quakers in the western division accounts in part for this discrepancy. It is true also that some of the most eminent West Jersey proprietors were never elected to the proprietary council. Included among the prominent members of the board during this time were Daniel Coxe, John Reading, Thomas Wetherill, Revell Elton, John Mickle, John Ladd, Mahlon Stacy, Jacob Hewlings, Peter Baynton, Robert Hartshorne, Ebenezer Miller, Thomas Rodman, John Hinchman, William and Abraham Hewlings, Samuel Clements and Daniel Ellis. A considerable number of these gentlemen served in the colonial assembly, and two or three were honored by appointments to the council of New Jersey. Of course, there were other West Jersey landowners, never elected to the proprietary council, who held positions of public trust.

The question of ownership of two extensive tracts of land, designated as the Elizabethtown Purchase and the Monmouth Purchase, was the chief cause of the land troubles. These tracts comprised practically five counties of the present state, the Monmouth Purchase including the settlements of Middletown and Shrewsbury, and the Elizabethtown Purchase the towns of Elizabethtown, Newark, Bergen, Woodbridge and Piscataway. At irregular intervals during the colonial life of New Jersey, after an apparent adjustment of claims, the vexatious disputes would again arise to plague the proprietors. From 1702 until 1738 there was a period of comparative quiet, as regards the land disputes. But during the administration of Governor Morris unrest again became evident, and continued throughout almost the whole of Governor Belcher's long administration, assuming at times a very serious aspect.

It will be remembered that in 1664 King Charles II had granted to his brother James, the Duke of York, the lands

lying between the Connecticut River and Delaware Bay. Under the command of Colonel Richard Nicolls, a fleet was despatched by the Duke to take possession of the territory and oust the Dutch. The expedition proved successful and Nicolls was the governor of this territory, which thus included New York and New Jersey. In September of that year some settlers from Jamaica, Long Island, applied for permission to purchase land, which permission being granted by Nicolls, these settlers—"Bailey, Denton and Watson, their Associates, their Heirs and Executors"—by purchase obtained a deed to a tract of land from three Indian Sagamores. In the words of the indenture, the tract was bounded "on the south by a river commonly called the Raritan River, and on the east by the river which parts Staten Island and the Main, and to run northward up after Cull Bay till we come at the first river which sets westward out of the said Bay aforesaid, and to run west into the country twice the length as it is broad from the north to the south of the aforementioned bounds."<sup>1</sup> Bailey, Watson and their associates had this purchase confirmed by a patent from Nicolls, with the proviso that they should render a certain yearly rent to the Duke of York or his assigns, according to the customary rate of the country for new plantations. This grant, the so-called Elizabethtown Purchase, contained a tract of great extent, probably between 400,000 and 500,000 acres.<sup>2</sup>

In June, 1664, while the Nicolls fleet was still at sea, the Duke of York, evidently anticipating the successful outcome of the expedition, granted by deeds of lease and release to Berkeley and Carteret that part of his newly acquired terri-

<sup>1</sup> *N. J. A.*, vol. i, p. 15.

<sup>2</sup> Hatfield, *History of Elizabeth*, p. 36.

tory which we know as New Jersey. Of this grant, Nicolls was, of course, unaware when he confirmed the purchase of Bailey, Watson and associates, and indeed he probably was not informed of the transfer to Berkeley and Carteret until December of that year.<sup>1</sup>

Thus in these two grants, the one of Nicolls to Bailey and associates, and the other from the Duke of York to Berkeley and Carteret, there are two conflicting claims to the same tract of land. In this conflict of grants is found the source of those disturbances that for decades disturbed what might well otherwise have been a period of peace and quiet in New Jersey history.

After New Jersey was deeded over to Berkeley and Carteret, the lords proprietors commissioned Philip Carteret, a cousin of the proprietor, as their governor. According to the "Concessions and Agreements" issued by the proprietors, lands were to be taken up only by warrant from the governor, and were to be patented by him. Quit rents were not required until March 25, 1670, after which they were to be paid annually, "a halfpenny of lawful money of England for everyone of the said acres." The arrival of Governor Carteret in America was not marked by any disquieting omens, premonitions that might possibly have been expected of the two conflicting interests which later would assert themselves so positively, and indeed indications point to the fact that the settlement was quietly made under the Concessions instead of under the Nicolls grants,<sup>2</sup> for the fact is that a large majority of the people, sixty-five male inhabitants, swore fidelity to the lords proprietors' claims.<sup>3</sup> Newark, Piscataway and Woodbridge

<sup>1</sup> *N. Y. Colonial Documents*, vol. iii, p. 105.

<sup>2</sup> Tanner, *op. cit.*, p. 68.

<sup>3</sup> *N. J. A.*, i, p. 49.



were settled deliberately under the Concessions, and opposition to the proprietors came as an after thought.<sup>1</sup>

In point of law, as to the legal ownership of the lands in question, the case rests clearly in favor of the proprietors. The emptiness of a claim based merely on Indian purchase was apparent even to the anti-proprietary settlers themselves.<sup>2</sup> But their position also regarding the Nicolls grants cannot be sustained. Those transfers of lands took place after the tracts had passed from James' ownership. By eminent lawyers the opinion was given that "The Delegated Power which Colonel Nicolls had, of making grants of the lands, could last no longer than his Master's interest, who gave him that power; and the having or not having notice of the Duke's grant to the Lord Berkeley and Sir George Carteret makes no difference in the law, but the want of notice makes it great equity, that the present proprietors should confirm such grants to the people who will submit to the concessions and payment of the present proprietors common quit rents."<sup>3</sup> This right in equity the proprietors always respected, offering to confirm the grants made under the Indian purchase and the Nicolls patent, but at the same time justly claiming their right to the yearly rent, as prescribed by the concessions.

The pinch first came with the advent of 1670 and the first demand for quit-rent, as authorized by the concessions and agreements. There was a general refusal on the part of the inhabitants to pay the rent, and Governor Carteret, helpless before determined opposition, leaving Captain Berry as his deputy, went to England to impress upon the authorities the sad state of affairs which existed in New Jersey.

<sup>1</sup> *N. J. Historical Society Proc.*, series ii, vol. i, pp. 161 *et seq.*

<sup>2</sup> Tanner, *op. cit.*, p. 60.

<sup>3</sup> *Elizabethtown Bill in Chancery*, p. 41.

The result was decisive, and opposition melted before proclamations of the proprietors commanding obedience to Berry, and asserting the invalidity of claims held under the Nicolls patent.

Shortly after came the Dutch re-occupation of New York, to be followed closely by the English reconquest. Subsequent to this double change of ownership, which New York experienced between 1673 and 1674, the Duke of York re-conveyed East Jersey to Carteret. The patent which James obtained from the king after the resurrender of New York to the English was an absolutely new one, which according to English law annulled previous grants. Hence, in the same way the Duke's reconveyance to Carteret gave the latter a new and unquestioned title to his part of New Jersey, and would in point of law necessarily rob the Nicolls patent of any possible validity which might previously have been claimed for it. And such was indeed the case, for, with a single exception, all of the original Elizabethtown associates obtained warrants for surveys under the proprietors, as was also quite generally the case in Newark and Piscataway.

For a considerable period occasional mutterings of discontent were heard, but the twenty-four proprietors, into whose hands East Jersey had now come, never relaxed in their opposition to any recognition of the Nicolls grants, and comparative quiet was maintained. This, however, was the lull before a formidable storm which, when its power was spent, was a chief cause of the surrender of the proprietary government to the crown. In 1693, when Jones ejected James Fullerton, a landholder under proprietary title, from his land, the ejectment suit of Jones *vs.* Fullerton followed, which in the Perth Amboy court resulted in a decision in favor of Fullerton.<sup>1</sup> By an appeal to the

<sup>1</sup> Hatfield, *Hist. of Elizabeth*, p. 242.

king in council Jones obtained a reversal of the decision. This decision was the match which kindled the smouldering embers of anti-proprietary discontent. The king was petitioned to grant relief from the proprietors, proprietary courts were overthrown, and scenes of violence were frequent. In the so-called Clinker Lot Division,<sup>1</sup> a great extent of territory was surveyed and divided by the Elizabeth-town claimants in utter disregard of proprietary rights.

Indeed the Clinker Lot Right men did not recognize the existence of such an inconvenient abstraction as proprietary rights. At this juncture, as has been said, mainly because of the inefficiency of the proprietary government, both the East Jersey and West Jersey proprietors transferred their powers of government to the crown, retaining unaltered their rights to the soil of the province.

In the instructions of 1702 to Lord Cornbury, the first royal governor of the Jerseys, it was ordered that the right to the soil should be secured to the proprietors by the passage of an act of the legislature.<sup>2</sup> At the assembly's first session the so-called "Long Bill" was prepared for this purpose, and in part provided for the invalidation of claims to land based on the Nicolls patent. Cornbury, disgruntled at what he regarded as lack of financial support, prorogued the assembly before the passage of the "Long Bill," and this bright hope for a definite and final decision of the conflicting interests was shattered. While Cornbury was surrounded by his inner circle of corrupt politicians, a Colonial Tweed Ring, the interests of the proprietors dwindled to a very low state. During his administration the way was paved for great difficulties to the proprietors by the ill-considered grants of the two large Ramapo and New Brit-

<sup>1</sup> Tanner, *op. cit.*, p. 79.

<sup>2</sup> *N. J. A.*, vol. ii, p. 517.

ain tracts. During Lieutenant Governor Ingoldsby's régime an ill-starred attempt to secure the right to the soil to the proprietors was made, but was practically smothered in an anti-proprietary committee of the assembly.

Upon the succession of Governor Hunter, in 1710, proprietary affairs began to take on a brighter hue. The new governor took the position that property disputes should be settled, not by legislative action but by judicial decision.<sup>1</sup> An excellent theory that was, and just also, but the conditions were too stoutly opposed to its successful and satisfactory adoption in practice.

Nevertheless a test case was actually tried in the Supreme Court with the natural result, a proprietary victory, for the court was admittedly in the proprietors' favor. Numerous surveys were then made by the proprietors and the dissensions seemed in a fair way of settlement: but such a supposition subsequently proved to be a delusion. Although, in 1725, a case, that of Vaughan *vs.* Woodruff, had been decided against the Elizabethtown adherents, they were averse to any conclusive settlement. In 1731 several suits of ejectment were brought against them, the case of Lithgow *vs.* Robinson standing as the test. The tables were again turned, the case being decided against the proprietary interests. Encouraged by this decision, the Elizabethtown associates began bold proceedings. Funds were collected by assessment with which to maintain their claims, preparations were made for dividing lands not parceled out in the Clinker Lot survey, and in 1737 the associates themselves brought an action against one Vail, who held his land under proprietary title.

This case was ultimately decided against the proprietors, but to offset the effect of the reversals in the cases of Lith-

<sup>1</sup> *N. J. A.*, vol. xiii, p. 427.

gow *vs.* Robinson, and Jackson *vs.* Vail, the proprietors had met favorable decisions in other cases, resulting from ejectment proceedings brought by them against some of their opponents.

Such was the early history of the Elizabethtown purchase up to this time when there had been certain decisions rendered, some in favor of the proprietors, others in favor of the anti-proprietary party.

Little time need be spent in the consideration of the land troubles arising from the Monmouth Patent to 1738. This tract was granted in 1665 by patent from Governor Nicolls to William Goulding and others, who had before the arrival of the English expedition purchased the land from Indians. It included lands between the Raritan and "Sandy Point" and extending back into the interior for some distance.<sup>1</sup>

Three years from the date the patentees were to have settled one hundred families on the lands, and for seven years they were to be free from rent.<sup>2</sup> When Governor Carteret arrived, the settlers located there refused to recognize the authority of the proprietary title over the lands. When the quit-rents were demanded in 1670 resolute resistance was offered, but an agreement was finally reached between Berkeley and Carteret and the Monmouth purchasers, according to which in return for the surrender of the claims under the Nicolls Patent the settlers were to have their land granted to them individually in accordance with the terms of the Concessions.<sup>3</sup> This was more an apparent than real settlement, for the people of Middletown later showed their dissatisfaction, even professing exemption from the payment of quit-rents.

<sup>1</sup> Tanner, *op. cit.*, p. 61; Whitehead, "East Jersey under the Proprietors," p. 45.

<sup>2</sup> Parker, *N. J. Historical Society Proc.*, series ii, vol. iii, p. 18.

<sup>3</sup> Tanner, *op. cit.*, p. 63.

The varying successes of their suits seemed to have tantalized the Elizabethtown settlers beyond their powers of endurance, and they determined to put an end to the whole business with one fell swoop. To submit their case directly to the king was the determining stroke which they agreed upon. Mr. Fitch, a Norwalk lawyer, was engaged to draw up a petition to the crown.<sup>1</sup> After stating the early history of the grant of New Jersey and the Nicolls patent, the petition asserts that Governor Carteret "was so far from insisting on the said Lord Berkeley's and Sir George Carteret's right to the lands purchased by your humble Petitioners' Ancestors" that he purchased Bailey's share.<sup>2</sup> In many suits, the petition continues, the petitioners have been successful, but by their continued ejection suits the "would-be proprietors" reduced the inhabitants to distress. The governor, chief justice, judges, and even juries were interested against the petitioners, and hence there was no prospect for the distressed subjects except to be heard at "The Fountain of Justice under Your Majesty's Royal Care and Protection."<sup>3</sup> The king was asked to hear and determine the question, appoint disinterested commissions from the colonies to decide or grant some other relief. There were 309 names affixed to the petition. It was read in council July 19, 1744, and subsequently referred to the Lords of the Committee of Council for plantation affairs, and later to the Lords Commissioners for Trade and Plantations, but beyond that nothing is known of it.

The settlers who claimed lands in consequence of Indian purchase alone were as insistent in their opposition to the proprietors as were those who held title by virtue of the Nicolls grants. No matter under what claim the disputed lands

<sup>1</sup> Hatfield, *op. cit.*, p. 366.

<sup>2</sup> *N. J. A.*, vol. vi, p. 209.

<sup>3</sup> *Ibid.*, p. 206 *et seq.*

might have been held, the people usually made common cause against the proprietors and joined in acts of violence at about the same time. Because of an absence of authentic records to prove the sale, there was more opportunity for fraud where no claim except mere Indian purchase was set up. It does not follow, however, that all such claims were advanced fraudulently. The undisturbed enjoyment of property rights convinced many that the proprietors were making unjust encroachments when they did attempt to assert their authority.

One of the directions which Berkeley and Carteret laid down for the governor, council and inhabitants of New Jersey in 1664 was, that "the land is to be purchased from time to time, as there shall be occasion by Governor and Council from the Indians, in the name of us the Lords Proprietors, and then every individual person is to reimburse us, at the same rate it was purchased."<sup>1</sup> Although this rule was observed for the most part, some persons contracted for parcels of land with the natives. In 1683 the General Assembly of East Jersey passed a law forbidding this practice.<sup>2</sup> By the act, those who made such agreements with the Indians without the license of the governor might be "prosecuted as seditious persons, and as breakers of the King's peace, and publick peace, and safety of this Province." In accordance with this act, proprietary governors issued licenses to settlers for the purchase of Indian lands, upon condition that such transactions conformed to the concessions of the lords proprietors and the laws of the province.<sup>3</sup>

In the instructions to Lord Cornbury, the first royal gov-

<sup>1</sup> Leaming and Spicer, *Grants and Concessions*, pp. 37, 54.

<sup>2</sup> *Ibid.*, p. 273.

<sup>3</sup> *N. J. A.*, vol. vi, p. 339.

ernor, he was forbidden to allow any persons except the proprietors or their agents to purchase lands from the Indians. The first act of the legislature under the royal government was "for regulating the Purchasing of Land from the Indians."<sup>1</sup> It was provided that after December 1, 1703, no person could purchase land from the Indians except he had a right of propriety and obtained a license. For every purchase contrary to the act forty shillings per acre was to be forfeited. Unless the person obtained a grant from the proprietors within six months after the publication of the act, improper purchases were declared void.

The law was in favor of the proprietors and left no room for uncertainty as to the titles. Deeds to land, unless issued under the authority of the proprietors, were clearly void. According to the constitution of the colony, it mattered not whether the conveyances were "from some private foreign strolling Indians, or from such as lived on the Lands, and might have had some Pretensions to sell them;" or whether the purchases were "made for small or trifling Sums, or for such Considerations as were then usually given to the Indians."<sup>2</sup> Any such transactions were void. When active steps were taken by the proprietors to assert their authority the colony was thrown into turmoil.

During the administration of Governor Morris numerous ejectment suits were brought by proprietors in trespass cases. Some of the defendants in suits from 1741 to 1743 were Joseph Moss, John Morris, Benjamin Crowell, Jeremiah Clarke, Barent Kiter, John Crain, Benjamin Manning, Wright Skinner, John Clawson and Isaiah Younglove. Verdicts for the plaintiffs were invariably rendered,

<sup>1</sup> *N. J. A.*, vol. ii, p. 517; Allinson, *op. cit.*, p. 1.

<sup>2</sup> *Ibid.*, vol. vi, p. 300.



in consequence of which the proprietors believed their contentions substantiated.<sup>1</sup> In 1745 eighteen actions of ejectment were still at issue.<sup>2</sup>

The Elizabethtown associates complained against the juries before which the land suits had been tried. The plea was made that artifice and influence contrived to prevent trials before impartial juries. The defendants were "inclined to believe" that "an alteration of Somerset and Morris Counties had resulted from the connivance of the proprietors."<sup>3</sup> Middlesex, rather than Somerset or Morris, juries would have proved more satisfactory to the associates. Chafing under the sting of supposedly unjust persecution, the people displayed a dangerous temper in the riots that followed.

In 1745 serious difficulties arose on the part of the occupants of the Elizabethtown Purchase tract, where Newark was situated. On September 19, 1745, Samuel Baldwin, a member of a committee of Essex County, chosen to protect the interests of the people in their disputes over land, was arrested for cutting logs on the so-called Van Gesin's tract. The proprietors alleged that his conduct violated a legislative enactment of 1713, which provided that any man cutting trees on lands not his legal property "should be fined twenty shillings." In a demonstration, which must have loomed before the little town of Newark as a dangerous riot, a crowd of Baldwin's sympathizers broke open the county jail at Newark, where he was confined, and released him. Governor Morris thereupon sent a message to the assembly urging that the riotous condition of the province be earnestly considered, and that a militia act or other laws

<sup>1</sup> *Elizabethtown Bill in Chancery*, pp. 48-52.

<sup>2</sup> *Ibid.*, p. 52.

<sup>3</sup> *Answer to the Bill in Chancery*, p. 35.

should be passed to prevent the spread of the disorders.<sup>1</sup> To this suggestion the assembly replied on October 3d, by deploring the lawless riot at Newark, but expressed the opinion that existing laws were sufficient to bring their violators to justice.<sup>2</sup> The governor obtained little satisfaction from the lower house, for that common cause of dissension, the pulling of the purse-strings, was at this time a bone of contention between them. Morris at least relieved his mind by retorting that even if the laws were sufficient to punish the rioters the militia act then in force could not quell such an uprising as pestered the colony, nor could the "Officers and Courts necessary to convict them attend that service—without salaries or some provision to defray the charge of prosecution, which are not provided, nor, as appears, intended to be provided, by your house."<sup>3</sup>

His Excellency ordered the attorney general to prosecute any who had been active in the riot, and at the same time, with the advice of his council, directed the Essex County sheriff to be diligent in the apprehension of the disturbers of the peace and violators of the law, committing all such to any jail they thought most proper.<sup>4</sup> The diligence of the sheriff resulted in the arrest and commitment to the Newark jail of Robert Young, Thomas Sarjeant and Nehemiah Baldwin. But of these prisoners, Baldwin was boldly rescued while being taken by the sheriff from the jail to the Supreme Court, and the other two were released from the jail by a crowd of rioters. Again the governor appealed to the legislature to take steps to prevent the defiance of government and contempt of laws, this time with more satisfactory results. The assembly evidently saw the light, for a bill for "Better Settling and Regulating the Militia"

<sup>1</sup> *N. J. A.*, vol. vi, p. 379.

<sup>2</sup> *Ibid.*, p. 250.

<sup>3</sup> *Ibid.*, p. 264.

<sup>4</sup> *Ibid.*, p. 400.

was ordered to be brought in. Indeed the tone of the assembly was so patronizing as to arouse suspicion.

Several publications now appeared which were designed to justify the acts and claims of the contending parties. A communication of the rioters, in February, 1746, upheld the questionable proceedings in Essex County on the ground that the proprietors threatened ejectment proceedings against all who would not subscribe to certain unreasonable demands.

It was thus the exasperation of the people, that refused to contain itself longer, because their "Rights, Properties and Possessions" had been invaded by the proprietors. In a lengthy statement sent forth from a council meeting at Perth Amboy in March, 1746, the proprietors, after rehearsing the history of the titles in dispute, pertinently remarked that if deeds were taken based on any titles whatsoever, except "In the Name of the Lords, Proprietors of East New Jersey," according to an act of 1683 such transactions were criminal,<sup>1</sup> and by an act of 1703 were invalid unless confirmed by the general proprietors within six months from the date of the act. Responsibility for the confusion in the province was shifted to the rioters, who had "Set up sham deeds procured from strolling Indians for a few Bottles of Rum." A tract which went by the name of the Horseneck Purchase figured largely in the ejectment proceedings complained against by the people. James Alexander, Robert Hunter Morris and David Ogden were the three proprietors most heavily involved in this tract. According to the proprietary statement these men, with Ogden as negotiator, endeavored to have certain conciliatory propositions accepted by the people, but failed.<sup>2</sup>

<sup>1</sup> For the Act of 1683, see *N. J. A.*, vol. vi, p. 302.

<sup>2</sup> *N. J. A.*, vol. vi, p. 302.

Consequently ejectment proceedings were instituted, in any or all of which the issue might have been joined, an appeal to England taken, if so desired, and a settlement definitely obtained. The poor deluded people were urged by the proprietors "To flie to the Mercy of the Laws for the Expiation of their criminal riots and to the Mercy of the Owners of the Lands they have been pillaging."

Two formal petitions, prepared by some of the rioters, were brought into the assembly and read on April 17, 1746.<sup>1</sup> It was urged in these documents that the lower house should grant relief by passing an act to stay all processes against them until the pleasure of the king should be known. One petition claimed to be from inhabitants in the northern part of the colony; the other from "eight persons chosen by a great number of the inhabitants of the northern part of this province, a committee to represent and act for them."

On May 26, 1746, Samuel Nevill made an elaborate argument before the assembly against the petitions.<sup>2</sup> Paragraph by paragraph both petitions were considered by the speaker and answered. He concluded by moving that they be rejected, but that the governor "should extend His Majesty's mercy to those people by a General Pardon, Under Such Restrictions and upon Such Conditions as to his Excellency Shall Seem proper." When a vote was taken two days later, Nevill and Kearney, both East Jersey proprietors, were the only assemblymen who voted against sending the petitions to the governor and council, in accordance with the prayer of the petitioners.<sup>3</sup> The movement toward an act of pardon at this time progressed no farther than the preparation of such a measure. Taken in

<sup>1</sup> *Assembly Journal*, Apr. 17, 1746.

<sup>2</sup> *N. J. A.*, vol. vi, p. 408.

<sup>3</sup> *Assembly Journal*, Apr. 28, 1746.

connection with the impossibility of reaching an agreement between the council and assembly upon a measure to prevent future riots, this did not bode well for the peace of the province.

In April, 1746, a communication was sent to the "House of Representatives" signed by seven rioters, reviewing Ogden's former proposal of a trial at law and professing their willingness to join in issue according to the proposal. A preference was stated that the action be brought against Francis Speirs, of the Horseneck Tract. The general proprietors agreed to bring an ejectment suit against Speirs and announced that their attorney would be at the next Supreme Court at Perth Amboy to sign the general rule for joining issue in the said action. Later the rioters complained that all the lawyers were engaged in their opponent's cause and desired the proprietors to release one of their attorneys that he might be engaged to appear for the prospective defendants. That the proprietors refused to do on the ground that all those connected with their side of the case had been in charge of their affairs for some years, that there were many other attorneys in New Jersey and New York not engaged by "fee or interest for the proprietors," and that the Supreme Court would require attorneys, if necessary, to serve the committee of the rioters.<sup>1</sup> These preliminaries all came to naught, for none of the rioters made application to the Supreme Court for attorneys nor took any steps to have a trial on their claims.

Governor Morris died on May 21, 1746, and when President Hamilton, acting governor, met the assembly in June, he called their attention to the distressed condition of the province, the inefficiency of all methods of relief and urged them to take rigorous action, lest they suffer the resentment

<sup>1</sup>*N. J. A.*, vol. vi, p. 392.

of the king and Parliament. Later in the year, at President Hamilton's request,<sup>1</sup> Alexander and Morris wrote to the lords of trade complaining of the riots, and of the assembly's inactivity, prophesying too that unless quelled the disorders would spread and effect the dependence of the plantations.<sup>2</sup> While this letter to England was tinted to exaggerate the conditions, nevertheless it was true that the colony was not becoming quieted. On the first day of November the assembly, having taken no action on the riots, asked to be dismissed, and had their request granted. Shortly after, the jail in Somerset County was robbed of a prisoner, and threats were made against Nevill, then a judge for Middlesex County. The only measure which the president could take was to issue a proclamation forbidding the colonists to join the rioters, or assemble with them. But disturbances were beginning in Morris County, where one Dalrymple with his family was unceremoniously ousted from property which he had held under title from the East Jersey proprietors.<sup>3</sup>

When the legislature met, in May, 1747, the president again exhorted the assembly to take measures to prevent riots and remedy the distracted state of the province, for the king would not allow his laws to be trampled under foot.<sup>4</sup> Upon the plea that this session had been called only for the purpose of raising troops, the lower house determined to take prudent measures at the next session, if the rioting continued.<sup>5</sup>

The inactivity of the assembly was apparently interpreted as a consent to riot by the disturbing elements. Within a month from the adjournment of the legislature, one of the

<sup>1</sup> President Hamilton was ill.

<sup>2</sup> *N. J. A.*, vol. vi, p. 439.

<sup>3</sup> *Ibid.*, p. 427.

<sup>4</sup> *Assembly Journal*, May 6, 1747.

<sup>5</sup> *Ibid.*, May 8, 1747.

new session of the demonstration occurred at Perth, Anberly in Middlesex County. A large number of armed men marched against the cell, and contrary to the warning of the sheriff forcibly opened it and released one Bannister, held under indictment for participation in the attack on the Somerset County jail. The disturbances reduced even Chief Justice Robert Hunter Morris to passivity. On 10 July, 1847, he wrote to James Alexander that although the assembly was about to meet he had no hopes of any official business resulting, and that the Grand Jury at Anberly would hardly indict the rioters, much less hold them on a charge of high treason, the indictment which Judge Wells had urged upon the jury to return.

Proponents of liberty in the disturbed counties confessed that they had looked rather at perpetrating what they then were very contrary to the king's laws, but not they professed the legitimate for objects of government. To count the violence for the peace of the province was not their object. It was no remedy to fight "persons who had long suffered under the oppression were further oppressed. Others compelled to take refuge from landlords, whom they were not disposed to acknowledge, while those who had courage to stand out were threatened with loss of liberty, and a cruel and oppressive taxation." Under such conditions, and with a conviction of the necessity of a change, they had taken notice of the organization of the United Provinces of the Massachusetts Bay.

The necessity of reform had been admitted with great satisfaction by the Massachusetts people in the colony, but as the law of the Massachusetts they were unwilling. The only remedy was a more complete and universal representation. Some of the more moderate spirits in the colony of the province

<sup>1</sup> *Journal of the Massachusetts Bay, vol. 2, p. 17.*

Church of Elizabethtown, of which congregation many of the defendants against the proprietors were communicants.<sup>1</sup>

But the governor's first message to the legislature must have left a discouraging ring in the ears of the Elizabethtown claimants. A committee of the rioters sent a congratulatory message to Belcher soon after his arrival, expressing the hope that under his wise administration the disorders which they regretted, would cease, and that the "Lord of Hosts" would "Arise for the help and succor of the oppressed poor and crushed needy ones."<sup>2</sup> The good Jonathan assured the rioters that his duty led him to support the king's authority and punish "breakers of the public peace" but, with evident faith in the maxim that "soft words turn away wrath, but the wringing of the nose brings forth blood", he promised them his protection "in all things consistent with Reason and Justice."<sup>3</sup> In a second dutiful petition to the governor several of the distressed settlers frankly confessed that they had no intention or desire of sundering the bonds that held them to His Majesty's authority, but had acted only in defence of their own and their poor neighbors' rights, which were in danger of suffering great harm.

