

**DEVELOPMENT OF LOCAL GOVERNMENT**

**IN DELAWARE**

**1776 - 1831**

**by**

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## CHAPTER I. - PREVIEW OF GOVERNMENT PRIOR TO THE REVOLUTION

### Introduction

The purpose of this thesis is to show the development of local government in Delaware under two state constitutions, from 1776 to 1831.

However, as a means of clarifying this development, it has been thought desirable to present a short sketch of the growth of government in Delaware during the colonial period as well.

### Dutch, First Period 1609 - 1631

In 1609, Henry Hudson, an Englishman in the employ of the commercially alert Dutch East India Company, was making explorations in the new world.<sup>1)</sup> Like other explorers before him, he was searching for a shorter route to the Indies; and the break in the mainland which is the Delaware Bay, gave promise of being the long searched for route. Discovering that the bay was shallow, Hudson made no attempt to explore it.<sup>2)</sup> Convinced that no route so shallow could possibly be the short passage, he withdrew from the Delaware Bay, in search of other more promising water routes.<sup>3)</sup>

Hudson next steered a northerly course, sailing up  
the New Jersey coast to Manhattan.<sup>4)</sup>

Another Dutch explorer, Captain Mey, also touched the lower reaches of the Delaware Bay four years later. He first sailed to the Hudson, and thence southward along the coast to the southernmost part of what is today New Jersey. To the cape on the tip of New Jersey, he gave the name "Cape Mey", naming it for himself. Opposite Cape Mey on the Delaware shore he saw another cape to which he gave the name "Cape Cornelius", but which we now know as Cape Henlopen. At the point, which is now the boundary line between Delaware and Maryland, Mey gave the name Cape  
<sup>5)</sup>  
Hindlopen.

The first truly complete exploration of the Delaware Bay and River was made by another Dutch explorer, namely, Hendriksen. Spending most of the year 1615, and a part of the following year, Hendriksen thoroughly explored both the Delaware Bay and River; he is known to have landed at Christina Creek where he conversed and dealt with the Indians.

It would be expected, quite naturally, that

these explorations would quickly stimulate commercial activity on the part of Holland, the leading commercial nation at that time. The Dutch, however, were slow to take advantage of the great fields opened up by their intrepid explorers. Hendriksen's reports, although failing to arouse any spirited interest among the officials of the government, did encourage the Dutch merchants, which led to increased trading company activity.<sup>6)</sup> It was by trading companies, that the first control, or government of the Delaware area, was established and maintained.

The Dutch East India Company held a claim of authority over the area by reason of priority of discovery, but administration of power was non-existent since the company had no settlers or agents here. The company's control ceased as a result of the sale of its rights to Holland.<sup>7)</sup> In 1614, the States-General, the constitutional governing body of the nation, granted a trading charter to some Dutch merchants, and for the first time gave the name of New Netherland to their American over-seas possessions, an area stretching from French held Canada to Virginia, or from the fortieth (40th) to the forty-fifth (45th)

8)  
parallel.

From this nationally-encouraged trading group was born the West India Company which was granted a charter in 1621 by the States-General. Now, however, no specific territory or possessions were guaranteed to the company, and responsibility for success or failure was placed squarely up to the company, since it was not permitted to declare war. Should hostilities occur, 9) the expense of defense was to be borne by the company. Except for the stated restrictions the States-General was generous. In its name the company could make alliances and contracts with other nations within charter limits; raise a body of soldiery with power of dismissal; appoint and discharge governors and other public officers; build forts; administer justice and promote trade. 10) To administer these privileges for the company, five boards of managers were stationed in various parts of Holland, with the executive power in the hands of a "college of nineteen", in addition to representatives from the five boards of managers 11) and one representative from the States-General. Here we see an excellently conceived method of control which, however, was handicapped from the start

by a lack of protection against any aggression, since Holland made no guarantees in the event of hostilities. Thus checked, a bold, aggressive policy could hardly be pursued by the company.

The governmental organization, outlined above, had no one in the Delaware area over which to exercise control. In 1629, however, in order to stimulate colonization, the company offered to grant extensive tracts of land to anyone who would found a colony with not less than fifty people. The founder was to exercise the powers of government over the colony in the same manner as a Feudal Baron.<sup>12)</sup> The States-General confirmed the Charter of Exemption and Privileges, as this deviation from the company's regular procedure was termed. Noting the value of the land, several Dutchmen took advantage of the generous policy in that same year by having their agents, Samuel Blomaert and Samuel Godwyn, purchase a tract of land beginning from old Cape Henlopen, where the southern boundary of Delaware touches the ocean, and extending north thirty-two (32) miles to the mouth of the Mahon River.<sup>13)</sup> Before the year 1629 became history, plans for other colonies were budding through the efforts of Rensselaer,



14)  
DeLaet and DeVries. The individual ownership of tracts of land in Delaware now went through a process of evolution, emerging into an eight man partnership, composed of Godwyn, Blommaert, DeVries, Van Rensselaer, and four members of the West India Company - Van Ceulen, Hamel, Van Haringhoeck and Van Sittorigh. The result was the familiar ill-fated DeVries settlement,<sup>15)</sup> which was established at what is now Lewes.

At this point, attention should be directed to the fact that the Dutch governmental machinery, which had been organized under the guiding hand of the Dutch West India Company, now had been temporarily sacrificed to a feudalistic system for the sake of stimulating colonization. This meant that Ossett, the Dutch Commander of the newly established colony<sup>16)</sup> in Delaware, was the government of the colony.

With the complete destruction of the colony by the Indians, the Ossett government came to an end, and the eight man partnership was dissolved in 1635 by the sale of their interests to the Dutch West India Company.<sup>17)</sup> The exercise of control over the Delaware area once more reverted to the Indian, but to be interrupted in a few short years by the arrival of the Swedes.<sup>18)</sup>

The Swedes and New Sweden 1638 - 1655

The seeds of Swedish dominion had been sown as early as 1624 when King Gustavus Adolphus granted Usselinx a commission for the formation of a trading company, the plans of which were drawn up by Usselinx for presentation to the government and nation.<sup>19)</sup> In 1626 the King signed the contract of thirty-seven (37) articles, known as a charter of privileges, giving it life for twelve (12) years. The purpose of the new adventure was to make settlements by means of which the christian religion could be propagated among the native Indians, and profits could accrue to the stockholders of the company.

The government was to consist of one director with a six year term, elected by a majority vote of the qualified share-holders, or appointed from the eligible members; a head office in Gothenburg, and local offices elsewhere. The parent government provided for its own welfare by exacting a 4% duty on all exports and imports, except gold and silver, received in payment for goods; by claiming one-fifth of the minerals discovered; one-tenth of the harvest from

cultivated lands and booty taken from pirates, if a Swedish Man O' War were present. Otherwise, such income was to go to the company for the defense of trade. The company was to operate under the protection of the Swedish government, and, at the expense of the government, the King was to appoint a council consisting of the most prominent share-holders to provide for building and manning fortifications, appointing governors and other officers, making laws, establishing courts, settling disputes between the colonists and Indians, founding towns, making treaties within charter limits and providing defense in case of hostilities.<sup>20)</sup>

In comparison with other trading company systems, Usselinx's contract was tied more firmly to the national government, and consequently was less apt to fail because of too little governmental interest, as was the case with the Dutch. But, alas, Usselinx's efforts proved in vain. The Thirty Years War in Germany and the Swedish King's death on the battle-field of Lutzen in 1632 prevented his plans from materializing.<sup>21)</sup>

9.

In 1629 the King, to be sure, had organized a South Company to build ships to augment the merchant marine for war trade. In 1630 the South Company and Usselinx's Company were joined. An entirely new company was formed in 1632, called the New South Company with Usselinx as "General Director". The chances for the final survival of this company, however, completely disappeared when the Swedish Army in Germany was defeated in 1634.

Yet in 1637, there was organized a new company which was destined to succeed.<sup>22)</sup> Since, upon the death of Gustavus Adolphus in 1632, his sole child, and successor, Christina, was only six years old, the governing powers rested largely in the hands of the Chancellor, Count Axel Oxenstiern, and it was under his capable direction that the patent, formulated by Usselinx in the time of Gustavus Adolphus, was revived with its privileges extending to the citizens of Germany.<sup>23)</sup>

The new Swedish-Dutch Company chose Minuit, formerly director of the West India Company at New Amsterdam, as leader of the expedition and manager of

colonial affairs, while Blommaert was engaged to handle the business in Holland, provision expeditions and direct the progress of the company. <sup>24)</sup> Financial backing was to be provided by Sweden and the Dutch <sup>25)</sup> partners.

The proposed government for the colony was outlined in the instructions directed to Minuit. By these Minuit was told where to explore, what to buy, to name the area "New Sweden", to build a stronghold, to treat the Indians kindly, and to establish the beaver trade with them. An additional letter of thirty-two (32) articles informed the commander, soldiers, and sailors of their responsibilities and <sup>26)</sup> conduct, especially enroute to America.

In accordance with his instructions, Minuit established, at "The Rocks" on the Christina River in present day Wilmington, Delaware, the garrison house, storage facilities, and a stockade and called the place Fort Christina in honor of the twelve-year old Queen of Sweden. Almost immediately Minuit was confronted with Dutch protests, accusing the Swedish-Dutch Company of appropriating Dutch lands, but these

27)  
 protests he calmly ignored. With the colony firmly  
 established, Minuit set out on a return voyage to  
 Sweden via St. Christopher Island in the West Indies.  
 Upon reaching that island he visited a Dutch vessel  
 which, however, was blown out to sea while he was  
 aboard, and was never heard of again. Thus ended the  
 Minuit leadership of "New Sweden".<sup>28)</sup> But, Minuit,  
 with forethought, had appointed Mans Kling as commander  
 of Fort Christina and Henrick Huygen as custodian of  
 merchandise and provisions, before he set forth on his  
 ill-fated trip,<sup>29)</sup> and, therefore, the colony did not  
 perish but became the first permanent settlement not  
 only in what is now the State of Delaware but in the  
 entire Delaware River Valley.

The difficult task of finding a suitable  
 successor to Minuit, and of planning a new expedition  
 now confronted the company.<sup>30)</sup> The office of Governor  
 was filled by Peter Hellender Ridder in 1639, but he  
 did not serve in that capacity until his arrival in  
 1640, when he took over the post temporarily held by  
 Mans Kling. At the same time Henrick Huygen surrend-  
 ered his books and duties as custodian of provisions.<sup>31)</sup>

Ridder's term was not distinguished by any marked changes in method of local control. The policy of friendly relations with the Indians was continued, and by purchase from them of an area south of Duck Creek, the holdings of the company were increased.<sup>32)</sup> Marked change did occur, however, in the company management. In 1641 the Dutch members of the company were bought out by the Swedish government; a transaction heartily desired by the Dutch since they were also stock-holders in the Dutch West India Company.<sup>33)</sup> Had they not terminated connections with one of the companies, they would have been in the peculiar position of being commercial rivals to themselves. A further change in management was effected in 1642 when re-organization of the old company created the New Sweden Company with the government pledged to subscribe liberally, and to be a stock-holder with the right to interfere in company management.<sup>34)</sup>

Johan Printz succeeded Ridder in 1642 at a salary of eight hundred (800) riksdaler. In addition to the Governor, four other officers were named: A Lieutenant Governor at sixteen (16) riksdaler per month; a Secretary at eight (8) riksdaler;

a clerk and a hangman.<sup>35)</sup> The pay of these officers  
was to come from the tobacco excise in Sweden.<sup>36)</sup>

Upon his arrival at Fort Christina in  
February 1643, Printz actually began his term.<sup>37)</sup>  
His commission and instructions gave him full direc-  
tions and power to administer and govern the colony,  
and they especially directed him to hold the established  
frontier. He was admonished repeatedly to maintain  
good relations with the Indians, but in spite of this,  
trouble did arise.<sup>38)</sup> Printz, in obedience to the  
admonitions of his superiors, concluded a treaty of  
peace with the natives. One might say that the new  
governor did have the last word, however, since a  
clause of the treaty stated that,

"if they hereafter committed the  
least offence against our people,  
then we would not let a soul  
of them live".<sup>39)</sup>

Printz's instructions further outlined his responsi-  
bilities which included the examination of the  
facilities for whale fisheries and silk worm culture;  
encouragement of fur trading, agriculture, manufac-  
turing and mining; and the dispensing of justice.<sup>40)</sup>  
The importance of these instructions as a governmental  
agency is evidenced by the fact that Printz did



attempt to carry them out.<sup>41)</sup> This meant that the  
 governor was the agent of the company, carrying out  
 their will according to instructions.<sup>42)</sup> At times,  
 circumstances caused Printz to abandon some of his  
 plans, which reveals that in the last analysis, the  
 government was largely dependent upon the will of the  
 governor.<sup>43)</sup>

Very early, under Printz, the colony was  
 re-organized, and divided into districts, each ade-  
 quately protected by a fort.<sup>44)</sup> It is quite probable  
 that this division was brought about to facilitate  
 more efficient control through local government. If  
 so, it apparently did not function properly, however,  
 as there is much evidence to indicate that Printz  
 ruled harshly and with an iron hand, having little  
 regard for the will of his people. Yet, some of the  
 blame must be placed upon the company, since Printz's  
 petitions to the mother country for aid went un-  
 answered.<sup>45)</sup> At one time, almost four years passed  
 before Printz received any orders or assistance from  
 Sweden.<sup>46)</sup> Such neglect would certainly go far to-  
 ward producing a nervous and ill-tempered governor,  
 especially when that official hoped to be released

from his post at the termination of his three year term; in fairness to the Queen, it should be stated that a successor to Printz could not be found<sup>47)</sup> immediately.

In 1653, with disaffection prevalent among the colonists, and with a governor wanting to go home, the Swedish Council of State undertook a full investigation of the matter, resulting in an order from the Queen, directing the Commercial College to take over<sup>48)</sup> the management of the company. The Commercial College was still directing the affairs of the company<sup>49)</sup> the following year.

The successor to Printz had none too happy a prospect before him, with the domestic problems of the colony to be solved and with the threat of Dutch interference with Swedish sovereignty ever hanging over the colony. The latter condition developed when Printz lost partial control over the Delaware River to the aggressive Stuyvesant, who built Fort Casimir<sup>50)</sup> at New Castle and exacted duty from all ships passing. Into this situation, Rising was projected in 1654, with memorials and instructions authorizing his control over political and judicial matters, but placing

the military management into the hands of another.<sup>51)</sup>

Rising came in May, and upon the arrival of his commissions in October, he assumed his new post as Director. He immediately appointed Sven Skute and Johan Papegoja as his assistants, and convened his council to provide for the re-organization of the internal government through the creation of a constitution.<sup>52)</sup>

Under Rising this council apparently operated as we find it being convened when a Dutch attack became imminent.<sup>53)</sup>

It must have been an important part of Rising's administration since one of its principal duties was to provide provisions for the colony.<sup>54)</sup>

Other officers aiding Rising were Commissary,<sup>55)</sup>

Assistant Commissary,<sup>56)</sup> an overseer of building materials, a superintendent of agriculture, a manager of the plantation and land clearing,<sup>57)</sup> an overseer of wood cutting,<sup>58)</sup> and an engineer map maker.

Rising's administration of government was attended by a greater freedom for the governed than was enjoyed under Prints.<sup>59)</sup> Land was apportioned to the settlers and cows were given to them on a rental basis.<sup>60)</sup> The right to trade directly with their

neighbors, the Indians or the Company, was granted to the settlers, and any land purchased became the personal property of the purchaser.<sup>61)</sup>

Abundant and clear evidence of a judicial system in these early days is not evident, but courts were probably held at Fort Christina from the start of the Swedish settlement in 1638.<sup>62)</sup> A court of inquiry composed of English, Swedish and Dutch Commissioners was held at Fort Christina in 1643,<sup>63)</sup> and there is<sup>64)</sup> mention of a court being called by Printz about 1645. It is very probable that it was a court similar to this "regular" court, composed of Printz and a jury, before which Sven Vass was tried for negligence in falling asleep while on guard duty. The following year, however, the case was re-examined at New Gethenburg in New Sweden by a "legal" court. The case was finally disposed of by sending the defendant and the minutes of the trial to Sweden for the approbation or disapprobation of the Queen and the Company. This procedure clearly indicates a recognition of the right of appeal to the mother country from the verdicts of the colonial court.

Printz complained of the need of an

assistant to administer justice and attend to the law business, since at times, he was forced to appear in court as the plaintiff as well as judge, but no such assistance was provided until Rising was appointed to the position.

What has been said of the court system demonstrates two things; no well defined court system had been established in the Delaware area, and secondly, a system of appeals was in use, either as a principle or from a lack of knowledge on the part of the local courts of the scope of their powers.

Care for the poor was not, under Printz, a problem because they were in no way provided for, but under Rising the need of begging was alleviated by the establishment of a charity fund and the appointment of a minister to distribute food and  
65) clothing.

#### The Dutch, Second Period 1655 - 1664

The Swedish attempts at government came to an end in September 1655 when the rumblings of  
66) Dutch intervention became an accomplished fact.

Rising, confronted with such an overwhelming force, chose capitulation as a more sensible choice than suicide, and New Sweden was handed over to Stuyvesant<sup>67)</sup> to become a part of New Netherland. Before taking leave, Stuyvesant appointed Deryk Smidt as Commissary<sup>68)</sup> pro-tem over the former Swedish settlements, and the seat of this temporary government was transferred from Fort Christina to Fort Casimir. As under former Swedish governors, lands were given out by Smidt, but complaints against his management caused his recall in November of the same year. Jean Paul Jacquet was chosen as a successor and commissioned Vice Director with "supreme command and authority to govern, aided by a council under the guidance of Stuyvesant".<sup>69)</sup> Jacquet as the vice director, Andries Hudde as secretary and surveyor and Elmerhuysen Klein as counselor were to compose a court of civil justice.

Most of the area included in present day Delaware ceased to be under the control of Dutch West India Company in 1656, by reason of the division of the territory by the company. The area south of Christina Creek was given up to be governed by six

commissioners appointed by the Amsterdam Burgemeester. Governmental orders were to be carried out through the Governor of New Netherland, subject to the ratification by the States-General. The management of the remainder of the territory north of Christina Creek was to be through the West India Company. The company ceded the entire area in 1663.<sup>70)</sup>

The Dutch rule was never long under the control of any one man. Smidt's successor, Jacquet, who became Vice Director in 1655, was dismissed in 1657, to be followed by Jacob Alrich. With Alrich came another entirely new type of governmental agent in the person of Geeran Van Dyke, who was to act as Inspector over the Swedes and to guard against seditious activities.<sup>71)</sup> This was probably the first secret service bureau, or European espionage system to be transferred to these shores. Alrich's many duties necessitated the appointment of an additional official by Stuyvesant in the person of William Beckman who became an assistant in 1658 with the special duty of collecting revenue. The death of Alrich in 1660 created a vacancy which was filled by the appointment of Alexander D'Hineyessa, with

Cornelius Van Gezel and Gerrit Van Sweringen as councillors.

The Dutch local government seems to have produced several more officers than had been employed by the colony of New Sweden. The towns had a Burgo-master and burgesses. A Schout or Sheriff had supervision over an area that extended beyond the town according to assignment. His duty was the adminis-<sup>72)</sup>tration of justice. Over these officers were the Vice Director and his assistant, who were responsible to their superior, the Director of New Netherland. The Director was responsible to the Dutch West India Company or to the Burgemaster of Amsterdam. The acts of these two agencies were subject to ratification by the States-General. Undoubtedly, the most important link in this chain was the Director, Peter Stuyvesant. The importance hinged not only upon the office but upon the dynamic spirit of the officeholder.

English, Duke of York Period 1664 - 1682

The Dutch loss of New Netherland came to pass when Stuyvesant was forced to surrender New



Amsterdam to the English on August 27, 1664. The Delaware area was surrendered with the loss of New Amstel on October 1, the same year.<sup>73)</sup>

The British system of control established in New York, consisted of executive and judicial powers in the hands of the governor and a servile council, aided in their administrations by a Court of Assizes with justices appointed by the Governor, and holding office at his will. The legislative power was entirely in the hands of the governors, the first of whom was Colonel Nicolls. Directing the activities of this government, beyond the seas, was the Duke of York.<sup>74)</sup>

The government of the Delaware area was placed in the hands of Sir Robert Carr, as an assistant to Nicolls. In 1667 Nicolls was replaced by Sir Francis Levelace as Governor over the settlements on the North and South Rivers. At this time the Delaware area was still in charge of <sup>Capt. John</sup> Sir Robert Carr with Captain Robert Needham as military commander.

*but Sir Robert was soon replaced by appointment of Capt. John Carr, son of Sir Robert.*

The need for a more adequate administration of control was probably responsible for the incorporation of New Castle in 1672, with a High Sheriff,

Bailiff, and Chief Magistrate for the town and river. This system of control, under the Duke of York, remained unbroken, except in 1673, when the Dutch recaptured their lost province. The treaty of the following year restored the area to the British, and the Duke of York's patents were renewed under Sir Edmund<sup>75)</sup> Andros as Governor. Carr, as an assistant in charge of the Delaware area, was replaced by Captain Cantwell<sup>76)</sup> and William Lomm.