In his first address to the legislature delivered in August, 1747, Governor Belcher urged that all departments of the government unite in an endeavor to suppress the disorders and restore quiet.<sup>4</sup> To this address the council pledged its support, and the assembly acted in a manner which presaged and augured well for a harmonious administration under the new royal executive. The assembly notified the council that it had appointed a committee of nine to confer with

<sup>1</sup> Hatfield, *Elizabethtown*, p. 372.

<sup>2</sup> *N. J. A.*, vol. vii, p. 63.

<sup>3</sup> *Ibid.*, p. 65.

<sup>4</sup> *Ibid.*, p. 21.



a committee of the council upon the subject as to the ways to suppress riots and disorders, meetings of the joint committee to be held at the house of the Widow Hunloke in Burlington.<sup>1</sup> Much to the council's impatience the proposed meetings were deferred, various excuses being given by the assembly. On December 10th, after the upper house had received news of a riot in Hunterdon County, it pressed upon the assembly the urgent need of meetings of the committees.<sup>2</sup> The assembly ultimately condescended and meetings were held.

It had been rumored that a "tumultuous procession" of rioters was about to take up the march to lay their grievances before the legislature. The joint committee recommended that each house pass resolutions discouraging any such demonstration. Resolutions were passed, pointing out that such procedure would be not only dangerous to the peace of the province, but would also be an infringement on the liberty of the legislature, inasmuch as the intended procession was desired to awe and influence the council and assembly.<sup>3</sup> In January, 1748, there was laid before the joint committee a statement of facts, prepared by the council committee, concerning the riots and the remedies attempted by the government to put an end to them. To what extent the work and influence of the joint committee was responsible for two acts which were now passed by the legislature, designed to put an end to the disorders, it would be difficult to state.

The first act was for "Suppressing and Preventing of Riots, Tumults and other disorders within this Colony." This measure had passed the second reading at the previous session, after which it was ordered printed for public per-

<sup>1</sup> *N. J. A.*, vol. xv, p. 539.

<sup>2</sup> *Ibid.*, p. 553.

<sup>3</sup> *Ibid.*, vol. vii, p. 559.

usal and its reconsideration postponed to the next meeting.<sup>1</sup> At the session in February, 1748, it passed the three readings and received the governor's assent in remarkably quick time. The measure was modeled after the riot act of Great Britain, which declared it a felony "for twelve or more, tumultuously assembled together, to refuse to disperse upon the requisition of the civil authority, by proclamation, in form set forth in the act."<sup>2</sup> Those refusing to disperse within an hour after the order were liable to suffer death. This act was to be read once at every session of the Supreme Court, Circuit Court and Court of Quarter Sessions in the province. It was to continue in force for five years. The other act, passed at the same time, provided for the pardon of "Persons guilty of the Insurrections, Riots, Tumults and other disorders, raised and committed in this Province." The measure recites that many are thus guilty, and as some had prayed the governor for relief, this free pardon was granted them. Justices of the Supreme Court or commissioners appointed for the purpose, were to receive pardons and administer the oaths to the penitent culprits.

The mad rush for executive clemency which some had hoped for did not materialize, and it was not until the next August that any applied to take advantage of the act of grace, when nine rioters entered into bond and took the oaths.<sup>3</sup> Affairs were in an unhappy state, and Governor Belcher, in a quandary, wrote to Chief Justice Kinsey of Pennsylvania for his assistance and advice in the difficult juncture.<sup>4</sup> The council advised the governor not to dissolve the assembly until the rioters had accepted the act of pardon, and the governor acted accordingly. Some of the

<sup>1</sup> *Assembly Journal*, Apr. 24, 1746.

<sup>2</sup> *Ibid.*

<sup>3</sup> *N. J. A.*, vol. xvi, p. 4.

<sup>4</sup> *Belcher Papers*, Jan. 11, 1748.

prominent councilmen felt strongly that, should the assembly be dissolved and new elections be held, rioting would predominate at the elections and there would be returned to the assembly a large anti-proprietary majority. But that was but one horn of the dilemma. When this same assembly met at its next session, what should be done with the rioters who had not accepted the act of grace, and they were decidedly in the majority? James Alexander, the prominent councilman, took the ground that, once ignored, clemency could not be offered again. His solution naturally reverted to the necessity of strengthening the hands of government so that guilty persons could be not only taken, but kept and brought to justice. That something needed to be done to strengthen the "hands of government" was evident, for they now began to fight among themselves.

The disturbances continued, new outbreaks occurring during November, 1748, in the vicinity of Newark and Perth Amboy.<sup>1</sup> These called forth a memorial from the East Jersey proprietors to the governor asking him to interpose in support of the king's authority, and arguing that the refusal to accept the act of grace was a clear mark of an intention on the part of the culprits to throw off their dependence on the English crown. This prompted the governor to again lecture the legislature, the assembly in particular, on the necessity of suppressing the "dreadful confusions". The council's response was considerate, but the assembly insinuated that the laws were not fully executed, and said that if this defect was remedied, the laws still proving to be inefficient, they would consider the matter at the next session.<sup>2</sup>

<sup>1</sup> *N. J. A.*, vol. vii, p. 178.

<sup>2</sup> *Assembly Journal*, Dec. 7, 1748.

This reply of the assembly afforded ample opportunity for a conflict between the houses, for the council immediately defended the executive officials of the colony, maintaining that more effectual enforcement of laws could be obtained only by added appropriations for the support of the government. Such an imputation upon the assembly's control of the purse-strings was resented and brought forth the resolution among others, "that this House have a right to enjoy their own sentiments, in all matters and things that shall come before them, without being accountable or censured by the Council for the same."<sup>1</sup> The council, convinced that the assembly was guilty of a brazen neglect of duty, urged the governor to join in laying the condition of the province before the king and his ministers. The governor signified his intention of trying one more session of the legislature before appealing to the king. At this juncture the unusual happened. The governor and council came into conflict! After receiving notice from the council that it wished to give him advice, Governor Belcher proudly informed them that when he wanted their advice, he would ask for it. A few days later, December 22, 1748, the council communicated to Belcher the opinion that his stand regarding advice was wrong. Again the council pressed for immediate application to the king.

Duty so strongly impressed the councilmen, that notwithstanding the governor's refusal to join with them, an address was sent to the king and also to the Duke of Bedford, then Secretary of State, urging that such measures be taken as should be thought best to secure peace in the province.<sup>2</sup> At about the same time, in December, 1748, the council of proprietors of East Jersey also sent a peti-

<sup>1</sup> *N. J. A.*, vol. xvi, p. 64.

<sup>2</sup> *Ibid.*, vol. iii, pp. 187-191.

tion to the king, asking his protection for their property at this time, when the colonial laws were unavailing and it was impossible to execute them. The importance of the matter was urged upon Ferdinand John Paris, the London agent of the East Jersey proprietors, by Alexander and Morris. Their plan was that Paris should persuade the Secretary of State or the Board of Trade to order Governor Belcher to call the assembly to action, and if it refused to act, to threaten the sending of troops for the restoration of order. Any hope the proprietors had of such strenuous action was punctured by Paris's letter to Alexander, stating that no more than a "strong instruction" from the king to Belcher to call the assembly could be expected.

The suspicion with which the proprietors began to regard the governor became evident. A new assembly had been convened in February, 1749, but had taken no measures against the rioters, which fact, it was charged, was a virtual confirmation of their case. The proprietary agent, dutiful to his clients, promised to look with diligence for any possible complaints against Belcher, in order that the scale might be turned against him.<sup>1</sup> But the imputations against the governor were somewhat shattered by his message to the lords of trade, sent on April 22, 1749. The assembly, he said, had no regard for what he directed, there was no hope that they would raise money to protect the jails and quell the disturbances, and consequently the king's special orders would be awaited with great expectancy. Notwithstanding this, Alexander and Morris sent to Paris some charges which could be used against the governor.<sup>2</sup> In justification of his action in not joining the council in their address to the king, Belcher himself wrote to the Duke of Bedford that he regarded it more for the king's

<sup>1</sup> *N. J. A.*, vol. vii, p. 238.

<sup>2</sup> *Ibid.*, p. 251.

honor that action should be separate, basing his belief on his interpretation of the character of the colonial government. He renewed his request for special orders from the king. The lords of trade began their consideration of the conditions in New Jersey.

Dated June 1, 1750, the report of the Lords Commissioners for Trade and Plantations upon the condition of New Jersey was sent to the Lords of the Committee of Council.<sup>1</sup> The report gave in detail the basis of the proprietary claims and a lengthy statement of the disorders in the province. After a review of the claims of the rioters the report, little sparing the feelings of the Elizabethtown and other claimants, characterized them as a "Set of Freebooters who enter upon any lands, and cut down and destroy the timber, tho' the lands have been ever so long granted to others under the King's title."

It was the lords' opinion that the laws passed in New Jersey designed to check the disorders should be disallowed, in accordance with a report of the attorney general and solicitor general. The rise and progress of the outbreaks were due principally to the weakness of the government, consequent upon the necessity of the governor's either obeying the popular will or being refused support.<sup>2</sup> As to remedies, the report declared the most efficient would be to send a "sufficient military force under the direction of a commander to be appointed for that service." Or four companies from New York could be sent under the command of an authorized person, allowed to act independently by having a competent salary settled upon him at home. Or if it was believed that either of the above remedies would not be efficient, New Jersey might be re-united to the govern-

<sup>1</sup> *N. J. A.*, vol. vii, p. 466.

<sup>2</sup> *Ibid.*, p. 521.

ment of New York according to the plan in vogue before 1738.

The Lords of the Committee of the Privy Council, as a result of the above report, in July, 1751, directed the attorney general and solicitor general to prepare a draft of a commission to be issued for investigating the grievances of the king's New Jersey subjects.<sup>1</sup> The Lords Commissioners for Trade and Plantation were ordered to prepare the draft of an additional instruction to be sent to the governor of New Jersey. This instruction was to be drawn so as to include an expression of the king's displeasure with the assembly for its inactivity, a notification to the inhabitants that a commission had been ordered to inquire into their grievances, and a declaration that the king had in consideration "the granting an Act of Indemnity to all those who shall appear to have merited the same," with the added injunction that the people behave themselves for the future.

The commission intended for the investigation was prepared by the attorney general and solicitor general, and submitted to the Lords of the Committee of the Privy Council.<sup>2</sup> It empowered the prospective investigators to make a full and impartial report upon New Jersey conditions. To this end, they were granted by the commission, as drawn, full power to receive necessary information, to examine witnesses and to send for persons, books, papers or records that might be useful. This tentative commission was referred to the lords of trade, who, in reporting it to the committee of council, gave the opinion that, if it was executed,

it must be by the appointment of such persons to be Commissioners as shall be men of known Prudence, Temper and

<sup>1</sup>*N. J. A.*, vol. xvi, p. 322.

<sup>2</sup>*Ibid.*, vol. viii, pt. i, p. 58.

Ability, that these Commissioners should be chosen out of some of the neighboring colonies or sent from hence, as your Lordships shall judge most proper, but we are inclined to think that persons sent from hence would be the least liable to suspicion of Interest, Prejudice or Partiality.<sup>1</sup>

Inasmuch, however, as the commission authorized only an inquiry into the grievances in New Jersey, upon which subject the lords of trade had already made an exhaustive report, it was not frankly recommended, and was never issued. While the plan of appointing a committee to probe New Jersey's affairs was under consideration, Belcher proposed to Lord Hardwicke three persons for the committee.<sup>2</sup> They were De Lancey, chief justice of New York; Fitch, deputy governor of Connecticut; Saltonstall, first judge of Massachusetts Bay; all three recommended as gentlemen of capacity and integrity.

The lords of trade viewed favorably, however, a suggestion of the attorney general and solicitor general that one of the disputed property cases be brought up for a final judicial determination, which when settled would serve as a rule for all other cases.<sup>3</sup> An additional instruction conformable to that idea was recommended, but never issued. This plausible theory of a guiding judicial decision had always worked miserably in practise. The difficulty was that both sides could point to many such decisions to prove their claims. The recommendation, if acted upon, would doubtless have proved insufficient.

In the meantime, while the authorities at Whitehall were evolving ways and means for the reduction of the restless

<sup>1</sup> *N. J. A.*, vol. viii, pt. i, p. 90.

<sup>2</sup> *Belcher Papers*, Dec. 3, 1751.

<sup>3</sup> *N. J. A.*, vol. viii, pt. i, p. 90.



Jerseymen, there was no abatement of that restlessness in the colony. The disturbers of the peace indeed continued to regard legislative apathy as a commission allowing them to defy the law. The counties of Essex, Middlesex and Bergen particularly became the scenes of violence. Two men, Ball and Burwell, having been imprisoned, were rescued, but later returned to confinement voluntarily and petitioned for speedy trial. The assembly urged the governor to issue a commission for holding a court of oyer and terminer in Essex County, but acting upon the council's advice, he refused on the ground that lawful and impartial juries could not be obtained in the county of Essex.<sup>1</sup> In September, 1749, the governor again appealed to the assembly to take action, but fruitlessly. The appeal was renewed in February, 1750, after a riot at Horseneck, but elicited the response from the assembly that legal prosecution was the only method to be pursued, and the disturbances might have been checked, if the governor had heeded the request for a commission of oyer and terminer in Essex County.<sup>2</sup>

After a brief respite from disturbances, there occurred in April, 1752, another jail-breaking and the release of a prisoner committed for high treason at Perth Amboy. Although the governor had issued his warrant that extra precautions be taken to hold the prisoner, one Wickoff, in confinement, he was spirited away before the extra precautions could be taken. The council, on being asked by the governor for advice, stated that inasmuch as orders might be expected from the home government at any time, they should be awaited.<sup>3</sup> Belcher continued during the summer

<sup>1</sup> *N. J. A.*, vol. vii, p. 402.

<sup>2</sup> *Assembly Journal*, Feb. 21-27, 1750.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 379.

of 1752 patiently to ply the London authorities for orders. The council now despaired of any good coming from the assembly, told the governor it would be useless to have another session of the legislature to consider the state of the colony, and became content with the suggestion that the attorney general "should proceed according to the known laws of the land."

When the assembly did meet in May, 1753, it listened to the regular exhortation that some action should be taken to bring the colony out of its difficulties. But after this session of the legislature the governor could write to the lords of trade merely the oft-repeated news that nothing had been done to check the riots, and make the oft-repeated request that the king's orders be sent.

Early in 1754 Hunterdon County became the scene of disorders, and Governor Belcher issued a proclamation commanding the magistrate to punish the guilty persons.<sup>1</sup> One year later another disturbance occurred in the same county, and there followed the usual procedure—the chief executive's request for advice from the council, and the subsequent issue of a proclamation ordering the magistrates to be diligent and the sheriff to suppress the riots.<sup>2</sup>

By August, 1755, after more than half a century of gloomy land dissensions, the horizon began to clear, and there came a relief from the intermittent distractions. This fortunate turn in affairs was due particularly to the impending struggle with France and the development of a disposition on the part of the people to submit their land title cases to the regular course of judicial procedure. The Elizabethtown claimants filed their elaborate answer to the proprietary bill in chancery, and Essex County, the center of the agitation, was disposed to wait hopefully for the

<sup>1</sup> *N. J. A.*, vol. xvi, p. 433.

<sup>2</sup> *Ibid.*, p. 513.

results of that suit. In other counties, many former associates surrendered their claims to the proprietors. Not only were the people becoming weary of the profitless struggle, but they were obliged to turn their attention to the absorbing events of the Fourth Intercolonial War. As early as August, 1753, Belcher, doubtless encouraged by the less frequent occurrence of riots, had written to the lords of trade that the province was in a "better state of peace and tranquility," and that the proprietors should improve this excellent opportunity by bringing forward their actions of trespass and ejectment.<sup>1</sup>

Over a year passed before an answer from the lords of trade to the above letter reached New Jersey. This reply from London, which Belcher laid before the council in November, 1754, advised that the governor use his influence in persuading the proprietors to bring their actions for trespass before the courts for adjudication.<sup>2</sup> A council committee considered the matter and after six months had elapsed reported to the governor.<sup>3</sup> It stated that after continued offers on the part of the proprietors to the rioters' committee to join in an action, one Tompkins was entered as defendant in 1752, the case to be tried a year later before a Middlesex County jury, but delays had postponed the trial of the case. In the meantime, according to a report which came to the council committee, it was seen that the spirit of rioting was disappearing.

In Essex County at least sixty rioters were indicted, confessed the indictments, submitted to the mercy of the court, were fined and ordered to good behavior for three years. They complied and paid the costs of prosecution. In Hunterdon County even more auspicious omens were observed.

<sup>1</sup> *N. J. A.*, vol. viii, pt. i, p. 151.

<sup>2</sup> *Ibid.*, vol. xvi, p. 493.

<sup>3</sup> *Ibid.*, p. 549.

In the trial of an action of trespass before the Supreme Court at Burlington, the plaintiffs were able to set forth their case as so just and evident, that not only were the jury and bystanders convinced, but even the rioters settled upon the lands involved in the case, and the defendant's lawyer, who advised his clients "to contend no farther against so clear a title."<sup>1</sup> The light of the proprietary point of view dawned upon the wayward settlers of Middlesex and Hunterdon Counties, but the majority of the people of Essex County had not yet, according to the proprietors, become "sensible of their errors."

It must be borne in mind that the inhabitants of Middlesex and Hunterdon Counties were not included in the original Elizabethtown Purchase. The determining factor in their outbreak had been the influence of the general restless conditions about them, or, as was so often mentioned in the letters and reports of that time, the disorders spread. Coupled with that was doubtless the hope of substantiating their questionable claims against those of the proprietors and in so doing, freeing themselves from the obligation of the quit-rents, which they had regarded with such hostility. But in Essex County, the seat of the Elizabethtown Purchase, the outcome was different.

There the controversy came to an end, but not to a legal settlement. On April 13, 1745, there was filed with the clerk in chancery, Thomas Bartow, the Elizabethtown Bill in Chancery.<sup>2</sup> The title to the bill ran as follows:

A Bill in the Chancery of New Jersey, at the suit of John Earl of Stair and others, Proprietors of the Eastern Division

<sup>1</sup>*N. J. A.*, vol. xvi, p. 551.

<sup>2</sup>This Bill in Chancery is a rare document, as is also the answer thereto. Copies are in the New Jersey Historical Society Library.

of New Jersey; against Benjamin Bond and some other Persons of Elizabethtown, distinguished by the Name of the Clinker Lot Right Men. With three large Maps, done from Copper-Plates, to which is added; The Publication of the Council of Proprietors of East New Jersey, and Mr. Nevill's speeches to the General Assembly, concerning the Riots committed in New Jersey, and the pretences of the Rioters, and their Seducers."

The reader was likewise advised that "these Papers will give a better Light into the History and Constitution of New Jersey, than anything hitherto published, the matters whereof have been chiefly collected from Records." The document was published by subscription, printed by James Parker. Parker and Benjamin Franklin were to sell a few copies, the "Price bound and Maps coloured, Three Pounds; plain and sticht only, Fifty Shillings, Proclamation Money." The bill was an exhaustive defence of the proprietary claims, signed by James Alexander and Joseph Murray, "of Council for the Complainants."<sup>1</sup>

After the case of the plaintiffs had been fully set forth, the bill concluded, praying that the defendants be commanded to appear on a certain day in "His Majesty's Court of Chancery of this Province, then and there to answer the Premises." The governor was asked to grant writs of injunction, commanding the defendants and confederates to commit no further "Waste or spoil upon the lands in question, by cutting of timber or otherwise howsoever, until your Excellency shall have given farther directions therein."<sup>2</sup>

The committee of Elizabethtown engaged William Livingston and William Smith, as their counsel, to prepare an answer to the proprietary document. This work, "An

<sup>1</sup> *Bill in Chancery*, p. 81.

<sup>2</sup> *Ibid.*, p. 81.

Answer to a Bill in the Chancery of New Jersey," was not completed until August, 1751, and was printed the following year by subscription. Affixed to the "Answer" are the signatures of 449 freeholders and inhabitants of Elizabethtown. A touch of sarcasm is apparent in the title to the reply. It purports to be

An Answer to a Bill in the Chancery of New Jersey, at the suit of John Earl of Stair, and others, commonly called Proprietors, of the Eastern Division of New Jersey, against Benjamin Bond, and others, claiming under the original Proprietors and Associates of Elizabethtown, to which is added; Nothing either of the publications of the Council of Proprietors of East New Jersey, or, of the Pretences of the Rioters, and their Seducers; except so far as the persons, meant by Rioters, Pretend Title against the Parties to the above Answer; but a Great Deal of the Controversy, though much less of the History and Constitution of New Jersey, than the said Bill.

The Bill in Chancery was submitted to Governor Morris, who had established a Court of Chancery and himself exercised the office of chancellor. Morris's connections might naturally have inclined him toward the proprietary cause, had he passed a decision upon the case; but his death in 1746, over five years before the answer was prepared, prevented that contingency. On the other hand, had the case been adjudicated before Belcher, his possible leaning toward the defendant's cause would have been a matter of suspicion on the part of many. For unknown reasons, it was not settled before Belcher.

Some of the leading men connected with the suit died.<sup>1</sup> The case dragged along and before a decision was ren-

<sup>1</sup> Hatfield, *History of Elizabeth*, p. 372.

dered the strenuous events beginning in the late fifties interrupted its further progress. The raising of troops for the French War became the paramount question. Shortly after came the tense situation caused by the Stamp Act, from which time until the outbreak of the Revolution thought and energy were diverted into other channels than a suit in chancery over disputed land titles. During the war for independence there was a suspension of legal business, and after the colonies had gained their freedom and New Jersey had become a state, the suit was never again reopened. Hence this controversy which had been a thorn in the side of the province for almost a century, was never legally decided.

## CHAPTER VII

### BOUNDARY DISPUTES

BOUNDARY lines were often subjects of dispute during colonial times. Before the wilderness was claimed for habitation, inexact bounds were not necessarily inconvenient, but with the increase in population the necessity for the determination of accurate and recognized boundaries became imperative. In New Jersey history, the northern boundary line was the cause of a long dispute with New York. This was the most important controversy of this nature, although not the only one. The ownership of Staten Island and the jurisdiction over the waters lying between New York and New Jersey were also matters of contention. Of interest to the two proprietary bodies was the fixation of the line between East and West Jersey.

The Duke of York granted to Berkeley and Carteret

All that Tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island and bounded on the east part by the maine sea and part by Hudson River and hath upon the west Delaware Bay or River and extendeth southward to the maine ocean as far as Cape May at the south of Delaware Bay and to the northward as far as ye northermost branch of the said Bay or River of Delaware which is in fourtie one degrees and fourtie minutes of lattitude and crosseth over thence in a straight line to Hudson River in fourty one degrees of lattitude which said tract



of land is hereafter to be called by the name or names of New Cesarea or New Jersey.<sup>1</sup>

This was entirely definite, except for the "Northermost Branch of the said Bay or River of Delaware which is in fourtie one degrees and fourtie minutes of lattitude." The determination of this spot caused a hundred-year contest.

Early but fruitless attempts had been made to fix the northern line.<sup>2</sup> The disputed section in New Jersey belonged to the proprietors, who naturally were most active in procuring a settlement. In 1686 occurred the first unsuccessful attempt to settle the boundary question. Delays ensued, and it was not until 1719 that another concerted effort was made by the two colonies in this matter. In that year Governor Hunter issued a commission for determining the boundary. Each legislature passed an act for the purpose of appointing commissioners to coöperate in running the line.<sup>3</sup> An indenture was signed declaring the Fish-Kill to be the northernmost branch of the Delaware, but an unfortunate disagreement between the surveyors as to the point on the Hudson, rendered the whole affair abortive.

Although a settlement was so nearly attained, almost thirty years elapsed before the controversy was again actively revived. Meanwhile that section of the colony was becoming peopled with great rapidity. It was for the greater convenience of the growing population that Morris County was established in 1740. This may have served to revive the troublesome question, for almost immediately

<sup>1</sup> *N. J. A.*, vol. i, p. 12.

<sup>2</sup> See Tanner, *op. cit.*, p. 641 *et seq.*; Whitehead, *Northern Boundary Line*, *N. J. Hist. Soc. Proc.*, vol. viii, p. 157.

<sup>3</sup> Nevill, *Acts of the General Assembly*, p. 77.

the charge was made that its bounds extended beyond the confines of New Jersey.<sup>1</sup> The two counties in the disputed section were Morris County, New Jersey, and Orange County, New York.

When civil officers began to exercise authority in the newly-erected county, disorders inevitably ensued. Inhabitants near the supposed line denied the jurisdiction of the Jersey officials over them, and used violence upon persons in that vicinity who declared their lands were in New Jersey. The bravado of the Orange County men led them into such reckless conduct that frequent complaints against them were received by Governor Morris. On the other hand, the Jerseymen were not entirely innocent of seeking to gain an advantage, forcibly if necessary. Neither side was inclined to be bullied, and there resulted a condition of turmoil and violence, well calculated to show the necessity for a speedy settlement of the boundary line. The council unanimously advised the governor to urge the Morris County magistrates to avoid strife, preserve peace, and protect the inhabitants from insult.<sup>2</sup> There is no evidence that the magistrates were not disposed to follow such excellent advice, but in itself it was insufficient to correct the frontier difficulties.

The border encroachments continued. In September, 1741, a joint committee of both proprietary boards in the province appealed to Governor Morris to use his influence in having the line run.<sup>3</sup> After a thorough investigation the petitioners had become convinced that New Yorkers had overrun the line of that colony and were dispossessing many of the tenants of the Jersey proprietors from their lands.

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 266.

<sup>2</sup> *Ibid.*, vol. xv, p. 185.

<sup>3</sup> *Ibid.*, vol. vi, p. 138.

As this petition did not spur the governor to action, the East Jersey proprietors sent an address to Morris in June of the next year.<sup>1</sup> It was claimed that John Bayard of New York had started ejectment proceedings in an Orange County court against persons who lived seven miles south of where the true line should run.<sup>2</sup> Morris was urged to write to the lieutenant governor of New York with a view to a settlement of the boundary question. Lieutenant Governor Clarke having been succeeded by George Clinton, as governor of New York, Morris addressed himself to the latter.<sup>3</sup> To impress upon him the seriousness of the situation, there were sent to Clinton copies of the petitions that had been received by the New Jersey executive. His aid in the premises was asked, especially to restrain the people in his government from engaging in hostile demonstrations upon the New Jersey frontier. The two governors carried on an active correspondence with one another, but the boundary line was not further mentioned. The New York governor's declared reason for his inactivity was that £3,000 had formerly been expended in New York for that purpose, and no settlement reached.<sup>4</sup> Clinton was particularly interested in French and Indian affairs, and then too the Third Intercolonial War began at this time to engage the activities of the colonists.

Governor Clinton recognized the necessity of running the line, but shifted the responsibility of any action upon Chief Justice James De Lancey.<sup>5</sup> Robert Hunter Morris met De Lancey, and other New Yorkers concerned in the border lands on October 29, 1743, but the meeting broke up after "much talk to little purpose."<sup>6</sup> Endeavors to

<sup>1</sup> *N. J. A.*, vol. vi, p. 144.

<sup>3</sup> *Ibid.*, p. 162.

<sup>6</sup> *Ibid.*, vol. vi, p. 168.

<sup>2</sup> *Ibid.*, p. 147.

<sup>4</sup> *Ibid.*, vol. vii, p. 152.