The British machinery under the Duke of York had all the appearances of being a democratic one without actually having any of the rights or liberties. Of all the governments employed in the management and control of the peoples on the Delaware, the Duke of York's government was perhaps the most despotic, since from the Duke of York's Governor down to the lowest officer, the job of the officeholder depended upon pleasing the whims of his immediate superior. The Duke's philosophy of government was based upon

"severity and laying such taxes on them as might not give them liberty to entertain any other thoughts but how to discharge them". 77)

In spite of this, a greater number of civil officers of a local character were introduced than had originated even under the Dutch. The Schout or Sheriff was continued. In place of a Burgomaster and burgesses, five magistrates were appointed for the town of New Castle and five for the management of the settlements along the river. In 1676 these were increased by one for both the town and river. An innovation was a secretary or clerk whose duty was the collection of quit rents and other taxes. Courts had existed, as had been stated before, but they were more intelligently located by the English than formerly, and hence, probably more intelligently planned. One of these was located at Troy, on St. Jones Creek, near Dover, while the other was at Whorekill, now Lewes. These functioned from about 1674. The judicial system was enlarged shortly after in 1679 by a proclamation of the Governor, introducing the Duke of York's laws and establishing three judicial districts of New Castle, Upland and Whorekill.<sup>78)</sup> Upland was in present day Pennsylvania. Whorekill included our present day Sussex and Kent counties.

English, Penn Period 1682 - 1776

The Duke of York's arbitrarily imposed government was superseded by William Penn's democratic administration; and this in spite of the condition that the area was held by Penn under the same circumstances, with the same opportunity for personal satisfaction of vanity. The Delaware area came into the hands of Penn through leases in August 1682, by the Duke of York.<sup>79)</sup>

Penn arrived in New Castle in October 1682 with his deeds as basic proof of his ownership of New Castle and a twelve mile radius, and of the two lower counties of Jones, now Kent, and Whorekill, now Sussex. It was characteristic of Penn to demonstrate his keen executive ability by the immediate appointment of magistrates for all the counties, and by commissioning six persons to be both justice of the peace and a court of judgement for New Castle and its environs. Any four of these would constitute the quorum necessary to hold court. Penn had at once proved his ownership, asserted his authority, and set in motion local administrative organs. A little later, on November 18th, Penn made further use of his local organization by directing the sheriffs of

the counties to summon the freeholders to an election for the purpose of electing seven of their number to serve for one year, in the capacity of deputies and representatives, in a general assembly at Upland, Pennsylvania. This body was the forerunner of the present state legislative bodies in both Delaware and Pennsylvania.

In 1682, at their first meeting, the two most important items of business were the passage on "an act of union" by which the three lower counties on the Delaware, were united with Pennsylvania; and an act changing the number of members in the General Assembly.

The year 1683 was the beginning of a schism between the lower counties on the Delaware, and the Pennsylvania area of Penn's ponderous possessions. This began as a minor disaffection over the location of the General Assembly, and to surmount this difficulty, the General Assembly met in Lewes in 1683, and in New Castle in 1684. The next six years was a period of strife for the new democracy. Upon leaving for England in 1684, Penn delegated executive authority to the Provincial Council, but in the face

of the rising tide of discontent which followed, an improvement was attempted in 1687 in the form of a five man commission. This too, proved incapable of decreasing the trivial, political bickerings of men too small for a democratic form of government, and Penn next sent John Blackwell over as Governor. His failure and release from office in 1690 was attended by the secession of the Delaware counties, and the subsequent establishment of a separate council and election of own judges. Penn acknowledged the division in 1691 by the appointment of a deputy governor over the territories.

During the years of discord there came into being a new office and an additional duty for an established office. In 1685 a Ranger was appointed for New Castle County to keep and care for hogs running at large. In 1683 the sheriffs were given the added duty of not only summoning the freeholders to elections, but of making returns of the elections  
80)  
before the General Assembly.

The rift between the Delaware Counties and Pennsylvania Counties is deserving of a final

comment. As developed, it might appear that the delegates from Delaware were enmeshed in the entangling squabbles of the Pennsylvania delegates to such a point of exasperation as to finally seize upon secession as a final solution to a difficult problem. If the meetings of the General Assembly within our life times can be taken as a criteria, it would be extremely difficult to believe that the Delaware delegates of Penn's time did not participate in, and add to the machinations of petty political squabblers. The underlying causes of the final break are more reasonably explained in the terms of geography and transportation. The Delaware counties were in a geographical location physically dissimilar to that of Pennsylvania, and the transportation facilities of the time were not adequate for efficient representative government of such a large and sparsely populated area. Even these obstacles might not have been insurmountable, had there been the continued wise leadership of William Penn whose theories in the field of government were about one hundred years ahead of his time.

The Delaware Counties with their representative legislature began and continued their existence

in a politically unstable world. The death of Penn in 1818 marked the beginning of a law suit of fifty years duration between Lord Baltimore and Penn's heirs, to determine the ownership of the counties; <sup>81)</sup> and long before the final decision in favor of Penn's heirs was reached, the struggle between France and England was in motion. The conclusion of the conflict was the beginning of the British colonial policy which produced an era of friction between the mother country and her colonies, leading directly to the Revolutionary War.

#### Government on Eve of Revolution

During this whole period several branches of local government developed, and upon the eve of the Revolution they were as follows.

The judicial branch consisted of a system of courts composed of a Supreme Court, Court of Oyer and Terminer, County Court of Common Pleas, General Quarter Sessions Court, Orphans Court, a Special Court, and a Court of Equity. The Supreme Court's justices also served in the Court of Oyer and Terminer. The County Court of Common Pleas was held at the same times



and place as the General Quarter Sessions, and both had the same three justices. The sessions were held four times a year in each county. The Orphans Court, established as early as 1722, was presided over by justices of the peace who attended the Quarter Sessions, and dispensed with the usual business, except for being denied the right to admit letters of administration in which no bond was required. The Court of Equity had the same justices as the Court of Common Pleas and considered all cases in equity. The Special Court was composed of two justices of the peace in each county and six free-holders. These eight formed a beard for trying all  
 82)  
 negroes or mulatto slaves.

The justices of the peace also helped in the settlement of petty cases as well as serving as peace officers. Special duties included the fixing of prices of liquor, the quantity to be sold, and the general regulation of drinking houses. Of these officers there were about thirteen in New Castle  
 83)  
 and Sussex counties and about seventeen in Kent.

Two other important well-established officers were the Sheriff and Coroner. For a time

these officers became rather corrupt due to the regulation allowing for their constant re-election every three years. This condition was remedied by a law limiting their service to three terms <sup>of one year</sup> with an intervening three terms before re-election. At the elections held for the choosing of members of the Assembly, the voters chose two persons for sheriff and two for coroner from which the Governor selected one Sheriff and one Coroner. Perhaps the two most important of the sheriff's duties was the summoning of juries and acting as judge of elections with the assistance of the inspectors and clerks. The latter duty fell to the lot of the Coroner in the event of the sheriff's absence.

Important hundred officers were the inspectors of election, one from each hundred appointed by the electors at meetings held for that purpose, and assessors who were also elected. These assessors served with the justices of each county and eight grand jurymen, on a finance board to determine the amount of money needed for the ensuing year. Then the constables of the hundreds prepared a list of taxables from which the board made assessments. At

a second meeting collectors were appointed in every hundred. It was from these boards that the later levy courts were organized.

Regulation of county roads was first under the jurisdiction of the county justices while the King's Highway and public roads were cared for at the directions of the Governor and Council. About fifty years later, in 1749, the maintenance of roads was placed under the control of the Quarter Sessions Court, which was to appoint annually one or more overseers of the roads in each hundred. In case the citizens of a particular area wanted a new road, they applied to the court, which appointed a commission to view the site. If approved, the citizens built the road. Roads were kept in repair by requiring a definite number of days work from the inhabitants. In New Castle County there came into being a board of commissioners of five men, which was given complete control over the building and repairing of roads, and had the added power of filling their own vacancies on the board.

Incarceration of criminals was taken care of by providing a house of correction in each county.

The latest additions to local government, prior to the outbreak of the Revolution, were the overseers of the poor appointed by the justices of peace, and compelled to serve. It became their responsibility to levy special taxes in each hundred to maintain the poor.<sup>86)</sup>

The departure of the Delaware delegates from the General Assembly of Pennsylvania in 1690 marked the first step in the independence of the three lower counties on the Delaware; the second step was the complete secession in 1704, while the final step was brought about during the stress of the Revolutionary War.

In 1776 the Delaware Assembly received a resolution, passed by the Continental Congress on May 15th, advising the formation of a government. The Assembly unanimously approved and passed a resolution stating that persons holding offices on June 13th should continue in their respective capacities

"in the name of the government of the counties of New Castle, Kent and Sussex upon the Delaware".

Thus was established a provisional government until the machinery for creating a new one could be set in motion.<sup>87)</sup> The result was the convening of a state convention of duly elected delegates on August 27th, at New Castle, from which came the first constitution of a completely independent state.

#### Constitutional Changes 1776

The new constitution of 1776 wrought few changes in the court system, except for methods of procedure and composition. The Chancellor, Supreme Court judges, and justices of the Common Pleas, were to continue in office during good behavior, and were to hold no other offices. The number of Supreme Court judges were to be not less than three nor more than four, with one residing in each county. The same justices were to preside over the Court of Oyer and Terminer with any two of the judges acting as if all were present. Equity jurisdiction was removed from the province of the Court of Common Pleas and transferred to a Chancellor who was to hold a Court of Chancery. The judges of the Common Pleas were established along the same lines as were those of the Supreme Court, and in the case of both courts, one

X 1792

judge had the authority to open and adjourn either. The Orphans Court was to be presided over by any two of the judges of the Court of Common Pleas. Acknowledgement of deeds and their recording was granted to any judge of the Supreme Court or Court of Common Pleas, which courts were also singled out to issue writs of habeas corpus. The only very noticeable change in the court organization was the establishment of a Court of Appeal to be composed of the President of the State, and three members to be chosen by each house of the General Assembly.

Other minor changes included the clarification of the Register's office and the appointment of justices of the peace. The Register of each county was to receive, adjust and settle the accounts of executors, administrators and guardians. These accounts were to remain in his office for inspection, and in cases of exceptions by persons vitally interested in an estate, the Orphans Court had jurisdiction. Justices of the peace were to be appointed by the President of the State and his Privy Council from a list of twenty-four names submitted by the House of Assembly. From each list, twelve were to be selected  
88)  
for each county to serve for seven years.

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## CHAPTER II. - COUNTY AND JUDICIAL SYSTEM

### Character of Local Government

Local government must not be looked upon as the control of, and administration of certain well-defined areas, in which each area was a complete political entity. The areas were finally well defined, but the offices of administration often dovetailed and the whole local system was dependent upon and received its authority from the state government through the Governor and General Assembly. It might be expressed as a government of the whole by mutual assistance of its parts. And from this point on, we shall consider the constitution of the parts. The large political divisions and the principal officers and organs through which local government was administered will be the large focal points of this discussion. These parts were the court system, county, county boards, the hundred and municipalities.

### The County

The largest unit of local government, developed in Delaware, was the county. The first

indication of a planned division of the entire Delaware area came about in 1671, a few years after the acquisition of the territory by the English. In that year the upper and lower areas were placed under military governors whose exploitative methods did not encourage the growth of local offices. <sup>1)</sup> A further

step in the division occurred in 1679 when the Duke of York's governor divided Delaware into three judicial districts to better administer the Duke's laws. <sup>2)</sup>

As yet, however, it must be noted that there was only the thought of judicial functions for these areas.

The term county, being a familiar one to the English to designate a large political division, it was natural that the term was being generally used here by the time of Penn's arrival. Penn, however, changed the names of his counties; in 1682, Deal became Sussex and Jones became Kent. The name New Castle was retained for the northern county. <sup>3)</sup>

That these counties gradually assumed more than judicial functions prior to the Revolution, is shown by the fact that they were able, separately, to raise committees of safety in the face of the impending clash with the mother country. <sup>4)</sup> This action need not

be looked upon as a matter of hostility any more than as a policy of public safety. The war, of a certainty, increased the organization and independence of the counties,<sup>5)</sup> and left only the precise establishment of boundaries unattained, - a detail, which was concluded by the passage of such a bill in 1779.<sup>6)</sup>

The most northern county was New Castle with the county seat at the town of New Castle. The removal of the seat of the government elsewhere was several times a serious question of discussion and legislative action. The first attempt came about in 1765 because of the danger from pirates on the Delaware River, but resulted in the removal of the records only, to the less vulnerable town of Christina Bridge. Similar agitation, equally unsuccessful, brought the matter before the General Assembly in 1803, 1810 and 1811.<sup>7)</sup>

The middle county of Kent was originally a part of Whorekill or Sussex County. Separation was effected in 1680 after the area had experienced a six year boom in immigration from Maryland. At that time, Lewes, the court town or county seat,

was inaccessible to the inhabitants of the Jones River area, except by boat. It was this inconvenience that brought about the agitation leading to the creation of Jones County or Kent and to its county seat at TownePoint at the river's mouth. The seat of government was transferred again, about 1689, to the tavern of James Maxwell, nearer to the present site of Dover than was Towne Point. Dover had to forego the honor until its founding after 1717.<sup>8)</sup>

Lewes, the county seat of the southernmost county of Sussex, received that distinction as a result of popular usage and favor, extending back to 1658, rather than by legislative action.<sup>9)</sup> The desire of the people of Sussex for a more centrally located site brought forth a bill in Assembly for such a change,<sup>10)</sup> and, before the end of the year, 1791, the terms of the act had been complied with, and<sup>11)</sup> Georgetown was the new county seat.

A consideration of the judicial system at this point will make for better understanding of the various county offices that follow.

The seven courts were the Supreme Court,

Court of Chancery, Orphans Court, Common Pleas,  
General Quarter Sessions, Court of Oyer and Terminer,  
and High Court of Errors and Appeals.

### Supreme Court

The Supreme Court met in each of the  
counties twice yearly at definitely stated times fixed  
by law,<sup>12)</sup> but the fixation was not permanent, and was  
frequently altered to suit the convenience of the  
inhabitants.<sup>13)</sup> Its jurisdiction included appeals in  
criminal cases, debt attachments, suits involving land  
ownership, and appeals from the Court of Chancery  
and Orphans Court.<sup>14)</sup> An additional duty, shared as  
well by the President of the State, was the adminis-  
tering of the oath of affirmation to applicants for  
naturalization.<sup>15)</sup>

The judges of the court numbered three, a  
Chief Justice, Second Justice, and Third Justice and  
were elected by the General Assembly.<sup>16)</sup> These  
usually operated in concert, but in 1792 an act of  
Assembly made it possible for one judge, in the event  
of the other judges failing to arrive, to open and

adjourn the court and make the necessary rules preparatory to the pending court business.<sup>17)</sup> In 1808, another law, gave the justices jurisdiction over the hearing and deciding of questions of bail, while the court was not being held.<sup>18)</sup> In spite of our present day respect for the words supreme and judge, the position of Justice of the Supreme Court was not so desirable in the decade following the Revolution. Caesar Rodney and Richard Williams both decided not to accept after being duly appointed, and John Sykes accepted the position of Clerk of the Common Pleas Court in preference to a judgeship in the Supreme Court.<sup>19)</sup>

The Clerk of the Supreme Court, who was the chief officer, had certain special duties, some growing out of customary procedure and some specifically prescribed by law. Such duties of the latter type were established by a law of 1806, directing that the books kept by the clerks should be available to the Orphans Court, and stating that alphabets, to facilitate the use of the books, should be kept. At the same time an additional duty, that of collecting

all fees due the crier of the court, was established.<sup>20)</sup>  
 A law of 1808 added further to the power of the office  
 by requiring the clerk to take recognizance of  
 creditors to indemnify the hundred or county from  
 costs which could accrue through the maintenance and  
 illness of imprisoned debtors.<sup>21)</sup> Their duties were  
 further increased in 1811 by a statute which required  
 the keeping of a register showing the attendance of  
 jurors with the amount due each; drawing order for pay-  
 ment of same, and the sending of the list to the Levy  
 Court.<sup>22)</sup>

The pay of the clerk was dependent upon  
 a fee system involving a charge for practically  
 every item of work done. In 1793 there were fifty  
 fees which might possibly be collected, ranging from  
 three cents to two dollars. There were four 3¢  
 fees; eight 4¢ fees; fifteen 7¢ fees; one 10¢ fee;  
 eight 5¢ fees; two 20¢ fees; two 33¢ fees; three  
 40¢ fees; one 47¢ fee; one 50¢ fee; four 67¢ fees;  
 one \$1.33 fee and one \$2.00 fee. The average was  
 about twenty-three cents. In addition to these fees,  
 the clerk received one cent for each line of twelve



words for copying certain records.<sup>23)</sup> The law of 1811 provided an additional fee of \$2.00 for each list of jurors drawn up and sent to the Levy Court.<sup>24)</sup>

### Court of Chancery

The Court of Chancery, like the Supreme Court was held twice yearly in each of the counties at times, stated by law, and, as in the case of the Supreme Court, these times were frequently changed. Such changes were made in 1795,<sup>25)</sup> 1802<sup>26)</sup> and again<sup>27)</sup> in 1813.

By a law of 1793, jurisdiction of the Chancery Court was made to include the appointment of trustees for idiots and lunatics over the age of twenty-one, after a jury had determined the idiocy or lunacy of the subject. It then became the obligation of the court to see that the trustees accounted for the profits of the estates at least once in two years. This particular business had<sup>28)</sup> formerly belonged to courts of equity. In 1806 the court's powers were extended to allow the compulsion of infant trustees to convey lands held<sup>29)</sup> in trust. A law of 1811 prepared for a more cer-

tain adherence to the court's decrees by empowering the Chancellor to give orders for the sale of all lands, tenements and hereditaments whenever such action would facilitate a more effectual execution of the court's decree.<sup>30)</sup>

The Chancellor was the all important officer of the court and was invested with important powers. The right to issue the writ of habeas corpus was given to him by law in 1793, a right formerly held by the judges of the Supreme Court or Court of Common Pleas only.<sup>31)</sup> In 1800 the General Assembly recognized the integrity of this officer by allowing him a free hand in determining all rules relative to practice for the return of writs, commissions and such proceedings in the court.<sup>32)</sup> A law of 1806 demonstrated that under certain circumstances the Chancellor had some power over the levy courts. For a few years prior to 1802, it was discovered that the proceedings of the Orphans Court had not been recorded, and in order to bring the records up to date, certain persons were delegated to do that work under the direction of the Chancellor. Upon completion, the Levy Court was to pay for it as directed by the

Chancellor.<sup>33)</sup> This, however, was an isolated case and is not to be construed as evidence of a close association between the Levy Court and chancellorship. The chancellor's annual salary was increased to one thousand dollars in the year 1806.<sup>34)</sup>

The Register in Chancery served as the Clerk of the Court and became a definitely established part of the court in 1806.<sup>35)</sup> His duties became fixed by law, one of which, in 1817, directed the Register to annex to the rules of the court the forms of oaths usually taken by the trustees, commissioners and referees.<sup>36)</sup> The duties of entering all items of costs in every case;<sup>37)</sup> of transmitting a copy of a record to the Secretary of State denoting the number of days of each session, and the number of judges in attendance;<sup>38)</sup> and the duty of appointing appraisers for estates,<sup>39)</sup> all came into being through laws of 1826. Another responsibility was added in the following year giving the Register the power to open, and adjourn court as the Chancellor might direct, in case of his illness. If no notice was received from the Chancellor, the Register was to continue to open and adjourn the court for five

successive days and thence for the remainder of the court's term provided the Chancellor did not attend.<sup>40)</sup>

The office, before it was clearly conceived was filled by the Clerk of Peace. The term of office was no definite number of years, but apparently during good behavior, or until the office holder elected to resign. Between 1773 and 1830 there were six registers, the first serving twenty-four years; the second three years; the third five years; the fourth sixteen years; the fifth five years, and the<sup>41)</sup> sixth four years.