<sup>6</sup> *Ibid.*, p. 171.

rouse the officials or landowners of New York to action failed dismally. The East Jersey proprietors were persuaded that only "by an Act of the General Assembly of this province to be approved by his Majesty for running the same line *ex parte*" would the desired end be gained.<sup>1</sup> Governor Morris was urged to recommend such an act to the legislature at its next meeting. Morris's indisposition, however, prevented the delivery of the formal address to both houses at this session. A bill to settle the New York and New Jersey line was introduced, but, as with other measures, no agreement between the council and assembly was possible.<sup>2</sup> Violent constitutional conflicts marked the course of legislation at this time, and it was almost certain that any line act, sponsored by East Jersey proprietors, would not receive favorable action in the assembly.

In the winter of 1747-1748 the assembly was at length prevailed upon to pass the bill for ascertaining the partition line. The council minutes show that James Alexander was in constant attendance during the legislative session of that year and presumably was one of the most influential of those who prevailed upon the lower house to pass the act.<sup>3</sup> It may be noted also, that this was the eminently satisfactory legislative session shortly after Belcher's arrival at which the assembly's pet bills were passed. This act had a clause suspending its operation until the royal pleasure was known.<sup>4</sup> By it commissioners were appointed for running the line, with the consent of New York, and according to the act of 1718.<sup>5</sup>

<sup>1</sup> *N. J. A.*, vol. vi, p. 218.

<sup>2</sup> *Assembly Journal*, Nov., 1744.

<sup>3</sup> *N. J. A.*, vol. vii, p. 119.

<sup>4</sup> Allinson, *op. cit.*, p. 172. Neither Nevill nor Allinson give the details of this act.

<sup>5</sup> *N. J. A.*, vol. viii, pt. i, p. 217.

There was apprehension on the part of the East Jersey proprietors for the success of the partition act in England. Governor Belcher strongly urged the confirmation of the bill as tending greatly to promote the quiet and peace of the royal subjects, but the attitude of New York was ominous.<sup>1</sup> For the first time in over a decade that colony had appointed an agent in London. The supposition was that this appointment was made chiefly with a view to opposing the line act. On April 9, 1748, this suspicion seemed verified. A motion was made by Mr. Gale in the New York assembly that as

an Act has been lately passed by the Legislature of the Province of New Jersey for settling the boundaries between that Province and this, which, in its consequences, may greatly affect the properties of many of the inhabitants of this colony, and tend to lessen and impair his Majesties Revenue Arising by Quit rents, I humbly move that Mr. Speaker may be directed to write to Mr. Charles, Agent for this colony in Great Britain, to use his endeavors that the said act may not receive royal assent until this colony have an opportunity of making their objections to, and being heard against the said act.<sup>2</sup>

It was accordingly ordered that the speaker of the assembly should notify Charles to use his influence against the bill.

Steps were taken by the New Jersey proprietors to assure the final success of the act. Robert Hunter Morris, Elisha Parker and James Alexander were a committee in charge of the boundary affair. Proofs were sent to their agent in London which, it was expected, would obviate all the objections that the New Yorkers might bring forth.<sup>3</sup> Alex-

<sup>1</sup> *Belcher Papers*, April 22, 1748.

<sup>2</sup> *N. J. A.*, vol. vii, p. 120.

<sup>3</sup> *Ibid.*, p. 126.

ander hoped that one hearing before the lords of trade would convince them of the propriety of the bill. The committee notified the speakers of the New York council and assembly of the passage of the act, delivering sundry papers to them.<sup>1</sup> Likewise an address was sent to Governor Clinton notifying him that the king would be urged to approve the boundary line act. He was asked to communicate to the New Jersey committee any objections he might have to the measure, in order that such objections might be satisfactorily answered.<sup>2</sup>

The governor of New York undertook to explain his attitude in this matter to the royal authorities in a letter of October 7, 1748.<sup>3</sup> It was his idea that as the lands along the line were granted to private persons for trivial quit rents, the settlement was only a matter of adjustment between the interested parties in both provinces. As it did not appear to him "that the interest of the Crown or of this Province in General are any way concerned in the matter, but only the Patentees of the lands along that line," the New York executive declined to bother the home officials with the controversy.

New York freeholders living near the disputed region opposed the New Jersey line act, as they "found Sundry things set forth therein for facts and truths which they conceived to be otherwise."<sup>4</sup> The bid for royal favor made by the New York assembly in the resolution of April 9, 1748, referred to above, was clever. To claim that running the partition line might lessen the king's quit rents was not a valid argument against settling the boundary difficulty. As a matter of fact, practically all the lands along the line

<sup>1</sup> *N. J. A.*, vol. vii, p. 141.

<sup>2</sup> *Ibid.*, p. 142; *Robert H. Morris Papers*, vol. ii, p. 8.

<sup>3</sup> *Ibid.*, p. 159.

<sup>4</sup> *R. H. Morris Papers*, vol. ii, p. 36.

had been granted away by the crown, and it was immaterial to the king where the line fell.<sup>1</sup>

But whether just or not, the opposition of New York brought on an expensive and leisurely investigation in England. In both provinces the landholders wished the investigation to be a public charge, but it was made so only in New York. The East Jersey proprietors were certain that the assembly would not contribute to the expense and did not press the matter.<sup>2</sup> In New York there was opposition to saddling the debt upon the public. The opposition granted the necessity of determining the line, but insisted that those who were to reap the benefits should bear the burdens.<sup>3</sup> A pamphlet discussion was provoked by the question. One gentleman of New York, signing himself "Tribunus Populi," asked if it was "reasonable and just, that those persons who have obtained enormous grants of two or three hundred thousand acres of land upon that line, at so small a Quit-Rent as a Beaver skin etc, should expect the public to pay for running a line to ascertain their bounds?"<sup>4</sup> Despite the strong opposition to such a course, the New York assembly voted in 1750 that the Jersey line act should be opposed at public expense. This result is said to have been due chiefly to the De Lancey influence.<sup>5</sup>

In due season the New Jersey bill reached England, and agent Paris received also the papers and data with which to defend the measure. On February 14, 1749, he submitted a petition to the lords of trade in defense of the bill.<sup>6</sup> The history of the case was recited, including the last ineffectual attempt to come to an amicable agreement with

<sup>1</sup> *N. J. A.*, vol. vii, p. 153.

<sup>2</sup> *Ibid.*, p. 262.

<sup>3</sup> *Ibid.*, p. 163.

<sup>4</sup> *R. H. Morris Papers*, vol. ii, p. 22.

<sup>5</sup> Whitehead, *Northern Boundary*, p. 167.

<sup>6</sup> *N. J. A.*, vol. vii, p. 229.

New York. In conclusion the lords were asked to appoint a day for a hearing, that they might thereafter recommend the act to the king. There followed many delays, and month after month Paris was forced to notify his American clients that the board had not yet considered the bill.<sup>1</sup> Aside from the fact that the lords were occupied with other questions, the delays were in no small part occasioned by the conduct of Charles, the New York agent. He ever pressed for a postponement of the case on the ground that instructions had not been sent to him by the New York assembly. On July 19, 1749 the privilege of one more postponement was granted for the benefit of Mr. Charles.<sup>2</sup> The delay was to last only long enough for a letter to reach America and have an answer returned. Intercourse between the mother country and the colonies was slow at that time, but not to such an extreme as the delay that actually ensued. Many letters might have been exchanged between Charles and the New York assembly before the question was again revived. The next hearing was not held until June 7, 1753. It appears that agent Paris had slight hope for the success of the East Jersey proprietors in this affair. The whole thing was distasteful to him, yet he claimed to have labored as faithfully as if he "had liked the Cause."<sup>3</sup> To James Alexander he wrote, "but I assure you, was this a matter recommended to me by A Person whom I had less regard for, no Pecuniary Reward whatsoever should drag me to it." The cause of this "heavy heart" on Paris's part was that the East Jersey proprietors were urging him to state "the case a little too tenderly and favourably for themselves." He feared that he would suffer ill-consequences from such a course of procedure. It was with evi-

<sup>1</sup> *N. J. A.*, vol. vii, pp. 234, 240, 297.

<sup>2</sup> *Ibid.*, p. 300.

<sup>3</sup> *Ibid.*, p. 300.



dent relief that Paris learned of the intended visit of Chief Justice Morris to England. "I shall every day look for Mr Ch: Justices arrival", he wrote on November 10, 1749.<sup>1</sup> Morris had sailed from Newcastle, Delaware, about twelve days before that date.

Whatever may have been the proprietary agent's personal feelings, he never wavered in the task before him. After the long period of apathy, Paris could finally report, on March 7, 1753, that a hearing of the case had been ordered "on the first committee after Easter."<sup>2</sup> The request that a day be set for the consideration of the boundary act had been made by Paris on December 2, 1752.<sup>3</sup>

After testimony had been taken on the boundary act, the opinion pronounced by the lords of trade was unfavorable to New Jersey.<sup>4</sup> The lords declared that if the boundary grants were doubtful recourse might be taken to one of two methods of settlement. Either all parties concerned might concur, or the regular channels of judicial procedure might be utilized. The latter method necessitated a commission from the crown under the great seal. The act under consideration was pronounced unwarrantable and ineffectual because it had not the concurrence of the other parties concerned. As former proceedings in this difficulty between New York and New Jersey were not warranted on the part of the crown, they were not binding upon the crown. Any determination of the boundary prejudicial to New York, according to the report, would affect the king's interest, in that he might be deprived of escheats and quit rents. However meagre such rents might be, the essence of the ques-

<sup>1</sup> *N. J. A.*, vol. vii, p. 360.

<sup>2</sup> *R. H. Morris Papers*, vol. ii, p. 62.

<sup>3</sup> *Collections of N. J. Hist. Society*, vol. v, p. 298.

<sup>4</sup> *N. J. A.*, vol. viii, pt. i, p. 128.

tion was not altered. From this reasoning the conclusion was logically reached that Governor Hunter ought not to have issued his commission for running the line. It was declared impossible to recommend this line act for approval, and the agents of the two provinces were ordered to attend the board meeting on July 4th. Later in the same month the lords of trade submitted their opinion to the king in a representation which declared the New Jersey line act not fit to receive the royal approbation.<sup>1</sup>

The industrious Paris made immediate preparations to oppose favorable action on the lords of trade's representation, but was handicapped because of a lack of instructions and funds.<sup>2</sup> A committee of the privy council, to which the king had referred the report, had the matter under advisement. Paris decided to adopt the former tactics of the New York agent and spar for a delay in the proceedings. On August 7, 1753, the case was held up until a petition could be prepared for the Jersey proprietors. The East Jersey agent found the proprietors of the western division disinclined to risk the expense of opposing the opinion of the lords of trade, but Robert Hunter Morris believed the West Jersey Society would take a "proper part in the affair."<sup>3</sup> The petition, however, was submitted by the East Jersey proprietors alone. After an elaborate review of the case, the petitioners asked that they might be heard against the report of July 18th. All efforts were of no avail, and the act for determining the boundary line was disallowed. Over five years had elapsed since the passage of the bill in the New Jersey legislature!

The East Jersey proprietors fell into error because of

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 144.

<sup>2</sup> *Ibid.*, p. 152.

<sup>3</sup> *Ibid.*, p. 158.

their insistence that nothing should be done to invalidate what had been accomplished in 1719. It indicates the fear on their part that they could not hope for a more favorable decision than that would have been had it been consummated, and the intimation that nothing less favorable to them should be considered. The royal authorities, however, by assenting to the boundary line acts of both provinces in 1719, did warrant the proceedings at that time. But those proceedings resulted in no definite or final agreement and should not have been made almost the *sine qua non* in the case of the Jersey proprietors over thirty years later. On the other hand it was not strict justice to consider the royal quit rents in this boundary dispute. The true determination could be made only according to the interpretation of the land grants and not by any gerrymandering of the line to suit the royal revenue. An impartial consideration of every circumstance does not appear to have been the constant rule of any of the parties concerned, but the attitude of New Jersey is less reprehensible than that of New York or the crown.

At this time, the summer of 1753, the upper parts of Morris County were erected into Sussex County.<sup>1</sup> New courts, new officials, and new tax-gatherers were established along this border country, thus increasing the possibility of disorders. On December 20, 1753, Governor Belcher, in view of the riots and outrages that had taken place, besought the lords of trade to consider ways and means to bring about a settlement of the boundary, as there was little prospect of an amicable adjustment between the two provinces.<sup>2</sup> In July, 1753, Richard Gardiner, an East Jersey surveyor, had been threatened "with horrid oaths and a

<sup>1</sup> Allinson, *op. cit.*, p. 194.

<sup>2</sup> *N. J. A.*, vol. viii, pt. i, p. 190.

pistol", wounded and robbed.<sup>1</sup> New Jersey officials were arrested and hauled before New York justices for performing their duties in the disputed territory. It was said that to "enumerate all the cruelties and abuses committed by the people of New York upon people of New Jersey" would have filled a large volume!

But it is not to be supposed that the Jerseymen along the border were entirely passive. The records of each colony testify to the violence of the other party. On a Sunday in February, 1754, New Yorkers claimed that "about fifty Jersey People had attacked and taken Justice Swartwout and Justice Westbrook, and had greatly beat and abused Justice Swartwout and had carried those two Justices down below Pechaqualong before Justice Van Camp."<sup>2</sup> Not only were Orange County officials thus summarily dealt with, but it is likewise alleged that inhabitants of that county deserted their homes or else converted them into veritable forts.

Little time elapsed after the notice of the disallowance of the act of 1748 before the East Jersey proprietors made the next move. They were rather stirred to activity by discrediting reports published by the New York legislature. A most exhaustive and detailed statement of the dispute was presented to Belcher in a memorial of the council of the East Jersey proprietors, dated November 20, 1753.<sup>3</sup> The following March it was sent to the lords of trade by Robert Hunter Morris. The distinguishing feature of this document was its advocacy of a temporary line of jurisdiction. It was contended that there were no sufficient reasons for not regarding the observations of 1719 at least as fixing

<sup>1</sup> *N. J. A.*, vol. viii, pt. i, p. 226 *et seq.*; vol. xvi, pp. 435 *et seq.*

<sup>2</sup> *Ibid.*, vol. xvi, p. 437; vol. viii, pt. ii, p. 20.

<sup>3</sup> *Ibid.*, pp. 202-286.

a temporary line. If New York regarded this as an encroachment, running the true line would be the remedy, or New York should show better reasons for any other temporary line. The governor was urged to assert the jurisdiction of the province up to the line designated in 1719. To further evince their earnestness in the matter, the East Jersey council of proprietors entered into a bond of £2,000 to pay half the charge for executing a royal commission to settle the bounds between New York and New Jersey.<sup>1</sup>

The lords of trade concurred in the belief that a temporary boundary should be fixed, and promised shortly to so recommend to the king. In the meantime Governor Belcher and Lieutenant Governor De Lancey were both to take all legal and proper measures to preserve the peace in the disrupted region.<sup>2</sup> New York, however, showed no disposition to agree even to a temporary line of jurisdiction.<sup>3</sup> Belcher's repeated letters to De Lancey urging that such action be taken were ignored. There was no respite of violence along the frontier and the governor of New Jersey feared much bloodshed and many murders, if De Lancey did not cooperate with him to restore and preserve peace.<sup>4</sup> By November, 1754, Governor Belcher wrote to the lords of trade that matters "seem to be come to a Crisis; and I am in much pain, lest there should be bloodshed, among the Borders, before King's Orders can arrive."<sup>5</sup>

The New Yorkers at length found it imperative to have a semblance of order maintained along the border. De Lancey wrote to the lords of trade, on December 15, 1754, of the necessity of a speedy settlement of a temporary line.<sup>6</sup>

<sup>1</sup> *N. J. A.*, vol. viii, pt. i, p. 200.

<sup>2</sup> *Ibid.*, p. 206 *et seq.*

<sup>3</sup> *Ibid.*, vol. viii, pt. ii, p. 27.

<sup>4</sup> *Ibid.*, vol. viii, pt. ii, p. 30.

<sup>5</sup> *Ibid.*, vol. viii, pt. ii, p. 72.

<sup>6</sup> *Ibid.*, p. 74.

He was advised by the New York assembly to exercise jurisdiction to the line of 1686. This line was, of course, less favorable to New Jersey than the one of 1719, and in addition, as claimed by New York at this time, was some distance south of the actual observations of 1686<sup>1</sup>. The failure to agree upon even a temporary boundary precluded a speedy termination of the dispute. James Alexander felt that the New Yorkers were trying to wear the East Jersey proprietors out, but believed that none of the proprietors would grow weak in the contest. He evidently thought the dispute would be handed down from generation to generation. Intimating that proprietary affairs must soon devolve upon others, because he was becoming old, the veteran Alexander wrote to Paris, in January, 1755, that he also "must be well Advanced in Years."<sup>2</sup> The agent was advised to fee some dependable gentleman, who could assist Paris in case he should become sick or disabled, for the differences with New York would continue to need an able manager.

On June 12, 1755, the lords of trade reported against an act of the New York legislature "for submitting the controversy, between the Colonies of New York and New Jersey, relating to the partition between the said Colonies to the final determination of His Majesty."<sup>3</sup> To allow the king to decide the dispute without either party having the prospect of an appeal was pronounced unusual. To previously ascertain the limits of the disputed property, as this act did, was declared improper. To propose a method of decision to which the New Jersey proprietors had not consented was regarded as ineffectual. The disallowance of the bill was recommended.

<sup>1</sup> See Map, *N. J. Hist. Soc. Proc.*, vol. viii, p. 157.

<sup>2</sup> *N. J. A.*, vol. viii, pt. ii, p. 90.

<sup>3</sup> *Ibid.*, p. 108.

At the same time, the proper method of procedure in this boundary dispute was declared to be by a commission, from whose decision either party could appeal to the king in privy council. As this was the plan which the New Jersey interests had continually favored, it was proposed that an additional instruction be sent to the governor of New York, now Sir Charles Hardy, directing him to recommend to the assembly of that province the payment of half of the expense of executing the suggested commission. The instruction was issued, and Hardy recommended to his assembly a dutiful compliance with what the king had ordered.<sup>1</sup> Belcher, optimistic as usual at the first appearance of light, wrote to the lords of trade of the importance of settling disputes between the colonies "in this time of General Danger when their united strength is so necessary."<sup>2</sup> But had Belcher lived a decade longer than he did, he would not even then have had the satisfaction of witnessing the final adjustment of this persistent dispute.

In colonial history it was frequently the case that the king proposed, but the assembly disposed. Governor Hardy urged and argued the matter with the New York assembly, but nothing was done.<sup>3</sup> That body pleaded the heavy expense to which the province would be put as the reason for this negligence. The New York executive suggested the propriety of having a commission in England determine the case, but the lords of trade rejected this as unprecedented and not less expensive than the desired scheme.<sup>4</sup> He was ordered to again urge the assembly to make proper provision for the expense of the commission. The assembly however showed no disposition to obey the royal instruction, and evidently had no intention of so doing.

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 183.

<sup>2</sup> *Ibid.*, p. 187.

<sup>3</sup> *Ibid.*, p. 207.

<sup>4</sup> *Ibid.*, p. 213.

On September 1, 1756, Belcher again entreated the London officials to interpose in the dispute, that more unfortunate consequences might be prevented.<sup>1</sup> The East Jersey proprietors again petitioned the king.<sup>2</sup> They definitely asked that a royal order be issued declaring the line of 1719 the line of jurisdiction until the true line should "be finally settled, run and marked under a commission from your Majesty to be issued and carried into Execution at the Joint and Equal Expense of your Petitioners and the said province of New York."

It seemed that this definite and just proposal must receive due consideration. The petition was referred to the lords of trade, and December 21, 1756, was the day appointed for a hearing.<sup>3</sup> The usual delays followed. At length, on January 27, 1757, the lords of trade reported in favor of the temporary line, as indicated in the East Jersey petition. Agent Charles of New York had repeatedly succeeded in obtaining postponements, but the lords finally saw the necessity of restoring peace between the provinces.<sup>4</sup> New York was allowed six months in which to provide for the expenses of the final settlement, before the temporary arrangement should take effect. The report of the lords of trade was subsequently approved by a committee of the privy council.<sup>5</sup>

Six months were allowed; years were taken. With characteristic neglect the matter was not pushed to completion and border strife again began. The inhabitants of northern New Jersey were particularly restive. Philip Swartwout certified to the council of New York that "one Petrus Smoke, who called himself Sheriff of Sussex County in the

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 224.

<sup>2</sup> *Ibid.*, p. 225.

<sup>3</sup> *R. H. Morris Papers*, vol. ii, p. 79 *et seq.*

<sup>4</sup> *N. J. A.*, vol. viii, pt. ii, p. 243.

<sup>5</sup> *Ibid.*, p. 256.



Province of New Jersey, with eleven other persons pretending to be inhabitants of New Jersey, but in fact being all or most of them possessors of Lands within the ancient and long exercised jurisdiction of this Province," that is New York, forcibly ousted him and his family from their possessions.<sup>1</sup> The Orange County sheriff, obeying an order of the New York council, reinstated Swartwout in his possessions.<sup>2</sup> But this did not end that gentleman's troubles with the unneighborly Jerseymen. In the winter of 1761, "dreading the miseries to which an imprisonment in this rigorous season of the year would naturally expose him," Swartwout signed a £1,600 bond to appear at the Sussex County court on the third Tuesday in February.<sup>3</sup> President Colden of New York urged Governor Boone to take measures for Swartwout's relief and prevent further encroachments upon the New York frontier.<sup>4</sup>

An interval of quiet ensued, until finally, on December 11, 1762, the New York legislature passed an act to settle the line.<sup>5</sup> General Monckton, appointed governor of New York the preceding year, sent a copy of the act to Governor Franklin, who laid it before the New Jersey legislature on May 28, 1763.<sup>6</sup> The measure passed in New York was entitled,

An Act for submitting the property of the lands which are held or claimed by grants under the Great Seal of this Colony and are affected by the Controversy about the boundary or Partition line between this Colony and the Colony of New Jersey to such a method of decision as his most Gracious

<sup>1</sup> *N. J. A.*, vol. ix, p. 178.

<sup>2</sup> *Ibid.*, p. 182.

<sup>3</sup> *Ibid.*, p. 250.

<sup>4</sup> *Ibid.*, p. 253.

<sup>5</sup> *N. Y. Colonial Laws*, vol. iv, p. 640.

<sup>6</sup> *Assembly Journal*, May 28, 1763.

Majesty shall think proper by his Royal Commission or otherwise to appoint and for defraying the expense to accrue on the part of this colony on the final settlement of the said Line.

John Cruger, Henry Holland, Frederick Philipse, John Morin Scott, William Bayard and Benjamin Kissam were appointed agents to manage the controversy. The act was to be void if New Jersey did not pass a bill for the same purpose within a year.

At no previous time had all parties concerned been so unanimously agreed upon the necessity of a settlement of the line of jurisdiction between the two provinces. In the New Jersey legislature a similar bill was promptly introduced, passed both houses and received the governor's approval on June 3d.<sup>1</sup> Five agents were appointed by the act to manage the controversy. By an act passed at the same session, the East Jersey proprietors bound themselves to indemnify the province for any funds drawn out of the treasury for the purposes of the boundary settlement.<sup>2</sup>

Of the five agents nominated to manage the New Jersey interests in the controversy, one was opposed by the lords of trade and a second died shortly after the enactment of the law. The other three were John Stevens, James Parker and Henry Cuyler, naturally all large East Jersey landholders. Inasmuch as the line act of 1763 was disallowed because of the one objectionable agent, only the title is given in Allinson's collection of laws, and the names of the undesirable and of the deceased nominee are not known.

On February 21, 1764, Governor Franklin advised the assembly to pass another act for settling the line, in every respect like the former one, "except that instead of the two gentlemen first named therein," the names of William Don-

<sup>1</sup> Allinson, *op. cit.*, p. 254.

<sup>2</sup> *Ibid.*

aldson and Walter Rutherford should be inserted.<sup>1</sup> This was accordingly done and two days later the act for submitting the property of lands in the colony, "to such a method of decision as His most gracious Majesty shall think proper by his Royal Commission or otherwise to appoint," was passed.<sup>2</sup> Another bill was also enacted for subjecting the estates of the East Jersey proprietors to the exemption of the province from any expense.<sup>3</sup> Three more years elapsed before the boundary commission was issued under the privy seal.

The delay may have been caused by the selection of the commissioners. In August, 1764, Henry Wilmot, the New Jersey agent, submitted a list of five commissioners for running the line. They were Governor Franklin, Andrew Oliver, Peter Randolph, Peyton Randolph, and Richard Corbin.<sup>4</sup> These men were evidently selected on the part of New Jersey, with the idea that New York would submit a similar list. In 1766 the list of commissioners to adjudicate the boundary dispute was announced, but met with some objections on the part of Wilmot. Petitioning the king for an alteration of the personnel of the commission, he asked that Charles Stewart be appointed instead of the late John Temple, and that Richard Bulkley, Charles Morris, Joseph Guerrish and Joseph Gorham be struck from the list.<sup>5</sup> The rejection of the four last named gentleman was asked because they were Nova Scotia officials, and too far removed from the scene of action. Wilmot mentioned that the appointment of fewer commissioners would have been more agreeable to both provinces. According to the list as finally issued, Morris was the only Nova Scotia officer

<sup>1</sup> *Assembly Journal*, Feb. 21, 1764.

<sup>2</sup> Allinson, *op. cit.*, p. 263.

<sup>3</sup> *Ibid.*, p. 265.

<sup>4</sup> *N. J. A.*, vol. ix, p. 447.

<sup>5</sup> *Ibid.*, p. 589.

included, but the names of both Temple and Stewart appear.

The draft of the commission to settle the boundary dispute between New York and New Jersey was approved, June 26, 1767.<sup>1</sup> Thirteen commissioners were appointed, five of whom constituted a quorum. If at the first or second meeting agents of the two provinces had not submitted to the adjudicators a full statement of the case, the commissioners might proceed *ex parte* in the execution of the commission. Full powers were granted to adjudicate the case. Not sooner than two months, nor later than three months, after the decision was rendered, the commissioners were to meet in order that either party, if aggrieved, might enter an appeal to the king in privy council.

The thirteen commissioners were:<sup>2</sup> Charles Stewart, John Temple, and Peter Randolph, surveyors general of the customs for the district of Quebec, and of the northern and southern districts of America, respectively; Andrew Elliot, receiver general of quit rents in New York; Chambers Russell, judge of the Court of Vice Admiralty in Massachusetts; William Allen, chief justice of Pennsylvania; Samuel Holland and William De Brahm, surveyors general of lands for the northern and southern districts of America; Andrew Oliver, secretary of Massachusetts; Charles Morris, surveyor of lands of Nova Scotia; Peyton Randolph, attorney general of Virginia; Benjamin Franklin, of Pennsylvania, and Jared Ingersoll, of Connecticut.

Two years passed before the first meeting of the commissioners, held in New York in July 18, 1769.<sup>3</sup> Six of the thirteen were in attendance, Stewart, Morris, Elliot,

<sup>1</sup> *N. J. A.*, vol. ix, p. 630.

<sup>2</sup> *Ibid.*, p. 624.

<sup>3</sup> Whitehead, *Northern Boundary*, p. 174.

Holland, Oliver and Ingersoll. John Jay was appointed secretary. For New York, Scott, Bayard and Cruger were the most active agents; for New Jersey, Parker, Stevens and Rutherford.

It is not within the province of this study to follow the proceedings of the commissioners.<sup>1</sup> The decision, rendered on October 7, 1769, and the subsequent developments in the case will be noted. The point on the Delaware determined upon was at the junction of the Mackhackimack and Delaware Rivers.<sup>2</sup> That station, in latitude 41 degrees, 21 minutes and 37 seconds was believed to have been intended in the deed from the Duke of York as at the northernmost branch of the Delaware. The point on the Hudson should be fixed at 41 degrees. The straight line drawn between these two points was declared to be the true boundary. Samuel Holland and Charles Morris did not concur with the other commissioners as to the station at the Hudson River.