A fee system provided the remuneration of the Register. In 1793 a law established seventeen fees ranging from four cents to eighty cents. There was one 4¢ fee; seven 7¢ fees; one 20¢ fee; one 33¢ fee; two 40¢ fees; two 47¢ fees; three 67¢ fees; and one 80¢ fee, making an average of about thirty-one cents per fee. The Register also received a fee of one cent a line, per twelve word line, for<sup>42)</sup> copying certain records. A law of 1826 added a fee of two and one-half per cent commission on the court crier's fees and increased the list of fees to

twenty-nine, ranging from ten cents to one dollar.<sup>43)</sup>

### Orphans Court

The Orphans Court was reorganized in 1802, by a change in the 1792 Constitution, through a three-fourths vote of the General Assembly. Equity jurisdiction, formerly exercised by the Orphans Court was delegated to the Chancellor, except for settling accounts of executors, administrators, and guardians. In these cases the Chancellor was to handle appeals from the decrees of the Register. The Orphans Court was given the right to compel attendance of witnesses.<sup>44)</sup> In 1806 regulating the recording of court procedure was left up to the Judges or Chancellor, who also had the authority to make citations in vacation upon the reception of a written petition. Obedience could be enforced by imprisonment or temporary attachment of lands.<sup>45)</sup>

The Clerk of the Orphans Court had several duties outlined by a law of 1806. He was to enter, on books supplied by himself, petitions for the valuation and division of intestate lands; recognizances received from persons accepting lands,

and tenements at a valuation; petitions and orders for sale of lands from executors or administrators; orders to estimate the annual value of lands of orphans and minors; the returns of such orders; appeals from the register for the probate of wills and granting of letters of administration; exceptions to accounts; sentence orders, decrees, and each appointment or removal of a guardian.<sup>46)</sup> He was also instructed to keep alphabets to the record books; be ready to produce the books in court upon order; deliver records to his successor; collect and pay over orier's fees;<sup>47)</sup> and to deliver lists to the Chancellor. A law of 1829 repeated the duties stated above, but went further by stipulating that the records should be written in a fair plain hand, that recognizances should be kept in a separate book, and recorded within five days. At the same time two new duties were assigned. One of these was that the clerk must notify the Register of the appointment of guardians within twenty days, and the other empowered him to open and adjourn court during the chancellor's absence.<sup>48)</sup>

Compensation to the Clerk of the Orphans Court was provided through twenty-two fees ranging from four cents to sixty-seven cents. In 1793 there were three 4¢ fees; six 7¢ fees; two 10¢ fees; six 20¢ fees; two 33¢ fees; one 40¢ fee; one 41¢ fee and one 67¢ fee, with an average fee of about nineteen cents.<sup>49)</sup>

#### Court of Common Pleas

The Court of Common Pleas met twice yearly in each county, usually just after the Supreme Court term ended.<sup>50)</sup> In 1792 appealed cases from Justice of Peace Courts were placed under the jurisdiction of the Common Pleas Court;<sup>51)</sup> and in 1793 a law provided that licenses to keepers of inns, taverns, ale houses, eating houses, and places of entertainment, could not be granted until a petition was presented to the judges of the court when they were sitting as a Court of General Quarter Sessions. The court then drew up recommendations signed by the judges, approving or disapproving the applications.<sup>52)</sup>

The justices of the court were elected by both houses of the General Assembly,<sup>53)</sup> and in the

presence of the President of the State.<sup>54)</sup> They were  
 four in number,<sup>55)</sup> and served also as Justices of the  
 Orphans Court.<sup>56)</sup> In order to dispense more speedily  
 with business, an act of 1787 gave the same powers  
 to smaller number of justices.<sup>57)</sup> This was undoubtedly  
 done to make it possible to hold court when some  
 of the justices were unable to attend. In 1793 the  
 salary of the Chief Justice was one thousand dollars,  
 as compared to one-half that amount for each of the  
 other justices.<sup>58)</sup>

#### Court of General Quarter Sessions

The Court of Quarter Sessions met, as the  
 name suggests, four times annually in each county.  
 In 1786 a law gave the court jurisdiction over cases  
 involving public houses; keepers and sellers of  
 spirituous liquors; and persons promoting horse-rac-  
 ing; foot-racing; shooting matches, and cock-fighting.<sup>59)</sup>  
 The power to enforce laws regulating grist mills  
 was granted the court in 1790.<sup>60)</sup> All, or any two  
 of the justices, were enabled by a law of 1793 to  
 grant a license or permit, allowing the sale or ex-  
 portation of negro or mulatto slaves. Prior to this,



five justices of the peace in open session attended to this business.<sup>61)</sup> No further powers were delegated to the court until about 1811, when appointment of receivers of hogs was granted to the court. This office was not generally a county, hundred, or town office, but apparently a rare appointment in sections where laws had been made against allowing hogs to run at large; and where the law was disregarded.<sup>62)</sup> In 1826 the court was given slight jurisdiction over roads, by receiving the right to appoint five freeholders to examine a road that the authorities were considering closing at the request of petitioners. If the commission decided that the road should remain open, a new group of five freeholders were selected whose judgement was to be final. The court granted the commissioners one dollar a day each, to be paid by the petitioners.<sup>63)</sup>

The Clerk of the Court was directed by a statute of 1781 to make out a list of all fines and forfeitures since 1777.<sup>64)</sup> The implication is, that this was to become a regular duty henceforth. In 1799, the law required the clerk to make a return of all tavern licenses granted by the court, to the

<sup>65)</sup>  
Auditor's office.

It is interesting to note that the Quarter Sessions Court was English in name, there having been a flourishing court of the same name during the Tudor and Stuart periods. It was, at that time, the organ through which the justices of the peace operated and over which they presided. <sup>66)</sup> The number of sessions was fixed by statute as early as the reign of Edward III. <sup>67)</sup>

#### Court of Oyer and Terminer

Whereas the Court of General Quarter Sessions handled the petty cases generally, the Court of Oyer and Terminer dealt with greater crimes. Occasionally, persons convicted were unable to pay the costs, fees, fines, or restitution money. In these cases a law of 1808 gave the court the power to have the Sheriff dispose of such persons as servants for a term of years, not exceeding seven. <sup>68)</sup> The law of 1811 provided that the justices should notify the Sheriff who was to summon the justices of the peace of the hundreds, the Coroner, hundred constables, jurors and others bound to attend.

The Sheriff was also to be notified ten days in advance, in order that he might summon twenty-four persons for Grand Jury duty and thirty-six persons for Petit Jury duty. The Grand Jury part was to be omitted in case no one had been charged with a capital crime.<sup>69)</sup> In 1821, the law concerning the disposal of persons as servants, was enlarged upon by providing that if the fines, forfeitures, and fees were greater than the purchase price of the person sold for slavery, a list of the fees due officials should be sent to the Levy Court, who in turn were to draw orders on the County Treasurer for the specified sums.<sup>70)</sup>

The fees allowed the clerk of this court were double the fees allowed the Clerk of the General Quarter Sessions, by a law of 1793.<sup>71)</sup>

#### Court of Errors and Appeals

The last court to be considered was the Court of Errors and Appeals established in 1788.<sup>72)</sup> Four years later, the Constitution of 1792 re-organized this court, so that it should consist of the Chancellor, Judges of the Supreme Court, and

Court of Common Pleas, with the Chancellor presiding. Should it be impossible for the Chancellor to do so, an order of succession was established, beginning with the Chief Justice of the Supreme Court, followed by the Chief Justice of the Court of Common Pleas, and continuing with the next eldest judge according to priority of service.<sup>73)</sup>

In 1793 a statute more specifically outlined the court's program and jurisdiction. Once every year, in the town of Dover, the court was to convene to "receive, hear and judge appeals in all matters of law and equity", that had come from the Supreme Court, Court of Chancery, and Court of Common Pleas in each county. The attending officer, for the execution of the orders and processes of the court, was the Sheriff of Kent County.<sup>74)</sup>

In cases where the court reversed the decrees of a lower court, a law of 1811 provided for restitution in money.<sup>75)</sup> In 1813 the General Assembly passed a law which confirmed the law of 1793 in every detail.<sup>76)</sup>

The duties of the Clerk of High Court of Errors and Appeals, must have been established by custom, probably following procedures set up in other

courts. No law relating to such duties appears until 1824. In that year the clerk was instructed to copy the records of the court from August 1795 to 1824 in a book. In the same year a ten dollar fee for his commission was demanded by the State. Since two commissioners were appointed by the Governor to correct the records, apparently little care had been taken to keep complete and available records before this time.<sup>77)</sup> Two acts of 1826 further directed the clerk to make an entry in the court's records, showing the number of days each session was held and the name of the judges attending each day; a copy of this information was to be sent to the Secretary of State.<sup>78)</sup> The second act compelled the entry of every item of cost in every case along with the time.<sup>79)</sup>

The pay of the clerk was through a fee system established by law in 1793. It was possible to collect twelve fees ranging from thirteen cents to one dollar, with an average of about thirty-four cents. There were six 13¢ fees; three 20¢ fees; one 67¢ fee and two \$1.00 fees.<sup>80)</sup> A new law respecting fees was passed in 1826, which created one new \$1.00 fee, one new 50¢ fee and allowed one cent for

every twelve word line copied. Five other fees<sup>81)</sup>  
were substantially increased.

### Introduction: Clerk of the Peace and Prothonotary

Before terminating the discussion of the court system, two officers closely associated with things judicial should be mentioned, namely, the Clerk of the Peace and the Prothonotary. An understanding of the duties of these officers is somewhat difficult, because they served in several capacities, and because the terms Clerk of the Court and Prothonotary are often used interchangeably in a rather loose fashion. For the sake of clarity, it is necessary to state, that during the period of this study, namely, to the year 1831, the Clerk of the Peace served as the Clerk of the Quarter Sessions Court,<sup>82)</sup> and as Clerk of the Levy Court.<sup>83)</sup> The Prothonotary served as Clerk of the Supreme Court,<sup>84)</sup> Court of Common Pleas,<sup>85)</sup> and apparently as Clerk of the Court of Oyer and Terminer as well.<sup>86)</sup>

### Clerk of the Peace

The office originated prior to 1676, and

before that date one man was Clerk of the Courts on South (Delaware) River, including the towns now known as Chester, New Castle, and Lewes.<sup>87)</sup>

In their connection with the work of the Levy Court, and with the business of taxation, the clerks exercised most of their authority. A statute of 1798 required the clerk, when officiating as Clerk of the Levy Court, to furnish the Auditor with duplicates of the proceedings of the court within two months after adjournment in order to provide for a better accounting.<sup>88)</sup>

In regard to taxation, the laws of 1781 instructed the collectors of the hundreds to give such a sum of money for bond as the clerk and one Justice of the Peace should direct,<sup>89)</sup> to keep the assessment list for his county,<sup>90)</sup> and to deliver to the County Treasurer an account of the amount of money each hundred Collector was to have charged against him for collection.<sup>91)</sup> In 1784, the clerk was required not only to keep an assessment list but to send duplicates to the Auditor.<sup>92)</sup> If the Collector had collected a surplus of the amount charged against him,

the Auditor, in turn, was to send an account of it to the clerk for filing, and apprise the Levy Court<sup>93)</sup> of the matter. Two laws of 1796 added considerably more clerical work, by requiring that the names of the collectors of each hundred, with the sums they were obligated to collect, be sent to the County Treasurer,<sup>94)</sup> and by requiring the filing of the corrected assessor's valuations, after which, a copy of the valuations, including both real and personal property, was to be made out and sent to the Speaker<sup>95)</sup> of the House of Representatives. These lists of evaluations were by a law of 1798 to be arranged alphabetically and posted in the most public places in the various hundreds of the counties within ten days after completion of the corrections by the<sup>96)</sup> Levy Court.

The furnishing of records for the Auditor and State Treasurer, in connection with the taxing program, made still heavier the detailed clerical work. In 1800 a law required that the Clerk of the Peace send to the Auditor, before the first of June, a statement of the proportion of the total taxes due from each hundred, for roads, bridges, poor, and



other purposes, and a list of the names of the collectors in each hundred, with the amount of the allowance for delinquencies and error.<sup>97)</sup> Two years later, the latter list, where the collection of state taxes was involved, also had to be sent to the State Treasurer.<sup>98)</sup> To provide a check on the collectors and their delinquency allowance, a statute of 1810 exacted the sending of duplicate receipts of the collectors to the Auditor within three months after their receipt.<sup>99)</sup>

The Clerk of the Peace was also a veritable license bureau, operating as an agent of the Secretary of State, by a law of 1802. The secretary distributed to the clerks marriage licenses, tavern licenses, and licenses for hawkers or peddlers. The clerks of the peace were instructed to appoint not less than six justices of the peace to aid in the dispensing of licenses, and only these two officers were allowed to distribute the above-named licenses.<sup>100)</sup> In 1809 the fee for a tavern license was twelve dollars, while that for hawking or peddling was six dollars.<sup>101)</sup> In 1826, licenses to retailers were added to the list.<sup>102)</sup>

A series of laws, passed from 1811 to 1829, gave the clerks of the peace specific duties concerning elections. Before the Levy Court, the clerk was to present the accounts showing disbursements to the inspectors and freeholders, aiding in the election, at the rate of \$1.50 per day.<sup>103)</sup> On the tax list, the clerk had to write the forms of the oaths to be taken by judges and inspectors of elections,<sup>104)</sup> and, later, file the oaths along with lists of the voters, poll lists, and returns of those elections pertaining to the choosing of representatives in congress, sheriffs, coroners, and Levy Court commissioners.<sup>105)</sup> If an election was to be held for President and Vice President, the clerk was obliged to get the alphabetical lists of voters from the Inspector, and deliver same to the Sheriff.<sup>106)</sup>

In their relations with the courts, a statute of 1811 directed the clerks to keep registers showing the attendance of jurors, and then, to make out lists showing the attendance and amount due each; draw an order for payment of same on the County Treasurer, and finally to send the lists to the Levy Court.<sup>107)</sup> As Clerk of the Quarter Sessions

Court, the Clerk of the Peace kept records of the number of days the court was in session, judges in attendance each day; and names of the judges present at a trial on appeal in the Court of Errors and Appeals. A copy had to be sent to the Secretary of State.<sup>108)</sup>

Statutes made the Clerk of the Peace the recipient of certain fees and bonds. Bonds of the collectors, county treasurers,<sup>109)</sup> and constables,<sup>110)</sup> and fees of the constable's appointments were to be lodged in the clerk's offices. Notices of the failure of the constables to give bond or pay fees, or of the Levy Court to appoint constables were sent to the Governor.<sup>111)</sup>

There were other miscellaneous duties delegated to the clerk. The warrants, granting the fence viewers of the hundreds the authority to operate, were dispensed by the clerk after 1804.<sup>112)</sup> Naturalization certificates were recorded in his office through a statute of 1819,<sup>113)</sup> as were marriage bonds after 1826.<sup>114)</sup> In the same year the clerk was burdened further by the demands of a law

directing him to send to the Sheriff, certified copies of every criminal sentence, and copies of the orders for the sale of convicts as servants.<sup>115)</sup>

And, finally, the temporary task of returning to the trustees of the school fund, the findings of the commissioners appointed to fix the school districts,<sup>116)</sup> was awarded to the Clerk of the Peace in 1829.

That the Clerk of the Peace was an almost indispensable part of local government can hardly be refuted. Further evidence of the importance of the office is shown by the long list of fees granted to the clerk as early as 1793. There were over forty fees from three cents to thirty-three cents,<sup>117)</sup> with an average of about twelve cents per fee.

#### Prethonotary

The Prethonotary was another busy officer, but was burdened with fewer duties and operated in fewer fields. The office seems to have originated between 1693 and 1702,<sup>118)</sup> and as the periods of service of the officers varied in duration, it must be surmised that the office was an appointive one.<sup>119)</sup> Between the outbreak of the Revolution, and

1830, there were seven Prothonotaries serving terms of fourteen years, one year, twenty-seven years,<sup>120)</sup> twenty years and five years.

The bulk of the Prothonotaries duties centered about the courts served by them, and were, for the most part, prescribed by law. A law of 1785 gave them authority to administer and file oaths in courts served by them.<sup>121)</sup> One such oath was for land commissioners, named in 1794.<sup>122)</sup> Again, in 1817, a law compelled the issuance of the forms of oaths to be taken by the commissioners as attachments to the court's orders.<sup>123)</sup> In 1793, an act respecting jury duty made it the Prothonotary's responsibility to consult the list of jurors, and write each name on a roll in readiness for drawings at trials. The names of the jurors summoned for jury duty had to be recorded alphabetically in a book, with a statement of whether or not they served, with addresses, and terms of service. Upon termination of jury service a record of the amount due each was drawn up, signed by the presiding judge, and then sent to the Levy Court. The Prothonotary completed his duties to the jury by

making out an order for each juror to enable them to receive their compensation from the County Treasurer.<sup>124)</sup> These identical duties were reviewed by a law of 1811.<sup>125)</sup>

Another court duty, added in 1825, directed the Prothonotary to enter the time of day, and date of receiving transcripts of appeals from justices of the peace, after which the transcripts were to be filed, and dates for the new trials recorded upon the docket. This procedure was to be followed by issuing a summons charging the Sheriff to notify the appellate to appear.<sup>126)</sup> In the following year, the Prothonotary was obliged to keep court records showing the days in session; names of judges plus their attendance records; and a special record of the judges present at a trial on appeal in the Court of Errors and Appeals.<sup>127)</sup> He was also to record judgment bonds, and lists of books, and records coming from the Recorder of Deeds.<sup>128)</sup> Court duties, added by laws in 1829, included entering on the court records, execution payments and judgments satisfied; money from the sale of persons sold as servants; notifying Auditor of lists

of fines imposed by the court within thirty days  
 after the time of recessing; <sup>129)</sup> showing the time  
 judgments were entered; keeping two indexes to  
 judgment records, one of plaintiff and one of de-  
 fendant; and listing the judgments alphabetically  
 within twenty-four hours after entry. <sup>130)</sup>

The Prothonotary served in the capacity of  
 state salesman or agent for printed records of  
 various kinds. A law of 1817 seems to have been the  
 beginning. In that year the Secretary of State was  
 to have the acts of Assembly printed, and was to  
 give several volumes to various state officials.  
 The remainder were sent to the Prothonotary, who was  
 to dispose of them at a fixed price of twenty-five  
 cents, and make an accounting to the State Treasur-  
 er, quarterly. In 1818 the Prothonotary was given  
 the same directions except that he was, in this  
 year, allowed to give away copies to each conserva-  
 tor of the peace, and each grand juror, a procedure  
 which must have increased the popularity of the  
 Prothonotary, unless the change came about through  
 pressure of the conservators and jurors on the  
 grounds that they had been slighted the year before.

The Prothonotary accounted for the disposal of one hundred and sixty copies in 1819,<sup>131)</sup> but this was either too few or the sale of other years had not come up to expectations, because the Assembly passed an act designed to make a special check on the number of sales and books left over.<sup>132)</sup> Instead of having to make an accounting quarterly, an act of 1821, reduced the times to two a year or semi-annually.<sup>133)</sup> In 1829 an act of Assembly combined the laws relating to the sale of the copies of the laws, changing only the disposal of free copies. From that time on, the Prothonotary was to give away a copy to each of the public officers in the county.<sup>134)</sup>

In 1831, a revised edition of the laws was published, and for this, the Prothonotary was to ask the price of two dollars per copy. The only free copies were to be given to the Clerk of the Supreme Court, Register in Chancery, and the Prothonotary himself.<sup>135)</sup>

Election duties of the Prothonotaries were only minor. A law of 1810 provided that election returns for Governor, and the members of



the Assembly, were to be recorded in his office with  
 a certificate showing the candidates elected. <sup>136)</sup>

In 1828 the same procedure was called for, and an  
 added power granted to the Prothonotary; namely, that  
 he should act as the presiding officer of the board  
 of canvass of elections in the event of the absence of  
 both the Sheriff and Coroner. <sup>137)</sup>

The Prothonotary also kept the bonds of  
 trustees of the loan office, as directed by a law in  
 1779; and for a time, beginning in 1793, he had the  
 agency for marriage licenses. As has already been  
 related, the latter power was transferred to the  
 Clerk of the Peace in 1802. A rather interest-  
 ing power was granted to the prothonotaries in  
 1793, when they were delegated to choose the exact  
 site for the whipping posts in Georgetown and Dover,  
 after the General Assembly had chosen the general  
 locations. <sup>138)</sup>

The Prothonotary received his pay in fees,  
 three of which were established by law in 1801.  
 These ranged from eight cents to sixty-seven cents  
 with an average of thirty cents. <sup>139)</sup> An additional

fee was added in 1820 for copying the court records, but the amount was left up to the Levy Court. Seven new fees and an allowance of one cent per twelve word line for copying records, were added in 1825. The average for the new fees was about forty-seven cents per fee. A new listing of all the fees collectable in 1826 showed fifty-two, ranging from twenty-five cents to one dollar and a half, with fifty cents as the usual fee. Nine of these were for duties in relation to the Court of Common Pleas and ranged from twenty-five cents to one dollar.<sup>140)</sup>

To offset this fee system of remuneration, the Prothonotary was required to give security after 1811,<sup>141)</sup> and in 1825 an act of Assembly demanded a ten dollar fee for a commission to hold the office.<sup>142)</sup>

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### CHAPTER III. - COUNTY OFFICES AND OFFICERS

#### Introduction

The government of the three counties was exercised through a corps of officers, whose titles, for the most part, still have a familiar ring. These officers were the clerks of the peace, prothonotaries, sheriffs, coroners, county treasurers, registers of wills, and recorders of deeds. Other officers, whose titles in our day lack a familiar ring, were trustees of the lean offices, tax commissioners, county collectors, commissioners of land offices, escheators, inspectors of gaols, inspectors of flour, informers, and county physicians. Of these, the first two have been discussed under the court system, because the greater part of their activities hinged upon their duties in relation to courts. None the less, they should be remembered as county officers.

#### Sheriff

Perhaps the officer most respected, busiest, and hence most vital to the county, was the Sheriff. The office was introduced here about 1657 by the

Dutch, but the Dutch Sheriff or Schout remained in New Amsterdam and carried on through an Under Schout. After the English took over, the name High Sheriff appeared in 1668, and the officer chosen had jurisdiction over all three counties, and the southeastern corner of Pennsylvania. This huge territory hardly could have been fully traveled by one man, and certainly could not have been adequately administered. It was probably this condition which led to the appointment of deputy sheriffs in 1683.<sup>1)</sup> The growth of the office under the English was natural since the office had long been a flourishing one in England, even before the Tudor period. By the time of the Stuarts, however, it had declined to second place in importance as a part of English local government.<sup>2)</sup> After the colonies gained their independence, the office continued under the title of Sheriff, usually, though the council minutes of 1783 refer to the officer as "High Sheriff" in one place and just plain "Sheriff" in another.<sup>3)</sup>

The office of Sheriff was elective for a term of one year,<sup>4)</sup> and a portion of the sheriff's



duties dealt with elections. These duties originated in the form of writs from the Speaker of the House of Assembly instructing the various sheriffs of vacancies in the Assembly, and ordering an election to fill the positions. The vacancies might be due to resignations,<sup>5)</sup> or death.<sup>6)</sup> After carrying out the speaker's instructions, the sheriffs, acting with the inspectors of elections made a report of the results.<sup>7)</sup> If it should occur that an inspector was not present at the close of an election, a law of 1811 demanded that the Sheriff compel him, nevertheless, to produce the election results of his district.<sup>8)</sup> Additional details in respect to the procedure of holding elections were added through one law of 1811, which required the sheriff to advertise elections each year in September by attaching, to the court-house door of each county, a proclamation shewing the offices and posts to be filled. The sheriffs were also to be the receivers of the boxes in which the electors placed their ballots, and also the boxes containing cancelled ballots. Each ballot box had to be sealed with tape. On Thursday following the elections, the sheriffs received the inspectors' certificates of

elections in their respective districts, following which, the Sheriff, Inspector, and hired clerks of the Sheriff, met as a committee to make complete  
 9) returns.

Besides the above duties, the Sheriff was also present at elections in the role of a conservator of the peace with the power to control elections, prescribed in a law of 1779. By this law, the Sheriff could call upon any public officer to aid in quelling disorders; refusal was punishable by a fine from fifty to five hundred pounds. If, in the election of representatives to the General Assembly, any attempts were made to interfere with the election, or if a disturbance reached riotous proportions, the Sheriff could adjourn, or postpone the election from day to day until conditions were more conducive to a fair and just election.  
 10)

Two laws of 1830 and 1831 might be considered temporary, or special acts dealing with the preparations for the convention of 1831 to change the Constitution. The first depended upon a few "ifs". If the Sheriff were presiding officer of the Board

of Canvass, and if the inspectors were present, they should make out four certificates of all the votes cast for, and against a convention. These certificates were to go to the Governor, Prothonotary, Speaker of the Senate, and Speaker of House of Representatives.<sup>11)</sup> The second law provided that, at the election of delegates to the convention, the same board should make out two certificates, or returns, one going to the Prothonotary of Common Pleas, and the other to the convention on its first day of Assembly.<sup>12)</sup>

The sheriff's position at elections was certainly a most important one, and when one considers that at that time there were few amusements, few opportunities for social gatherings, and few holidays, a fuller understanding of the complexities confronting the Sheriff is comprehended. With a crowd in a holiday spirit, being both a peace officer and election official could have been no small task. However, elections were also infrequent, and little of the sheriff's time, therefore, was expended on them.

More time-consuming duties were those having to do with forced sales of lands, and goods of people

delinquent in the payment of bills. A law of 1786 recognized the prior existence of the sheriff's right to act in that capacity.<sup>13)</sup> Two years later, minute instructions of the sheriff's procedure sound similar to those required of a modern census taker. To the court ordering the sale, the sheriff's return had to show exactly what had been done, an inventory of articles not sold, an appraisement of such articles, principal improvements on the land, quantity of land, location, and the sheriff's statement as to whether or not the yearly rents, and profits from the land, beyond the expenses, were sufficient to satisfy the debt, and damages for which the property was being sold.<sup>14)</sup> The last direction was altered in 1796 by instructing the Sheriff to inquire whether or not the net income was adequate to discharge the debt within seven years. Results of the inquiry were to be appended to the report.<sup>15)</sup> Within thirty days after such a sale, the Sheriff was required, by a law of 1801, to appear at the office of the Prethometary or Clerk of the Supreme Court to make a complete financial report.<sup>16)</sup>

These sales were for ordinary debts, failure

to pay taxes, and, after 1786, upon complaint of the Loan Office trustees, for failure of mortgagors to<sup>17)</sup> renew mortgages, or pay interest. Many of them originated in the Justice of the Peace Courts and the execution process was directed to the Sheriff,<sup>18)</sup> if the plaintiff so desired. Apparently many of the sales were conducted by the constables of the hundreds, depending upon the choice of the plaintiff. Once elected to manage such a sale, the Sheriff either had to comply, or himself be liable to prosecution for failure to execute the process, according to a law of<sup>19)</sup> 1788. The necessity of such a law indicates that the sheriffs must have sometimes tried to place these duties upon the shoulders of constables.

Sales by the Sheriff were also necessary because of a failure to pay rent. In these cases, after 1798, the sheriff secured, as surety from the plaintiff, and one other person, a bond of twice the value of the property to be seized from the defendant.<sup>20)</sup> The next steps called for a five days notice to the defendant before seizure, an appraisal of the goods, a six day period for public notification,<sup>21)</sup> and finally the sale of the goods. For

appraising, the Sheriff enjoyed the power of appointing appraisers, after 1826, at a fee of twenty-five cents.<sup>22)</sup>

It is to be recalled that the period of time from 1776 to 1831 was one in which the monetary system of the country was in its early stages of stabilization, that the government of the country had failed to operate efficiently, that a new government was treading untried paths, and that a process of rehabilitation, following the Revolutionary War, was in progress. When one remembers all this, the great number of forced sales is not to be wondered at. These sales oftentimes piled up on the Sheriff, finally requiring, in 1829, a law directing the Sheriff to keep a record of the executions received, with the time of receiving, in order that priority in disposal of them might be arranged.<sup>23)</sup> As might be expected from experiences of our own times, the opportunity for acquiring bargains at sheriff sales, often presented itself. That the sheriff should not take advantage of the opportunity to buy cheap and sell dear, would have been contrary to human behavior. However, accusations and criticisms of

the Sheriff for using his position, or office to benefit from the miseries of others, was sure to follow. Such criticism must have occurred for a law of 1819 forbade, in the future, his purchase of goods at sales which he was conducting.<sup>24)</sup>

The period following the Revolution produced several laws designed to control slave behavior and to prevent slaves running away, and each law increased the sheriff's duties. The first of these laws, passed in 1787, provided for the sale of freed slaves back into the slavery system of the West Indies for a period not exceeding fourteen years upon conviction for horse stealing. The Sheriff conducted such sales and collected the money, one-tenth of which became his fee.<sup>25)</sup> After 1827, the owner of a slave convicted of theft was notified, and expected to make good the plaintiff's loss within twenty days. If the owner did not make restitution, the Sheriff had another slave sale on his hands. If the owner of a guilty slave was unknown, exportation was often the court's judgment, and, if after advertising, the owner could not be found, the Sheriff conducted the

sale. In these cases it was more probable that a slave would end up in a neighboring state than in the West Indies. Should a slave, sentenced to exportation, return to the state, the Sheriff was obliged to place him in jail, advertise for two months and then re-sell him; the same applied if the purchaser failed to remove the slave from the state within twenty days after purchase.<sup>26)</sup> The Sheriff also often had to sell persons as servants, who were unable to pay fines for the crimes of horse stealing and slave stealing. The court fixed the number of years the persons thus sold were to remain in service as servants; the period could not exceed seven years.<sup>27)</sup>

If slaves were apprehended as runaways, a law of 1816 commanded the Sheriff to hold them in jail and advertise for a period of six weeks. They were to be delivered to no claimants without the approval of the Justice of the Peace of the town, or next nearest justice. If not claimed, the slave was released at the end of six weeks.<sup>28)</sup> This period of six weeks was reduced to twenty days in 1827.<sup>29)</sup>

Through the management of the various



sales, the Sheriff naturally received and handled tidy sums of money. In 1777 a more speedy turnover of this money was effected by compelling the Sheriff to turn over fines to the County Treasurer within two months after they were received, or be liable to a suit for double the amount collected.<sup>30)</sup> By the terms of an act of 1787, other officers of the state, coming into money belonging to the state, were to pay the Sheriff, who in turn delivered it to the State Treasurer within thirty days.<sup>31)</sup> As can be perceived, the state was somewhat more exacting than the county. However, the periods of time allowed for turning over the money were lengthened as time passed. In 1819, the time was increased to sixty days,<sup>32)</sup> and in 1829 to ninety days.<sup>33)</sup> Collection of juror fines, for failure to heed jury summons, was numbered among the duties of the Sheriff after 1793.<sup>34)</sup>

In certain instances, compulsory attendance of courts by the Sheriff was required. A law of 1827 made such a demand, when the case concerned a charge of forcible entry, or involved proceedings against tenants for refusal to vacate lands, if the summons were served by the Sheriff.<sup>35)</sup> Even if he did not

attend other courts, he was obliged, in cases of murder and manslaughter, to furnish to the Chief Justice and Justices of the Supreme Court, a copy of the commitment.<sup>36)</sup> For the Court of General Quarter Session, the Sheriff was required to deliver a list of the prisoners with the causes of their commitment.<sup>37)</sup>

To insure better jurors, an act of Assembly of 1793 required the sheriffs to take oaths promising not to pick persons for jury duty who were biased, but to choose persons of a good character. The jury list, picked by the Sheriff had to number not less than thirty-six or more than sixty, unless two judges, sitting on a case, required more; then the list was to contain eighty-four names, to be summoned ten days before the opening of court.<sup>38)</sup> For Grand Jury service, twenty-four persons were summoned in writing ten days before the opening of the Court of General Quarter Sessions. The Sheriff had to pick these men from his own county to serve for a period of one year.<sup>39)</sup> Six years later, in 1817, an act of Assembly directed that the jury-picking duty be done in conjunction with the Levy Court. In February, between the first and third Fridays, the sheriff

met with the Levy Court to pick the jurors for the Supreme Court, Court of Common Pleas, and General Quarter Session.<sup>40)</sup>

Control over the places of incarcerating prisoners has long been associated with the office of Sheriff, and the time of which we write was not an exception. Although the Sheriff apparently acted as the actual keeper of the gaols before 1827, a law of that year enabled him to appoint keepers, for whom, however, he was responsible. While maintaining the jail, no Sheriff was allowed to sell liquors to prisoners, or to keep a tavern, ale house, or any other house of public entertainment. Should the Sheriff decide to be his own keeper of the gaol he was paid board for each prisoner at a rate established by the Levy Court.<sup>41)</sup> If the prisoners were those of the United States government, the Sheriff received an additional fifty cents a head per month.<sup>42)</sup> Complete records for the Legislature were demanded in 1831, including names of those imprisoned for debt, those imprisoned for crimes, length of time to serve, ages, sex, color, costs of each case, and amount of payments made in case

of imprisonment for debt.<sup>43)</sup>

A rather peculiar duty of the Sheriff was established by a law of 1786. If a ship was in distress in the Delaware Bay or River, and an application for aid was made to the Sheriff, he was bound to muster men to aid under the direction of the captain if he were present; if not, the Sheriff gave directions.<sup>44)</sup> In other words, the Sheriff with his crew of volunteers, acted in the capacity of a modern coast guard crew, except that their services were applied for rather than volunteered.

Besides the many duties mentioned, the Sheriff had other miscellaneous responsibilities. By a law of 1787 he was obliged to obey orders of the Auditor<sup>45)</sup> as well as make a yearly accounting to the Auditor after 1829.<sup>46)</sup> A law of 1799 gave the Sheriff the authority to execute deeds in cases of persons dying before the deed could be drawn up.<sup>47)</sup> Two laws added more power to the sheriff's office in 1829. One empowered the Sheriff to do away with nuisances himself if they were not removed after conviction and imposition of a penal-

ty. For this work the Sheriff received four dollars a day, to be collected through court from the defendant. The other law directed the sheriffs to have armories built in Kent and Sussex counties within sixty feet of the gaol.<sup>48)</sup> Less pleasant duties included whipping, branding, pilloring, and executing<sup>49)</sup> prisoners.

A list of over fifty fees in effect in 1793 attest to the importance of the sheriff's office. These ranged from seven cents to sixteen dollars, with the average about one dollar and forty-five cents. This average, however, is somewhat misleading since the execution fee of sixteen dollars, twice as much as the next highest fee, helped to make any average top heavy. The average of one dollar computed without the two highest fees, would appear to be more accurate.<sup>50)</sup> Six fees were added the following<sup>51)</sup> year with an average of about eighty cents per fee, and another fee of fifty cents was granted in 1817 for summoning the Levy Court to assist in making up a<sup>52)</sup> jury list. These fees were exclusive of mileage grants, and special fees of thirty pounds, and fifteen pounds, respectively, for summoning members of the

General Assembly from Sussex and Kent counties,<sup>53)</sup>  
 but were otherwise the complete source of income  
 for the Sheriff, as acceptance of any other fees was  
 prohibited by law in 1827.<sup>54)</sup>

The size and number of fees indicates that  
 the office of Sheriff was a lucrative one, and the  
 amount of bond demanded bears out the fact. In 1778  
 the amounts were raised to three thousand pounds for  
 the sheriff of New Castle County, two thousand five  
 hundred pounds for Kent and two thousand for Sussex.<sup>55)</sup>  
 In 1793 the New Castle County Sheriff was required to  
 give a bond of sixteen thousand dollars, Kent County  
 fourteen thousand and Sussex twelve thousand.<sup>56)</sup>  
 The same amount was being required in 1821.<sup>57)</sup>

#### Corener

Mention of the office of Corener usually  
 calls to mind violent death, and inquests, or pecu-  
 liar circumstances surrounding death. The office  
 in the Delaware area, established about 1685,<sup>58)</sup>  
 had about the same duties as we still associate  
 with it. Investigation of sudden death called for  
 an inquest by a jury, which a law of 1811 stated  
 should be picked from twenty persons summoned ten

59)  
 days prior to the trial. To insure quality on such  
 juries, one law of 1811 demanded that the Coroner  
 take a special oath, similar to the one required of  
 the Sheriff.<sup>60)</sup> By a law of 1829, special duties,  
 relative to the examination of circumstances surround-  
 ing mysterious deaths, included the holding of the  
 inquest, examination of suspects, recording of  
 material evidence and voluntary declarations, summon-  
 ing witnesses, and arresting them to compel attendance,  
 arresting and holding of suspects, issuing warrants  
 to a Constable calling for the apprehension of per-  
 sons accused, and other duties usually granted to a  
 peace officer to carry out an arrest.<sup>61)</sup> Then on the  
 day of the convening of the Court of General Quarter  
 Sessions, the Coroner had to deliver records of all  
 inquisitions made by him. If at any time during the  
 year, the Coroner received notice of the recommendation  
 of a Justice of the Peace of the County to disinter a  
 body for examination of the cause of death, that duty  
 became his.<sup>62)</sup>

The office of Coroner is placed far to  
 the fore in this discussion of county officers, be-  
 cause of the relation of the office to that of the

Sheriff, rather than for any reason of priority in importance. Many of the duties of the Coroner, established by law, were the same as those of the Sheriff, but performed only in the event of the sheriff's inability. The duties, necessary to assemble a jury, were to become the coroner's in the event of the sheriff's absence, or in case the sheriff's involvement in the case made him legally excepted.<sup>63)</sup> Laws of 1811<sup>64)</sup> and 1825 specified the same with respect to duties involved in conducting an election.<sup>65)</sup> Another such duty, certainly little relished by the Coroner,<sup>66)</sup> was performing executions.

The inferior position of the office to that of Sheriff can be seen in a comparison of the fees received by each in 1793. Whereas the Sheriff received over fifty, the Coroner could collect only about six, averaging seventy cents each.<sup>67)</sup> In 1814, however, these rates were increased about fifty per cent<sup>68)</sup> and, as recorded in 1826, were still on that basis.<sup>69)</sup>

The security required of the Coroner was also much less than that required of a Sheriff,



being only three thousand dollars in 1811.<sup>70)</sup> In 1826 the same bond was required plus a ten dollar fee to the state for his commission.<sup>71)</sup>

### County Treasurer

The County Treasurer's office was created about 1757 when the Levy Courts were granted the authority to appoint such officers.<sup>72)</sup> Sussex County had six different treasurers from the Revolution to 1831, serving terms ranging from two years to fifteen years, which indicates that the term of office was indefinite.<sup>73)</sup> The same method of appointment was being followed in 1781,<sup>74)</sup> but in 1809 an act of Assembly directed that the appointment was to be made annually by the Levy Court.<sup>75)</sup> A law of 1825 confirmed the method of appointment, selected February as the time for choosing the treasurers, and stated that the appointee should be a "good and substantial freeholder".<sup>76)</sup> Since no Sussex County Treasurer served less than two years, the law calling for yearly appointments really had but little bearing upon the procedure of the Levy Court. Such a law did not prevent re-appointments, and that is just what the levy

courts methodically did. However, the law did provide the Levy Court an escape, if a County Treasurer proved to be incompetent, as well as being a club to insure efficiency on the part of the treasurer. This does not mean that if the Levy Court found itself burdened with an incompetent treasurer, removal from office could not be effected until the termination of his yearly term. A law of 1778 had provided for any such situation by granting the Levy Court the authority to dismiss any treasurer, who failed to comply with an order to adjust their accounts, or deliver the books to the State Treasurer. The Levy Court then proceeded<sup>77)</sup> to appoint another treasurer. Nine years later the power of dismissal was reaffirmed, but the procedure for making new appointments was altered. In case of a vacancy through dismissal or death, a successor was to be chosen by the Assembly, if in session; if not, the President of the state made the selection.<sup>78)</sup>

During the early years of Revolution, each of the counties also had military treasurers,<sup>79)</sup> who seem to have been directly under the jurisdiction of

the General Assembly.<sup>80)</sup> Since no mention of them occurs after 1777, it can be concluded that the offices were the creations of a war emergency, and have no place in civil local government.

Custody of money coming from fines and forfeitures, and collection of such monies from the various county and hundred officers, were important duties of the treasurers up until 1793.<sup>81)</sup> By that time the office of State Treasurer had been firmly established, and it was to that office that future fines and forfeitures were to be paid.<sup>82)</sup>

After collecting the stated monies, a law of 1780 directed the treasurers to settle their accounts with either the State Treasurer, or Levy Court of their respective counties.<sup>83)</sup> By a law of 1783, the accounts, thenceforth, were to be settled with the State Auditor every six months.<sup>84)</sup> The state office of Auditor of accounts seems to have been a temporary arrangement to replace the committees appointed by the Assembly for the purpose of auditing certain accounts. The office was permanently established in 1787.<sup>85)</sup> In the same year the times of accounting with the Auditor were increased to four

times a year and the treasurers were relieved from settling accounts with the levy courts.<sup>86)</sup> Another change in the number of times of settling accounts with the Auditor was established in 1829. From that time, one accounting was to be made on a day selected by the Auditor within four days after the Court of Common Pleas convened.<sup>87)</sup> In rendering accounts, the treasurers were instructed to be specific as to the time of receiving money, persons received from, amount, and to what account the money was to be applied. The latter specification referred to the road fund, the poor fund, and the like.<sup>88)</sup>

In 1813 the county treasurers were required to deliver to the Auditor certificates of fines that had been imposed by justices of the peace in their county. The certificates had to contain not only the amounts of fines, but also the names of the constables responsible for collection.<sup>89)</sup> To make sure of this information in the future, justices of the peace were ordered to name a specific Constable to collect an imposed fine. Before 1813 these reports were made directly to the Auditor by the justices.<sup>90)</sup>

In 1807 the county treasurers began to perform some of the duties of the Commissary of Military Stores, such as appointing a collector of fines.<sup>91)</sup> This heralded the future abolition of the office of Commissary, in 1812, when the treasurers inherited<sup>92)</sup> the duties relating to fines.

Some of the duties of the county treasurers related to the management of roads and bridges. By a law of 1796, an account for each of the hundreds in Kent County was to be opened and the monies accruing from the road tax in each hundred were to be kept separate.<sup>93)</sup> Obviously, the purpose of such a regulation was to prevent one "hundred" from receiving three hundred dollars worth of road improvements, if the road tax in that "hundred" had produced only a two hundred dollar fund. At times the treasurers were assigned special duties, as the adjusting of accounts of specially appointed managers of bridges. Findings, in such instances, were reported to the Levy Court.<sup>94)</sup> Still another duty in relation to roads was started in 1821, when the county treasurers were granted the right to authorize a five percent commission to the collectors of road taxes,

whenever the road tax was worked out in labor. <sup>95)</sup>

The treasurers, then, both received collected funds, and set up accounts for dispensing funds. For example, non-commissioned officers, serving notices to delinquents of courts martial, received twenty-five cents for each notice from the County Treasurer. <sup>96)</sup> After 1821 the clerks of the courts <sup>97)</sup> could draw orders on the treasurers. Orders for clothing, and bedding for prisoners were drawn on the funds. <sup>98)</sup> The school fund, set up by the treasurers, was subject to reduction by orders originating <sup>99)</sup> with the trustees for educating poor children.