The decree was satisfactory to neither province. New York declared that both points were too far north; New Jersey insisted that the station on the Delaware was too far south. By this decree, observed a New York newspaper account, "many Hundred Thousand Acres of Land, and a vast number of antient possessions held by patents under this colony, are totally ceded to New Jersey"; and again, "Tho' by this decree the court house and Church in Orange Town is left a few Rods to the Northward of the line decreed; yet upwards of 150 families settled in that antient county town, will, if the Decree be confirmed, be dismembered from this colony, and exposed to utter Ruin."<sup>3</sup> In their report to the governor, the New Jersey agents, on the

<sup>1</sup> *Minutes of the Boundary Commission*, in N. Y. Hist. Soc. Library.

<sup>2</sup> *N. J. A.*, vol. xviii, p. 15.

<sup>3</sup> *Ibid.*, vol. xxvi, p. 518.

other hand, declared that the line, as decided would deprive their colony of at least 150,000 acres of land.<sup>1</sup>

The New York agents immediately appealed from the decree. The appeal was refused, as it could not be received until two months after the decision had been rendered. The commissioners thereupon adjourned to meet at Hartford, Connecticut, on December 8th, for the purpose of hearing the appeal of either party.<sup>2</sup> Bayard, one of the New York agents, went to England presumably to exert his influence in favor of that province.<sup>3</sup> The East Jersey proprietors sought to obtain the aid of the province in the further negotiation of the boundary dispute. Governor Franklin was advised by his council to recommend to the assembly that the New Jersey managers of the dispute should receive provincial assistance in any possible litigation before the crown.<sup>4</sup> In addition the East Jersey proprietors petitioned the legislature to grant a sum of money to enable them "to appeal to the king in council and support the just claim of this province against the extravagant claim of New York."<sup>5</sup> Although the immediate controversy was between individuals, Franklin told the assembly it affected the interests of the two provinces, and New Jersey, like New York, should aid in defending the claims.<sup>6</sup>

A conference was held between committees of the council and assembly, the initiative having been taken by the lower house.<sup>7</sup> It was resolved to introduce a bill empowering the treasurers to take a bond, from the agents appointed to manage the controversy, for funds drawn pursuant to the

<sup>1</sup> *N. J. A.*, vol. xviii, p. 14.

<sup>2</sup> *Ibid.*, vol. xxvi, p. 519.

<sup>3</sup> Whitehead, *Northern Boundary*, p. 183.

<sup>4</sup> *N. J. A.*, vol. xviii, p. 21.

<sup>5</sup> *Assembly Journal*, Nov. 9, 1769.

<sup>6</sup> *Ibid.*, Nov. 18, 1769.

<sup>7</sup> *N. J. A.*, vol. xviii, p. 86.

line act, but that the treasurers should be indemnified by the agents. The committee of correspondence was directed to order the London agent to support the claim of the province by a memorial to the king.<sup>1</sup> An act to indemnify the treasurers for advancing not over £3,000, received the governor's assent on December 6, 1769.<sup>2</sup> This was of course simply a loan by the province to the proprietors.

On December 8, 1769, the day set for the appeal, Elliot and Morris were the only two commissioners at the Hartford meeting. The following day also there was no quorum, and as the New York commissioners would not agree to act without a quorum, adjournment was taken to July 4, 1770. Meanwhile application was made to the royal authorities for further instructions. The king ordered that any action taken by the commissioners, on July 4, 1770, should be valid regardless of a quorum. One lone commissioner, Andrew Elliot, appeared in New York on the day set, and adjourned "the meeting" to the "first Tuesday in May next."<sup>3</sup>

The agents of both provinces, however, decided to abide by the decision of the commission and no further meetings were held. Arrangements were made for surveying the line.<sup>4</sup> James Parker, John Stevens, and Walter Rutherford for New Jersey, and John De Noyelles and William Wickham for New York were to supervise the necessary surveys. The governors of both provinces issued proclamations requiring the inhabitants along the border to aid the agents and surveyors, threatening with punishment any who hindered the work.<sup>5</sup>

<sup>1</sup> *Assembly Journal*, Dec. 1, 1769.

<sup>2</sup> Allinson, *op. cit.*, p. 335.

<sup>3</sup> *Minutes of the Commission, N. J. A.*, vol. xxvi, p. 587.

<sup>4</sup> *N. J. A.*, vol. x, p. 194.

<sup>5</sup> *Ibid.*, pp. 178, 194.

On October 18, 1770, the East Jersey proprietors petitioned the assembly for leave to introduce a bill confirming the terms of agreement made between the New York and New Jersey agents for running the line.<sup>1</sup> The permission having been granted, an act establishing the boundary and confirming the titles and possession of the lands adjacent to the line was passed, and received the governor's assent on October 27, 1770.<sup>2</sup>

A proviso was in the bill that New York should pass a similar act. The bill which the legislature of that province passed on February 16, 1771 did not entirely correspond to the New Jersey measure. Consequently Governor Franklin, in September, 1772, recommended the enactment of a law similar to that of New York.<sup>3</sup> Such an act received the governor's assent on September 26, 1772.<sup>4</sup> In the assembly the bill passed by a narrow margin, the affirmative vote of the speaker saving it.<sup>5</sup> The boundary acts of both provinces were approved, and the exasperating and lengthy dispute was settled.<sup>6</sup>

The surveyors of the boundary line, John Stevens, Walter Rutherford, Walter Wickham and Samuel Gale, reported, on November 30, 1774, that the partition line had been marked "so that it may be sufficiently known and distinguished."<sup>7</sup> A rock on the west side of the Hudson in latitude of the 41 degrees had been marked. Trees along the line had been designated "with a Blaze and five notches under the same." Forty-eight stone monuments were erected at one-mile intervals with "the words New York on the North Side of each of the said Monuments and the

<sup>1</sup> *Assembly Journal*, Oct. 18, 1770.

<sup>2</sup> Allinson, *op. cit.*, p. 342.

<sup>3</sup> *Assembly Journal*, Sept. 11, 1772.

<sup>4</sup> Allinson, *op. cit.*, p. 368.

<sup>5</sup> *Assembly Journal*, Sept. 19, 1772.

<sup>6</sup> *N. J. A.*, vol. x, p. 416.

<sup>7</sup> *Ibid.*, p. 150.



words New Jersey on the south side of each of the said Monuments."

In a question of this nature the material interests of the persons concerned not unnaturally determined their point of view. This is evident when it is considered that, although the language of the original grant was remarkably free from ambiguities, there were so many opinions as to where the true line should go. "To the northward as far as ye Northermost branch of the said Bay or River, of Delaware which is in fourtie one degrees and fourtie minutes of latitude," New Jersey was to extend according to the grant. The confluence of the Delaware and the Mackhackimack was in latitude 41 degrees and 21 minutes. Neither the specified latitude of the grant nor the descriptive clause as to the northern branch of the river was observed. The decision seemed to fix upon a point midway between a line run at random in 1719, the most favorable to New Jersey, and the line claimed by New York as the one agreed upon in 1686, the most favorable to that province. If the point, as fixed, is regarded as a compromise, New York fared much better than her neighbor. Regarded in the light of the terms of the grant, New Jersey's interests were apparently sacrificed to those of her more powerful and wealthy rival.

In connection with the northern boundary difficulty, reference may be made to the disputed claims to the ownership of Staten Island. A mere glance at the map shows that this island is geographically a part of New Jersey. The territorial grant to Berkeley and Carteret, quoted at the beginning of this chapter, included the tract of land "to the Westward of Long Island and Manhitas Island".<sup>1</sup> This clearly indicates that the Duke of York granted Staten

<sup>1</sup> *N. J. A.*, vol. i, p. 12.

Island to the two noblemen. The hostility of Governor Nicolls to the Duke's transfer to Berkeley and Carteret has been mentioned, and he never allowed the New Jersey authorities to exercise jurisdiction over the island. The representations of New Jersey to secure possession, during the proprietary period, and once, in 1704, after the surrender to the king, were of no avail.<sup>1</sup> From that time until after the Revolution no formal action was taken in the matter, and Staten Island was recognized as belonging to New York. All boundary disputes between New York and New Jersey were not adjusted until 1833, when the question of the jurisdiction over the waters lying between the two states was decided.

The determination of the northern boundary line disturbed an agreement of long existence between the East and West Jersey proprietors. An agreement between Carteret and the West Jersey proprietors, in 1676, declared the line between the two divisions to be one drawn from Little Egg Harbour to the northernmost point of the province.<sup>2</sup> No effort, however, was made to run the line for several years. Later, when attempts were made, difficulties ensued.<sup>3</sup> Twice, in 1686 and again in 1688, negotiations for the purpose fell through. In the last named year, a rather arbitrary agreement was made between Robert Barclay of East Jersey and Daniel Coxe of West Jersey.<sup>4</sup> So unfavorable to the East Jersey proprietors was this arrangement that they rejected it, and thirty years passed before negotiations were again resumed. To run the line in accordance with the agreement between Carteret and the West Jersey proprietors in 1676, was the decision in 1718. This was,

<sup>1</sup> *N. J. A.*, vol. i, p. 349, 350; iii, p. 61.

<sup>2</sup> *Ibid.*, p. 212.

<sup>3</sup> Tanner, *op. cit.*, p. 633 *et seq.*

<sup>4</sup> Samuel Smith, *History of New Jersey*, p. 196.

of course, not such an attractive proposition for the men of the western division. A legislative act for the purpose was passed and commissioners were named, but the opposition of Coxe and the return of Governor Hunter to England interfered with the success of the project at that time.

Although the efforts of the Coxe interests to secure the disallowance of the act of 1719 for running the line failed, almost another three decades elapsed before an attempt was made to make the surveys. The West Jersey proprietors persistently refused to join with the eastern proprietors in determining the boundary, and in 1743 the latter decided to run the line *ex parte*. John Hamilton and Andrew Johnstone, as commissioners under the partition act of 1719, appointed John Lawrence to run the line. A commission and a set of twenty-one instructions were issued to him in the summer of 1743.<sup>1</sup> To aid Lawrence in the work he was "to employ Martin Ryerson or Gersham Mott or some other as an assistant surveyor" and before the end of that year the division line of the two sections of New Jersey had been determined. This independent action on the part of the East Jerseymen naturally did not receive the unqualified approval of the landholders of the other division.<sup>2</sup> Nevertheless the former insisted upon the justice of the Lawrence surveys and the West Jersey proprietors by subsequent acts practically acquiesced therein.

It will be remembered from the discussion of the northern boundary question that the West Jersey proprietors did not regard themselves as directly affected by that controversy. The Lawrence line had been run in 1743 from the most southerly point of the east side of Little Egg Harbor to what was then regarded as the most northerly point of

<sup>1</sup> *N. J. A.*, vol. vi, p. 154.

<sup>2</sup> *Minutes of the Council of East Jersey Proprietors*, Aug. 17, 1742.

the province, in latitude of 41 degrees and 40 minutes. By the decision of the royal commission in 1769, however, the northernmost point was thrown far to the eastward. Consequently it was decidedly to the advantage of the West Jersey proprietors to regard the newly-determined point at the confluence of the Delaware and the Mackhackimack as the northern point of division between the two parts of the province. On December 1, 1775, Daniel Coxe, then president of the council of West Jersey proprietors, petitioned the legislature for permission to have introduced at the next session a bill for appointing commissioners to settle the line dispute.<sup>1</sup> He suggested that the East Jersey proprietors should acquiesce in such a mode of determining the differences. The desired leave was granted. As no further sessions of the provincial legislature were held, and the turmoil of the Revolution interrupted, the subject was dropped for some years. Although outside of the period of this study, it may be mentioned that an application to the state legislature in 1782 for the above mentioned purpose was rejected by a substantial majority.<sup>2</sup>

Had the plan of the West Jersey proprietors, to have the partition line run from the northern point as determined in 1769 to Little Egg Harbor, succeeded, they would have gained about four hundred and twenty-five thousand acres of territory.<sup>3</sup> The line fixed in 1743 gave West Jersey an excess of at least a million acres over East Jersey. To have made the disparity almost two million acres was more than the men of the eastern division were willingly disposed to allow. Leaving out of consideration any thought of the equalization of the two divisions, the position

<sup>1</sup> *Assembly Journal*, Dec. 1, 1775.

<sup>2</sup> Gordon, *History of New Jersey*, p. 74.

<sup>3</sup> *Ibid.*, p. 75, statistical note.

of the West Jerseymen was not unnatural or extreme. Both parties had in practise regarded the north partition point as marking one end of the line. The final decision as to the location of that point was not rendered until 1769, when it was officially declared to be not in latitude 41 degrees and 40 minutes, but at the junction of two streams. According to the final decision, latitude 41 degrees and 40 minutes was far outside of the province, and could not properly be regarded as the beginning of a line to divide the province into two parts. Whether the point as fixed by the royal commission was equitable is another question. The fact is, it was accepted and regarded as the northernmost point of New Jersey.

## CHAPTER VIII

### THE JUDICIAL SYSTEM

A STUDY of the judicial system of New Jersey shows that little essential change had taken place since its organization under Lord Cornbury's "Ordinance for Establishing Courts of Judicature," in 1704. The materials, existing in New Jersey under the proprietary system and in the other colonies, were systematized and formed the basis for the ordinance.<sup>1</sup>

This ordinance marked at least one bright spot in the corrupt Cornbury administration. The reorganization provided for justices of the peace, with jurisdiction in debt and trespass cases up to forty shillings, a right of appeal to the court of sessions being granted in cases involving over twenty shillings. There was to be a Court of Common Pleas held in every county where there were Courts of General Sessions. These courts could hear and determine all common law actions, with the proviso that actions involving ten pounds or over could be heard in the Supreme Court. Courts of General Sessions were held four times a year at designated times and places. The highest regular court was the Supreme Court, having jurisdiction in all pleas, "civil, criminal and mixt, as fully and amply, to all intents and purposes, whatsoever, as the Courts of Queens Bench, Common Pleas and Exchequer within her Majesties Kingdom

<sup>1</sup> For this general subject, see Field, *Provincial Courts of New Jersey*, and Tanner, *The Province of New Jersey*, ch. xxiii.

of England.”<sup>1</sup> The provision of the ordinance that the Supreme Court should sit alternately at Perth Amboy and Burlington, was later superseded by an ordinance of 1728, establishing two Supreme Courts, one at each of the above named places.<sup>2</sup>

And thus outlined, such to-day is the general structure of the judiciary. Changes naturally did occur in the practise of the courts. Such alterations were instituted by either royal instructions, governor's ordinances or provincial legislation. Let us trace these alterations during the period under consideration.

During Belcher's administration, on December 5, 1753, an additional instruction was sent to the colonial governors altering the methods of appeals.<sup>3</sup> The royal instructions in New Jersey had from the first allowed the right of appeal from the highest provincial court to the governor and council in cases exceeding £100 Sterling. If the case involved over £200, appeal might be made to the crown's privy council.<sup>4</sup> The new instruction cited this method as having become defective and improper. Appeals were now to be made to governor and council only when the cases involved at least £300 Sterling, and to the crown in privy council when the amount exceeded £500. Only when security was given that the suit would be prosecuted was appeal to England allowable. The instruction further provided that where judges of the court from which the appeal was made were members of the provincial council, they could be present at hearings and give reasons for their judgment but could not vote. Of course, execution was suspended until

<sup>1</sup> For the Cornbury Ordinance, see Field, *op. cit.*, *Appendix C*.

<sup>2</sup> Field, *op. cit.*, *Appendix F*.

<sup>3</sup> *N. J. A.*, vol. viii, pt. i, p. 188.

<sup>4</sup> *Ibid.*, vol. ii, p. 551.

the final determination of appeals. Exception to the £500 rule was also made in cases involving sums payable to the crown, when appeal could be made even though a less sum was involved.

In December, 1761, an instruction which later had its influence in the Revolution was prepared by the lords of trade, and subsequently sent to the royal governors. Up to this time the royal instructions to the New Jersey governors guarded against arbitrary removals of judges by making their commissions unlimited as to time, which naturally came to be interpreted by the colonists to mean during good behavior. In 1761 Lieutenant Governor Colden of New York with great hesitation assented to an act of the legislature explicitly providing that the judges should hold their commissions during good behavior. The additional instruction recited that certain of the colonial legislatures had enacted laws granting judges good-behavior tenures, and that certain governors had, contrary to instructions, granted some commissions during good behavior. Such commissions were declared to be for the advantage of neither colonies nor home government and the governors were ordered, upon pain of removal, to refuse their assent to legislative acts, granting like tenures to judges of the provincial courts. Commissions were to be granted during pleasure only, "agreeable to what has been the Ancient Practise and Usage" in the colonies.<sup>1</sup>

That such could be said to have been "the Ancient Practise and Usage" in general in the colonies may not be true and strict adherence to it had not been given in New Jersey. An instance of this is found in New Jersey history in the case of the Jones-Morris contest for the chief justiceship,

<sup>1</sup>*N. J. A.*, vol. ix, p. 329. This instruction was sent to the governors under date of Dec. 12, 1761.



later to be mentioned. That the crown made colonial judges dependent upon his will became one of the chief grievances against the mother country in the American Revolution.<sup>1</sup> It was asserted by the colonists that in England this wrong had been righted, years before, by the English Revolution. The lords of trade maintained that the circumstances in the colonies were in no way similar to what they had been in Great Britain.<sup>2</sup> They complained, and not without some truth, that owing to the lack of a suitable allowance for the judges, governors had been obliged to commission inferior persons, who consulted their own interests and became "the Partizans of a factious Assembly," upon whom they were dependent for support.<sup>3</sup> As events proved, their proposed remedy for an evil, which they exaggerated, was scarcely remedial.

In New Jersey the royal authorities were soon given opportunity to display their firmness in this matter. Upon the death of George the Second, there appears to have been a cessation of business in the Supreme Courts, because the judge's commissions had not been renewed.<sup>4</sup> Upon his arrival in the province, Governor Hardy, fearing evil consequences from such a condition of affairs, renewed the commissions "as they have hitherto been granted, which is during good behaviour."<sup>5</sup> Moreover the assembly refused to make provision for judges who accepted commissions with tenure during pleasure. The governor had commissioned three judges, Morris and his two associates on the Supreme Court bench, during good behavior and the lords of trade, as previously mentioned, recommended his removal. Before Hardy received notification of his removal,

<sup>1</sup> See the *Declaration of Independence*.

<sup>2</sup> *N. J. A.*, vol. ix, p. 312.

<sup>3</sup> *Ibid.*, p. 313.

<sup>4</sup> *Ibid.*, p. 346.

<sup>5</sup> *Ibid.*, p. 346.

he had revoked several commissions granted by Belcher to judges of the Common Pleas, having the objectionable tenure, and the Supreme Court judges thus commissioned had agreed to accept commissions as the king wished.<sup>1</sup> Eleventh-hour compliance did not satisfy the authorities, however, and the governor was deprived of his office.<sup>2</sup> The home officials were also thus enabled to show that a strict adherence to this new instruction would be required.

In May, 1764, during Franklin's rule, the lords of trade prepared an additional instruction against the taking of exorbitant fees in the colonies.<sup>3</sup> The governors were ordered to have displayed in all public offices tables of the legal fees, and further, to enjoin all officers to receive only the legal fees or suffer removal and prosecution. That this instruction was ever sent to the governors does not appear.

An "Ordinance for Holding the Supreme Court for the Province of New Jersey" was issued by Governor Franklin on May 11, 1764.<sup>4</sup> The appointed times for holding the sessions had come to be inconvenient and consequently were changed. Doubtless because of the growth of the province, there was a provision that if, after the regular five-day session, a "Multiplicity of Business then Depending" rendered it expedient, the regular term at such time might be prolonged to the Tuesday following the commencement of the term. The regular term was from Tuesday to Saturday. Appeals, this ordinance stated, were to be made to the Supreme Court in accordance with the laws of "England and the laws of our Province of New Jersey not Repugnant thereto." Provision was made for holding yearly Circuit Courts in all the counties, except Cape May, to be presided over by a Supreme Court justice. The times

<sup>1</sup> *N. J. A.*, vol. ix, p. 367.

<sup>2</sup> *Ibid.*, p. 361.

<sup>3</sup> *Ibid.*, p. 440.

<sup>4</sup> *Ibid.*, p. 434.

and places of such sittings were to be appointed by the justices. Cape May causes were to be tried in Cumberland County. This provision for circuit courts was essentially the same as under Hunter's ordinance of 1725.<sup>1</sup>

An important ordinance relating to the judiciary was the "Ordinance in relation to the Court of Chancery," issued by Governor Franklin on March 28, 1770. Equity Courts encountered considerable hostility in the colonies, and although this was perhaps most pronounced in New York and Pennsylvania, nevertheless New Jersey harbored much similar distrust.<sup>2</sup> Lord Cornbury by ordinance had constituted the governor, lieutenant governor and any three councillors as a Court of Chancery, but Governor Hunter exercised the powers alone. This one-man power was opposed, but the action of Hunter meeting with the approval of the crown, the exercise of chancery powers continued under his ordinance until 1770.

In April, 1768, Franklin addressed the legislature upon the subject of the Chancery Court.<sup>3</sup> Mischiefs would attend its disuse, said the governor, for which reason he had maintained the court to his own pecuniary disadvantage. As there was no salary for the necessary officers and the fees were insufficient, he recommended a reasonable allowance in order that appointments to the necessary offices could be made. The assembly asked the governor to notify them specifically what officers were needed. Although he sent them a list of the officers and suggested fit salaries the assembly did not enter into the proper measures, being loath to create new offices and expend extra funds.

Thereupon the governor turned to the council for advice. They were informed that doubts had arisen as to the au-

<sup>1</sup> Field, *op. cit.*, p. 287.

<sup>2</sup> *Ibid.*, p. 108 *et seq.*

<sup>3</sup> *N. J. A.*, vol. xvii, p. 467.

thority of the governor to execute the office of chancellor, and were asked to report in writing, before May 14, 1770.<sup>1</sup> This was in November, 1769, and meanwhile all chancery proceedings were to be suspended.

The opinions of the councillors were varied and interesting, the majority favoring an ordinance appointing the governor to be chancellor. The most elaborate argument was that of Richard Stockton, who submitted his opinion in the form of a letter to Hillsborough, the Secretary of State.<sup>2</sup> Considering the subject under these two questions, "1st, Whether a Court of Equity does Exist in this Province? and if it does, 2dly, Whether the Governor is the Judge of it?" he decides both affirmatively. He supports his decision by a long and able argument. Frederick Smyth was of opinion that as the governor had no special commission as chancellor, nor any authority as such under his general commission as governor, he was not legally authorized so to act.<sup>3</sup> The chief justice further maintained that provision for such a court would be made after application to the crown. Inasmuch as Cornbury had been justified in the original establishment of a Court of Chancery in New Jersey, wrote Samuel Smith, the present governor with the same authority in his commission had power with the advice and consent of the council to continue the court.<sup>4</sup> After a rather extended argument, Charles Read concluded that no equity court existed in New Jersey, and the matter being important should be settled in England.<sup>5</sup> David Ogden, reaching his opinion by answering eight questions at great length, believed that the governor had the power neither by his commission, his instructions, nor by the common law of

<sup>1</sup> *N. J. A.*, vol. xviii, p. 25.

<sup>2</sup> *Ibid.*, vol. x, p. 155.

<sup>3</sup> *Ibid.*, vol. xviii, p. 121.

<sup>4</sup> *Ibid.*, p. 128.

<sup>5</sup> *Ibid.*, p. 130.

England to act as sole agent in equity cases.<sup>1</sup> The power to erect the court was vested in the legislature, declared Ogden. With great interest in the case, the learned Ogden submitted a "further Opinion," arriving of course at the same general conclusion. James Parker agreed that it never was the intention that the governor should act as chancellor, but that a chancery court might be established by ordinance and then the king's further instruction asked.<sup>2</sup> John Ladd was of the opinion that the court still existed.<sup>3</sup> Although existing, the court had not been properly established since 1713, observed John Stevens. An ordinance should be issued and the king's further instruction sought.<sup>4</sup> That if the court does not exist, the governor has full power to erect it and should issue an ordinance for the purpose, was the opinion of John Smith.<sup>5</sup> Lord Stirling wrote that Franklin never having been so appointed was not justified in acting as chancellor.<sup>6</sup> The necessity for such a court was however apparent, he continued, and one or more proper persons should be by ordinance commissioned as judges. In addition to laying before the council these opinions, the governor submitted some of his royal instructions to them and some extracts from council minutes bearing upon the subject.<sup>7</sup> Taking all the materials into consideration, the council advised that the attorney general draw up an ordinance for better establishing the Court of Chancery and appointing the governor Chancellor.<sup>8</sup> After subsequent approval of the ordinance by the council, the governor, on March 28, 1770, took the oath as chancellor.

The ordinance purported to be for the better establish-

<sup>1</sup> *N. J. A.*, vol. xviii, p. 135.

<sup>2</sup> *Ibid.*, p. 161.

<sup>3</sup> *Ibid.*, p. 163.

<sup>4</sup> *Ibid.*, p. 164.

<sup>5</sup> *Ibid.*, p. 165.

<sup>6</sup> *Ibid.*, p. 167.

<sup>7</sup> *Ibid.*, p. 154.

<sup>8</sup> *Ibid.*, p. 169.

ing of the Court of Chancery, which had always existed in the province.<sup>1</sup> Franklin was appointed by virtue of the powers under the great seal. The form of oath was prescribed and the chancellor was empowered to fix days for the hearing and determination of causes, to appoint and commission necessary masters, clerks, examiners, registers and other officers, and to make rules and regulations for carrying on the business of the court. This ordinance continued until 1776, but the Court of Chancery under the State government succeeded to virtually the same powers.

On June 19, 1772, Governor Franklin issued a proclamation appointing four regular terms of the Court of Chancery, two to be held at Perth Amboy, and two at Burlington.<sup>2</sup> The day for the beginning of the term was in each case appointed and they were "to continue from Day to Day as long as may be expedient."

The first legislative alteration in the practise of the courts during this period was the "Act to prevent Actions of Fifteen Pounds, and under, being brought into the Supreme Court of this Colony," passed in 1741.<sup>3</sup> This act was a bone of contention between Governor Morris and the assembly. He regarded it as no more than an attempt on the part of the popular body to restrict the jurisdiction of the highest court and lessen the judges' salaries.<sup>4</sup> Only because it was a temporary act, having the council's approval, was his assent given. His suggestion to the lords of trade, however, that their disallowance of the act would be more beneficial to prevent such attempts by the assembly in the future, than his refusal to assent would be, was not followed. The lords decided that they should first learn how the bill worked

<sup>1</sup> *N. J. A.*, vol. x, p. 184.

<sup>2</sup> *Ibid.*, vol. xviii, p. 289.

<sup>3</sup> Allinson, *Statutes of New Jersey*, p. 159.

<sup>4</sup> *Morris Papers*, p. 140.

in practise, before they proposed its disallowance.<sup>1</sup> It was forbidden to bring suits for less than fifteen pounds, Queen Anne's proclamation money, into the Supreme Court, except in cases involving land titles. A penalty was prescribed for bringing suits contrary to the intent of the act.

In 1744, Morris complained to the lords of trade that his former fears had not been groundless.<sup>2</sup> The act had been prejudicial to the chief justice and had lessened the jurisdiction of the Supreme Court. As it was now about to expire, the assembly, he rather wildly asserted, would probably make it perpetual. The bill was introduced in the March session of 1746, but the council refused to pass it. The second assembly that Governor Belcher met, however, came to an agreement with the council more readily, and the bill, limited to five years, was passed, February 18, 1748. It was subsequently renewed in 1753, and in 1760 was continued without limitation.<sup>3</sup>

When Morris denounced the bill he was representing to the home officials the side of the office holders. The benefits to the people, however, outweighed any disadvantages. The opposition of the council, in 1746, to the renewal of the act was doubtless due to its domination by Morris. Only a year later with the same council, but a different governor, there was little or no opposition to its passage.