In New Castle County only, a fund was established from monies arising from a dog tax, and the treasurer had to make a report on this account <sup>100)</sup> at least once every two years.

A peculiar source of funds originated during the Revolution, coming about as a result of the breakdown of the monetary system of the embryonic country. Even today, we hear persons who are either adverse to the use of profanity, or who have never been properly educated by association with sailors and stevedores,

use the term "not worth a continental" to convey the meaning of worthlessness. The term came into use as a result of the depreciation of the continental bills, issued by the Continental Congress during the War for Independence, and it was because of that condition, that the General Assembly passed an act in 1777, which helped increase the funds of the county treasurers. By the terms of the law, a creditor, upon refusal to accept the bills as payment, had ten days grace in which to re-assert the existence of the debt, either personally to the debtor, or in writing. If the creditor failed to comply with these regulations the debt was forfeited, with one third going to the debtor and two thirds to the county treasurer's coffer<sup>101)</sup>s.

The county treasurers received their remuneration through commissions on the monies handled. Their largest commissions were realized from the collection of special taxes levied by the Assembly to fill the state's quota, as set by the Continental Congress. In 1778 this fee was twenty shillings per hundred pounds handled.<sup>102)</sup> The rate for handling money raised for ordinary state use was much less,

but an attempt to raise the commission to twelve shillings and six pence per hundred, in 1779, failed to pass.<sup>103)</sup> Two years later the commission was ten shillings per hundred pounds,<sup>104)</sup> but in 1800 the treasurers were given a chance at an increase by being allowed a dollar and one half commission on every hundred dollars surplus.<sup>105)</sup>

If the amount of bond required from an officer is any criterion for determining the importance of an office, comparisons would show that the county treasurers were less important than sheriffs, and more important than coroners. Their bond of six thousand dollars, established in 1796,<sup>106)</sup> was raised to ten thousand in 1825.<sup>107)</sup>

### Register of Wills

Prior to 1678, administering estates in the Delaware area had been done by the New Castle Court, whenever petitioned to do so. In that year Governor Andros gave the court at New Castle authority to appoint persons for that purpose. The next step was, of course, the appointment of a regular Register of Wills, which took place in 1684. As the popula-



tion increased, the duties apparently increased, for in 1695, two persons were granted commissions to perform the duties of the office. These appointees often held several offices at one time, administering them through deputies.<sup>108)</sup> During the period in which we are most concerned, the office had become a fixed one,<sup>109)</sup> with the registers of wills serving irregular terms, indicating that the term of office was dependent upon good behavior.

As the title of the office signifies, and as has already been pointed out, the chief duties of the registers were in connection with testing wills, and administering estates. These had become established both by custom and statutes. Later laws reaffirmed these duties and dealt with procedure. A law of 1806 directed the registers to compel guardians, administrators, and executors to settle accounts and return inventories.<sup>110)</sup> After 1825, they were obliged to make alphabetical indexes to books in which were recorded releases, receipts, and acquittances.<sup>111)</sup> In 1829 the registers were commanded to make orders, showing the date of granting letters of administration, and to issue notices, requiring creditors to produce

their debts against the estate of the deceased. The same law recognized the authority of the registers to issue orders, subpoena witnesses and make attachments, and provided for obedience to these various orders, by granting them the power to arrest and imprison.<sup>112)</sup> The detail of appraising, often necessary in cases involving the settlement of estates, was usually done by appraisers hired by the registers.<sup>113)</sup>

Remuneration for the registers of wills was established in 1777 by law. In 1778 a bill was introduced to raise the amount of fees, but the conclusions of the members of the House of Assembly were, that they were opposed to doubling the fees received in 1770; that the fees established in 1777 were ample; and that the post was already a lucrative one.<sup>114)</sup> A law of 1793 enumerated twenty-six fees with an average fee of about sixty-two cents, besides allowances for copying.<sup>115)</sup> In 1825, a fee of thirty-seven and a half cents plus two cents for every twelve-word line, was established for recording and copying.<sup>116)</sup> A new listing of fees appeared in the following year, ranging from seven cents to three dollars.<sup>117)</sup>

The bond demanded of a Register of Wills was set at three thousand dollars in 1826; the same law compelled the payment of a ten-dollar fee for his commission.<sup>118)</sup>

### Recorder of Deeds

The forerunner of the Recorder of Deeds, was an officer appointed in 1727 to be the "keeper of the rolls for the lower counties"<sup>119)</sup> but the office with the title of Recorder of Deeds did not come into existence until 1762 under King George II.<sup>120)</sup> What was said of the term of office of the Register of Wills<sup>121)</sup> is applicable to the Recorder of Deeds.

The duties of the officers were in connection with public papers and land titles, as a discussion<sup>122)</sup> in the council in 1778 pointed out. The procedure in recording land titles to public lands was explained in a law of 1793. Upon application of someone for title, the recorder issued a warrant to the surveyor of the county, directing him to survey the lands in question. The surveyor then drew a plot of the tract, and adjoining lands, which was delivered to

an Examiner, commissioned by the Governor, for his approval. If approved, the recorder collected the sale price and made the grant, which next went to the board of three Land Commissioners for approval. After this board had given its stamp of approval the grant was signed by the Governor; the applicant had his land;<sup>123)</sup> and the Recorder of Deeds had a record of the grant.

A law of the following year exacted from the Recorder of Deeds, an annual report to the State Treasurer in the month of November, listing all warrants and surveys made.<sup>124)</sup> After 1810 the recorders were required

to keep a record of the name, age and sex of the children born to freed slaves, so that, the children might also gain their freedom when they became of age.<sup>125)</sup> Special duties were delegated to the re-

corders in 1812, resulting from the Assembly's becoming interested in preserving public records. The Assembly appointed a commission to examine and determine what records should be preserved in the recorders' offices. The recorders were then bound to transcribe all records recommended by the special commission.<sup>126)</sup>

From 1827 on, the recorders were to show on mortgage deeds the day, hour, and minute

each was recorded, and each such deed was to be recorded in the order it was received.<sup>127)</sup> A similar law, passed in 1829, required the noting of the day, month, and year in which each deed was recorded, and added constables' bonds to the list of recordings.<sup>128)</sup>

The fees allowed to the recorders were few, and comparatively small. In 1793 two fees were listed, one for seven cents and one for thirty cents. In addition one cent per twelve word line was allowed for copying and recording certain records.<sup>129)</sup> Through a law of 1812, compensation for work done for the Levy Court was left up to the Levy Court, the only qualification being the word "reasonable".<sup>130)</sup> Another fee was established in 1825 for recording private acts of the Assembly,<sup>131)</sup> and in 1826 two new fees of fifty cents, and one for thirty-seven and one-half cents,<sup>132)</sup> were established.

Bond was required of the Recorders in  
<sup>133)</sup> 1826 plus a fee of ten dollars for commissions.<sup>134)</sup>

### Loan Offices

The Revolution was responsible for the growth of the loan offices in the state. Under the

control of the Continental Congress, a Continental Loan Office was employed for handling funds to finance the Revolution.<sup>135)</sup> The bulk of these finances seem to have been raised by stipulating quotas for each state, with only the good will and efficiency of the states as an assurance of collection. Delaware employed local loan offices for about the same purpose.

Each county had one Loan Office,<sup>136)</sup> with a trustee as manager, by appointment of the House of Assembly, and concurrence of the council.<sup>137)</sup> In 1777 the Rodneys had a corner on the trusteeships, Caesar Rodney being the Trustee of the Loan Office in Kent County, and John Rodney holding a similar position in Sussex.<sup>138)</sup> The office was granted for a four year term.<sup>139)</sup>

The loan offices received money collected from special taxes, levied to raise the imposed quota,<sup>140)</sup> and states' money directed to their keeping by the Assembly.<sup>141)</sup> It was the intention of the Assembly to realize enough income from interest on the money loaned by the loan offices to pay the salaries of President of the State, and Justices of

the Supreme, Common Pleas and Admiralty Courts.<sup>142)</sup>

The duties of the trustees included lending out, and managing the monies placed in their care, accounting annually with an auditing committee appointed by the General Assembly<sup>143)</sup> and loaning money on mortgages<sup>144)</sup> with the authority to renew mortgages. If the mortgage was a guardians mortgage, approval of the Orphans Court was a qualification for renewal.<sup>145)</sup> From the above, a similarity to the functions of a banking institution can be perceived, which suggests that these Loan Offices were the forerunners of banks.

The Loan Office arrangement did not work very efficiently, and periodically required legislative action to put things aright. In 1779, the Assembly appointed two persons as a commission to attempt to collect the sums in arrears from the Trustees of the Sussex Loan Office. This commission was empowered to resort to suing if necessary.<sup>146)</sup> The real extent of the neglect of the trustees, in meeting their obligations, is revealed by an action of House of Assembly in 1780. At that time the

House appointed a committee to recover money due from the loan offices as far back as the year (147) 1774. The arrangements were probably no more satisfactory for the trustees, since there is evidence of an occasional resignation.<sup>148)</sup> In 1799, conditions prompted the General Assembly to enact a law calling for a transfer of duties of the trustees to the State Treasurer.<sup>149)</sup> However, since later enactments refer to the trustees and grant them powers, this law could have had reference to certain specific duties only.

The pay of a trustee amounted to twenty pounds per year, to be taken out of the interest money.<sup>150)</sup>

### County Collectors

Close investigation reveals that there were two groups of collectors; one group served the "hundred" as regular "hundred" officers while the other group operated throughout the counties as temporary agents of the General Assembly. It is with the latter group that we are at present concerned.

Prior to 1783, regular state taxes had been



collected by the established "hundred" collectors, who then made an accounting to the County Treasurer. The County Treasurer, in turn, went through the same process with the State Treasurer. In the year mentioned, the method of collecting was changed by creating a new collector for each county, to be accountable to the State Auditor, and to make payments direct to the State Treasurer.<sup>151)</sup> The collectors, appointed by the General Assembly for each general tax, were obliged to give bond; in case an appointee refused to serve, the power of appointment went to any five justices of the peace in the county.<sup>152)</sup> Occasionally, as in 1785, the Assembly appointed collectors to collect back taxes.<sup>153)</sup> In 1798 the power of appointment was given to the State Treasurer and the bond raised to twice the amount to be collected.<sup>154)</sup> The same method of appointment was being employed as late as 1810.<sup>155)</sup>

The important duty of the collector was, as has been mentioned, the collection of the state tax, for the accomplishment of which, the collector had the power to appoint deputies.<sup>156)</sup> Little change

occurred in his duties but laws now and then effected changes in the method of procedure. A law of 1784 required accountings with the Auditor twice yearly, and directed that the County Collector should pay any surplus over his quota to the County Treasurer. <sup>157)</sup>

After 1785, the time for his first appearance was to be specified by the Auditor, and at that meeting, one half the amount of the assessment was to be delivered under penalty of a fine. <sup>158)</sup> In relation to a surplus, laws of both 1786, and 1787, reaffirmed the terms of the law of 1784, and added a clause requiring the collectors attendance before the Levy Court in case any adjustment were necessary. <sup>159)</sup>

The collectors sometimes experienced difficulty in collecting, or in finding owners of tracts of lands. In the former case, the collector gave the delinquent ten days in which to pay, and if payment was not made, he proceeded to levy on goods for a forced sale. Should the delinquent refuse to show his goods to be levied on, the collector even had the power to arrest and convey to jail. <sup>160)</sup> In cases where the collector could not find the owner of a tract of land, sale of enough to pay the

taxes was carried out, if approved by the Court of  
 General Quarter Sessions.<sup>161)</sup>

The collector was paid by a commission on his collections. If trouble in executing a sale was experienced, the collector received the same fee as a Constable, or four percent.<sup>162)</sup> Otherwise the fee was three and one-half per cent with no allowance for deducted delinquents, unless the collector produced a certificate signed by two justices of peace, showing that all legal means of collection had been attempted.<sup>163)</sup> The above law, passed in 1785, was altered in 1794 by a law demanding that the Levy Court also had to approve the justices certificates.<sup>164)</sup> The regular fee remained the same, but in 1798 a bonus of eight dollars in every hundred dollars was allowed for a surplus, and sixteen dollars in every hundred dollars was allowed when portions of land, or timber had to be sold to pay the tax.<sup>165)</sup>

#### Escheator

The office of Escheator was one of those offices rarely referred to, and hence the conclusion

that it was an unimportant office which had probably outworn its usefulness. As my personal conception of the office has always been one of scorn, based upon the knowledge that in days of despotism, the office was often used unscrupulously to attain lands, I am prone to suspect that the office was an unpopular one, too. Regardless of personal opinions, the office was the theme of a law passed in 1805, which designated that the Governor was to appoint an Escheator to each county for a period of five years; that the power of filling vacancies was to be reserved to the Governor; and that the escheators were to give bond. If a case arose in which there were no remaining heirs to an estate, an Escheator Court was arranged by having the Sheriff or Coroner summon twenty-four persons, twenty-three of whom served as a jury to determine whether or not the lands escheated to the state. 166)

A law of the following year reduced the number of jurors to sixteen, at least twelve of whom had to agree that an estate should escheat. If they concurred, the Escheator transmitted his findings to the Clerk of the Supreme Court and General Assembly. If a probable case was related to the Escheator and

he had reason for doubt, it was within his power to request a written opinion from the Attorney General before proceeding with the inquiry.<sup>167)</sup>

The fees of an Escheator were six in number, ranging from twenty-five cents to five dollars with an average of about one dollar and eighty-five cents per fee. In addition, four cents for every twelve word line was allowed for writing down the testimony of witnesses.<sup>168)</sup> Under these circumstances long winded witnesses must have been a welcome nuisance, nor can it be denied that this was one instance where talk was not cheap for the state.

Miscellaneous county officers to whom little reference is made by records were the County Physician, the Inspector of Flour, and the Informer.

#### County Physician

The County Physician was probably an appointment made during the danger of a spread of an epidemic. Five physicians were appointed in 1797, one to reside in Wilmington, one in New Castle, one in Kent County, and two in Sussex County. One of the

Sussex physicians was to reside at Lewes, and the other on, or near the Nanticoke River. Their only duty was to board, and examine ships for infectious disease, with a view of determining whether or not the ship would be granted a landing permit. A fee of ten dollars was allowed for each ship examined. 169)

### Inspector of Flour

The Inspector of Flour was a New Castle County officer, established in 1796. He was appointed by the Governor for a term of three years and had the authority to appoint two deputies. As the title states, his duty was to inspect flour to see that it measured up to a set standard. His realm of inspection was in New Castle County only, unless he was particularly requested to go outside of the county by an owner, or purchaser of flour. Another common title was "Trier of Flour". 170)

In 1804 his fee was set at three cents per hogshead of flour examined. 171)

### Informers

172)  
Finding evidence of "Informers" in the

period under discussion was somewhat surprising. The name "Informer" harkens back to English local government. Informers were of two kinds. Those who were appointed and those who were voluntary, but even before the end of the Stuart period voluntary Informers had fallen into disfavor.

Any peace officer, of course, by the very nature of his office, was an "Informer", but the title, for designating a separate, and distinct office, was rarely used. Voluntary "Informers" were apparently little respected in Delaware counties. Even General Washington wrote the Delaware Assembly recommending that measures be taken against Informers in 1777.<sup>173)</sup> The council accordingly amended a bill, for punishing treasons and disaffected persons, to protect freedom of speech, and prevent a "flood of informers".<sup>174)</sup>

Recognition of "Informers" as active agents of local government in Delaware, would be incorrect. They are more to be remembered as unwelcome restorations of a much despised and obsolete system of catching criminals.

### Elections, Roads, and Bridges

County elections were by law directed to be held at the court houses of the county seats of New Castle, Dover, and Lewes.<sup>175)</sup> The last named was changed to Georgetown when that town became the county seat. Perhaps the only deviation from this was in the New Castle County election of 1777, which was held at Newark because of the proximity of British forces to New Castle.<sup>176)</sup> The elections were managed and directed under the authority of the inspectors and the Sheriff. If the Sheriff did not arrive, his deputy presided. If neither of them came, two overseers of the poor took charge. In the event that none of these officers put in an appearance, three freeholders were elected by the electors to preside.<sup>177)</sup>

The elections were not always free from disaffection, and violence. A petition to the General Assembly in 1777, from the inhabitants of Sussex County, charged interference in the election by an armed force. The interruption was of sufficient violence to prevent the election.<sup>178)</sup> Two years later,



another complaint was raised by the inhabitants of Kent County, complaining of illegal practices. Investigation by the Committee of Elections revealed that one hundred and twenty-three had voted illegally and the election was declared void.<sup>179)</sup> These provocations were enough to prompt the Assembly to enact a law on the interruption of elections, providing that late-sitting members of a county, where interruption of an election took place, could resume their seats in the Assembly, but could take part in only the business of ordering a new election. The law directed the sheriffs to read the law in a "loud and distinct voice" at the door of the Court House just prior to the casting of votes.<sup>180)</sup>

Violence continued in spite of legislation for prevention. In 1783 the Sussex inhabitants claimed that soldiers, officers, one of the inspectors, and his clerk invaded the polls with bayonets, swords, and clubs. They spread terror among the electors, by their rough talk and by actually inflicting physical violence upon several people, including a Constable.<sup>181)</sup> Most of these occurrences happened during the Revolution or while armed forces were

still mobilized. These certainly were not normal times, and abnormal conditions at elections might be expected. The lack of further evidence of violence indicates that elections were usually conducted in an orderly manner.

Obedience to laws referring to the seating of legislators was zealously maintained. In 1776 the Sussex voters complained that one member of the Assembly should not be seated, because he owned no land, and hence was not a freeholder. Investigation by the Committee of Elections showed, however, that the gentleman in question had been deeded a tract of land about a month before the election.<sup>182)</sup> In 1778 the Council of the General Assembly refused to seat an elected representative because no writ for the election had ever been issued by the Speaker of the Council.<sup>183)</sup>

The building and maintenance of roads, and bridges was divided between the county, and hundreds, usually at the direction of the General Assembly. No well-defined jurisdiction had been set up to be administered by a particular agency of local

government. The Assembly would be notified or petitioned, and action would result. In 1796 the road running from New Castle to Milford, along about the same route as we travel today, was designated as a county road, as was a road on about the same route as our U. S. Highway #13 from Dover to the northern Sussex County line. Only these highways were the county roads at that time, and only these were to be maintained by the counties. All other roads were hundred roads, and were to be maintained by the hundreds.<sup>184)</sup> This, of course, gave Sussex County no county roads.

No very consistent policy in the opening, or building of new roads was followed. In answer to a petition of 1808, calling for change in the course of a road, the Assembly directed that the road's course might be changed at the expense of the petitioner.<sup>185)</sup> A law of 1817 provided that public roads in Kent County should be laid out in the same way,<sup>186)</sup> after freeholders appointed by the Court of Quarter Sessions had determined that the proposed roads were necessary.<sup>187)</sup> In 1808, however, the Assembly provided for a change in the location of the

Appequinimink bridge and road at the expense of the county.<sup>188)</sup> The Dover Horsehead road was rebuilt in the same year at the expense of the county through the Levy Court.<sup>189)</sup> A more consistent policy was premised by a law of 1820, which stated that no new road was to be opened until it was approved by both the Levy Court, and Court of General Quarter Sessions. After such approval the expenses were to be borne by the county.<sup>190)</sup>

About the same policy was pursued in respect to bridges as was pursued in connection with roads. Some bridges were supported by tolls. The bridge over the Broadkill Creek was established as a toll bridge in 1759, but the tolls were so inadequate for maintaining the bridge in 1780, that the collector of tolls petitioned the Assembly to either increase the tolls, or provide for public support of the bridge.<sup>191)</sup> The Assembly complied with the petitioner's wishes by ordering the bridge repaired and providing for its future support by taxation of the people of Sussex County.<sup>192)</sup> The same provision was made for the Mispillion bridge at Milford, except that as it was on the boundary line of Kent and

Sussex Counties, both counties were responsible for its support.

The Assembly often appointed special commissions to build or maintain bridges. In the case of the Mispillion bridge, mentioned above, four commissioners and their survivors were appointed to keep the bridge in good repair. <sup>193)</sup> For repairing a bridge over the North West Fork, two commissioners from Kent and two from Sussex were appointed to put the bridge in good repair. Once repaired, one-half of the bridge was to be placed under the Mispillion Hundred overseers, and the other half under the overseers of North West Fork Hundred. <sup>194)</sup> In 1796, three commissioners were appointed to supervise the building of a new bridge over Bread Creek. An entirely new procedure was laid down in this case. The commissioners were to apply to the Prothonotary of Sussex County, to have him direct the Sheriff to summon a jury of six, who would determine the location and amount of damages due property owners. The Sheriff was responsible for a report to the Court of General Quarter Sessions, while the commissioners had to account to the Levy Court. When completed,

the bridge was to be maintained by Broad Creek and  
 Little Creek Hundreds.<sup>195)</sup> Commissioners were appointed  
 for a bridge at Cedar Creek,<sup>196)</sup> and also at  
 Little Creek in 1802, but in the latter case, the  
 commissioners were responsible to the County Treasurer  
 instead of the Levy Court.<sup>197)</sup>

Another way of building bridges was for the  
 county to build the bridge and continue to collect  
 tolls until the expense of building was liquidated.  
 Then the upkeep of the bridge was taken over by the  
 county, and the tolls ceased.<sup>198)</sup>

Sometimes a company would build a bridge,  
 and a toll system would be established, with the tolls  
 going to the company until the county paid a sum equal  
 to that expended by the company.<sup>199)</sup>

Perhaps the most unusual method for meeting  
 the cost of building a bridge, was the authorization  
 of a lottery, and the appointment of a five-man board  
 of managers to conduct it. Such a system was employed  
 in 1812 for placing bridges over Jones Fording and  
 over the Choptank River. The managers were respon-  
 sible to the Kent County Levy Court.<sup>200)</sup>

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## CHAPTER IV. LEVY COURT AND OTHER COUNTY BOARDS

### Levy Court

Many of the officers discussed in Chapter III, in one manner or another, carried out their various duties through commissioners who constituted the county boards.

The most vital of these boards, the Levy Court, exercised some authority in almost every area requiring government or control. In the early years of the period under consideration, the Levy Court was composed of the justices of the peace, grand jurymen,<sup>1)</sup> and assessors. From the date of its inception, by an act of the Crown in 1756, no change in its composition was effected until years after the Revolution. The power to appoint county treasurers, granted in 1757,<sup>2)</sup> was the only change in respect to duties. The first changes in composition were established through an act of 1791, by which the members of the levy courts of New Castle and Sussex Counties were to be the oldest Justice of the Peace of each "hundred", and the President of General Quarter Sessions, who was to represent his "hundred". In Kent County, there was a

slight difference, in that the two oldest justices of the peace of each "hundred", were to serve. If any hundred lacked the two justices to fill the quota, a freeman was chosen by ballot of the justices of the peace at their November meeting of the General Quarter Sessions Court.<sup>3)</sup> Two years later, in 1793, a radical change was brought about by a law providing<sup>4)</sup> for the election of the members of the court. The members were now known as commissioners, eleven of whom composed the New Castle County Levy Court. Two were elected from Christiana Hundred, two from Appoquinimink, and one from each of the other hundreds. The Kent Levy Court had nine members, with three coming from Murderkill Hundred, two from each of the hundreds of Duck Creek, and Mispillion, and one from each of the hundreds of Little Creek and Jones. In Sussex County, each of the hundreds elected one commissioner to the Levy Court which gave the court a total of ten members. A system of rotation of the members was provided by dividing the first set of elected commissioners into three groups, the first group serving two years, the second three years and the third four years. Vacancies were supplied

5)  
 only by new elections. A change in the representation of the hundreds of Kent County came about in 1829 when a law called for a reduction to two from Murderkill Hundred, and increased Jones's to two. The same law stipulated that the commissioners had to live in the "hundred" they were representing; that removal to another "hundred" created a vacancy; that members could not hold the offices of County Treasurer, Trustee of the Poor, Sheriff, Coroner, or Collector; and that the term of office was to be three years with the original rotation still in effect. 6)  
 In the following year, due to an act which divided Mispillion Hundred to create the new Milford Hundred, the Sussex Levy Court was increased to twelve members, instead of eleven, which still gave each hundred, including the new one, one representative each. 7)

The time of meeting of the Levy Court, in 1797, was on the first Tuesday of February. 8)  
 An increase in the court's volume of duties and the natural growth of the nation must have necessitated the increase of meetings to three in 1825. These were held at the court-houses on the last Tuesday of September, first Tuesday of February and first Tuesday of

March. Adjournment from time to time was permissible with one commissioner, or the Clerk of the Peace, having the authority to adjourn.<sup>9)</sup>

At about the time of the change to elected levy courts, the general duties resembled the work of a budget committee. At their meeting, the commissioners determined, and settled the public debt; arranged for payment of known debts to be incurred by the county; calculated the amount of money necessary to finance any program of building, or repairing of the court-houses, poor-houses, work-houses or prisons; determined the amount for adequate maintenance of the poor; building, or repairing of bridges, and all types of roads; and provided for raising and collecting the needed sums.<sup>10)</sup>

The areas of control, with which the levy courts had the greatest concern, were roads and assessment for taxes. As established by a law of 1791, at their annual meeting, the commissioners were to fix a rate to raise the sums for maintaining the poor, and direct the "hundred" collectors to collect,<sup>11)</sup> and by a law of 1796, to determine the

same for maintaining the roads.<sup>12)</sup> Those officers in  
 attendance, besides the commissioners, were the  
 assessors, commissioners of tax, Clerk of the Court  
 and the constables. The first had to attend on the  
 day the Court was sitting as a Court of Appeals,<sup>13)</sup>  
 as well as on the first meeting of February when they  
 made returns of their valuations and assessments,<sup>14)</sup>  
 upon which were based the court's estimates. In 1805  
 the Levy Court was given the authority to reduce or  
 remove the assessment on places which had become  
 unproductive.<sup>15)</sup> The only other duty in connection  
 with assessments before 1825, was the court's respon-  
 sibility in transferring assessment lists and making  
 corrections,<sup>16)</sup> when new "hundreds" were created or  
 new boundaries were established.<sup>17)</sup>

In 1825 provision for three meetings of the  
 Levy Court instead of one, brought changes in the  
 Court's relations to the assessors. On the last  
 Tuesday of September the assessors were to appear  
 before the courts to take an oath, and receive in-  
 structions on how to evaluate property. At the  
 February meeting the assessors were to report again  
 to return their assessment lists and have their own  
 property assessed by the court. The court corrected



the assessments, rated persons omitted, and then set their March meeting as the time for the next appearance of the assessors to aid the court when it sat as a Court of Appeals.<sup>18)</sup> A law of the following year gave the Levy Court the Authority to appoint assessors if a vacancy occurred, or if a hundred failed to elect one.<sup>19)</sup>

In decisions respecting financing of new "Hundred" roads, the Levy Court in New Castle County was given this duty in 1793. Formerly, two justices of the peace, and the overseers of the poor of the hundred had taken care of these matters.<sup>20)</sup> In 1796 the Court of General Quarter Sessions was relieved of its authority over roads and the Levy Court was given the power to appoint one or more overseers for each hundred.<sup>21)</sup> The right to make changes in their appointments was added the following year.<sup>22)</sup> The authority over roads, of which the General Quarter Sessions was deprived in 1796, was partly restored by a law in 1820, which demanded the Quarter Session's confirmation of the levy court's approval of a new road before the road could be opened. The Levy Court examined the returns of damages awarded plus the

other expenses of building a road.<sup>23)</sup>

In 1825 the levy court's duties in respect to roads were fully outlined. The Court was to decide upon the amount needed by taxation; apportion<sup>24)</sup> the amount for the roads throughout the "hundreds"; order payment by the County Treasurer of money to the overseers; lay additional taxes and alter apportionment; appoint the overseers for the Kent and Sussex "hundreds", stating to each the limits of his territory; and examine the accounts of the overseers.<sup>25)</sup> A final duty begun in 1804 was firmly established in 1829 when the Levy Courts were confirmed in the power of appointing overseers for private roads upon application of interested persons.<sup>26)</sup>

Along with roads, the levy courts also had some authority over bridges, such as maintaining<sup>27)</sup> them after completion, or appointing toll collectors, and determining the rates of annual contracts for persons who wished to cut down on their annual toll charges by purchasing a sort of season ticket.<sup>28)</sup> In 1823 a law gave the courts additional duties by providing that no bridge could be built until rec-

commended and approved by the Court of Common Pleas<sup>29)</sup> and Levy Court. The courts were also responsible for lighting certain bridges and for posting regulations<sup>30)</sup> for the use of the bridges.

As to jails, laws of both the years 1812, and 1815 gave the Levy Court authority to remove lunatics from the public jails to the poor-house.<sup>31)</sup> The law in the latter year, also specified that compensation for support might be recovered from any property owned by those transferred.<sup>32)</sup> The court could make appropriations setting aside a fund for purchasing clothing and bedding for the prisoners, but a law of 1818 stated that this procedure was not to be followed unless the inspectors of gaols laid before the Levy Court a certified record of the amount drawn by them during the previous year.<sup>33)</sup> Another important duty came under the direction of the Levy Court by a law of 1827; namely, the appointment of three jail commissioners for each of the counties of Kent and Sussex, and the supplying<sup>34)</sup> of vacancies.

The general taxing powers of the Levy Court were altered from time to time by legislative

action. In 1799, the court was instructed to exempt taxables from the road tax if they had met the requirements for working out the tax by actual labor

before August 1st.<sup>35)</sup> A measure for the support of the poor, in 1817, authorized the levy courts to levy an entirely new tax to raise two thousand dollars for food purchases. The tax was apportioned among the various "hundreds", and collected by the regular hundred collectors, but the distribution of the foodstuffs was left up to three or more freeholders especially appointed for the task by the

Levy Court.<sup>36)</sup> The right to order the collection of these two taxes, the road tax and poor tax, on dates prior to the specified times of collection, and to order payments to overseers, was given to the levy courts in 1825.<sup>37)</sup>

One of the important duties of the levy courts, as previously related, was acting as a budget committee. To do this, required accurate knowledge of the usual expenditures, which the courts acquired by settling various accounts. Appearing before the court in Sussex County for this purpose were the trustees of the Cape Henlopen Lands.<sup>38)</sup>

The various county treasurers were responsible to the courts for their accounts,<sup>39)</sup> as were the trustees of the poor.<sup>40)</sup> The form for presenting the various accounts and the manner of verifying them were to be determined by the courts, according to a law of 1825.<sup>41)</sup> Perhaps to prevent accounts from exhibiting a tendency to reckless spending, a law of 1829 denied everyone the right to purchase, or contract to purchase any goods without the permission of the Levy Court.<sup>42)</sup>

The hundred collectors were completely under the jurisdiction of the levy courts, which appointed them; allowed or disallowed their delinquency claims; approved their bonds,<sup>43)</sup> and fixed their rate of commission on collections.<sup>44)</sup>

Special laws added responsibilities for the Levy Court giving them connection with a variety of subjects including canals, crews, jurors, Sunday Schools, immigrants and day schools. By a law of 1803, those commissioned to raise money by subscription for the Lewes-Rehoboth Canal, were made responsible for returning the list to the Levy Court.<sup>45)</sup>

The relation to crows came about in New Castle County where the Levy Court was directed, in 1810, to create a fund by assessment, in order to provide bounties for the destruction of crows.<sup>46)</sup> The duty of selecting jurors for the Supreme Court, Court of Common Pleas and Court of General Quarter Sessions was given to the levy courts and sheriffs in 1817.<sup>47)</sup> A law of 1821 was designed to encourage Sunday Schools to keep up their attendance by offering them sums up to two hundred dollars if they met certain specifications. Examination of these reports, and drawing orders on the county treasurers for payment, became the duties of the levy courts.<sup>48)</sup> In 1829, the power to grant licenses permitting immigrants to land in the county, was granted to any two members of a Levy Court or any one member and a Trustee of the Poor.<sup>49)</sup> The school law of 1829, which was the beginning of a serious attempt to establish a state-wide system of public instruction, gave much of the preliminary work to the levy courts. To them was given the task of appointing commissioners to divide the counties into school districts, which were directed to be about four miles square. The levy courts were also

to acquire information showing the number of schools in existence, number of scholars, teacher's pay and the number of children in the areas from five to twenty-one years of age. This information was then to be returned to the Clerk of the Peace, after which<sup>50)</sup> it was sent to the trustees of the School Fund.

From the foregoing discussion, the importance of the Levy Court to the county can readily be seen. When something had to be done the levy courts were the organizations usually called upon to do it. It appears that the motto of the General Assembly was, - "Let the Levy Court do it".

Taking into consideration the importance of this county board, the pay of its commissioners was strikingly low. The pay in 1815 was one dollar and eighty cents a day for each day attended, plus<sup>51)</sup> mileage at the rate of six cents a mile. This mileage was probably one way. By 1826 there had<sup>52)</sup> been still no change.

Before 1825 the levy court's clerk was<sup>53)</sup> apparently just one of the commissioners, but in the above-mentioned year a law was enacted making

the Clerk of the Peace the Clerk of the Levy Court. His duties as laid down by the law, included the keeping of books, and minutes of the meetings; transmitting to the County Treasurer copies of all allowances made by the court, of the collectors appointed, and the amount each was expected to collect.<sup>54)</sup> Two laws of 1829 increased the duties of the Clerk considerably. By these, he was made responsible for notifying the Sheriff of vacancies in the Levy Court,<sup>55)</sup> and for sending to the Auditor copies of the assessment lists, minutes of the meetings, notifications of any changes made by the court, and any other papers in the custody of the Auditor.<sup>56)</sup>

#### Trustees of the Poor and Allied Officers

Relief of the poor has ever been a problem to society. From the days of the early settlements the problem existed, and frequently required measures for its alleviation by the colonial administrators. Under the English, about the only legal action devoted to the problem was a law of 1740, which forbade entrance into the colonies of poor and impotent persons.<sup>57)</sup> The next governmental action was taken in



1775 by the General Assembly of the three lower counties. This law provided for the appointment of overseers, who were given the power to bound out poor children and otherwise provide for the support of the poor. None of the provisions of the act were put into actual practice,<sup>58)</sup> however, and the matter stood as before. The business of fighting the Revolution apparently dwarfed all other things, and prevented the execution of this law. Some subsequent action, for the relief of the poor, was undertaken by the hundreds, but not by the Assembly until 1791. In that year, an act again provided for the appointment of trustees of the poor, with the powers of a corporate body. Seven were appointed for the New Castle board, seven for Kent, and ten for Sussex, each Trustee to serve a three year term. Vacancies in the future were to be supplied by the Levy Court.

Probably to prevent too great a number of persons taking advantage of the state's new generosity, a stigma was placed upon the position of pauper by a clause requiring all paupers to wear badges of red cloth on their left arms. The New Castle poor were P.N., the Kent P.K., and the Sussex

59)

P.S.

The following year, an act of the Assembly added three more trustees to the New Castle board, and designated that the trustees for the three counties be distributed, with one for each hundred, except Christiana in New Castle, which was given two, and Murderkill in Kent, which was allowed three. A rotation in office, to insure experience on the board at all times, was provided by commanding the Levy Court to meet in February and remove one third of the trustees by ballot. Another third was directed to be moved on each of the two following Novembers, and thereafter, once yearly, the Levy Court was to follow the same procedure.<sup>60)</sup> In 1829, a change in representation of the hundreds on the board was effected in Kent County with Dover, Murderkill, and Mispillion hundreds being given two each, while the other hundreds still had one each. Qualifications for holding the office were set down as residence in the hundred, and a freeholder in the county. Future vacancies were filled by these commissioners of the Levy Court from the hundred in which the vacancy occurred.<sup>61)</sup> The creation of the Milford Hundred added one more Trustee to the Sussex County board in

62)  
1830.

The act creating the board of trustees, made provision for the care of the poor in poor-houses. The trustees were empowered to purchase not more than one hundred acres as a site, and to supervise the erection of a suitable building, if there were none already on the tract purchased. The necessary sums to carry out these provisions were to be raised  
63)  
by a tax.

In New Castle County, Christiana Hundred pioneered in caring for the poor, a fact, which the Assembly recognized by stipulating that if the newly created trustees of the poor could not come to an agreement with the Trustees of Christiana Hundred on the purchase of the existing poor house, or if the trustees decided to build a house elsewhere, then the "hundred" was to be exempt from the law except for its share of the sums for supporting the  
64)  
poor. The two sets of trustees were able to get together, and the established poor house was purchased. It, unfortunately, was destroyed by fire in  
65)  
1804, but rebuilt on the same site.

The Kent County trustees, on the advice of a committee appointed to look for suitable houses, rented a house near Camden as a temporary poor-house. Only a short time later, in February of 1791, the Voshel house and plantation of seventy-three acres was purchased. The establishment was slowly increased by the addition of buildings. A log house for the Overseer was built in 1791; a smoke house in 1792; a cook house in 1799; a building for the insane in 1800; a separate house for poor negroes in 1811; and a three-story brick building for white women in 1811.<sup>66)</sup>

Sussex seems to have had a poor-house in Dagabero Hundred before the board of trustees purchased the Springfield tract from John S. Hill in 1793. In spite of a term of the law of 1791 specifying that no more than one hundred acres were to be purchased, the Springfield tract contained four hundred acres. In 1800 this tract was traded for four hundred and one acres in what was then the Hundred of Broadkill, but now Georgetown. The house on the new tract had been built in 1766, but in spite of its age, it was still in use as a poor-house in 1831.<sup>67)</sup>

The duties of the trustees were strictly concerned with the maintenance of the poor. Their initial duties were: the appointing and dismissing of overseers; appointing any other necessary officers; making of rules and regulations governing poor-houses; admitting persons to the poor-house; dismissing inmates if their behavior, as reported by the overseers, warranted it; providing accommodations and working tools for the poor; and fixing the bonds and salaries of overseers, the bond not to exceed fifty pounds.<sup>68)</sup>

As unforeseen complications arose, acts of the Assembly provided for them. A law of 1803 gave the trustees the authority to issue summons to the constables to compel the attendance of masters for hearings, upon the complaints of apprentices bound out.<sup>69)</sup> In Kent County, a law of 1812 granted the trustees the power to transfer insane persons from the gaol to the poor-house,<sup>70)</sup> and in 1816, if two-thirds of the trustees agreed, the insane could be transferred to Philadelphia hospitals for treatment.<sup>71)</sup> Authorization to bound out paupers came about in 1818. However, the number bound out was not to exceed one-third the number retained in

the poor-houses; and only prospects who had been inmates for more than three months, and who would willingly submit, could be handled in this way.<sup>72)</sup>

Sale of negro women was sanctioned by a law of 1823, if a woman became the mother of an illegitimate child while in the poor-house. The duration of her forced labor was not to exceed eighteen months, and the money was to be used to pay expenses while she was a charge upon the state. The same law changed the manner of admission of paupers to the poor-house by requiring that one of the two trustees accepting an application, had to be a resident of the same hundred as the applicant.<sup>73)</sup>

In the following year, another law allowed the trustees to pay the funeral expenses of poor persons, who died outside the poor-house.<sup>74)</sup>

A law of 1829 consolidated, or combined former regulations to clarify the duties of the trustees. The only new clause named the officers to be appointed by the board, and these were a Clerk, a Chairman, and a Treasurer, the first two of whom had to be members of the board.<sup>75)</sup>

The state was very cautious about adding to the state's list of paupers and passed many laws

of prevention, usually placing the power of enforcement in the hands of the trustees of the poor. The first of these was passed in 1791, giving two trustees the power to bound out, as apprentices, orphan children, and the children of parents unable to provide a livelihood and education. The length of time to be bound out was left up to the discretion of the trustees. The law also operated against persons importing people likely to become paupers. The importer, upon the complaint of two trustees, could be brought before two justices of the peace, and compelled to export those likely to be charges.<sup>76)</sup> In 1792, even persons, who moved into the county, and appeared poor enough to become charges on the state, could be moved by the Constable to their former place of residence upon the complaint of two trustees, or one Trustee, and one Justice of the Peace. If the physical condition prevented one's removal to the poor-house, the trustees might help them, but the Court of General Quarter Sessions was instructed to require their relations to reimburse the state. The property of a man who had deserted his family could be ordered seized by the trustees to support his family. Imprisonment

might be resorted to if no property could be found, until the prisoner gave security of supporting his family.<sup>77)</sup> If a slave, discharged from slavery after he was thirty-five, became infirm, or a charge upon the state, similar action could be taken against the master by a law of 1819.<sup>78)</sup> The law, allowing the trustees to bound out children, passed in 1791, was placed in operation for negroes, and illegitimate children in 1823.<sup>79)</sup> In 1829 all of the above measures were confirmed, and some slightly modified. Not only importers, but also corporations were required to give security for removal of persons imported to work; and to prevent an influx of poor immigrants, two trustees were granted the power to examine them, before granting a license for their landing. One entirely new power granted to the trustees, was that of dismissing from the poor-house any pauper entering into matrimony.<sup>80)</sup>

The overseers of the poor were fully responsible to the trustees who appointed them. A duty, other than those mentioned, was to prevent the marriage of paupers in the poor-house of which he was the manager, on pain of being removed from



office along with the pauper.<sup>81)</sup> Other duties, outlined in 1829 were, to receive only persons in the poor-house ordered there by the trustees; to keep records showing a list of the poor; when admitted; when discharged; by whom ordered; inventory of furniture; materials and provisions used; expenses of the poor-house, and income from the labor of the paupers; to lay accounts before the board of trustees; to enforce obedience to commands by means allowed by the trustees. For his labors, an Overseer was paid no more than one hundred and fifty dollars a year,<sup>82)</sup> and was forced to give a bond of one thousand dollars. The salary was certainly in addition to maintenance, which would not have been at all niggardly in those days.