In 1748, another act which had been strenuously objected to by Morris and his council was rather quietly passed in Belcher's administration. This was "an Act to oblige the several Sheriffs of this Colony of New Jersey to give Security, take the Oaths or Affirmations therein directed for the Discharge of their Offices, and to prevent their too long Continuance therein."<sup>4</sup> Complaints were upon occa-

<sup>1</sup> *Morris Papers*, p. 150.

<sup>2</sup> *Ibid.*, p. 183.

<sup>3</sup> *N. J. A.*, vol. xvi, p. 406; Allinson, *op. cit.*, p. 227.

<sup>4</sup> Allinson, *op. cit.*, p. 156.

sion made that sheriffs refused to give the required security for the proper discharge of their duties.<sup>1</sup> Upon three occasions, in 1742, attempts were made by the assembly to secure the passage of the above-named bill, only to come to a disagreement with the council upon amendments, and to have it finally rejected at each session. The opposition to the bill was engendered because it limited slightly the governor's power in appointing sheriffs. And Governor Morris, seconded by his council, was always touchy regarding his prerogatives.

The measure received Governor Belcher's assent, January 18, 1748, and was later allowed by the royal authorities. The lords of trade, however, did not show eagerness to approve the measure, for after it had been reported favorably by Matthew Lamb, one of the royal counsellors-at-law, they returned it to him for his reconsideration.<sup>2</sup> He justified his decision on the ground that similar acts had been passed and confirmed in neighboring provinces, and even in England legislative acts had somewhat limited the crown's authority in the appointment of sheriffs.<sup>3</sup>

By the act sheriffs were obliged to enter into bond for £800, except the Cape May county sheriff, whose bond was fixed at £200. The form of oath which the officers were to take was identical with one required in the "Act for securing His Majesty's Government in New Jersey," passed in 1722.<sup>4</sup> A special form of affirmation for "the People called Quakers" was prescribed. Sheriffs who did not enter into bond and take the oaths were disqualified. The oaths could be administered by any judge of a Court of Common Pleas, or any mayor or chief magistrate. The

<sup>1</sup> *N. J. A.*, vol. xv, p. 90.

<sup>2</sup> *Ibid.*, vol. vii, p. 206.

<sup>3</sup> *Ibid.*, p. 329.

<sup>4</sup> Allinson, *op. cit.*, p. 62.



form of the required bond was also given. The last section, limiting the sheriff's continuance in office to three years, was the provision that had caused opposition to the act. They could hold office again after three years. Sheriffs, furthermore, were required to be freeholders and residents of the county for which they were appointed.

The question of the amount of the fees which should properly be taken by the various officers of government was subject to frequent dispute, the parsimonious assembly endeavoring to make the legal fees as low as possible. An act to establish fees and regulate the practise of the law had been passed in 1733 under Cosby, but was disallowed by the crown two years later.<sup>1</sup>

Ten years later, in December, 1743, another act for regulating fees was passed but met the same fate as the former measure.<sup>2</sup> It was not objectionable in point of law, but complaints had been received that the fees determined upon were too small, "so inconsiderable that no Persons of Character or Reputation will care to accept Employment therein."<sup>3</sup> This was Governor Morris's complaint, and he had a smart altercation with the assembly over the bill. The measure was passed with a suspending clause, but the assembly ordered the bill printed, soon after its passage, and by "suggesting" that the judges "ought" to conform to it, practically ordered its enforcement before the royal pleasure was known.<sup>4</sup>

This was unwarrantable conduct and justified the governor in protesting strongly against the assembly, as it is needless to say he did.<sup>5</sup> The conduct of the assembly in having the bill printed prematurely was given as a further

<sup>1</sup> *N. J. A.*, vol. v, p. 377.

<sup>2</sup> *Ibid.*, vol. xv, p. 309.

<sup>4</sup> *Ibid.*, p. 239.

<sup>3</sup> *Ibid.*, vol. vi, p. 238.

<sup>5</sup> *Ibid.*, vol. xv, p. 315.

reason for its disallowance. The royal disallowance, dated at Kensington, June 28, 1749, was laid before the council of New Jersey by Governor Belcher on October 12th. This is a striking example, also, of the leisurely manner in which the wheels of government moved. The bill was passed, December 5, 1743, and the council notified of its disallowance, October 12, 1749.

Meanwhile an act providing among other things "for the Payment of the Services of the Several Officers of the Colony, and for preventing the said Officers from taking exorbitant Fees" was passed in February, 1748, and received the royal assent, November 23, 1749.<sup>1</sup> This act had passed the council with practically no opposition.<sup>2</sup> It set forth that after the king's assent only the fees therein stated should be accepted by public officers for their services. For every offence in accepting greater fees, £20 was to be forfeited. The law in addition enacted that if a cause was lost because of neglect or mismanagement on the part of an attorney, he should be liable for damages. The fees as established by this act continued to be in force during the rest of the colonial period, but were frequently complained against as insufficient, and scarce affording the officials a proper maintenance.<sup>3</sup>

"An Act to erect and establish Courts in the several Counties in this Colony, for the Trial of small Causes" was passed in 1748, as a previous bill for the same purpose was about to expire. The original measure unfortunately has been lost, but is thought "to have continued the jurisdiction of Justices of the Peace to recover Debts and other Demands for and under Five Pounds."<sup>4</sup> The act passed

<sup>1</sup> Allinson, *op. cit.*, p. 160.

<sup>2</sup> *N. J. A.*, vol. xv, pp. 614-618.

<sup>3</sup> *Ibid.*, vol. ix, p. 592.

<sup>4</sup> Allinson, *op. cit.*, p. 188.

the legislature without difficulty in 1748. Actions for debt involving under £5 were made triable before any one Justice of the Peace.<sup>1</sup> In cases involving over 40 shillings either party might demand trial by a jury of six men. Appeal might be made to the next Court of Common Pleas also in cases of more than twenty shillings, except where the trial had been before six jurors. Fees to be taken in actions covered by this act were fixed. The bill of course detailed the process necessary to its operation, and excluded certain actions from the operation of the act. It was to continue for seven years.

An act with the same title was passed in 1760, the former bill having "been found very beneficial to the inhabitants of this Colony; and it being near expired of its own limitation."<sup>2</sup> It modified the former act, in that actions under £6 were to be cognizable before any one justice, but appeals could be taken in judgment of 20 shillings or more, as before, except where a jury verdict had been given. This act likewise was limited to seven years. In 1769 and 1775 it was renewed after expiration. In every case the council made certain amendments to which the assembly assented.

The legislature had passed an "Act to erect Courts in the several Counties in this Colony for the Trial of Causes of Ten Pounds and under," to which the governor assented on December 6, 1769.<sup>3</sup> In the council this measure had encountered opposition and was disallowed by the crown in June, 1771.<sup>4</sup> The assembly having been notified of the royal disallowance, expressed regret inasmuch as it was intended to make the recovery of small debts easier and less costly.<sup>5</sup>

<sup>1</sup> Nevill, *Acts of the General Assembly*, vol. i, p. 388.

<sup>2</sup> *Ibid.*, vol. ii, p. 335.

<sup>3</sup> *N. J. A.*, vol. xviii, p. 217.

<sup>4</sup> *Ibid.*, p. 261.

<sup>5</sup> *Ibid.*, p. 219.

The law had been in operation up to the time of its disallowance and in the opinion of the lower branch of the legislature had "answered the Ends proposed, and proved beneficial to the People." The governor issued a proclamation declaring the act void. The order of the Privy Council does not state the reasons for the disallowance of the act.

There appears to have been some doubt in the colony as to the effect of the death of George II upon the proceedings of the courts transacted after his demise. The justices and practitioners in the Supreme Court, expressing doubts to Governor Boone as to the validity in the reign of George III of an ordinance issued under the authority of the late king, urged him to issue a new ordinance.<sup>1</sup> In order to prevent the possible interruption of legal proceedings, the council advised the governor to adopt the suggested course. The ordinance is not given, and inasmuch as an act of assembly for the purpose was passed shortly thereafter doubtless was never issued.

The act of assembly was entitled "for obviating Doubts respecting the Acts of Assembly passed last Session; and for Confirming the Proceedings of the Courts of Justice in this Province, since the Demise of his late Majesty."<sup>2</sup> It confirmed the legislative and judicial proceedings in the colony subsequent to the death of George II and previous to the proclamation of George III, provided for the future continuance of assemblies until six months after the death of the crown, and applied the above six months provision to the courts and their officers. This act was disallowed in 1761, as materially affecting the royal prerogative.<sup>3</sup> The lords of trade declared that no doubts had ever arisen or could arise "with any Shadow of reason" regarding the

<sup>1</sup> *N. J. A.*, vol. xvii, p. 232.

<sup>2</sup> Nevill, *op. cit.*, vol. ii, p. 390.

<sup>3</sup> *N. J. A.*, vol. ix, p. 331.

validity of acts legally enacted after the death of a ruler. The provision continuing the courts and their officers was objectionable because it might be interpreted to deprive the crown of the power to remove officers or suspend commissions during the six months' interval. The order in council giving notification of the disallowance was laid before the New Jersey council, April 6, 1762.<sup>1</sup>

Another legislative enactment pertaining to the judiciary was disallowed in 1771. The act, however, had been passed in 1765, during the Stamp Act agitation. That it was aimed at the Stamp Act, Franklin may have thought possible, but such doubtless was not the case, for the people did not seriously intend to use stamped paper. The act, which was never printed, was "for regulating the Practise of the Law, and other Purposes therein mentioned."<sup>2</sup> The law would have reduced the number of court proceedings, and prevented certain illegal practises of the lawyers. Governor Franklin had assented to the measure only with a suspending clause, but agreed to the necessity of the law, and so informed the lords of trade.<sup>3</sup>

The governor had notified the lords that the assembly would urge its confirmation. After waiting patiently for five years to hear from the New Jersey assembly, the lords of trade recommended the disallowance of the act.<sup>4</sup> One of the king's lawyers had reported that the act contained innovations, without sufficiently stating the inconvenience of the old methods. The worthy lords, moreover, were of opinion, that the neglect of the assembly to urge the bill's approval betokened lack of argument in its support. Governor Franklin in communicating this disallowance to the

<sup>1</sup> *N. J. A.*, vol. xvii, p. 284.

<sup>2</sup> Allinson, *op. cit.*, p. 283.

<sup>3</sup> *N. J. A.*, vol. ix, p. 490.

<sup>4</sup> *Ibid.*, vol. x, p. 199.

assembly said that the act had been rendered needless, because of a subsequent act of the legislature.<sup>1</sup> The measure to which the governor had reference was passed in March, 1770, and was entitled an "Act to provide a more effectual Remedy against excessive Costs in the Recovery of Debts under Fifty Pounds in this Colony; and for other purposes therein mentioned."<sup>2</sup> It brings us to the consideration of a critical period in the history of the judiciary.

The legislation regarding the courts up to this time shows that the subject of fees and legal practises had long been matters, not only of importance, but of contention between the different branches of the government. After the Fourth Intercolonial War there were evidences of great prosperity, followed, however, by a period of distress. For years lawyers had been accused of lengthening lawsuits and making legal proceedings expensive. When in Governor Franklin's administration, owing to the stringency of the times, money became scarce, debts piled up, and prosecutions increased, the people redoubled their clamorous charges against the courts and their officers.<sup>3</sup>

Numerous charges were made against some of the most respected members of the New Jersey Bar. Bernardus Legrange, having been accused of accepting exorbitant fees, was ordered to appear before the assembly. The house, notwithstanding his strong defence, declared the charges sustained. Later, however, certificates from the Supreme Court justices were shown declaring that the accused had not taken unwarrantable fees, and Legrange was exonerated. Bias, because of the popular outcry, may have influenced the assembly in its previous resolution. Samuel

<sup>1</sup> *N. J. A.*, vol. x, p. 241.

<sup>2</sup> Allinson, *op. cit.*, p. 339.

<sup>3</sup> Field, *op. cit.*, p. 164 *et seq.*

Allinson was another against whom groundless charges were made.

Many petitions against the base lawyers were pouring into the assembly. On October 24, 1769, James Kinsey, Samuel Allinson, and John Lawrence, three prominent New Jersey lawyers, presented a memorial to the lower house which was an able defence of their conduct.<sup>1</sup> It declared that the petitions sent to the assembly were all so similar that they doubtless came from one source. Numerous debtors implied numerous debts, on account of which creditors had the right to expect money. The indiscretion of the people, not the laws or lawyers, accounted for the many financial failures. The memorial declared that the sheriffs were guilty of oppression for they were not obliged to submit their bills of costs for taxation, nor file them in any office, as was the case with the lawyers. They then presented charges against Samuel Tucker, a Hunterdon County sheriff who had been elected to the legislature in 1769, and submitted what they regarded as evidence of his having charged exorbitant fees in three particular cases. The charges were especially interesting because Tucker had been particularly active in bringing charges against the lawyers.<sup>2</sup>

Tucker's defence was insufficient and upon investigation the assembly decided that in at least two of the cases excessive fees had been charged. The house came to two resolutions, namely, that "it is illegal, a high misdemeanor, and a very great Grievance," for officers to take fees other than those allowed by government, and that Tucker had taken illegal and excessive fees, which was oppressive and a grievance. No further action was taken against him, however.

<sup>1</sup> *Assembly Journal*, Oct. 24, 1769.

<sup>2</sup> *Ibid.*, Nov. 3, 1769.

The discontent became so pronounced that there was serious rioting in Essex and Monmouth Counties, which threatened to stop the course of justice. In July, 1769, an attempt was made by a mob of malcontents to prevent the session of the County Court at Freehold, Monmouth County. Although unsuccessful in this attempt, they later accomplished their purpose, when in January, 1770, the lawyers were driven from their court and the laws set at naught. There were similar riots in Essex County, where also the burning of considerable property belonging to the prominent lawyer, David Ogden, revealed the seriousness of the situation. Ogden's affairs were so crippled that he was obliged to resign from the assembly.<sup>1</sup> Action against the rioters in Monmouth County was so dilatory and half-hearted that they practically escaped punishment for their misdeeds. Essex County showed a commendable spirit and quickly tried, convicted and punished the culprits.

Impelled by the seriousness of the situation, Governor Franklin called a council meeting, directing also the attendance of the sheriff and justices who were present at the Monmouth riot in January, 1770.<sup>2</sup> The assembly was also called for March 14th, and two days later the governor addressed a long message to them upon the subject of the riots, urging firm measures to cope with the situation.<sup>3</sup> The unjustifiable methods taken by the people to redress grievances were denounced in strong terms, especially after the legislative investigation had exonerated the lawyers. In the unwillingness of some and the inability of others to pay their debts, the governor believed lay the causes of the violence. That the people were unreasonable against the lawyers, Franklin showed by citing the activities of the

<sup>1</sup> *N. J. A.*, vol. x, pp. 149, 183.

<sup>2</sup> *Ibid.*, p. 148.

<sup>3</sup> *Ibid.*, p. 172.



Monmouth Grand Jury. After uncommon activity on the part of the Grand Jury in obtaining evidence, indictments only to the amount of fifty shillings could be found against them. After three lawyers were indicted, the indictments of two were easily quashed, the third not being at the time tried, because the accused was sick. The governor recommended acts for reviving and continuing the militia law, for better preventing tumults and riotous assemblies, for compelling the reparation and strengthening of prisons and for providing a sum for answering contingent and extraordinary expenses that might arise. He concluded with a warning as to the consequences that would attend the continuance of anarchy and mob rule.

The assembly "heartily grieved at the Occasion" of their meeting, and expressing regret for the errors of the "deluded People," set to work to enact the necessary laws.<sup>1</sup> An act was passed to revive and continue the process of the courts of Monmouth County,<sup>2</sup> as also acts to revive and better regulate the militia of the colony, and to prevent dangerous tumults and riotous assemblies. The governor was also asked to issue a proclamation offering £25 reward for the discovery and punishment of the perpetrators of the Ogden outrage.<sup>3</sup> Franklin immediately issued the proclamation, March 21, 1770, offering the suggested reward "for discovering and bringing to condign Punishment the Person or Persons guilty of that atrocious and Alarming villainy."<sup>4</sup> An accomplice who aided in the punishment of any of his associates was offered the royal pardon.

The assembly was commendably impartial in its judg-

<sup>1</sup> *N. J. A.*, vol. x, p. 180.

<sup>2</sup> Allinson, *op. cit.*, p. 339.

<sup>3</sup> *Assembly Journal*, Mar. 21, 1770.

<sup>4</sup> *N. J. A.*, vol. x, p. 183.

ments in this matter. They asserted their belief that the best remedy against any abuses from the lawyers was "an honest Care to fulfil Contracts; and a patriotic Spirit of Frugality and Industry," but to quiet any popular misgivings and prevent future outbreaks it seemed to them that there should be a regulation of the practise of the law.<sup>1</sup> As has been mentioned, many petitions had been sent to the lower house, not only from the counties where disturbances had occurred, but from others also.<sup>2</sup> Some of the petitions may have been "padded," as was charged in the case of those emanating from the storm centers, but they were so numerous as to show widespread dissatisfaction. They were similar in tone. The great number of lawsuits and the high charges of prosecution were the grievances which the assembly was called upon to remedy.

After considering the petitions the assembly entered into a series of resolves, which show their earnest desire to denounce the riots and also to redress any grievances actually existing.<sup>3</sup> Declaring their desire to hear grievances and secure their redress, they characterized the riots as an insult to government and pledged themselves to oppose such attacks upon government and upon private property. The resolute conduct of the Essex County magistrates was commended, and it was at this time that the governor was asked to proclaim the offer of a reward for the persons guilty in the Ogden affair. A bill was ordered to shorten the practise of the law and regulate the recovery of debts between £10 and £50. A bill for this purpose, entitled "An Act to provide a more effectual Remedy against excessive Costs in the Recovery of Debts under Fifty Pounds in this

<sup>1</sup> *N. J. A.*, vol. x, *Ibid.*, p. 181.

<sup>2</sup> *Assembly Journal*, Mar. 15-19, 1770.

<sup>3</sup> *Assembly Journal*, Mar. 19, 1770.

Colony; and for other Purposes," was passed. The governor expressed doubts as to the efficacy of this act when tried, but it was allowed by the royal officials.<sup>1</sup>

A similar act had been rejected by Franklin in 1769, because he had regarded it as inadequate and injurious to the clerk of the Supreme Court, a royal patentee. He had also been opposed to it, because it had no suspending clause, and contained certain clauses contradictory to an act<sup>2</sup> at the time pending the royal approval. The governor gave as the condition of his assent, a repeal of the act of 1765 and the addition of a suspending clause to the one in question. Regarding a suspending clause to a five year bill designed as an experiment of its utility as inexpedient, the assembly had asked the governor to obtain the permission of the crown to assent to such a bill at the next session.<sup>3</sup> That such assent was obtained is not on record, and it is doubtless the unusual events of the recent months that led Franklin to assent to the act for remedying excessive costs in 1770. The later act, however, had been altered to meet the governor's chief objections, but doubtless did not prove as satisfactory as was expected.<sup>4</sup> Allinson did not think it necessary to print it in his collection of laws in 1775, for it would expire at the next assembly session and "there is Reason to believe it will not be revived without Alteration."<sup>5</sup>

Futile attempts were made to secure the passage of other laws during this agitation. An act for the better regulation of the admission of attorneys-at-law progressed only as far

<sup>1</sup> *N. J. A.*, vol. x, p. 198.

<sup>2</sup> The act passed in 1765 referred to above.

<sup>3</sup> *Assembly Journal*, Dec. 6, 1769.

<sup>4</sup> *N. J. A.*, vol. x, p. 193.

<sup>5</sup> Allinson, *op. cit.*, p. 339.

as its second reading, in December, 1769, and was then ordered to lie on the table.<sup>1</sup> One to explain and amend a former act for the relief of insolvent debtors was passed in March, 1770, but was disallowed by the crown, June 7, 1771.<sup>2</sup> In 1772, the governor refused his assent to an act for the return of able jurors and the regulation of juries.<sup>3</sup> In November, 1773, a second attempt to pass this bill was defeated by the governor.<sup>4</sup>

In the crisis just described, the abuses and evils against which the people complained were undoubtedly grossly exaggerated, but this made the dangers to government none the less real. A lack of confidence in the integrity of the courts was a weakening of the hands of government in a most vital spot. The base motives of some, added to the fancied or real grievances of others, encouraged a popular frenzy that was alarming.<sup>5</sup> All branches of the provincial government acted with commendable promptness and zeal. The activity of the council and civil magistrates in suppressing the riots was commended by the Earl of Hillsborough.<sup>6</sup> The bright circumstance during this period was the inability of the complainants to substantiate their general and sweeping charges against the New Jersey Bar.

No consideration of the personnel of the highest court in the province can but impress one with the variety of duties which its members performed in the public service. The early justices were not even members of the legal profession in many cases. It was a characteristic of the period for one person to hold numerous offices at the same time,

<sup>1</sup> *Assembly Journal*, Dec. 1, 1769.

<sup>2</sup> *Ibid.*, Mar. 27, 1770.

<sup>3</sup> *N. J. A.*, vol. xviii, p. 330.

<sup>4</sup> *Ibid.*, p. 404.

<sup>5</sup> It may be noted that the riots occurred in anti-proprietary sections. Many lawyers were prominent proprietors.

<sup>6</sup> *N. J. A.*, vol. x, p. 198.

and the justices were no exception. As a study of the personnel of the council showed, many of the councillors were also justices of the Supreme Court. This combination of offices was strongly objected to by the assembly, chiefly because the council acted as a court of appeal, and it was said the same judge might sit upon a case twice. The position was not well taken, however, for a royal instruction prevented any irregularity on that account. Despite the many complaints because of the meagre income, many of the ablest persons in the province sat on the Supreme Court bench.

At the beginning of Governor Morris's administration, Robert Lettice Hooper was chief justice, John Hamilton second judge, and Colonel Coxe third judge. Hooper and Hamilton have been previously mentioned as members of the council. Colonel Daniel Coxe died soon after Morris became governor.<sup>1</sup> He was a holder of large proprietary interests, whose early connections with Cornbury somewhat shadowed his active career in New Jersey politics. His appointment to the Supreme Court came in 1734. It will be remembered that Governor Morris commissioned his son, Robert Hunter Morris, as chief justice to succeed Hooper in 1739.

A most interesting and delicate question arose during the chief-justiceship of Morris. During the year 1757 the chief justice made a visit to England, and in his absence William Aynsley was appointed to his place. The representation of the lords of trade resulted in the appointment of Aynsley "in the room of Robert Hunter Morris, Esqr. who has resigned."<sup>2</sup> This was the mistake that brought about a most unfortunate controversy. Morris had not at this time resigned.

<sup>1</sup> Field, *op. cit.*, p. 132.

<sup>2</sup> *N. J. A.*, vol. viii, pt. ii, p. 248.

In 1754, however, when the chief justice had accepted the appointment as governor of Pennsylvania, he had sent his resignation to the lords of trade.<sup>1</sup> This resignation was not accepted, or at least Morris, receiving no reply from the lords of trade, accepted their silence as a refusal to allow the resignation.<sup>2</sup> He continued as governor of Pennsylvania only two years, when, upon returning to New Jersey, he again acted as chief justice.

The explanation of the appointment of Aynsley is that the lords of trade were, in February, 1757, appointing him to the position, in accordance with the vacancy created by the resignation of Morris in 1754. Dilatoriness on the part of the royal officials in colonial affairs, was not unusual, and although this seems an extreme case, the representation of the lords of trade had as its object simply to supply the Morris vacancy.<sup>3</sup> The appointment of Aynsley does not seem to have been due, as Judge Field suggests, merely to the difficulties attending the transition from Belcher to Bernard in the province.<sup>4</sup>

During Morris's absence in England in 1757, Aynsley came to America, and began his duties as the chief justice in 1758. Previous to that his mandamus to fill the office during the royal pleasure had been received by President Reading, and the commission had been published.<sup>5</sup> The new chief justice was not destined to fill his honored position in the province for a long term. He died early in July, 1758, his death occasioned, according to Governor Bernard, "by his drinking milk and water when he was Very hot on

<sup>1</sup> Field, *op. cit.*, p. 149.

<sup>2</sup> *N. J. A.*, vol. ix, p. 206.

<sup>3</sup> *Ibid.*, p. 231.

<sup>4</sup> Field, *op. cit.*, p. 151.

<sup>5</sup> *N. J. A.*, vol. xvii, p. 136.

Wednesday last," his death having occurred the day following that fatal imbibing.<sup>1</sup>

In May of the year following, one Nathaniel Jones was appointed to succeed Aynsley on the Supreme Court bench.<sup>2</sup> This appointment was approved on May 31, 1759. Meanwhile, Morris had returned to New Jersey from his trip to Europe and proposed to resume the chief-justiceship under his old patent. Bernard was in a quandary, for had not Morris been replaced by another? An agreement was reached according to which Morris would not undertake to resume the office and Bernard would appoint no one to succeed Aynsley until the royal mandate was known.<sup>3</sup> The royal mandate was Jones's appointment, and Bernard, regarding the agreement with Morris as terminated, asked the royal officials to advise him regarding his conduct, if Morris should oppose the claim of Mr. Jones. The lords asked for the reasons upon which Morris based his conduct, instructing Bernard meanwhile to obey the king's commands.

The former, and as afterwards transpired the then, chief justice frankly stated that he wished the office because he had had no permission to resign.<sup>4</sup> Lack of permission he regarded as a prohibition. Governor Belcher, even, had told him that the two offices, that of chief justice of New Jersey and governor of Pennsylvania, were not incompatible. In view of the feeling existing between Morris and Belcher at that time, such a statement would certainly be proof of Governor Belcher's charity. Morris added with modest display that it was not the income the office afforded which prompted his desire, for he took the office "rather to prevent it falling into Contempt than expecting any Support from it." He

<sup>1</sup> *N. J. A.*, vol. ix, p. 124.

<sup>2</sup> *Ibid.*, p. 173.

<sup>3</sup> *Ibid.*, p. 176.

<sup>4</sup> *Ibid.*, p. 206.

wished that the office should "always be in the hands of a Man of independent fortune and Known Integrity." Governor Bernard sent Morris's explanation to the lords of trade, after the latter had promised the governor not to interrupt Jones in assuming the office.<sup>1</sup>

Despite his frank confession of the fact, Morris was, of course, a man well suited for the office in question, and of great prestige and influence in the province. Whoever Nathaniel Jones was, he doubtless was inferior to Morris in ability, and was an almost absolute stranger to the people. It is true that he had been given a flattering reception at Elizabethtown in November, 1759, upon his arrival, but the people of that community were doubtless more opposed to Morris than they were in favor of Jones.<sup>2</sup> General dissatisfaction at Jones's appointment was expressed, and even the governor was sceptical of his ability to hold the office.<sup>3</sup>

On the ground that he could not resist the importunities of the people to accept the chief-justiceship, Morris took his seat in the Supreme Court, intimating to Bernard that as the governor was about to leave the province, Morris's promise to him was no longer binding.<sup>4</sup> It was Bernard's opinion that the promise affected Mr. Jones and the lords of trade also, and consequently could not be so easily rejected but Morris could not to advantage believe in such an interpretation.

There was an interesting session of the Supreme Court of New Jersey held at Perth Amboy, March 18, 1760.<sup>5</sup> Chief Justice Morris, and Samuel Nevill, the second judge, were

<sup>1</sup> *N. J. A.*, vol. ix, p. 210.

<sup>2</sup> Morris once spoke of "the Absurdity, to say no more of his (Jones's) behaviour after his Arrival." *N. J. A.*, vol. ix, p. 236.

<sup>3</sup> *N. J. A.*, vol. ix, p. 211.

<sup>4</sup> *Ibid.*, p. 212.

<sup>5</sup> *Ibid.*, p. 214.



present. The king's "trusty and well beloved" Nathaniel Jones was also there. He offered a commission dated Nov. 16, 1759, appointing him chief justice and asked that it be read. First, however, Morris's commission under date of 1738 was read. It frankly stated he was to hold the position with all its emoluments, fees and perquisites during his good behavior. Jones's commission appointed him "in the room of William Aynsley Esqr. deceas'd." He was "to have, hold, exercise and enjoy the said office" during the royal pleasure; and with all the rights and profits that Aynsley had enjoyed. Request was made by Jones that the oath of office be administered to him. At his request certain entries from the minutes of the court were read to show "that William Aynsley Esqr. deceas'd Satt as chief justice." It seemed that Mr. Jones had confirmed his right to the position for which he held the royal commission.

Morris naturally declined to pronounce judgment in the case and Nevill delivered the opinion. Morris's commission, the court decided, gave him a freehold in the office, of which he had not legally been divested. The oath could not be administered to Jones, but he might prove his right to the office by due course of law. Thereupon Morris requested David Ogden and Charles Read to defend any action that might be brought against him. Against the decision of Judge Nevill, Governor Bernard entered a public protest in the king's defence.<sup>1</sup> The lords of trade urged the king to refer the matter to the attorney general for his consideration and report proper measures in support of the king's "Right of Nomination Against the extraordinary and unprecedented claim of Mr. Morris."<sup>2</sup>

Upon Governor Boone's arrival in the province, Morris

<sup>1</sup> *N. J. A.*, vol. ix, p. 213.

<sup>2</sup> *Ibid.*, p. 232.

wrote him a detailed account of the dispute.<sup>1</sup> The governor transmitted it to the lords of trade, mentioning that Morris was of the opinion that a satisfactory account of his opposition to Jones had never reached them. The chief justice could have no ground for complaint now for his letter was laid before the king,<sup>2</sup> who was asked for a speedy determination of an affair producing confusion in the colony, difficulty to the governor and hardship to Jones. Here the case ended; Morris keeping his office, and Jones returning to England.

In 1762 Jones petitioned Hillsborough for the chief-justiceship of South Carolina, which was then vacant, but in vain.<sup>3</sup> It seems an unjust fate that he should not have been thus rewarded for the hardships he had suffered by his trip to the Jerseys. The expenses he had been under in that venture had exhausted his resources and he had in vain attempted to recover his lost legal practise. A remonstrance in his behalf was signed by four judges and sent to the Earl of Halifax in January, 1762.<sup>4</sup> They were "really concerned for this Poor Gentleman," and solicited Halifax's favor in recommending him to some office or making provision for him. Five years later, he again met with failure in applying for the chief-justiceship of New York.<sup>5</sup> In 1768 he made application to Hillsborough for relief. It is difficult to appreciate the attitude taken by the home government in his case.

The commission of Robert Hunter Morris was during good behavior. The difficulty caused by that commission was doubtless one of the arguments which led the royal

<sup>1</sup> *N. J. A.*, vol. ix, p. 235.

<sup>2</sup> *Ibid.*, p. 264.

<sup>3</sup> *Ibid.*, p. 342.

<sup>4</sup> *Ibid.*, p. 344.

<sup>5</sup> *N. J. Hist. Soc. Proc.*, vol. viii, p. 73.

authorities to issue at this time the additional instruction to the royal governors forbidding judges holding commissions under such tenure.

After the death of Coxe and the resignation of Hamilton, there seems to have been a rather long interval before two associate justices were appointed. In notifying the lords of trade of Hamilton's resignation, Governor Morris mentioned his appointment of Joseph Bonnell. Morris was expecting his resignation also because of the insufficient salary of the associate justiceship.<sup>1</sup> Bonnell, however, accepted the appointment. The governor did not at the same time appoint a successor to Coxe, for there was no salary, and he was debating the possibility of the office going to a Quaker.

As Robert Hunter Morris's associates on the bench for the greater part of his long tenure, Richard Salter and Samuel Nevill occupied their positions with ability. Salter, a councillor at the time of his appointment, was commissioned in 1754, succeeding Charles Read.<sup>2</sup> Nevill, who was at various times speaker of the assembly, was commissioned second judge in 1748.

The successor of Morris as chief justice was Charles Read who had been an associate justice before 1754, when he resigned, and again after Salter's death in 1763.<sup>3</sup> In 1763 he had gone on circuit for Mr. Nevill, who had long been "rendered incapable of Business by a stroke of the Palsy." He had officiated as chief justice for but a few months when, in October, 1764, Frederick Smyth took the oaths. There had been opposition to Read as chief justice and this may have had influence in England, for as early as July, 1764,

<sup>1</sup> *Morris Papers*, p. 48.

<sup>2</sup> *N. J. A.*, vol. ix, p. 340.

<sup>3</sup> *Ibid.*, p. 424.

Smyth had been appointed to the chief-justiceship by the king.<sup>1</sup> Read continued to act as second judge until his death in 1774, when Richard Stockton took his place on the bench. Franklin was somewhat in doubt as to Stockton's acceptance, but his name appears in the support bill of 1774, with a salary of £150.<sup>2</sup>

Read's appointment as chief justice created a vacancy in the court to which John Berrien was appointed, with the advice and consent of the council, in February, 1764.<sup>3</sup> His commission was read in court on March 20, 1764.<sup>4</sup> He was a gentleman of ordinary ability, with a loose tongue. Smith, the historian, regarded him as "a babbling County Surveyor, not fit to be a deputy to any sheriff in England." Twice during his incumbency of the justiceship, the provincial council was bothered by complaints against him. The chief justice, in April, 1768, complained of having been "in several instances treated with great indignity by Mr. Berrien."<sup>5</sup> Upon investigation the council found that the manner of both men had been "unbecoming their Stations," but Berrien was more deserving of censure and reprehension. Both were recommended to behave more suitably in future, not only to prevent their high offices from being dishonored, but also to prevent "recourse to Measures that may more effectually prevent the like Complaint for the Future."<sup>6</sup>

Complaints against Berrien did not come singly, for the week following the council's report on his controversy with the chief justice, the governor laid before the council

<sup>1</sup> *N. J. A.*, vol. ix, p. 446.

<sup>2</sup> *Assembly Journal*, Feb. 21, and Mar. 2, 1774.

<sup>3</sup> *N. J. A.*, vol. xvii, p. 374.

<sup>4</sup> *Minutes of the Supreme Court*, Mar. 20, 1764.

<sup>5</sup> *N. J. A.*, vol. xvii, p. 500.

<sup>6</sup> *Ibid.*, p. 506.

a letter which Berrien had written to Cornelius Low, a lawyer in the province.<sup>1</sup> The contents of the letter are not known, but the associate justice was ordered to give "his Reasons if any he has, for writing a Letter of so extraordinary a nature to Mr. Low."<sup>2</sup> After that there is no further mention of the case, but Berrien held his position on the bench until his death in 1772. The complaints made against him in 1768 do not seem to have injured his popularity, for in the following year he was elected to the assembly from Somerset County.<sup>3</sup> Berrien's successor was David Ogden.<sup>4</sup>

Mention of the provincial attorneys general may well be made at this time. They were commissioned by the governor in the king's name and to hold office during pleasure.<sup>5</sup> Joseph Warrell held this office from 1734 until 1754, when he asked leave to resign in order to spend the remainder of his days away from the contentions of the courtroom. He asked that Courtlandt Skinner should be appointed in his place.<sup>6</sup>

Skinner was appointed and held office during the remainder of the colonial period. The news of the change in this office had evidently not reached England in 1761, or else it was a clerical error which at that time led to the order in council continuing Joseph Warrell in his office of attorney general, at the accession of George III.<sup>7</sup> Having studied law under David Ogden, Skinner was well qualified for the position. His early opposition to British oppression changed as the Revolution broke out and he supported the British cause. As speaker of the assembly previous

<sup>1</sup> *N. J. A.*, vol. xvii, p. 507.

<sup>2</sup> *Ibid.*, p. 511.

<sup>3</sup> *Ibid.*, vol. xviii, p. 37.

<sup>4</sup> *Ibid.*, p. 372.

<sup>5</sup> *Ibid.*, vol. x, p. 450.

<sup>6</sup> *Ibid.*, vol. viii, pt. i, p. 293.

<sup>7</sup> *Ibid.*, vol. ix, p. 257.

mention of him has been made. His conduct as attorney general gave satisfaction to the chief executive. Belcher hoped he would not be supplanted in his office, for he was a young man of good virtue and understanding.<sup>1</sup> Boone regarded his conduct as irreproachable, but saw little or no value in the office he held.<sup>2</sup>

During the early years of royal government in New Jersey corruption and abuse marked the course of so-called justice. Credit must be given chiefly to Governor Hunter for loosening the grasp which the corrupt political ring of Cornbury's administration had fastened upon the judicial system.<sup>3</sup> From that time the period of judicial despotism in New Jersey may be said to have ended, and after 1738 complaints of the miscarriage of justice became comparatively infrequent. Exception may be made in the proprietary land suits, for the defendants therein clamored against the undue proprietary bias of the courts. Nevertheless this outcry was frequently unreasoning and was indulged in from ulterior motives. The right to appeal from the Supreme Court to the council, or to the crown, was rarely exercised.

The minutes of the Supreme Court indicate that it was not unusual for cases to be removed from the jurisdiction of the court, to be referred to the determination of certain persons appointed for the purpose. Notice having been given to the parties concerned, the referees would meet at a designated time and place to consider the case. The report of the referees was regarded as binding upon both parties and was in effect a judgment of the court.<sup>4</sup>

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 200.

<sup>2</sup> *Ibid.*, vol. ix, p. 279.

<sup>3</sup> Tanner, *op. cit.*, p. 480 *et seq.*

<sup>4</sup> *Minutes of the Supreme Court*, April 10, 1773; Thos. Ricke *vs.* John Gill.

## CHAPTER IX

### THE FINANCIAL SYSTEM

IN the pioneer days of which we are speaking, not the least of the difficulties of government was caused by financial affairs. With difficulty do we think ourselves into the conditions of that early period and realize the problems with which the people labored. The fact that very little currency circulated among that scattering population made recourse to some other medium of exchange necessary. Little gold and silver was current in New Jersey, and what little there was is said to have come into the hands of farmers near New York and Pennsylvania through sales of wheat, and was then hoarded for the purpose of making land purchases.<sup>1</sup> The ordinary medium of exchange among the colonists was bills of credit, so disadvantageous because of their fluctuating and usually deteriorated values.<sup>2</sup> During the later colonial period the expenses of government mounted up unusually high because of the frequent wars. It is of course true that these expenditures were in part, at least, repaid by the mother country. The now familiar phrase, the high cost of living, was uttered with great regularity by the officials, in their frequent demands for higher salaries. Questions of expenditures, taxation, and the issues of the bills of credit will necessarily be considered in this chapter.

The support of government was an almost annual subject

<sup>1</sup> *Morris Papers*, p. 166.

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<sup>2</sup> *Ibid.*, p. 53.

of discussion, and frequently of contention, in the history of the colony. The assembly successfully maintained their demand to unrestricted control of the colonial purse, this demand receiving unwilling acquiescence on the part of the governors and royal authorities, who never credited the lower house with the legal exercise of such control. The expense of government was either paid by the interest of money emitted on loan or by funds raised annually by a tax upon real and personal property. Salaries and incidental charges were granted annually, being issued upon a warrant of the governor, with advice of the council and accounted for by the two treasurers to a joint committee of both houses of the legislature.<sup>1</sup> Thus the assembly not only initiated all money bills, but also had partial charge of the auditing of accounts.

The governors were especially interested in increasing the salaries, and in having the support of government granted for as long a term as possible. In both of these matters the assembly's interests usually ran counter to those of the governor. Pretending economy, the assembly was reluctant to increase salaries. The longer the term for which the support of government was granted, the greater would be the governor's independence upon the lower house. This was fully realized and action was taken accordingly. The pulse of an administration can usually be felt in connection with the bill for the support of government.

The general character of one of the so-called support bills can best be shown from an outline of its contents.<sup>2</sup> The preamble would state that the support was voted out of "Duty, Loyalty and Gratitude" to the crown. The salaries of the different officers were then given, and the method

<sup>1</sup> *N. J. A.*, vol. ix, p. 580.

<sup>2</sup> Nevill, *Acts of the General Assembly*, vol. ii, p. 287.



of payment described. Provision was made for the payment of any arrears to an official's executors, in case of his death or removal. House rent for the governor was allowed, it being necessary that he be provided "with a House to live in, until one shall be provided for that Purpose." Sixty pounds was allowed for this purpose. Separate sections contained appropriations for circuit courts, payment of councillors, miscellaneous items to various persons and the pay of the "Members of the House of Representatives." It was designated from what funds the charges should be paid, or if necessary how the money should be raised.

With Governor Morris's uncompromising disposition it was but natural that the branches of government should frequently be at odds regarding financial affairs. He reminded his first assembly that it was incumbent upon them to make ample provision for the government, in return for the king's graciousness in granting the colony a separate governor.<sup>1</sup> Nevertheless the assembly and council became involved in the altercation, already mentioned, over the question of altering the support bill. An act was passed for supporting the government for three years, but it was a disappointment to the governor, who regarded it as fearfully insufficient.<sup>2</sup>

The contest over the bill had been so bitter that not a perfectly satisfactory one could be expected. The failure to provide for the incidental charges of government was certainly a defect, but the bill at least supported government for three years. Whether the salaries were too scant or not depended upon the point of view. None of the salaries were changed except the governor's, which was increased from £500 to £1,000 and house rent. The earlier amount, it should be remembered, was paid to the ap-

<sup>1</sup> *N. J. A.*, vol. xv, p. 2.

<sup>2</sup> *Ibid.*, p. 79.

pointee who acted as governor of New York also. The chief justice received £150, while the two associate Supreme Court justices, the attorney general, and the treasurers received £40 each.<sup>1</sup>

Morris said that the assembly thought they had done wonders, but in his opinion the officers of government were so "scantily provided for that they can scarce perform the services required of them."<sup>2</sup> The lords of trade sympathized with Morris because the people were no more grateful to their sovereign "for His Gracious Condescension to their Request, in granting them a Separate Governor."<sup>3</sup> It is true that Morris might reasonably have expected a salary more than double that which was given to officials who rarely had come into the province, and troubled themselves too little about its affairs.

The assembly later found that a mistake had been made in omitting the provision for contingent charges from the support bill, and in 1740 a bill for the purpose was introduced. Opposition to it, voiced chiefly by the governor's son in the council, prevented its passage. Young Morris protested because it empowered the assembly to appoint the printers of the laws, it did not make suitable provision for the proper fulfilment of the duties of the clerk of the council, it made no provision for incidental charges arising from unforeseen accidents, and because the council had the power to "amend, alter, or begin any bill for the disposition of the public money."<sup>4</sup> Inasmuch as there does not seem to have been any attempt to amend this particular bill in the council, Morris's last protest was simply a flaunt at the assembly.

<sup>1</sup> *N. J. A.*, vol. xv, p. 111. The salary of the chief justice was later decreased to £100.

<sup>2</sup> *Ibid.*, vol. vi, p. 68.

<sup>3</sup> *Morris Papers*, p. 48.

<sup>4</sup> *N. J. A.*, vol. xv, p. 165.

The bill for the support of government having expired when the assembly met in October, 1741, the governor urged them to continue the support and remedy their former mistake of neglecting to provide for the incidental charges of government.<sup>1</sup> In order that qualified men should accept positions the officers of government should be amply paid. The assembly did not see fit to increase the salaries, however, and granted the support for only one year. Morris was not discouraged, and flattered himself at having chosen "the softest way of treating them," meaning that he was less contentious with them than usual.<sup>2</sup> He had hopes of better success in the next session. At the next session he met with as much success, but no more, another support act being passed for only one year.<sup>3</sup>

In the session beginning in October, 1743, the assembly and governor were on bad terms, but the support bill was as usual passed. His Excellency again reminded the representatives, that they had promised to support the added expenses of the government when they had a separate governor and significantly promised his assent to any laws beneficial to the public.<sup>4</sup> What piqued the governor at this session was that the assembly postponed sending the support bill to him for his signature, until they were positive no further business was to be transacted. To suffer for their conduct, they were read a long lecture by the governor about their unwarranted behavior.<sup>5</sup> The support bill granted the usual salaries for a year.

The unusually acute situation that existed in the legislative sessions of 1745, owing to the assembly's efforts to pass their pet measure for the emission of £40,000 in bills

<sup>1</sup> *N. J. A.*, vol. xv, p. 200.

<sup>2</sup> *Morris Papers*, p. 139.

<sup>3</sup> *N. J. A.*, vol. xv, pp. 246, 257.

<sup>4</sup> *Ibid.*, p. 279.

<sup>5</sup> *Ibid.*, p. 315.

of credit, their refusal to confer with the council on the militia bill, and their order to print the fee bill, left the government unsupported.<sup>1</sup> With frankness the assembly asked the governor to pass their bills before action was taken upon the support bill. Morris took this as a threat that if he refused his assent to the bills, "they would not support, or as they call it, grant a support for the government." A support bill was prepared but the salaries were halved, because, as the assembly resolved, "while Things remain in this Situation the Colony is not in a Condition to support Government so largely as they have done for some years past."<sup>2</sup> Of course the council refused assent to such a bill, and at the last mention of it in the records it was under the council's consideration.<sup>3</sup> This method threw the blame for the non-support of the government upon the governor and council.

The governor's complaint to the lords of trade was drawn out to even greater length than usual. The encroachments of assemblies should be stopped and they should be "reduced to such proper and legall bounds as is consistent with his Majestie's Prerogative and their dependance."<sup>4</sup> He suggested that all money in future raised should be declared to be given to the king, to be by him applied for any use and in any manner that he saw fit. The king was to delegate the governor with the advice of his council to direct the expenditures. Morris, as a royal official, had evidently lost the ability to read the signs of the times.

In 1746 the efforts to have the government supported were still unsuccessful. The beginning of the session was

<sup>1</sup> *Morris Papers*, p. 213.

<sup>2</sup> *N. J. A.*, vol. xv, p. 372.

<sup>3</sup> *Ibid.*, p. 373.

<sup>4</sup> *Morris Papers*, p. 225.

not without an appearance of harmony, and gave hope that the desired end might be accomplished. In a brief message, on March 4th, the governor remarked that it was unnecessary to call attention to the fact that the support had long since expired.<sup>1</sup> The house expressed willingness to supply the deficiency and pay for the necessary expenses of government.<sup>2</sup> In May the governor promised to assent to the Militia Act and the act for bringing actions of less than £15 into the Supreme Court, if support would be granted to the government.<sup>3</sup> Because the treasury was low, replied the assembly, the governor would be given £500 a year for two years, but the other salaries would be as usual. An inducement of £1,000 extra, however, was offered to the governor if he would assent to the act for the emission of £40,000 in bills of credit, and it should receive the royal approval.<sup>4</sup> Enraged, the governor refused to pass the bills unless the government was supported as amply as heretofore. There was no possibility of agreement, and a support bill was not passed. This was the last contest between Morris and the legislature.

Although Governor Belcher boasted that holding the affection of the people afforded him more satisfaction than a "bigger Salary,"<sup>5</sup> he continually complained of his insufficient remuneration. He characterized the assembly as tolerably honest but stingy.<sup>6</sup> Contests between the assembly and council, chiefly growing out of the land disturbances, and the methods of settling the tax question upon the several counties, interfered with the regular support of government during this administration, a circumstance which was

<sup>1</sup> *Assembly Journal*, Mar. 4, 1746.

<sup>2</sup> *Ibid.*, May 6, 1746.

<sup>3</sup> *Ibid.*, Mar. 11, 1746.

<sup>4</sup> *Assembly Journal*, May 7, 1746.

<sup>5</sup> *Belcher Papers*, Mar. 14, 1748.

<sup>6</sup> *N. J. A.*, vol. vii, p. 106.

Belcher's misfortune rather than his fault. In 1750 he urged upon the members of his family in New England to sell some of his property there, in order that he might obtain subsistence.<sup>1</sup> Miscreant gossipers, however, had told of the great emoluments of his office, and Belcher, worried at such falsifications, told his family that however much he might wish such reports to be true "they are false and Vile."<sup>2</sup>

The first assembly to meet Belcher did not change the amount of the salaries. The support bill of 1748 provided for but one year's support, although Belcher had urged a fixed yearly salary suitable to the dignity of the office. This was of course refused, the assembly declaring the settlement as ample as formerly and telling the governor to expect nothing more.<sup>3</sup> This bill was saved from defeat only by the withdrawal of the council's claim to amend a money bill. Disagreement between the branches of the legislature regarding the quotas bill, prevented the support of government in 1750. All the governor's entreaties that the assembly should take the next best method to support the government, if it could not be done in the way they thought best, were to no purpose, and the assembly was dissolved.<sup>4</sup> In this respect, at least, this was a successful expedient, for at the next session, a two-year support act was passed.<sup>5</sup>

The harmony was of short duration, however, for the mooted question of council amendments to a money bill brought disagreement. Additional friction was fostered by the new claim of the assembly to submit acts to the governor in person, even after the concurrence of the council

<sup>1</sup> *Belcher Papers*, Nov. 15, 1750.

<sup>2</sup> *Ibid.*, Feb. 1, 1751.

<sup>3</sup> *Assembly Journal*, Feb. 17, 1748.

<sup>4</sup> *N. J. A.*, vol. vii, p. 583.

<sup>5</sup> *Ibid.*, p. 598.

had been refused.<sup>1</sup> Both the governor and the council characterized this claim as irregular.<sup>2</sup> That proved to be the last disagreement upon this subject during this administration, and thereafter annual support bills were regularly passed.

From 1751 to 1757 the province was spared the expense of a chief justice, because of Morris's absence. Nevill performed the extra services during this period, and in September, 1751, petitioned the assembly for the first time for extra recompense.<sup>3</sup> Receiving no relief, the request was repeated in January, 1752. Thereupon, he was allowed six pounds for each court he attended during the absence of the chief justice.<sup>4</sup> During this period the officers of government, except the attorney general, were gratified with no salary increases. The attorney general suffered a ten-pound decrease.

Government was supported in the usual way during the rapid changes of the next three administrations. It was customary upon the accession of a new governor to allow him £500 extra to aid in defraying his transportation and other expenses. The additional amount was given to Bernard, but when Boone succeeded after such a short interval, it was only the affirmative vote of the speaker that saved the sum for him.

Although Governor Franklin frankly confessed to the lords of trade that he had no hope of having the salaries settled permanently, he urged it upon his first assembly.<sup>5</sup> The representatives were told that the necessaries of life had increased threefold in the last seven years and the salaries were inadequate.<sup>6</sup> They responded to the cost of liv-

<sup>1</sup> *N. J. A.*, vol. xvi, p. 332 *et seq.*

<sup>2</sup> *Ibid.*, vol. vii, p. 625.

<sup>3</sup> *Assembly Journal*, Sept. 17, 1751.

<sup>4</sup> *Ibid.*, Jan. 30, 1752.

<sup>5</sup> *N. J. A.*, vol. ix, p. 384.

<sup>6</sup> *Ibid.*, p. 384.

ing argument by raising the governor's salary to £1,200, the chief justice's to £150, and the associate justice's to £50. The usual extra £500 for expenses in taking up the administration was refused to Franklin, and the royal instruction urging permanent salaries was ignored. Scarcely any difficulty was experienced in passing the support bills during this administration, but demands for higher salaries were frequent and insistent, even if to no effect.

In 1765 the inhabitants of certain islands in the Delaware River petitioned to be annexed to New Jersey. These islands, being outside of the jurisdiction of the royal courts, sheltered many malefactors, which circumstances rendered the holding of land titles there insecure.<sup>1</sup> For the protection of their land titles the inhabitants were willing to pay large quit rents to the crown. Here Franklin saw a grand opportunity. The quit rents might be sufficient to support the entire civil establishment of the province! In place of insufficient salaries, and dependence upon the assembly, Franklin had visions of bountiful salaries and freedom from domineering assemblies. He urged upon the royal Secretary of State the annexation of the islands to New Jersey in order that sufficient revenue might be had for the increase of salaries.<sup>2</sup> Secretary Conway told the governor that the petition of the possessors of the islands of the Delaware River would receive the consideration due its importance.<sup>3</sup> Doubtless Franklin thought its importance was greatly underestimated, for his scheme was not carried into effect.

In 1769 the governor was unsuccessful in his attempt to have the assembly appropriate part of the interest money of the bill for emitting £100,000 in bills of credit in order to make more proper provision for the officers of government.<sup>4</sup>

<sup>1</sup> *N. J. A.*, vol. ix, p. 488.

<sup>2</sup> *Ibid.*, p. 488.

<sup>3</sup> *Ibid.*, p. 492.

<sup>4</sup> *Ibid.*, vol. x, p. 144.



The assembly might be brought to compliance, Franklin told the royal officials, if this act was disallowed, and it was specified that royal assent would be given to an act which set aside part of the interest money for the support of the government and provided for each officer.

The £100,000 bill of 1769 was disallowed, but for other reasons. Undaunted, the governor kept recommending salary increases with commendable patience. In 1773 his suggestion that the crown might pay the salaries out of royal revenues, thereby lessening the dependence of the royal officials upon the lower house, ruffled the assembly not at all. They determined to cross no bridge before they came to it. Despite his father's disapproval of his desire for added salary as likely to embroil him with the people, the younger Franklin asked Lord Dartmouth, in 1773, either for an increase in salary or promotion to a better government.<sup>1</sup> Although Dartmouth promised his aid in the matter, it was never forthcoming.<sup>2</sup>

The governor was not alone in requesting added compensation for public service, during this period. Chief Justice Smyth was particularly insistent. Smyth joined with Franklin in asking for an allowance from the king's revenue, in order to be more independent of the legislature.<sup>3</sup> In 1768 he declared that he had continued in office almost wholly at his private expense, but had continually been expecting a salary from England.<sup>4</sup> The governor recommended that Smyth's salary be increased, and the chief justice sent a memorial to the assembly, but no change was made.<sup>5</sup> In 1772 Smyth was allowed a salary from the crown, and ordered to accept of no further allowance from the assembly.<sup>6</sup>

<sup>1</sup> *N. J. A.*, vol. x, p. 390, note, p. 393.

<sup>2</sup> *Ibid.*, p. 401.

<sup>3</sup> *Ibid.*, vol. ix, p. 489.

<sup>4</sup> *Ibid.*, vol. x, p. 62.

<sup>5</sup> *Assembly Journal*, June 16, 1766.

<sup>6</sup> *N. J. A.*, vol. x, p. 361.

Attorney General Skinner sent a memorial to Lord Dartmouth in 1772, requesting the latter's favor in obtaining a royal salary.<sup>1</sup> For eighteen years this gentleman had been inadequately compensated, according to his petition, which was seconded also by the governor.<sup>2</sup> Attorneys general in other colonies had been the recipients of salaries from the king, and Skinner craved a like favor. During the remaining years of the colonial establishment, he annually received no more than his £30, plus fees.

Requests for better pay were repeated down to the end of the colonial period. In 1775 the £100,000 act, passed by the legislature the previous year, received the royal approval.<sup>3</sup> As a return for this favor, the king urged that the government be more liberally supported for the period of the existence of the loan. In response to requests from the governor, the assembly declared it not beneficial to grant salaries for a longer period than usual, and inexpedient to erect a building for the legislature. The usual support only was granted. Franklin regretted their remissness, and promised Dartmouth to allow the assembly at their next session an opportunity to retrieve for past neglect. But there was not another session of the royal colonial legislature of New Jersey. The last appropriation act had provided for support until October, 1776, but the royal government in New Jersey was non-existent months before that date.

During the later colonial period it became habit with the people to protest that their regular taxes for government were burdensome. This was ever the excuse pleaded when they did not wish to grant a royal requisition for the support of royal troops. Actually the taxes were small

<sup>1</sup> *N. J. A.*, vol. x, p. 383.

<sup>2</sup> *Ibid.*, p. 389.

<sup>3</sup> *Assembly Journal*, Nov. 22, 1775.

indeed, and the methods of raising them simple.<sup>1</sup> The amount to be raised for the support of government at no time exceeded £3,000 a year, and was levied upon property and land. Minimum and maximum rates were prescribed for different properties, between which limits rates might be assessed at the discretion of the assessors.