The Treasurer of the Poor was selected by the trustees of the poor, and was a part of their organization from the beginning of the board.<sup>83)</sup> He received money due to the poor fund such as taxes,<sup>84)</sup> gave the collectors their receipts, and rendered a final account to the Auditor.<sup>85)</sup>

Education of the poor children became

the responsibility of the trustees after 1818. A fee of two dollars and one half per pupil for three months of instruction was paid to each teacher hired for the work. Much of the instruction was placed under the supervision of societies like the Brandywine Manufacturers Sunday School, the Female Harmony Society of Wilmington, the New Castle Benevolent Society<sup>86)</sup>, and the Female Union Society of Smyrna. The number of students any one teacher could have in a year was limited to twenty in 1824.<sup>87)</sup> A law of the following year specified that certain claims for the education of the poor children should be paid out of the school fund.<sup>88)</sup>

Some idea of the cost of maintaining the poor in Delaware may be received from an examination of the amounts apportioned to the counties in 1818. New Castle County received one thousand dollars distributed to the "hundreds" in amounts varying from fifty dollars to one hundred and eighty dollars. Kent received the same, with the "hundreds" receiving sums ranging from seventy-five dollars to three hundred and sixty-two dollars. Sussex also received a thousand dollars apportioned in sums from ninety

dollars to one hundred and forty dollars.<sup>89)</sup>

The compensation of the trustees of the poor, in 1826, was one dollar a day for every day's attendance at the poor-house plus three cents a mile for travelling expenses. However, no more than two hundred dollars a year could be paid to a Trustee. The appointed Treasurer received a two percent commission upon all the amounts he received and paid out.<sup>90)</sup>

Funds for the poor fund were raised through the collection of various fines as well as by a regular poor tax. One-half of the amount of fines imposed on judges, justices of the peace, and assessors was thus used.<sup>91)</sup> The whole fine of twenty shillings, which might be imposed on a miller on Christina Creek for failing to grind for the inhabitants on Mondays and Saturdays, went to the poor fund.<sup>92)</sup> Persons allowing hogs to run wild in Duck Creek Town (Smyrna), after 1791, forfeited their hogs, which were sold, and the money applied to the use of the poor.<sup>93)</sup> Other fines, thus applied were: a three pound fine for selling strong drink to, or

dealing with the poor without the consent of the  
<sup>94)</sup> Overseer; an eight dollar fine for interrupting,  
or disturbing church meetings, or meetings of  
<sup>95)</sup> societies; one half of a five dollar fine for leaving  
a dead, or dying animal within a hundred yards of a  
public road for longer than six hours; a one dollar,  
and a half fine for failing to call a Wood Corder to  
measure wood being sold or bought in the village of  
<sup>96)</sup> Camden; ten dollars of a fine imposed upon persons  
refusing to serve as a Receiver of Hogs in Duck Creek  
<sup>97)</sup> Hundred; ten dollars of a fine against persons for  
placing their seines improperly in the St. Jones  
Creek; a one hundred dollar fine for obstructing the  
Constable in his duties in respect to that particular  
<sup>98)</sup> law; a three dollar fine imposed on referees in  
debt cases, if they failed to answer a summons; and  
fifteen dollars of a fine for placing blind or con-  
<sup>99)</sup> cealed nets in St. Jones Creek. Summarized, this  
would mean that had the peace officers of one of the  
counties, say Kent, had a very good day back in 1829,  
and arrested someone on each of these counts, the  
poor fund would have been enriched by about two hun-  
dred dollars.

### School System

The early educational program of Delaware, was a hit or miss affair with no organization, and no system until after the passage of the school law of 1829. Indeed, there were schools in most of the towns, and villages, and even in some of the rural areas, but these were started by enterprising teachers, or established one by one by acts of the General Assembly.

A few examples of the first method of establishing schools will serve to demonstrate the usual procedure. In Baltimore Hundred, a gentleman who was both a farmer and preacher, added teaching to his list of careers in 1799, and held the school in his own house. His fee was two dollars a year per pupil or fifty cents a quarter.<sup>100)</sup> In the Bridgeville area, a school had been in operation since 1765, and was supported by public subscription.<sup>101)</sup> Most of the schools were started, and operated in these two ways. Sometimes the schools were in homes, sometimes in rudely constructed log houses, and often in churches.<sup>102)</sup> Some areas, of course, had

plenty of children of school age, but because of the lack of compulsion, or encouragement, no school was held.<sup>103)</sup>

A great many of the schools were incorporated by acts of the General Assembly. The Brandywine Academy was so established in 1815, with a board of seven trustees elected yearly. Persons allowed to vote were those who had contributed one hundred dollars to the school, paid five dollars annually, or had made some other donation.<sup>104)</sup> The Bridgeville Institution had the same number of trustees, but no set amount was required as a subscription, as a qualification to vote for the trustees.<sup>105)</sup> The Milton Academy, established in 1818, was like that of Bridgeville's.<sup>106)</sup> The stockholders of the Milton Academy appointed a committee to form a constitution, the preamble of which shows a profound respect for the nation's preamble to the Constitution; it read as follows:

"We the subscribers, in order to form a more perfect Union, ensure tranquility, promote learning, and secure the blessings of tuition to our posterity, do ordain and establish this Constitution." <sup>107)</sup>

Many other schools were started in the same manner, with but slight differences in the number of trustees<sup>108)</sup> or qualifications for voting for the trustees.

There were occasions when the Assembly granted the trustees the right to raise money by lottery. Both<sup>109)</sup> the Glasgow Grammar School and the Dever Academy<sup>110)</sup> were granted such permission.

A drawback to this unsystematic educational program was that it denied some children a chance for any education because they or their parents could not pay the fees. To remedy this situation, charity<sup>111)</sup> schools of the many societies sprang up, the names of which have already been given under a discussion of the education of paupers.

A school fund, though not a school system, was in existence in 1796, and it received its money from the sale of marriage licenses, and tavern licenses. As much of the fund as possible was to be invested in bank stock, and the Legislators directed that the money be distributed among all the hundreds to encourage the teaching of English, Arithmetic, and<sup>112)</sup> other useful branches. Transferring money from

the school fund is no new thing, for in 1797 some of the money in the fund was set aside for paying the salaries of the Chancellor and various judges, the remainder going to schools.<sup>113)</sup> Another license fee, that of hawkers or peddlers, and fines collected from those not able to show their licenses, were added to the fund in 1803.<sup>114)</sup> In 1807, all the profits exceeding ten percent from the toll bridge over the Christina River at Wilmington were directed to the fund.<sup>115)</sup> The Trustees of the fund had nearly five thousand dollars in cash in 1816, besides investments in bank stock,<sup>116)</sup> which of course would not go far toward building and maintaining schools in all three counties. Nevertheless, the same methods of raising money were still in use in 1826.<sup>117)</sup>

The School Law of 1829 rejuvenated the office of Trustees of the School Fund. As related above, the division of the counties into districts was left up to the levy courts, who in turn appointed five commissioners to divide their respective counties. Upon completing their work of examining the reports of the special commissioners, the reports had to be presented to the Assembly, and that became



the duty of the Trustee. Another major task was the lumping of the monies accruing to the school fund from the various sources, and then dividing it into three equal parts. An account had to be opened with each district, and a close check kept to insure all schools an equal share of the money. A section of the law, which gave him another duty, was an arrangement providing a district a sum equal to any sum it would raise for building, or supporting a free school, the sum to be paid out by the Trustee of the School Fund.<sup>118)</sup> Investment of the money accruing to the school fund;<sup>119)</sup> transferring money as loans, to other funds;<sup>120)</sup> and paying out claims for the tuition of the poor children,<sup>121)</sup> completed the realm of his authority.

The County Superintendent was an entirely new officer, created by the school law. There was one for each county, receiving the office through an appointment by the Governor. His duties included keeping in touch with all persons aiding in the execution of the act; supplying the districts with forms; advising them; collecting information; and making a full report to the Assembly. His only pay was reim-

122)  
bursements for travel and postage.

The school committees were the most local of all the school officials. These, too, were created by the new school law of 1829. A school committee was composed of two commissioners, and a district clerk, elected by the district voters. Their duties, in connection with the execution of the act, were: to pick the site for the school; acquire the ground, and a building; maintain the school-houses; employ qualified teachers, women teachers to teach in the summer months, when those too young to work on the farms could attend; apply money appropriated to the school; and appoint a district collector of school taxes. The committee was to open the school every year in November, and continue until the money ran out. In the matter of governing the school, the commissioners had the power to pass rules and regulations, and the power of expelling children hard to discipline. The only pay ever received by the members of the committee was one dollar a day, and mileage at three cents a mile, for the days they were summoned before the Auditor to settle their accounts.

123)

The Clerk of the District was the secretary of the school committee. He kept the records of the district's meetings of both the voters and committee, names of the scholars, description of the location of the district, and gave notices of meetings.<sup>124)</sup>

### Inspectors of Gaols

The prison system of the Delaware State was little more developed than the school system at the beginning of the Revolution. Prisoners sometimes languished in prisons as long as ten months before being brought to trial,<sup>125)</sup> with a very scant fare to subsist on, as the allowance for a prisoner was less than two shillings a day.<sup>126)</sup> The jailers took in the prisoners, and later sent bills to the Assembly. During the war such an arrangement was inadequate because many more prisoners, as deserters, helped fill the jails, and huge bills were incurred.<sup>127)</sup> The Assembly got around one such bill by ordering it paid, and charged to the nation,<sup>128)</sup> and one jailer got around running up a bill that might not be paid, by discharging ten prisoners of war, because no provision for their support had been made.<sup>129)</sup>

Not until 1805 were conditions much improved. In that year the Supreme Court was authorized to appoint five Inspectors of Gaols in each county, comprising county boards for each county. Three of these persons had to reside within six miles of the county seats, and two inside the limits of the towns. Once a month the whole board met at the county jail, while two of them made an inspection some one day each week. The condition of the jail, and behavior of the jailer was to be reported quarterly to the Supreme Court Judges. If the prisoners needed clothes or bedding, the inspectors could make the purchase and present the bill to the Supreme Court for approval, after which the Levy Court directed its payment by the County Treasurer. No bills of fees could be collected by the jailer until approved by at least one member of the board residing in the town.<sup>130)</sup> A little of the red tape, or checking machinery was eliminated in 1818, by having the chairman sign the orders for clothing, and then send it directly to the County Treasurer. The law also provided that appropriations to the board would be made if the inspectors presented to the Levy Court

a record of the amount spent in the previous year. 131)

In New Castle County a similar system was in effect before the two lower counties adopted the board of inspectors. Practically the same duties had been carried out by the judges of the Supreme Court and Quarter Sessions Courts, aided by the inspectors after 1805. Laws establishing this system were repealed for New Castle County, and a new system adopted in 1807. The Levy Court was authorized to appoint, annually, three of the trustees of the poor, or other persons, as commissioners of the jail and work-house. Their times of meeting were less, since they met every third month, but their powers were broader than those of the members of the board of inspectors. They made the regulations for running the prison, purchased all equipment, specified punishments for incorrigibles, and provided work for the prisoners. Accounts were settled directly with the Levy Court.

Working in conjunction with the commissioners, was an Overseer of the work-house appointed by the Levy Court. He was to compel the able prisoners to

work, and arrange for the sale of their products; to report misconduct to the commissioners; to keep a record of the ages of prisoners; time committed, and discharged; and render a financial account to the Levy Court.<sup>132)</sup>

Finally, the New Castle system of a board of commissioners was adopted by Kent and Sussex in 1827.<sup>133)</sup>

### Taxes

Taxation, always a necessary problem of government, consisted chiefly of levies of a general tax for support of the state, and national government. One problem arose in 1779 over the apportioning of a general tax. The cry of unfairness arose, because the tax was levied equally on each of the counties. To adjust the matter, the Assembly named a commission of three, one for each county, to go through the hundreds of each, making estimates at the rate of three pounds per acre for the best land, in order that subsequent taxes might be more evenly divided.<sup>134)</sup> In the House of Assembly four different rates were proposed

before an acceptable one was obtained. On each vote the Sussex delegates solidly voted "No". They remained adamant until it was proposed that the total tax be divided in twenty-one parts, with New Castle County paying eight parts, Kent seven, and Sussex six.<sup>135)</sup>

In 1786, the same method of apportioning the tax was being employed. New Castle's quota was 4,800 pounds, Kent's was 4,200 and Sussex's 3,600.<sup>136)</sup> Bad feeling arose again in 1815, when the two lower counties apparently outvoted New Castle, thus sticking them with the bulk of the tax load. When the quotas were established, New Castle was to pay about three-fifths of the total, whereas the estimates of value showed the county's valuation to be one-third.<sup>137)</sup>

Although surpluses are rarely a matter of concern for a government, a law of 1800 provided that in such cases, the money would be returned to the proper county, or counties for such uses as the Levy Court might direct.<sup>138)</sup>

Machinery was necessary for the collection of taxes, and the first arrangement provided for the

cooperation of any three justices of the peace, the Levy Court, and Clerk of the Peace, which composed a board to ascertain rates, and carry out collections.<sup>139)</sup> This system, which was started in 1704, was altered in 1792 by having any two justices of the peace meet with the overseers of poor, and the constables of the hundreds, which composed a board to make the county assessment rates. A portion of the money collected was to remain in the hands of the collectors, as a fund for the poor to be drawn on by the overseers upon the order of any one Justice of the Peace of a "hundred".<sup>140)</sup> In 1781 a law allowed the payment of taxes in three different installments, March 8th, June 8th, and October 8th, with the first installment payable in supplies of pork, beef and flour for the use of the army.<sup>141)</sup> In spite of this ameliorating process, there is ample evidence of taxes going uncollected.<sup>142)</sup>

#### Tax Commissioners

The weakness in collecting probably caused the change in the taxing program in 1796, which created the new county officers called Tax Commissioners. Six



of these were appointed for each county by the Governor and divided into three classes. The first class served one year, the second class two years, and the third class three years, thus insuring experienced commissioners; no commissioner was to serve more than once in a three year term. Serving on this board exempted one from jury and military duty, but neglecting to serve was punishable by a fine of thirty dollars<sup>143)</sup> if the Levy Court so decided.

The commissioners duties were chiefly in connection with assessing. They met in the county seats on the last Tuesday of September, at which time the assessors, who were in the future appointed by the commissioners, appeared before them for instructions. The instructions directed the assessors to submit, at the December meeting, the results of their findings in each "hundred", including number of acres, improved, and unimproved acreage; buildings and improvements; and situation of properties. After the commissioners had examined the reports of the assessors, and had exhausted the records of the Recorder of Deeds, and surveyors, the rate of assessment was established, and the assessment list was

drawn up. The commissioners then had notices displayed in two public places in each "hundred", naming a date at least ten days hence, when they would meet to show valuations, and hear and decide complaints. Anyone not satisfied with the commissioners decision had recourse to the Levy Court, when it sat as a Court of Appeals on assessment cases. <sup>144)</sup> A year later the time of the second meeting with the assessors was changed to the first Tuesday in January, and the task of publishing notices in each hundred to denote the date on which the Tax Commissioners would reveal assessments, was delegated to the Clerk of the Peace. <sup>145)</sup> In 1804 the time for making valuations was again extended to the first Tuesday of February. <sup>146)</sup> The only other change, before the abolition of the office of Tax Commissioner in 1815, <sup>147)</sup> was an additional duty for the commissioners of New Castle County, occasioned by the passage of a dog tax law in that county. The commissioners had to furnish the Levy Court with a list of the owners of dogs, and number of dogs owned by each. <sup>148)</sup>

The abolition of the tax commissioner's office threw the whole taxing program back upon the

Levy Court, where it originally was handled.<sup>149)</sup> The only other radical change in procedure up to 1831, came about by an enactment of 1825, which provided that the valuations obtained for personal property should remain in effect for six years before new evaluations should be made. The first such list was to be made, however, in 1828, and then every six years thereafter. An evaluation of real property was to be made every twelve years, but yearly check ups were to be made to include persons coming of age, and any changes<sup>150)</sup> in ownership.

The change was certainly a radical one, but one not entirely surprising. The Levy Court was a vital, busy organ of local government which certainly could not have carried out all the details of the old taxing program without being over-burdened. Furthermore, as years passed, the natural increase in population was bound to increase the load on any department handling assessments.

#### Board of Assessors

A board, reminiscent of the discarded board of tax commissioners, was created in 1816. The board

known as the Board of Assessors was composed of three members for the whole state, one representing each county. Their duties were the same as those of the "hundred" assessors, except that they were to operate first in New Castle County, then Kent, and finally Sussex. Their report was to be made to the General Assembly, and for their services they received four dollars a day.<sup>151)</sup> This board had all the characteristics of a state board operating in county, and hundred affairs. It is conceivable that the General Assembly felt that the hundred assessors were not rating accurately, and the board was created to make an impersonal check on all the "hundreds".

#### Commissioners of the Land Office

The last county board we shall consider was the Board of Land Commissioners. This board, however, became relatively less important as the public domain decreased. The commissioners met four times annually, two weeks at a time,<sup>152)</sup> with two of its three members given the powers formerly required of all three after 1797.<sup>153)</sup> Such action denotes a loss of potency, soon confirmed by a law of 1799, which gave the lack

of meetings as the reason for decline, and attempted to revive the board by granting the Recorder of Deeds the power to open and adjourn the meetings, whether anyone was present or not. <sup>154)</sup> The purposes of the board were to settle disputes over the location of lands, prevent a grant of land of more than two hundred acres, and to give preference to adjacent land <sup>155)</sup> owners.

The commissioners were compensated by fees, and an allowance of one dollar, and one half for every day's attendance. The fees numbered six ranging from ten cents to fifty cents, with an average <sup>156)</sup> of thirty cents.

## NOTES

## CHAPTER IV

1. Laws of the State of Delaware V.II 1777 - 1797  
(New Castle, M.DCC,XCVII P.728)
2. Scharf - J. Thomas - History of Delaware V.II  
(Philadelphia, 1888) P.1041
3. Laws, V.II, P.1014-1015
4. Scharf, V.II, P.1214
5. Laws, V.II, P.1086-1087
6. Laws of the State of Delaware V.VII Jan. 2, 1827 -  
Feb. 16, 1829 (Dover, 1829) P.262-263
7. Laws of the State of Delaware V.VIII Jan. 16, 1830 -  
Feb. 13, 1835 (Dover, 1841) P.87
8. Laws, V.II, P.1325-1326
9. Laws of the State of Delaware V.VI Jan. 19, 1820 -  
Feb. 9, 1826 (Dover) P.496
10. Laws, V.II, P.1325-1326
11. Ibid., P.996-997
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15. Laws of the State of Delaware V.III Jan. 2, 1798 -  
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16. Laws, V.VI, P.270-271
17. Ibid., P.300
18. Ibid., P.496-497, 500
19. Ibid., P.604
20. Laws, V.II, P.1081
21. Ibid., P.1267
22. Ibid., P.1334
23. Laws, V.VI, P.10, 13, 26-27
24. Ibid., P.502-510
25. Ibid., P.514-516
26. Laws, V.VII, P.400-405 and  
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27. Laws, V.II, P.1077
28. Laws, V.III, P.196, 198-199
29. Laws, V.VI, P.288
30. Ibid., P.310
31. Laws of the State of Delaware V.IV Jan. 7, 1806 -  
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32. Laws of the State of Delaware V.V May 24, 1813 -  
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33. Ibid., P.349-350
34. Laws, V.VII, P.94
35. Laws, V.III, P.60
36. Laws, V.V, P.270-271
37. Laws, V.VI, P.510-511
38. Laws, V.V, P.41
39. Laws, V.VI, P.511, 513
40. Laws, V.VII, P.422 and  
Laws, V.II, P.997
41. Laws, V.VI, P.514
42. Laws, V.VII, P.375
43. Laws, V.VI, P.507-510
44. Ibid., P.195
45. Laws, V.III, P.267
46. Laws, V.IV, P.312
47. Laws, V.V, P.247-248
48. Laws, V.VI, P.86
49. Laws, V.VII, P.429
50. Ibid., P.184-187
51. Laws, V.V, P.104-105
52. Laws, V.VI, P.681
53. Laws, V.IV, P.470
54. Laws, V.VI, P.496
55. Laws, V.VII, P.263
56. Ibid., P.385-386
57. Scharf, V.II, P.619
58. Ibid., P.1036
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60. Ibid., P.1034-1035
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62. Laws, V.VIII, P.57, 70
63. Laws, V.II, P.988, 992
64. Ibid., P.992
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66. Ibid., P.1037
67. Ibid., P.1208
68. Laws, V.II, P.993-996
69. Laws, V.III, P.263
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72. Ibid., P.346-347
73. Laws, V.VI, P.318
74. Ibid., P.361
75. Laws, V.VII, P.416-420, 430-431
76. Laws, V.II, P.995-996
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78. Laws, V.V, P.400-401
79. Laws, V.VI, P.318-322
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83. Laws, V.II, P.1059-1049
84. Laws, V.VI, P.810-811
85. Laws, V.VII, P.379-380
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88. Ibid., P.376, 439, 534, 753
89. Laws, V.V, P.341, 342
90. Laws, V.VI, P.685-686
91. Laws, V.II, P.784
92. Ibid., P.813
93. Ibid., P.966
94. Ibid., P.998
95. Laws, V.III, P.231
96. Laws, V.V, P.71
97. Ibid., P.129-130
98. Ibid., P.258-259
99. Ibid., P.387
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102. Scharf, V.II, P.1091, 1098, 1120, 1178
103. Ibid., P.1087
104. Laws, V.V, P.89-91, 230-231
105. Ibid., P.113-114
106. Ibid., P.375-377, 210-211
107. Scharf, V.XI, P.1265-1266
108. Laws, V.V, P.301-303, 316-317, 228-229, 69-70 and  
Laws, V.III, P.300, 353-357
109. Laws, V.IV, P.819
110. Ibid., P.304-306
111. Laws, V.V, P.208-209, 216-217, 292-293, 352-355
112. Laws, V.II, P.1296-1298
113. Ibid., P.2353
114. Laws., V.III, P.290-291
115. Laws, V.IV, P.74
116. Laws, V.V, P.158
117. Laws, V.VI, P.616
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119. Ibid., P.157
120. Ibid., P.445-449
121. Laws, V.VIII, P.61
122. Laws, V.VII, P.196



123. Ibid., P.188-189
124. Ibid., P.188-189, 192
125. Votes of the House of Assembly - Oct. 1776 - June 1777 (Wilmington, 1777) P.16
126. Scharf, V.II, P.1206
127. Minutes of the Council of the Delaware State - 1776-1792 (Dover, 1886) P.279
128. Votes of the House of Assembly - Oct. 1779 - June 1780 (Wilmington, 1780) P.126, 129
129. Minutes of Council, P.751
130. Laws, V.III, P.393-398
131. Laws, V.V, P.349-350
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133. Laws, V.VII, P.94
134. Laws, V.II, P.653-654
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137. Scharf, V.I, P.304
138. Laws, V.III, P.129
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144. Ibid., P.1255-1256
145. Ibid., P.1327-1328
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147. Laws, V.V, P.104-108
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149. Laws, V.V, P.104-108
150. Laws, V.VI, P.500-501
151. Laws, V.V, P.167-172
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153. Ibid., P.1351
154. Laws, V.III, P.71
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156. Ibid., P.1164

## CHAPTER V HUNDREDS

### Description of the Hundred

In his book, "Government of Delaware", Mr. Messersmith relates the origin of the term "hundred", stating that it comes from a division of the Roman people called a "Century", so named because it could provide one hundred men for the army. Our ancestors in Britain retained the idea, but not the name, as their division became known as a "hundred". The hundred retained an important position from the tenth to the thirteenth century when it declined, finally losing, by about 1600, its powers to other local divisions. In his conclusion, Mr. Messersmith states:

"It seems strange, therefore  
that the English settlers  
in Delaware and Maryland  
should have revived the  
hundred." 1)

Rather than strange, it was perhaps very natural, because of a revival of the hundred in the fifteenth century. Due to an increase in population attended by a mounting problem in maintaining control, just prior to the accession of Henry VII, the counties were divided into hundreds with administra-

tion of the government in the hands of the High Constable.<sup>2)</sup> The adoption of the term by the colonists in Delaware did not take place until the area was acquired by the English, and then not immediately. A similar division and a forerunner to divisions into hundreds was the constabulary, in existence in New Castle County in 1683. The first uses of the term, "hundred", appear in deeds of 1687, naming Duck Creek Hundred, and of 1708, in which Appequinimink and St. George's Hundreds are mentioned.