Ordering that taxes should be "assessed, levied and raised on the several Inhabitants of this Colony, for the time being, their Lands and Tenements, Goods and Chattels," by legislative enactment the particular classes of people and property, with the rates, were enumerated.<sup>2</sup> In one long list, without division or proper classification, the taxable classes were given, such as householders, merchants and shopkeepers, saw-mills, grist-mills, fulling-mills, furnaces, forges, glass-houses, distilleries, ferries, single men working for hire, servants and slaves, cattle, and particular kinds of vehicles, "wagons, the bodies of which hang on springs," being separately enumerated. Profitable tracts of land held by deed, patent or survey were to be valued at the discretion of the assessors, the minimum and maximum valuation per hundred acres varying in the different counties. Acts to settle the quotas were passed from time to time, as the circumstances of the colony altered, and, as has been seen, caused much contention and bitterness between council and assembly.

During this period the methods of colonial taxation remained essentially without change. In each county there was an assessor and a collector for raising taxes. The county collector received the money raised by the town collectors, and transmitted it to the provincial treasurer, or

<sup>1</sup> For the subject of taxes, see Tanner, *op. cit.*, p. 519 *et seq.*; Parker, *Taxes and Money in New Jersey before the Revolution*, in *N. J. Hist. Soc. Proc.*, series ii, vol. vii, p. 150.

<sup>2</sup> Allinson, *op. cit.*, p. 317.

paid it according to the directions of the justices and freeholders if it was for county purposes.<sup>1</sup> In 1740 an act was passed which regulated the election of the county collectors. It enabled the freeholders in conjunction with three justices of the peace to choose such collectors, and required the persons elected to render an account to the justices and freeholders upon demand. A penalty was of course provided for neglect in this matter.

Appeals might be taken by any who felt aggrieved by an assessment. The method of appeal was altered by an act of October, 1770.<sup>2</sup> Jurisdiction in such cases was no longer to be held by justices of the peace, but appeal could be taken to the next Court of General Quarter Sessions of the Peace of the particular county. Judgments of this court were to be final. The former method of appeal had been found inconvenient and unsatisfactory.

In the quotas act of 1769 there was provision for the taxation of "Hawkers, Pedlers, or petty chapmen."<sup>3</sup> This was in accordance with an act for the purpose passed in July, 1740. In the opinion of the assembly, these strolling merchants reaped a harvest without contributing anything to the revenue. Most of the venders were non-residents. Peddlers were henceforth to be required to pay a tax to the overseers of the poor in each county in which they offered their wares for sale. The hawkers were graded and taxed accordingly, if traveling with a cart ten shillings, with a horse six shillings, on foot three shillings yearly. The overseer's receipt was in effect the peddler's license to do business. The money received was to be applied by the overseer for the relief of the poor.

The people, of course, had other public obligations to

<sup>1</sup> Allinson, *op. cit.*, p. 115.

<sup>2</sup> *Ibid.*, p. 341.

<sup>3</sup> *Ibid.*, p. 112.

meet aside from those imposed by the regular act for provincial support. Although these were for county or local purposes, they were nevertheless levied by the provincial assembly. After the enactment of a law, to meet some local need, the money for the purpose was levied in the usual manner, and expended by the persons authorized by the act, frequently the justices of the peace. The objects for which such local taxes were raised included the laying-out of highways, the building of jails and court-houses, and the construction and repairs of bridges. The inhabitants were also liable for a slight tax for the relief of the poor of the community.

Somewhat different in scope and purpose were measures which laid duties upon certain articles of commerce. As early as Hunter's administration, attempts had been made by means of export duties on staves to preserve timber.<sup>1</sup> In 1743 another act for the same purpose was passed, applying to East Jersey.<sup>2</sup> A duty was laid upon logs or timber exported to any of the other colonies. An exception was made, however, in the case of firewood less than four feet in length. The early act imposing a duty on pipe and hog-head staves was continued throughout the colonial period, but was altered from time to time. It was finally reenacted for seven years, in December, 1771, with increased penalties, and certain modifications in the judicial procedure under the act to remedy the defects shown by experience.<sup>3</sup> There was an article also which exempted the parties to the Elizabethtown Bill in Chancery from the operation of the act.

It was during the administration of Hunter also that a duty had first been laid upon slaves in the colony.<sup>4</sup> After

<sup>1</sup> Tanner, *op. cit.*, p. 532.

<sup>2</sup> Allinson, *op. cit.*, p. 134.

<sup>3</sup> *Ibid.*, p. 354.

<sup>4</sup> *Ibid.*, p. 31.

the expiration of this early act in 1721, except for unsuccessful attempts under Morris to pass a similar measure,<sup>1</sup> the subject was not again brought before the legislature until 1761. A bill laying a duty upon the importation of negroes into the province was dropped at that time after it had passed the assembly, because it conflicted with one of Governor Hardy's instructions.<sup>2</sup> In September, 1762, after sundry amendments, "An Act for laying a Duty upon Negroes and Mulatto slaves imported into this Province" was passed, gaining the governor's consent only when a suspending clause was added.<sup>3</sup> This measure was peculiar in that the import duty in the eastern division was but forty shillings, while that in the western division was six pounds.<sup>4</sup> This divergence was due to the fact that New York had a low import duty of but two pounds, while Pennsylvania had a high ten-pound tax upon all slaves. While the lords of trade had no objection to the principle of the bill, they regarded the provisions requiring the payment of the duty by the importer, and providing for a reservation of part of the duty in case of re-exportation as incompatible with the governor's instructions.<sup>5</sup> The bill was not laid before the King.

The objections to the former act were obviated by the "Act for laying a Duty on the Purchasers of Slaves imported into this Colony," passed in November, 1769.<sup>6</sup> A duty of fifteen pounds, proclamation money, for each slave was imposed, payable within ten days after the purchase. The county collectors were ordered to account for and pay the duties to the provincial treasurer, and all fines result-

<sup>1</sup> *N. J. A.*, vol. xv, pp. 30, 50, 343, 348.

<sup>2</sup> *Ibid.*, vol. ix, p. 345.

<sup>3</sup> *Ibid.*, p. 382.

<sup>4</sup> Allinson, *op. cit.*, p. 253.

<sup>5</sup> *N. J. A.*, vol. ix, p. 447.

<sup>6</sup> Allinson, *op. cit.*, p. 315.

ing from the act were to be applied to the support of government. The act was limited to ten years.

In 1716 an avowed excise tax was levied but this measure was allowed to expire at the end of the five year limitation. To gain the same end, the taverns were more carefully regulated, and tavernkeepers were obliged to pay a yearly assessment fee in return for their license.<sup>1</sup> By an act of 1743 a duty was laid upon rum and wines which were not imported directly from the British West Indies.<sup>2</sup> This was of course not a direct excise duty, but was simply designed to encourage the importation of rum from the West Indies.

The simple conditions under which the people of that time lived made the development of any elaborate system of taxation as unnecessary as it was impossible. Their conscious and evident desire was to distribute the burdens of providing for the public expenditures as equably as possible. Whatever in their estimation could be with certainty and propriety taxed was assessed. It is doubtless true that the people were not tax-burdened. Governor Franklin believed that the Jerseymen had less cause to complain of excessive taxation than almost any of the other English Atlantic coast colonies.

The issue of bills of credit is a subject closely related to that of taxation. The colonists well knew that the home authorities looked with suspicion upon the issuance of paper money, but they excused their persistence in demanding permission to strike bills of credit, because of the lack of a circulating medium. It is to the honor of New Jersey that, notwithstanding the enormous sums, which were issued in paper bills, the emissions were always regularly and properly conducted.

<sup>1</sup> Allinson, *op. cit.*, p. 101.

<sup>2</sup> *Ibid.*, p. 125.

In 1740 an additional instruction was sent to the governors directing that the act of the sixth of Anne "for ascertaining the Rates of foreign Coins in her Majesty's Plantations in America" should be strictly observed and executed.<sup>1</sup> Because it had not been duly observed many illegal practises were declared to have grown up. The governors were further ordered to pay strict obedience to a former instruction which forbade their assent to any act whereby bills of credit were issued in lieu of money, unless there was a suspending clause to the act. Governor Morris announced by a public proclamation in January, 1741, that the act of Anne referred to in the additional instruction would be punctually and strictly enforced.<sup>2</sup>

The problem was difficult. The lords of trade asked the governors to prepare statements of accounts as to the paper money, and to give their opinions upon the knotty subject.<sup>3</sup> This brought few results and the lords of trade confessed that they could lay no adequate proposition before the House of Commons for redeeming the bills of credit. Governor Morris sought the council's advice in New Jersey, but they had observed no evil consequences of paper money in their colony, and promised to submit to any remedy recommended by Parliament, if that honorable body was convinced of the existence of harmful irregularities.<sup>4</sup>

As for a remedy or a substitute Governor Morris had none. He reported at length to the lords of trade upon currency in New Jersey, but bluntly wrote, "Where Gold and Silver is wanting that it is necessary there should be something to pass current as medium of trade in Lieu of it seems to me evident."<sup>5</sup> Even so, the lords of trade hoped for a day

<sup>1</sup> *N. J. A.*, vol. vi, p. 94.

<sup>2</sup> *Ibid.*, p. 117.

<sup>3</sup> *Ibid.*, p. 122.

<sup>4</sup> *Ibid.*, vol. xv, p. 194.

<sup>5</sup> *Ibid.*, vol. vi, p. 137.



with no paper bills of credit, and urged Morris to care for the punctual redemption of the outstanding bills.<sup>1</sup>

In July, 1740, an act was passed making £2,000 current in bills of credit to provision and transport troops for an intended expedition to the West Indies,<sup>2</sup> but the people were sending petitions to the assembly for an emission to relieve their necessitous condition.<sup>3</sup> For the latter purpose a bill was introduced, in November, 1742, for striking £40,000 in bills of credit.<sup>4</sup> Governor Morris, however, rejected it, thereby gaining the approbation of the lords of trade,<sup>5</sup> and retaining the enmity of the colonists. The measure again passed the assembly, in October, 1743, but was tabled in the council.<sup>6</sup>

It was in the following year that the lack of harmony between the branches of the legislature became most acute, and the council rejected some of the assembly's favorite measures, among them another bill for the emission of £40,000 in paper money. The lower house believed that Morris had unduly influenced the council, but the governor protested that he neither directly nor indirectly sought to influence any councillor.<sup>7</sup> Complaining that the assembly had resorted to the tricky subterfuge of declaring the intention, in the preamble of the bill, of appropriating part of the money to be raised for building a house for the governor and for the assembly and council meetings, but actually making no appropriation in the bill for these laudable purposes, the council opposed the measure. Nor was this the single ground of opposition. The council at this time,

<sup>1</sup> *N. J. A.*, vol. xv, p. 241.

<sup>2</sup> Allinson, *op. cit.*, p. 120.

<sup>3</sup> *Assembly Journal*, May, 1740.

<sup>4</sup> *N. J. A.*, vol. xv, p. 253.

<sup>5</sup> *Ibid.*, vol. vii, p. 142.

<sup>6</sup> *Ibid.*, vol. xv, p. 284.

<sup>7</sup> *Morris Papers*, p. 229.

with its membership practically the same, reversed its former position, and went on record as opposed in principle to the emission of bills of credit.<sup>1</sup> Unreasonable and of fatal consequence to the people were such emissions, in the opinion of the council at this time. That the governor did not consciously attempt to convert any of the members of his council to his own views upon this subject may be true, but his well-known opposition to the measure and the acrimony then existing between the branches of the legislature, without doubt exerted great influence upon the opinions of the upper house.

At the opening of the session in April, 1745, Morris censured the assembly for attempting to pass a paper money bill, while an act was pending in the British Parliament, which if passed, would affect the colonial paper currency.<sup>2</sup> The assembly's retort was that inasmuch as their bill had a suspending clause it was in the nature of a petition to the king. The act of Parliament to which the governor referred was to prevent the issue of bills of credit in the colonies to be legal tender in payment for money.<sup>3</sup> The assembly resolved unanimously that this measure, if enacted, would not only be an encroachment upon the fundamental constitution of this colony, and the concessions made to the first settlers thereof, but would also be destructive of the "liberties and properties of his Majesty's subjects."<sup>4</sup> Partridge was ordered to oppose it vigorously.

Petitions were again sent to the assembly early in 1746, urging the necessity for an added emission of paper money, and the assembly resolved to have another bill introduced.<sup>5</sup> An inducement of £1,000 was to be offered to the governor

<sup>1</sup> *N. J. A.*, vol. vi, p. 220.

<sup>2</sup> *Ibid.*, vol. xv, p. 393.

<sup>3</sup> *Assembly Journal*, Nov. 9, 1744. <sup>4</sup> *Ibid.*, Nov. 9, 1744.

<sup>5</sup> *Ibid.*, Mar. 12, 1746.

for his assent, provided the king's assent was subsequently obtained.<sup>1</sup> Mutual suspicion prevented any agreement between the governor and assembly, so that the plan failed.

At this juncture President Hamilton assumed the administration, owing to the death of Governor Morris. During Hamilton's brief administration, £11,850 in bills of credit was raised for defraying the expenses of five companies of Jerseymen in the Canadian expedition.<sup>2</sup> It was confidently expected that the colony would be reimbursed for the funds thus expended.

But willingness to contribute to the supply of troops for expeditions against the enemy increased belief in New Jersey in the justice of the demand for more paper money. Partridge petitioned the king in 1746 that in the instructions of the newly-appointed governor there should be an instruction of leave for passing the bill to emit £40,000 in bills of credit.<sup>3</sup> Inasmuch as the New Jersey assembly had not formally authorized the petition, it may have been made at the request of Belcher, who had not at the time sailed for America. The fact that the agent did not have specific authority from the New Jersey legislature was given by the lords of trade in their representation to the king as the reason for not complying with the petition.<sup>4</sup>

Belcher's position with regard to the striking of bills of credit was different from that of his predecessor, and when the favorite £40,000 act was brought before him with a suspending clause it received his assent.<sup>5</sup> He urged the home authorities to confirm it because the New Jersey paper currency had been superior to that of the other provinces

<sup>1</sup> *Assembly Journal*, May 7, 1746.

<sup>2</sup> Allinson, *op. cit.*, p. 147.

<sup>3</sup> *N. J. A.*, vol. vi, p. 361.      <sup>4</sup> *Ibid.*, vol. vi, p. 433.

<sup>5</sup> *Assembly Journal*, Feb. 18, 1747.

and the treasury was empty.<sup>1</sup> Representations were made against the bill in England, and the governor was required to send over an exact account of the condition of paper money in New Jersey.<sup>2</sup> The report which Belcher submitted showed that all the outstanding bills would be redeemed by 1753, only half of the last emission, that of 1735, still remaining outstanding.<sup>3</sup> Governed by the same wise and successful principles as the last act of emission, the measure now submitted was, according to Belcher, worthy of confirmation. No amount of argument on the part of the governor could overcome the hostility of the English officials to paper money, in addition to the influence of Belcher's opponents at the court. The act was accordingly disallowed in November, 1749.<sup>4</sup>

Four years elapsed before the paper money question was again seriously considered. In response to a suggestion from the governor, the assembly, in May, 1753, appointed Messrs. Wood, Leaming and Spicer, a committee to investigate and report upon the condition of the paper money.<sup>5</sup> Their opinion was unanimous in favor of the absolute necessity of a further emission. No dependence could be placed upon foreign specie; the balance of trade was in favor of the British merchants; government had long since been supported by public taxes from public funds; and the province groaned under a heavy debt. With paper money the interest of which could be applied to the public relief, the just debts could be discharged with the foreign specie, otherwise hoarded. The argument, too, so prominent a decade or two later, was advanced, that deprived of a sufficient medium of exchange, domestic manufactures would be

<sup>1</sup> *Belcher Papers*, April 22, 1748.

<sup>2</sup> *N. J. A.*, vol. vii, p. 174.

<sup>3</sup> *Ibid.*, p. 246.

<sup>4</sup> Allinson, *op. cit.*, p. 172.

<sup>5</sup> *Assembly Journal*, May 23, 1753.

improved and developed to the injury of British merchants. This report was a clear and strong statement of the colonial viewpoint.

Having considered this report, the assembly resolved to petition the crown for a new emission of paper money, and to redeem the outstanding £15,302 in bills made current during the late war by levying provincial taxes.<sup>1</sup> The council refused to join with the assembly in the proposed petition.<sup>2</sup> In order that New Jersey might redeem the bills of credit made for the king's service in the late war, support the government, and aid the merchants themselves, the assembly asked the king to assent to a £60,000 emission.<sup>3</sup>

Admitting that a moderate quantity of such bills, properly secured, would be advantageous to a trading community, the lords of trade recommended a royal instruction in favor of the New Jersey petition, provided the new bills should not be declared a legal tender in payment of debts, and that the accruing interest should be appropriated to the contingent services of the government.<sup>4</sup> An insurrection was accordingly sent to the governor, conformable to the lords' sentiments, and in addition forbidding the governor's assent to any new emission until the bill had been transmitted for the royal approval.<sup>5</sup>

New Jersey assemblies had ever regarded it as axiomatic that bills of credit were useless, if they could not pass as legal tender. Their opinion was not changed by any number of royal instructions. Even the council now believed that the bills must necessarily be lawful tender for the payment of debts.<sup>6</sup> A bill was accordingly drafted similar to

<sup>1</sup> *Assembly Journal*, May 30, June 21, 1753.

<sup>2</sup> *N. J. A.*, vol. xvi, p. 407.

<sup>3</sup> *Ibid.*, vol. viii, pt. i, p. 183.

<sup>4</sup> *Ibid.*, pt. i, p. 196.

<sup>5</sup> *Assembly Journal*, Oct. 7, 1754.

<sup>6</sup> *N. J. A.*, vol. xvi, p. 487.

former acts, and a petition prepared, setting forth that if the bills were not a legal tender, the good purposes of the measure would be defeated.<sup>1</sup> The emission was for £70,000, the £10,000 in excess of what had previously been requested, being for the aid of the neighboring colonies in the contest against the French.

The draft of this bill was submitted to the royal authorities, who were urged to give the governor authority to assent to it, if passed. Belcher suggested that a clause should be added to obligate the province for any deficiency caused by the depreciation of the bills.<sup>2</sup> In a lengthy memorial, Partridge urged that consent be given to the passage of the measure.<sup>3</sup> As the proposed bill violated the recent royal instruction in the two most essential features, the recommendation of the lords of trade was improbable.<sup>4</sup> In the summer of 1755, Belcher was notified that the bill was inconsistent with the royal instruction, and could not properly be approved.<sup>5</sup>

Although the province had again failed to obtain financial relief upon the terms that were desired, during the next succeeding years there were numerous emissions to provide for the expenses of the Fourth Intercolonial War. These emissions were all made conformable to the act of the 6th of Anne, and the bills were to be legal tender only to the province. The assembly had refused to contribute supplies with which to resist the French in 1754, because of the rejection of their bills of credit proposition, but with the outbreak of the war in earnest, with splendid zeal they furnished both men and money. In rapid succession came the emissions, £15,000 in April, 1755, for the expedition to

<sup>1</sup> *N. J. A.*, vol. viii, pt. ii, p. 14.

<sup>2</sup> *Ibid.*, pt. ii, p. 72.

<sup>4</sup> *Ibid.*, p. 100.

<sup>3</sup> *Ibid.*, p. 95.

<sup>5</sup> *Ibid.*, p. 124.

Crown Point,<sup>1</sup> another £15,000 in August of the same year for the supply of Peter Schuyler's army,<sup>2</sup> and £10,000 in December for the defence of the frontiers.<sup>3</sup> In June, 1756, £17,500 was made current for the further supply of the troops under Colonel Schuyler and the defence of the frontiers;<sup>4</sup> in March, 1757, an additional £10,000,<sup>5</sup> and in October, 1757, a bill for the emission of £30,000 for the use of the king's service in the war was passed.<sup>6</sup> A seventh emission followed in April, 1758, by which £50,000 was ordered struck to augment the New Jersey regiment to one thousand men for the campaign of 1758, to which was added £10,000 in August for supporting 150 men on the frontiers.<sup>7</sup> To defray the expenses of a thousand men in 1759, a £50,000 emission was ordered, and in 1760 for the same purpose £45,000.<sup>8</sup> Thus within five years there had been ten emissions and a total of £252,500 was struck in bills of credit! By subsequent emissions of £25,000 in 1761, £30,000 in 1762, £10,000 in 1763 and £25,000 in 1764, New Jersey's grand total of money raised for the war was £342,500.

The manner in which the particular amounts making up this large sum were emitted was practically the same. The tender of the bills was declared to be as good and effectual in law as any other current coin in the province. Counterfeiting them was to be punishable by death. The quotas to be annually assessed were of course prescribed, as also the time during which the particular emissions were to be current before redemption. Likewise, the details regarding the signing and printing of the bills, and other necessary matters were as usual given in the bill.

<sup>1</sup> Nevill, *op. cit.*, vol. ii, p. 32.

<sup>2</sup> *Ibid.*, p. 75.

<sup>3</sup> *Ibid.*, p. 118.

<sup>4</sup> *Ibid.*, pp. 175, 203.

<sup>5</sup> *Ibid.*, p. 50.

<sup>6</sup> *Ibid.*, p. 92.

<sup>7</sup> *Ibid.*, p. 146.

<sup>8</sup> *Ibid.*, pp. 253, 279.

But after such an enthusiastic and rapid expenditure of money, there came an inevitable aftermath. With every new emission the taxes for the future years increased. The old question was immediately revived. Should the government be supported by taxes levied upon the properties of the colonists; or should more bills of credit be loaned, the interest of which would support the government? The table of the assembly became buried with petitions praying the emission of additional paper money.<sup>1</sup> The assembly regarded more paper money as the remedy which would alleviate the grievous complaints of their constituents,<sup>2</sup> and passed a bill for the emission of £100,000.<sup>3</sup>

Inasmuch as the money was to be made a legal tender and the assembly refused to add a suspending clause to the act, even a far less cautious governor than Franklin would have hesitated to sign the measure. He refused his assent because it did not conform to his instructions. But even had the governor's assent been obtained, the lords of trade would have effectually blocked the bill. At this time, they were more opposed than formerly to declaring bills of credit a legal tender in the colonies. In a report to the king, in 1764, they had pronounced this idea to be based upon fraud, and suggested that all resolutions in the colonies making such bills legal tender should be null and void.<sup>4</sup>

But the legislature of New Jersey had patience, perseverance and an evident faith that in some way they would obtain the favor of a paper currency bill upon their own terms. In response to the continued petitioning of their constituents, a committee of both houses declared a new emission to be necessary. A bill for striking £100,000 was passed in April, 1768, but failed to receive the assent of

<sup>1</sup> *Assembly Journal*, 1767, 1768.

<sup>2</sup> *Ibid.*, June 23, 1767.

<sup>3</sup> *N. J. A.*, vol. xvii, p. 488.

<sup>4</sup> *Ibid.*, vol. ix, p. 405.



the governor, for the same reason that governed his conduct the year before.<sup>1</sup>

Franklin acknowledged the possible service to the province that would attend a new emission and in behalf of the New Jersey council asked Secretary of State Hillsborough, if objection would be entertained to his assenting to a £100,000 emission bill, without a suspending clause, if the money were not declared legal tender and the interest should be appropriated to public purposes.<sup>2</sup> But only if a draft of the bill had been first transmitted for the king's approval, or had a suspending clause, was the governor's assent to be given.<sup>3</sup> In order to facilitate the public business, Franklin, early in 1769, sent a draft of the £100,000 act to England, that any alterations might be suggested before the next assembly meeting.<sup>4</sup> On the ground that the act implied that the money was to be legal tender the measure was not to be recommended for the king's approbation.<sup>5</sup>

Although the terms of the home authorities were regarded as unusually severe, the legislature of the colony hoped to devise an expedient, whereby the benefits of the prospective currency might in their estimation overbalance the inconveniences.<sup>6</sup> The device agreed upon was that the bills should be legal tender only to the loan offices issuing them, a plan which had been adopted, according to the assembly, in Pennsylvania and Maryland.<sup>7</sup> The measure passed at the November session of 1769 received the governor's assent, and its defence before the royal authorities was intrusted to Benjamin Franklin, the provincial agent at the court.<sup>8</sup>

<sup>1</sup> *Assembly Journal*, Apr. 23, 1768; *N. J. A.*, vol. x, p. 48.

<sup>2</sup> *N. J. A.*, vol. x, p. 49.

<sup>3</sup> *Ibid.*, p. 60.

<sup>4</sup> *Ibid.*, p. 99.

<sup>5</sup> *Ibid.*, p. 106.

<sup>6</sup> *Ibid.*, vol. xviii, p. 43.

<sup>7</sup> *Ibid.*, vol. x, p. 200.

<sup>8</sup> *Ibid.*, p. 136.

Having substantially qualified their position in regard to the bills, and provided for undoubtedly proper funds for the redemption of the currency, the assembly had no apprehension regarding the fate of the act.<sup>1</sup> This conviction was strengthened also, because the governor had urged the allowance of the bill as the best obtainable, even though deficient as to the appropriation of the interest money.<sup>2</sup> When notice of the disallowance of this act was received in September, 1770,<sup>3</sup> Franklin, as well as the assembly, was displeased, declaring it absurd to expect persons to mortgage their estates to loan offices for money, which later the loan offices could not be forced to receive again in discharge of the mortgages.<sup>4</sup>

The result of the last disallowance of their loan office act was to effectually discourage the assembly from attempting another bill for some time.<sup>5</sup> In 1771 the house refused to appropriate money for the supply of the royal troops, and by an overwhelming majority,<sup>6</sup> an attempt to draft a bill in strict compliance with the royal mandate was discountenanced.<sup>7</sup> Instead, a resolution was passed that bills of credit would answer no good purposes unless they were legal tender to the loan offices. Many petitions were received by the assembly from 1771 until 1774 praying for an emission of paper money upon loan, but it was not until February of the latter year that action was again taken in favor of a new emission.<sup>8</sup>

On February 20, 1774, in a committee of the whole house, the assembly resolved by a vote of 22 to 7, that

<sup>1</sup> *N. J. A.*, vol. x, p. 136.

<sup>2</sup> *Ibid.*, p. 150.

<sup>3</sup> *Ibid.*, vol. xviii, p. 192.

<sup>4</sup> *Ibid.*, vol. x, p. 200.

<sup>5</sup> *Ibid.*, vol. xviii, p. 200.

<sup>6</sup> *Assembly Journal*, Apr. 18, 1771.

<sup>7</sup> *Ibid.*, May 31, 1771.

<sup>8</sup> *Ibid.*, 1771-1774.

£100,000 should be emitted in bills of credit.<sup>1</sup> The governor, questioned upon the subject, declared it would avail nothing for him to assent to a measure which made the bills of credit legal tender to the loan office commissioners, even though a suspending clause should be added, for it would suffer the same fate as previous bills.<sup>2</sup> The governor suggested the expedient of allowing the bills to pass as legal tender to the provincial treasurers for the discharge of taxes, in accordance with a then recent act of Parliament.

Such a bill was accordingly passed in March, 1774.<sup>3</sup> Although the interest money which would accrue in the event of the confirmation of the act was not to be appropriated as the governor and council had desired, Franklin did not think proper to refuse his assent.<sup>4</sup> An order in council, under date of February 20, 1775, finally fixed the stamp of the royal approval upon the measure for which New Jersey had schemed and striven so long.<sup>5</sup> Frank and unqualified approval it was not. The bill was allowed, on the ground that paper money, when forbidden to be legal tender, had had salutary effects in the colonies.

That the act had provided no permanent salaries for the civil officers of government during the existence of the loan, but provided for the appropriation of the interest money to the support of government by future acts of the assembly, was criticised as a defect. To meet this objection the king was urged to make a requisition for the purpose upon the New Jersey assembly. But to comply with such a recommendation the assembly was particularly disinclined, and indeed, the Revolution had begun before the legislature was officially notified of the royal allowance of the £100,000 act.<sup>6</sup>

<sup>1</sup> *Assembly Journal*, Feb. 20, 1774.

<sup>2</sup> *Ibid.*, May 2 and 3, 1774.

<sup>3</sup> Allinson, *op. cit.*, p. 419.

<sup>4</sup> *N. J. A.*, vol. x, p. 461.

<sup>5</sup> *Ibid.*, p. 549.

<sup>6</sup> *Assembly Journal*, Nov. 24, 1775.

The paper money question was one of the most troublesome to the royal officials at home and in the colonies. It was a pertinent and stubborn fact that the peculiar circumstances of the American colonies made necessary a sufficient and flexible medium of exchange. Despite the theoretical objections to the method chosen to accomplish the desired end, the temptation became overpowering to declare emission after emission in order to lighten the burdens of taxation. The evils of a paper currency were minimized in New Jersey, however, by the careful way in which provision was made and adhered to for redeeming the bills of credit. It was this fact largely which made the residents there less able to appreciate the position taken by the home government, and which made them so insistent for relief through resort to an expedient in which they saw only good.

The New Jersey assembly could not "conceive it possible for any Fund to be of a more fixed and determinate Value," than the land security, carefully inspected by loan officers, upon which the emissions were based.<sup>1</sup> "Our Lands are daily rising in worth," cried the colonists. That was true for many years, but times of stress came then, as now. When lands decreased in value, the bills of credit did also. The depreciation of Jersey bills, however, was less than those of New York and Pennsylvania. In 1741 Governor Morris wrote "that the bills or what they call the Paper Money of this Province have not only retained but increas'd their Credit being now 12½ P Cent better than those of the neighboring province of New York."<sup>2</sup> Nevertheless the bills did fluctuate in value, and the fact that the deterioration was less than in other provinces, did not obviate the fundamental objections of the lords of trade. Merchants and traders were losers just in proportion to the sinking credit of this unstable currency.

<sup>1</sup> *N. J. A.*, vol. vii, p. 27.

<sup>2</sup> *Ibid.*, vol. vi, p. 135.

Aside from the theoretical objections to paper money, the London authorities naturally opposed the practice of supporting the civil establishments in the colonies by means of the interest from the bills of credit. This was a prevalent scheme to avoid taxation. In so far as the Jerseymen attempted to escape taxation for the support of government by resorting to the emission of paper money, its use must be especially condemned. The obvious danger of such a practice was that of an over-issue. As the bills were regularly canceled at their expiration, those outstanding were insufficient to pay the expenses of government. As one of the documents of the time declared, the effect of continued emissions upon "the Body Politic, is like cold water to a man in high fever, the more is given still the more is called for."<sup>1</sup> And New Jersey was no exception to the colonies that wished to pay the salaries and other charges of government in this way. "'Tis 17 years since any Tax was raised on the People for Support of Government," Belcher informed the lords of trade in 1749.<sup>2</sup> Two years later it was found necessary to raise the money for the support of government by a tax upon real and personal estates. During the Fourth Intercolonial War the expense of government was again paid by the interest of money emitted on loan. This practice continued until about 1769, when the government was again supported by annual taxes.<sup>3</sup> It is thus evident that for only two brief periods between 1735 and 1776 were the inhabitants taxed for the support of government. When, with this fact, it is considered that there was no provincial duty or excise, it is difficult to believe that the colonists were tax-burdened, as was their frequent complaint.

<sup>1</sup> *N. J. A.*, vol. vi, p. 226.

<sup>2</sup> *Ibid.*, vol. vii, p. 246.

<sup>3</sup> *Ibid.*, vol. ix, p. 580; vol. x, p. 447.

Whatever opposition the colonial governors showed to the emission of bills of credit, was due to respect for the letter of their instructions, and not to a desire to forbid the emissions. In many cases, indeed, denial of assent to issues of paper currency presaged the assembly's refusal to vote the necessary funds for the support of the civil establishment. The three leading governors of New Jersey during this period, Morris, Belcher and Franklin, personally favored a reasonable amount of paper currency in the colony, and at least in the case of the last two, urged the lords of trade to allow the passage of credit acts, that conflicted with the letter of their instructions.

The opposition to the restrictions imposed by the mother country upon the paper currency legislation in the colony, increased as the spirit of opposition to parliamentary taxation developed. This was doubtless due to the fact that when bills of credit could not be emitted, taxes were necessarily increased. The opposition of the home government to legal tender paper currency in the colonies was more consistent and resolute in the later, than in the earlier, colonial era. All the colonies including New Jersey, whose emissions were doubtless the least objectionable, felt the effect of this vigorous policy.

After the paper bills of credit came into general use, the counterfeiting evil became of serious importance. Imitating foreign coins was not only difficult, because of the scarcity of metal, but the danger of detection was increased, because of the comparatively small amount in circulation. Counterfeiting the paper bills of credit, however, was less expensive and less risky. As early as 1727 it was found necessary to replace bills of a previous issue in part because several thousand pounds of the earlier issue had been counterfeited.<sup>1</sup> The acts of emission decreed the penalty of

<sup>1</sup> Nevill, *op. cit.*, vol. i, p. 146.

death, without benefit of clergy, for altering or counterfeiting any of the bills. Notwithstanding this extreme penalty counterfeiting prevailed to an unfortunate extent. In 1748, a council resolution declared that if a jury were called to hear the case of a counterfeiter in Morris County, conviction would be impossible, because the jury itself would include either some guilty of the same crime or others who were relatives of the accused!<sup>1</sup> The course of justice was not so much impaired in all the counties, however, because many persons suffered the extreme punishment for their crimes.

There was other legislation against counterfeiting, aside from the sections in the acts emitting bills of credit. The activities of the counterfeiters became especially bold during the violent period of the land riots. The legislature passed an "act for punishing the coiners and counterfeiters of foreign coin passing current; and the counterfeiters of bills of credit of this Province" in February, 1748.<sup>2</sup> The portion of the act relating to foreign coins made current by lawful authority was unquestioned, but the king's attorney general objected to the uncertainty of the description of foreign coins that should be passed by common consent as full satisfaction for debts, the penalty for the counterfeiting of which was also death.<sup>3</sup> The act was accordingly disallowed.<sup>4</sup>

The preamble of an act passed in 1766 recited that there was no New Jersey law for punishing "capitally" many evil-minded persons who had lately come into the province and counterfeited the bills of credit of the neighboring colonies.<sup>5</sup> Situated between New York and Philadelphia,

<sup>1</sup> *N. J. A.*, vol. xvi, p. 48.

<sup>2</sup> *Ibid.*, vol. xv, p. 570.

<sup>4</sup> Allinson, *op. cit.*, p. 71.

<sup>3</sup> *Ibid.*, vol. vii, p. 305.

<sup>5</sup> *Ibid.*, p. 287.

New Jersey was a convenient and natural stamping-ground for the manufacture of valueless money. This bill of 1766 was designed to more effectually prevent such illicit business. The usual penalty was decreed. An act to more effectually "punish the counterfeiters of foreign Gold or Silver Coin" current in the colony was passed in March, 1774.<sup>1</sup> Under this law, for the first offence the miscreant might at the discretion of the court be treated to one or all of the following punishments, namely, to be whipped, branded "by an iron sufficiently hot to make a lasting mark," fined, imprisoned, pilloried or cropped. The penalty for the second offence was death. In the £100,000 act of 1774, an addition was made to the regular provision that "'Tis Death to Counterfeit." As encouragement, a reward of fifty pounds was to be paid to any person, who acting as an informer, was instrumental in securing the conviction of a counterfeiter.<sup>2</sup>

Notwithstanding the heavy penalties, as mentioned above, New Jersey suffered much from the practices of the counterfeiters. It was not unusual for the *Pennsylvania Gazette* to print "A Caution to the Public," because of the issue of counterfeit Jersey Bills. The "Caution" would explain the variations for the benefit of "those who have not both sorts to look at together."<sup>3</sup> The *Pennsylvania Journal* for July 28, 1748, noticing the execution of Henry Yager, convicted for counterfeiting New Jersey money, reported that "the Government is determined to exert itself in detecting and punishing this growing Evil."<sup>4</sup>

Unfortunately the escape of ten out of eleven counterfeiters from the Morris county jail in October, 1748, provoked a quarrel between the branches of the government

<sup>1</sup> Allinson, *op. cit.*, p. 441.

<sup>2</sup> *Ibid.*, p. 435.

<sup>3</sup> *N. J. A.*, vol. xii, p. 242.

<sup>4</sup> *Ibid.*, p. 469.



which effectually upset any stern determination to check the evil.<sup>1</sup> The prisoners had broken jail and had traveled unmolested to their homes. Believing that the authority of the judges should be strengthened, Belcher urged the legislature to pass a law for that purpose.<sup>2</sup> Because of the great number of counterfeiters in Morris County, the council's plan was that an act should be passed to enable the governor to grant commissions for bringing counterfeiters to trial in any county, upon which he, with the advice of the council, might determine.<sup>3</sup> They did vouchsafe the opinion, however, that some of the magistrates and judges of Morris County were lax. The assembly declared that not the laws, but the officers were at fault, and refused to pass any law providing for the transfer of the cases to other counties.<sup>4</sup> Neither house had a monopoly of the right nor was either disposed to compromise, and no agreement could be reached.

One of the most notorious of the colonial money-makers was Samuel Ford, a sleek villain, who continued his lawless practises in New York and New Jersey for many years and in the end escaped the deserved punishment for his crimes.<sup>5</sup> He had perfected himself in his "profession," by association with some of the famous Dublin crooks of that period. Associated with him in his ventures were John King and Joseph Richardson, who had visited Ireland with Ford. The Ford "mint" was in the thickest of a well-nigh impassable marsh, near his Hanover, Morris County, home.

In July, 1773, suspicions were directed against Ford, and his arrest for distributing counterfeit money followed.

<sup>1</sup> *N. J. A.*, vol. xvi, p. 82.

<sup>2</sup> *Ibid.*, p. 25.

<sup>3</sup> *Ibid.*, p. 33.

<sup>4</sup> *Ibid.*, p. 41.

<sup>5</sup> See Sherman, *Morristown*; Whitehead, *East Jersey Treasury Robbery*, *N. J. Hist. Soc. Proc.*, vol. v, p. 49.

After spending but a day in jail, he made good his escape, aided by his friend John King, a deputy sheriff, and perhaps winked at by Thomas Kinney, the high sheriff of Morris County. Efforts to capture Ford and his accomplice Richardson were unavailing, the former, it is said, finally settling in Virginia, under the name of Baldwin. Charges were presented to the governor against Kinney by none other than King, who charged the high sheriff with abetting Ford in his escape.<sup>1</sup> Although the council believed the charges to be unsupported, the governor was advised to prosecute the indictment which had already been found against Kinney in Morris County. The attorney general was ordered to prosecute the case.<sup>2</sup>

Bills of indictment for having been implicated with Ford were later brought against four men of supposed respectability in the colony. These men were David Reynolds, Samuel Hays, Benjamin Cooper and Barnabas Budd. The reason that only the first named suffered the penalty for his crime, must be related in connection with the story of a crime committed in 1768, the solution of which apparently baffled the efforts of the provincial officials.

For six years the robbery of the East Jersey treasury had remained an unraveled mystery. The home of Stephen Skinner, the East Jersey treasurer, at Perth Amboy, had been robbed of £6,570 9s 4d on the night of July 21, 1768. The house was occupied at the time, but the thieves worked with such ability and agility that, having broken open the iron chest, they escaped with the money, and successfully eluded all attempts to apprehend them. In a proclamation of July 26th, a reward for the capture of the robbers was offered, £50 to be paid by the governor, an additional £100

<sup>1</sup> *N. J. A.*, vol. x, p. 419.

<sup>2</sup> *Assembly Journal*, Feb. 16, 1774.

by Mr. Skinner, and a confessing accomplice would be entitled to the king's pardon.<sup>1</sup> The council advised that the assistance of the governors of New York, Pennsylvania and Connecticut be asked, and that an express be hurried along the sea coast.<sup>2</sup> It is interesting to notice that this advice was given a month after the perpetration of the crime.

When the legislature met, in October, 1769, the assemblymen expressed concern that the robbers had not been discovered and promised to give their best attention to the affair.<sup>3</sup> The treasurer, hoping for indulgence for his errors, but wishing no mercy for any guilt, submitted his case to the assembly.<sup>4</sup> A full inquiry into the robbery was postponed until the next session, after a declaration was made that nothing had up to that time appeared to impeach the character of the treasurer.<sup>5</sup>

At the session in October, 1770, the assembly made a searching inquiry into the matter. Many witnesses were examined and the members of the house even visited the scene of the robbery. After considering the evidence, the house resolved that the money was taken because of the "want of that Security and Care that was necessary to keep it in Safety," and the treasurer's request that the amount stolen be allowed him was denied.<sup>6</sup> This resolution of the assembly impugned the treasurer, although no evidence condemnatory of his conduct in office had been advanced.

The matter rested until September, 1772, when Skinner, in a memorial to the lower house, urged that the evidence be reconsidered, on the ground that the damaging resolution of 1770 was repugnant to the declaration of 1769, that the assembly had found nothing to impeach his character.<sup>7</sup> As

<sup>1</sup> *N. J. A.*, vol. xvii, p. 524.

<sup>2</sup> *Ibid.*, p. 525.

<sup>3</sup> *Ibid.*, vol. xviii, p. 42.

<sup>4</sup> *Assembly Journal*, Nov. 29, 1769.

<sup>5</sup> *Ibid.*, Nov. 29, 1769.

<sup>6</sup> *Ibid.*, Oct. 17, 1770.

<sup>7</sup> *Ibid.*, Sept. 9, 1772.

no new evidence had been introduced, the assembly denied the request for a re-hearing, and asked the governor to join with them in some method for compelling the treasurer to account for and pay to the colony the sum stolen.<sup>1</sup> The assembly intimated to the governor, moreover, that the treasurer should have been removed after the robbery.<sup>2</sup> This attitude of the lower house was scarcely consistent, and its position hardly tenable. A resolution proposing that the treasurer be removed had previously been rejected as unjust, and the assembly had continued to vote Skinner's salary.<sup>3</sup> The governor pertinently mentioned these facts and promised to unite with the house upon any proper measures whenever they were suggested. This was the beginning of a long and bitter quarrel between the governor and the assembly, which effectually stopped legislation for some time.

In a message to Franklin on September 18th, he was requested by the assembly to remove Skinner and join with the lower house in a law to authorize a newly-appointed treasurer to bring suit against the "now Treasurer" for the treasury deficiency, because he was negligent in his office.<sup>4</sup> Disapproving of this the governor was asked to submit some more agreeable method. The governor properly refused to remove the treasurer, before the offence charged against him had been satisfactorily proved.<sup>5</sup>

Having laid the matter before the council for their advice, that house, on September 20th, advised the governor that it would not be proper to remove Skinner.<sup>6</sup> In accordance with their further advice, he recommended to the

<sup>1</sup> *Assembly Journal*, Sept. 10, 1772.

<sup>2</sup> *Ibid.*, Sept. 12, 1772.

<sup>3</sup> *Ibid.*, Sept. 15, 1772.

<sup>4</sup> *Ibid.*, Sept. 18, 1772.

<sup>5</sup> *Ibid.*, Sept. 23, 1772.

<sup>6</sup> *N. J. A.*, vol. xviii, p. 294.

assembly a conference committee of the two houses to deliberate upon the matter.<sup>1</sup> The two committees met but could not reach an agreement at this session.<sup>2</sup> That they saw no reason for altering their former opinion, was the answer which the assembly returned to the governor, and he was left to pursue whatever methods he desired.<sup>3</sup>

At this juncture Skinner presented a memorial, stating his willingness to appear in a suit to be brought against him for the purposes desired by the assembly. Having decided that his removal from office must precede any action on their part, they refused to consider the proposal.<sup>4</sup> In a message of September 26th, the governor stated his position admirably but with little effect upon the stubborn legislators. He refused to remove the treasurer because of a mere opinion, expressed as such, by the house. Only when the treasurer's negligence had been legally determined would it be just to cause his removal. The attorney general, being the treasurer's brother, could not prosecute the case, but the governor declared himself willing to appoint for that purpose whomsoever they recommended. But if the assembly would not provide for the expenses of the suit, it would hang fire, and the blame must rest upon them. Returning no answer to this message, the house, having wearied of the quarrel, was prorogued at its own request.

It was during the interval between the September, 1772, meeting of the assembly and the opening of the next session, in November, 1773, that the activities of the Morris County counterfeiterers were revealed. Reynolds, the only member of the quartet indicted for counterfeiting, who was executed, had divulged certain information connecting Ford

<sup>1</sup> *N. J. A.*, vol. xviii, p. 339.

<sup>2</sup> *Assembly Journal*, Sept. 23, 1772.

<sup>3</sup> *Ibid.*, Sept. 25, 1772.

<sup>4</sup> *Ibid.*, Sept. 26, 1772.

with the robbery of the treasury. Cooper, Haynes and Budd, in confessions which gained for them freedom, also made statements incriminating Ford in connection with the robbery.

Governor Franklin referred to the treasury theft as having been brought to light, when he addressed the legislature at the opening of the session in 1773, and urged that he be enabled to send proper persons on an expedition to capture the robbers.<sup>1</sup> The assembly, not inclined to act in concert with the governor, recommended that rewards of £300 each be offered for the apprehension of Ford and Richardson, and £50 for King. Although the governor had laid before the house the confessions and examinations taken in connection with the affair, the assembly inquired the reasons for his belief that the mystery of the robbery had been solved.<sup>2</sup>

As firm as was the governor in his attitude toward Skinner, so resolute also was the assembly that the East Jersey treasurer should be removed. The governor in a long and careful message to the lower house detailed the reasons for his opinion. The assembly was inclined to scepticism regarding the confessions, because they had the appearance of having been extorted from the convicts by means of the "third degree."<sup>3</sup> The governor's position was, briefly, that credence could properly be given to those confessions where

<sup>1</sup> *Assembly Journal*, Nov. 12, 1773.

<sup>2</sup> *Ibid.*, Nov. 16, 1773.

<sup>3</sup> From the account of Justice Ogden, before whom the second confession of Cooper was taken, we must conclude that the "third degree" was administered. The sheriff was ordered to take off Cooper's irons and pinion him, as if he was about to be hanged. The sheriff was then ordered to take the rope in his hands, tell Cooper he was sorry he had to do his duty, and must take him out. The rope was then coiled and moved by the sheriff. It is reported that at this point "Cooper was frightened, knew more and would confess it." Therefore he confessed that Sam Ford had robbed the East Jersey Treasury.

they were not repugnant to credible evidence, and, that while there was positive and circumstantial evidence to prove that Ford was concerned in the robbery, there was nothing to prove the contrary.<sup>1</sup>

Meanwhile, Skinner again memorialized the assembly to the effect that he was anxious for some settlement and would agree to any method which was not over-prejudicial to him.<sup>2</sup> The house having ignored his former memorial, on December 17, 1773, he urged that a suit at law be brought, and promised to resign if the verdict should be against him. The assembly was unalterably opposed to Skinner. It was believed by some that the controversy was but the cloak to conceal their real plan to insist that the appointment and removal of the treasurers should be by them alone. James Kinsey, from Burlington County, was one of the leaders against the governor in this matter, and is said to have declared that the treasurer would have been liable had lightning blasted the treasury.<sup>3</sup>

On December 18th the assembly made a formal report to the governor of their position.<sup>4</sup> The report was doubtless penned by Kinsey. It was a lengthy argument in favor of their position that the confessions could not be regarded as credible. In this, however, they were grossly inconsistent, for it was admitted that Cooper's confession had been of great service against the counterfeiters. Admitting that the money was stolen, they still regarded the treasurer liable at law. Because removal was prerequisite to the institution of a suit at law, Skinner's removal was requested. The council did not hold this opinion, however, and unanimously advised the governor, that removal was not neces-

<sup>1</sup> *Assembly Journal*, Nov. 29, 1773.

<sup>2</sup> *Ibid.*, Dec. 6, 1773.

<sup>3</sup> *N. J. A.*, vol. x, p. 414.

<sup>4</sup> *Assembly Journal*, Dec. 13, 1773.

sary to the institution of a legal suit against the treasurer.<sup>1</sup> The assembly held to the belief that the public should bring suit and not confide simply in Skinner's promise to resign, if the verdict was against him.<sup>2</sup>

During this dispute, the wheels of government had been stopped. From arguments the assembly turned to threats, and, in February, 1774, flatly informed the governor that the fate of the bills for the support of government and for the supply of the barracks depended upon his decision regarding Skinner's removal.<sup>3</sup> But the people themselves now sought to influence directly by means of petitions the determination of the question, which had developed into an expensive and fruitless debate.<sup>4</sup> The first petition that came to the assembly early in February urged that Skinner should be removed and then prosecuted, one from Burlington County, even suggesting that if the governor persisted in his position, that the assembly should petition the king. The tide turned, however, and later petitions cried out against the injustice of condemning a person before he had been tried by his peers, which a removal before conviction would seem to indicate. There was much zeal displayed for "that most valuable Privilege of the Subject, to wit, a Trial by his Peers."

But regardless of petitions, each side remained firm. The governor was doubtless right in his position, and a master of argumentation, he riddled the arguments of the assembly, turning some into boomerangs against them.<sup>5</sup> The assembly, at a loss to refute Franklin, and unwilling to be convinced, on February 16, 1774, went on record as believing that the affair still remained "in an obscurity which we

<sup>1</sup> *N. J. A.*, vol. xviii, p. 375.

<sup>2</sup> *Assembly Journal*, Dec. 21, 1773.

<sup>3</sup> *Ibid.*, Feb. 9, 1774.

<sup>4</sup> *Ibid.*, Feb., 1774.

<sup>5</sup> *Ibid.*, Feb. 14, 1774.



must leave to Time to unravel." Skinner again requested a settlement by legal suit, and in addition asserted his willingness to give any security that could reasonably be asked of him.<sup>1</sup> The satisfaction which the treasurer obtained was to be told to resign if he wished a trial.

By a vote of 19 to 7, the house entered into seven resolves on February 19th.<sup>2</sup> The treasurer was declared guilty of remissness in keeping the money; he should not be entrusted with its care; the assembly could consent to no law intrusting funds to him; Skinner's continuance in office was unsatisfactory to the people; the treasurer's negligence and the dissatisfaction of the people were sufficient reasons for removal; any ill consequences or damage resulting from his continuance in office, should be placed against those who continue him in his position; and, the king should be petitioned for redress.

The quarrel gave every evidence of being interminable, when Skinner voluntarily resigned on February 22d. The previous day the assembly had asked Franklin to appoint some proper person for receiving the taxes for the ensuing year in East Jersey.<sup>3</sup> The governor having revealed this request to Skinner, the treasurer resigned and John Smyth was appointed to succeed him.<sup>4</sup> His resignation is an interesting document, setting forth his anguish and mortification during the recent trouble, but his determination that the public interest should no longer be put in competition with his individual interest.

A bill was immediately introduced to authorize the new treasurer to bring an action against Skinner for the amount

<sup>1</sup> *Assembly Journal*, Feb. 17, 1774.

<sup>2</sup> *Assembly Journal*, Feb. 19, 1774. The first resolution was carried by a vote of 21 to 5.

<sup>3</sup> *Assembly Journal*, Feb. 21, 1774.

<sup>4</sup> *Ibid.*, Feb. 24, 1774.

stolen. The governor did not agree with the method pursued by the assembly according to the act, and offered to refuse his assent if Skinner so desired.<sup>1</sup> The latter, trusting in the justice of the legislature, interposed no objection and the bill was passed.<sup>2</sup> By the law, Smyth was ordered to sue for the money, if Skinner refused to pay £6,570 9s. 4d. upon demand. John Wetherill, James Kinsey and Robert Price, or their survivors, were appointed managers of the suit and were authorized to draw a sum not to exceed £200 from the treasury for its prosecution. The judge and jurors were declared exempt from the payment of taxes raised on account of the suit.

The measure did not pass, however, without the exhibition of ill-humor between the houses of the legislature. In sending this act to the council, the assembly urged that it be given speedy consideration. The council with sensitive dignity and wounded pride hoped that the assembly did "not mean to convey an Idea that this House would not bestow an early and sufficient Attention to the Bill as the Importance of it should require, without being then put in mind of their Duty."<sup>3</sup>

Meanwhile the bad humor of the assembly had not been mollified by Franklin's appointment of Skinner to the council. Even without this added impetus, the personnel of the managers would have insured the prosecution of the case with suitable avidity. In the excitement of the approaching Revolution, however, counterfeiterers and treasury robbers became of secondary consideration, and the suit against Skinner was never concluded. During the war, the ex-

<sup>1</sup> *Assembly Journal*, March 11, 1774.

<sup>2</sup> Allinson, *op. cit.*, p. 449.

<sup>3</sup> *N. J. A.*, vol. xviii, p. 465.

treasurer turned loyalist, and his New Jersey property was confiscated and sold. That may have afforded some degree of consolation to the ardent spirits, who worked with such assiduity, in session and out of session, for his removal.

This subject has been treated in such detail because of the insight which it so clearly shows of the workings and characteristics of the colonial government. It is interesting to note how disproportionate an amount of the public money and attention was consumed by this unusual but comparatively unimportant affair. Its real importance was magnified because it was made the occasion for the expression of the growing hostility felt against the royal executive. The assembly gained the victory in this struggle. This was all the more significant, inasmuch as the victory was in the field of finance. Another step was gained in the ladder up which the assembly was ever slowly but surely climbing, to make the popular branch of the legislature of undoubted supremacy in the affairs of the colony.

In financial affairs, the New Jersey Assembly succeeded in gaining unquestioned control. Despite the protests of the royal officials at home and in the colony, the lower house continually asserted and stubbornly maintained the principle that it alone could originate and alter money bills. Payments for the usual expenses of government were made by a warrant of the governor, with the consent of the council, upon the provincial treasurers. Accounts were to be audited by crown officers.

The money raised for the extraordinary expenses of the war was paid out in an irregular manner. Commissioners, independent of the governor, were appointed for carrying into execution the purposes of the acts for aiding the king in military operations. The commissioners were made accountable to the assembly only, which by such acts was

given the power of allowing or disallowing accounts.<sup>1</sup> In 1759, Bernard complained of this irregular practise of issuing warrants to persons accountable to the assembly.<sup>2</sup> An additional instruction was thereupon sent to him, whereby he was ordered to refuse his assent to any bills for raising money unless the sums appropriated were to be upon warrant of the governor with the advice and consent of the council.<sup>3</sup> The accounts were in future issued upon warrant of the governor, but were not audited by royal officials. The treasurers were regularly ordered by the assembly to lay their accounts before the house, and a joint committee of the assembly and council inspected them.

In March, 1774, doubtless as a result of the treasury robbery, an act was passed "to oblige the Treasurers of the Colony of New Jersey to give Security for the due Execution of their Offices and to prescribe the Mode in which the same Security shall be taken."<sup>4</sup> Before any public money was put into his hands, the treasurer was to give bond for £10,000 proclamation money. The governor, council and assembly were to be the judges of the sufficiency of the security. This act, entirely laudable, had the effect of more properly securing the public funds.

<sup>1</sup> *N. J. A.*, vol. ix, p. 154.

<sup>2</sup> *Ibid.*, p. 154.

<sup>3</sup> *Ibid.*, p. 158.

<sup>4</sup> Allinson, *op. cit.*, p. 447.

## VITA

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EDGAR JACOB FISHER was born in Rochester, New York, in 1885, and received his public and high school education in that city. In September, 1903, he entered the University of Rochester, obtaining the degree of Bachelor of Arts from that institution in June, 1906. The year 1906-1907 was spent in pursuing graduate studies under Prof. William C. Morey and Prof. George M. Forbes, at the University of Rochester, and in June, 1907, the author of this study received the degree of Master of Arts. Having matriculated at Columbia University, he spent the next two years in residence at that institution. He attended the seminars of Prof. Herbert L. Osgood, and Prof. William A. Dunning, and courses under Professors Osgood, Dunning, Burgess, Sloane, Robinson, Seligman, Seager, and Shepherd. During the year, 1909-1910, he was principal of the Roselle Park (New Jersey) High School.







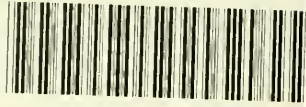








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