By the outbreak of the Revolutionary War until 1831, the "hundred" had become a well-established, and lively part of local government, with many important officers. New Castle County was divided into nine hundreds, namely; Brandywine, Christiana, Pencader, New Castle, Red Lyon, Mill Creek, White Clay Creek, Appequinimink, and St. Georges.<sup>3)</sup>

In Kent County there were five hundreds, Duck Creek, Little Creek, St. Jones, Murderkill and Mispillion.<sup>4)</sup> A sixth came into being in 1823, when

Dover Hundred was created from parts of St. Jones and Murderkill Hundreds.<sup>5)</sup> Sussex was divided into the ten hundreds of Cedar Creek, Broadkill, Lewes

and Rehoboth, Indian River, Baltimore, Dagsborough, Broad Creek, Mispillion, Northwest Fork, and Nanticoke.<sup>6)</sup> A division of Mispillion, in 1830, created<sup>7)</sup> the Milford Hundred.

### Justices of the Peace

The chief officers of the hundreds were the many justices of the peace. This office was also of English origin, created at first by custom about 1070, and later by statute during the reign of Edward III.<sup>8)</sup> From its small beginning it grew into an importance equal to, if not greater than, the office of Sheriff in county administration. And now we find the office the chief one in hundred government rather than county. The early magistrates, the first of which were appointed in 1668, may be considered as the first justices of the peace, although the name was not applied until<sup>9)</sup> after Delaware became a state.

The new constitution of 1776 provided for the appointment of twenty-four justices for each county, the General Assembly to appoint twelve, and the President and Privy Council to appoint the remaining twelve. The term of office was to be seven

years depending upon the behavior of the justices.<sup>10)</sup>  
 These instructions were carried out in 1777,<sup>11)</sup> but  
 in 1778 an act of Assembly called for the nomination  
 of twelve new justices for each county by the House  
 of Assembly; of this number six were to be selected  
 for each county by the President and Privy Council.<sup>12)</sup>  
 From this time on there were periodical changes in  
 the number of justices, sometimes being decreased,  
 and at other times increased. In 1798 a law allowed  
 no more than sixteen for each county,<sup>13)</sup> while in  
 1808 the number of justices was increased to fourteen  
 which was then the lawful limit.<sup>14)</sup> Each county was  
 allowed a different limit in 1815; New Castle could  
 have seventeen, Kent eighteen, and Sussex nineteen.  
 This did not mean that the counties had that many  
 justices, but that they could have no more than  
 these numbers, and then, only when two-thirds of  
 the General Assembly authorized their appointment by  
 the Governor.<sup>15)</sup> The limit in New Castle apparently  
 was not filled in 1825, as two additional justices  
 were appointed due to conditions arising in the  
 vicinity of taverns near St. Georges, and the Chesapeake  
 and Delaware Canal.<sup>16)</sup>

The duties of the justices of the peace were outlined in the year following their creation by the constitution. The Court of General Quarter Session was to be held by the justices, to which the Sheriff, constables, overseers of the poor, and overseers of the roads returned all of their writs, lists, and reports. The justices, with the grand jurors and assessors, were also to hold a Levy Court at the court-house in each county to work on taxation and settlement of accounts.<sup>17)</sup>

Association with their stated duties, and the natural progress of people, produced the need for changes in duties, which were effected by acts of Assembly from time to time. The odd system of allowing some functions to be performed by one justice, some by two, and on up to four, was in force. Its purpose is not discernable, but its origin is English. A similar "one-two" system can be found in English local government, with the purpose likewise not too clear.<sup>18)</sup> It apparently originated in the reign of Richard III when bail was so loosely handled by the justices that it became compulsory for two justices to agree before fixing bail.<sup>19)</sup> From then on, the practice just grew.

Since the peculiar system outlined was in practice, let us first consider the duties, and powers of one Justice of the Peace working alone. The power to try cases involving debt collections belonged to the justices, and was a matter in which they were often kept busy. In 1777, in order to enforce the acceptance of continental bills, the Assembly passed an act specifying that anyone who refused to give goods in exchange for the bills, should forfeit the sum involved. If legal action became necessary to collect it, a Justice of the Peace Court was the scene of the legal action, providing the amount did not exceed five pounds.<sup>20)</sup> In 1792 debt cases, in which the amount involved did not exceed twelve pounds,<sup>21)</sup> were placed in the Justice of the Peace Courts. In 1803, the same amount was allowed, and the debts could be construed to be for back taxes. The justices were further allowed to grant warrants of attachment for debts not exceeding thirty-two dollars.<sup>22)</sup> The Assembly raised the limit to fifty dollars in 1818 and gave the justices the authority to operate in cases involving real debt and interest, contracts,<sup>23)</sup> and merchandise. In 1825, all of the cases involv-

ing debts, which had been granted to the Justices of the Peace Courts, were confirmed as long as the amount remained under fifty dollars.<sup>24)</sup>

Ordinary trespass cases under the jurisdiction of the justices of the peace, were triable only when a specified sum was involved. A special act of Assembly in 1799 was designed to prevent persons cutting timber on the Lewes Cape, which was state land, by authorizing justices of the peace to issue warrants upon gaining knowledge of any trespassing.<sup>25)</sup> A law of 1810 specified that actions of trespass, and damage were triable before a Justice of the Peace if the amount involved was no more than thirty-two dollars.<sup>26)</sup> In 1822, probably to discourage justices from taking cases involving a greater sum than thirty-two dollars, a law was enacted requiring the justices to pay court costs if they issued warrants in cases where they had no jurisdiction.<sup>27)</sup> The amount was raised to fifty dollars in 1829.<sup>28)</sup>

The justices of the County of Kent were granted jurisdiction in cases involving illegal fishing in the St. Jones River. One such act of 1803



made it illegal to beat the water to drive fish into seines.<sup>29)</sup> Another in 1817, gave the justices the power to issue warrants for the arrest of persons placing seines, and other fishing traps in the river.<sup>30)</sup> In 1819 an attempt to temper the situation was made. A Justice of the Peace of Dover was given the authority to appoint three freeholders, who were to allow the placing of seines in the upper reaches of the river under the supervision of the freeholders, and after obtaining a written permission from them to do so. If anyone attempted to take advantage of the law by placing invisible or concealed seines, the justices were to exact a thirty dollar fine as penalty.<sup>31)</sup>

Debt cases triable before justices evidently included cases against those delinquent in paying their taxes, since a law of 1821 forbade justices to issue warrants for the recovery of taxes except in cases against persons, who moved out of the districts,<sup>32)</sup> or, as added in 1825, against the estates of persons who had died, and whose administrators refused to pay the taxes after ten days notice.<sup>33)</sup>

A series of laws covering the many types of

cases triable before one Justice were enacted between 1776 and 1831. The first of such actions directed the justices to prevent the mistreatment of residents of Sussex County by recruiting officers. In the eyes of the recruiting officers the mistreatment was warranted, because the complainants were making overtures<sup>34)</sup> to the British to encourage them to land. A record of alterations, and initiation of jurisdiction in other matters, with the date of such alteration or initiation, follows: 1786 - cases concerning the pilfering of goods from wrecked ships;<sup>35)</sup> 1795 - violations of laws regulating behavior on Sundays;<sup>36)</sup> 1798 - cases of non-resident negroes appearing in an election town;<sup>37)</sup> 1799 - compelling appearance of an expectant mother to name the father of the unborn, illegitimate child, and prosecution of the father for support;<sup>38)</sup> 1802 - profanity;<sup>39)</sup> 1805 - intentional firing of chimneys;<sup>40)</sup> 1810 - assault and battery, if the defendant agreed;<sup>41)</sup> 1811 - non-appearance of summoned witnesses;<sup>42)</sup> 1812 - discharging firearms within towns, or villages;<sup>43)</sup> 1815 - abandoning a dead, or dying animal within one hundred yards of a road, or street;<sup>44)</sup> 1817 - ex-convicted forgers not wearing the "F" as a badge denoting

their former crimes; <sup>45)</sup> 1819 - violations of laws reg-  
 ulating inns, taverns, and other public houses; <sup>46)</sup>  
 1826 - issuing warrants for the arrest of felons; <sup>47)</sup>  
 and in 1831 - ordering of temporary imprisonment, for  
 forty-eight hours, before transferring to prison or  
 court. <sup>48)</sup>

The rights of the accused were protected in  
 1792 by an act commanding the justices to grant a  
 defendant the time necessary for preparing for trial; <sup>49)</sup>  
 a law of 1818 contained the same clause. <sup>50)</sup> In a tres-  
 pass case, by a law of 1815, the defendant had the  
 right to appeal the case to the Court of Common Pleas. <sup>51)</sup>  
 In 1823 appeals were also permitted to the Supreme Court,  
 but this was qualified in 1825 in respect to debt cases.  
 If the trial was held without a three freeholder jury,  
 the case could be appealed, if the sum involved amount-  
 ed to more than five dollars, and thirty-three cents.  
 If the trial was held with such a jury, no appeal could  
 be taken unless the amount was more than fifteen dollars. <sup>52)</sup>  
 Should any person, concerned in a legal action before  
 a Justice, desire a record of the proceedings, the  
 Justice was compelled to oblige, by a law of 1806. <sup>53)</sup>

A lone Justice of the Peace was conceded the authority to perform many important labors outside of the realm of criminal, and civil actions. In 1777, one Justice was empowered to open and adjourn the Court of General Quarter Sessions if less than three of the justices appeared for the sessions of the court.<sup>54)</sup> The appointment of district judges for elections of district assessors, became the duty of one Justice in 1781.<sup>55)</sup> Administering the oath to auditors, formerly performed by a Judge, became the duty of a Justice of the Peace in 1782. This came about, because a reduction in judges oftentimes made their performance of the task an inconvenience, and hardship when much travelling was involved.<sup>56)</sup> From judges to hogs is quite a step down, but in 1790 one Justice was given the job of supervising the return of hogs to their owners after the animals had been penned for running at large in a town.<sup>57)</sup> In 1795, administering the oath to commissioners appointed to hear witnesses in a land dispute, could be done by a Justice; formerly, only the chancellor could perform this act.<sup>58)</sup> After 1826 they could distribute marriage licenses, if appointed by the Clerk of the

59) Peace. In 1829 jurisdiction over the management  
 of stray cases; <sup>60)</sup> the power to fill vacancies in the  
 office of Wood Corder when the Court of General Quarter  
 Sessions was recessed; <sup>61)</sup> a blanket right to administer  
 any oath of affirmation; <sup>62)</sup> and the authority to  
 exercise the office of Coroner, if the office was  
 vacant, or the Coroner was out of the county, <sup>63)</sup> were  
 added to the list of duties of the office of Justice of  
 the Peace.

A power lost by the Justice of the Peace  
 during this time was the right to perform marriage  
 ceremonies; lost through a law of 1790 which granted  
 that ceremony only to ministers. <sup>64)</sup>

The office gained some clerical duties  
 during these years. In 1793 they were directed by  
 law to account with the Levy Court annually. <sup>65)</sup>  
 In 1811, they were commanded to make quarterly  
 certifications to the Auditor. <sup>66)</sup> Two years later, a  
 law required that the reports be made to the County  
 Treasurer, instead of the Auditor, along with addition-  
 al information as to what constables were appointed to  
 collect the fines. <sup>67)</sup> The Assembly changed its collec-

tive mind again in 1821, and demanded that the reports, containing the information already stated, plus names of those fined, date, and use of fine, were to be transmitted to the Auditor annually.<sup>68)</sup>

Each Justice was also required to keep court records, or dockets after 1818. These records were to show the cause of action, names of defendants, and plaintiffs, debts or damages involved, costs, activities of the sheriffs, or constables in cases, judgements, and appeals taken.<sup>69)</sup>

Some powers delegated to justices of the peace had to be exercised by two justices sitting together. A law of 1777, designed to weed the Tories out of the population, gave any two justices of the peace the power to summon suspected Tories before them to take an oath of abjuration of allegiance to the British King. Those refusing were held for the Court of General Quarter Sessions.<sup>70)</sup> Two justices were empowered to sit on cases concerning damages to drawbridges in 1793;<sup>71)</sup> and in 1827, the decision to bound out negre orphan children after examination of the case, required the concurrence of

two justices.<sup>72)</sup> Trials of forcible entry and forcible detainer could also be tried before two justices<sup>73)</sup> of the peace.

A few powers, requiring no court action, or only minor court action, were within the province of two justices. The oath of two justices affirming that a Collector had used all legal means of collecting, became necessary for a Collector to receive deductions<sup>74)</sup> about 1790. In 1793 any two justices were empowered<sup>75)</sup> to appoint overseers of a bridge. Before 1813, taking the acknowledgement of deeds, bargains, tenements, hired tenants, and sales were done only by the chancellors and various judges. After that date any two justices were permitted to do these things.<sup>76)</sup> These powers were confirmed by a law in 1829.<sup>77)</sup>

Three justices were granted several powers between 1776 and 1791. These included the appointment of another hundred Collector in the place of one who did not qualify for failing to give bond;<sup>78)</sup> sitting as a board to approve or disapprove petitions seeking the right to operate a tavern, or other public house<sup>79)</sup> of entertainment; determining the rate of taxation

necessary to raise money to fill the state's quota  
 for the federal government;<sup>80)</sup> granting permits to  
 carry out of the state, or to sell slaves to the West  
 Indies, Georgia, or the Carolinas;<sup>81)</sup> issuing warrants  
 to the especially appointed collectors;<sup>82)</sup> and taking  
 the bond of a Collector.<sup>83)</sup>

The only case, where four justices were  
 necessary, was in the matter of viewing a bridge to  
 determine the extent of the repairs needed. The four  
 were required because the bridge was between the  
 counties of Kent and Sussex, and two justices  
 represented each county.<sup>84)</sup>

After 1789, the concurrence of five justices  
 instead of three was necessary to obtain a permit  
 to remove a negro from the state for sale in either  
 the West Indies, Georgia, Carolinas, Virginia or  
 Maryland.<sup>85)</sup> If one of the collectors, especially  
 appointed for collection of money for the national  
 government, failed to qualify, his successor was  
 named by five justices.<sup>86)</sup>

Performing certain acts in conjunction with  
 other persons or officers was not uncommon. Six free-



holders, and two justices of the peace were allowed to try cases involving capital crimes by negroes until 1789.<sup>87)</sup> This power was partly restored in 1797, when the same combination was given jurisdiction over cases of slaves committing rape on white women.<sup>88)</sup>

By a law of 1818, one Justice and three freeholders were to hear debt cases when the sum involved was between forty shillings, and fifty dollars,<sup>89)</sup> if either party requested the freeholders. The same law was in effect in 1829, except that the lowest amount was five dollars, and thirty-three cents instead of forty shillings.<sup>90)</sup>

One Trustee of the Poor, and one Justice of the Peace, working together, could bound a negro child, whose parents were unable to support it;<sup>91)</sup> could grant licenses for landing immigrants;<sup>92)</sup> and could examine new residents, who were suspected of not having a legal settlement, with a view of having them sent back to their former place of residence.<sup>93)</sup>

Laws of 1798, 1811, and 1825 all required the presence of the justices at elections. The first law specified the time to attend from ten A.M., to

six P.M., and empowered the justices to prevent the selling of whiskey, and to tear down any booth selling it.<sup>94)</sup> The second law differed from the first only in the amount of fine a Justice was to pay for neglecting these duties,<sup>95)</sup> and the third changed the time to nine o'clock until the election closed.<sup>96)</sup>

All the justices of the peace of each county, and sometimes of each hundred, occasionally met as courts. The most important of these was the General Sessions Courts, which not only performed a judicial function but also a legislative one. The legislative function, of course, was limited to powers granted by acts of Assembly. Examples were, the right to fix the rates of liquors,<sup>97)</sup> and a right to set aside the days on which mills should grind for the people.<sup>98)</sup> Occasionally, the justices, at their Court of Quarter Sessions, overstepped their bounds. One such instance was in 1779 when the Kent County justices proceeded to divide Murderkill Hundred into three hundreds; the Assembly very promptly declared the division null and void.<sup>99)</sup>

Special courts were held to determine the assessment rate when a demand for money was made on

the state by the national government. The business of the court could be carried on as long as no less than three justices were present.<sup>100)</sup>

Back in 1790, the justices of the hundreds appear to have met from time to time to order the allowance for the peer of the hundred.<sup>101)</sup>

The courts of the justices of the peace working alone or in pairs, were often held in public inns and taverns; a condition deplored by the President of the State in 1788. In some cases the taverns were owned by the justices.<sup>102)</sup>

The justices received their pay through commissions on fines, and through fees. In 1793 thirteen fees were listed, with the average fee equalling twenty-five cents.<sup>103)</sup> Many higher fees were added by a new listing in 1818, a list of which had to be kept in each justice's office for the benefit of the public.<sup>104)</sup>

### Constable

The next most important officer of the hundred was the Constable, who was to the hundred about

what the Sheriff was to the county.

In 1791 the Court of General Quarter Sessions was authorized, henceforth, to appoint the constables for the hundreds at the May session. The selections were to be made from returns of the constables already in the hundreds, or from other freeholders thought more suitable.<sup>105)</sup> If a Constable failed to meet the qualifications, or if the court neglected to appoint one, or if a natural vacancy occurred, the Governor made the appointment, according to a law of 1824; otherwise,<sup>106)</sup> the method of appointing constables was unchanged,<sup>107)</sup> and continued to remain unchanged through 1829.

The number of constables per hundred was established by a law of 1789. In New Castle County, each hundred had two. In Kent, Duck Creek Hundred had two; Little Creek Hundred one; St. Jones Hundred one; Murderkill Hundred three, and Mispillion Hundred two.<sup>108)</sup> In Sussex, each hundred was allowed two. In 1802 four new constables were appointed in New Castle, one of whom was to reside in Port Penn,<sup>109)</sup> and three new ones for Kent. In 1823, Christiana, and Appoquinimink hundreds had two constables, while each of the other New Castle hundreds had one each, instead of two.

In Kent County, Dover Hundred had been created, and it had two constables, while Mispillion Hundred had three. The other hundreds, of both Kent, and Sussex, maintained the same number as they had in 1789.<sup>110)</sup>

Dover, and Murderkill hundreds each gained a new one by a law of 1824, which stipulated that one of three appointed for Dover Hundred must live in the town of Dover.<sup>111)</sup> The number in New Castle County was increased in 1825. Another was added to St. George's Hundred, who was to reside at Port Penn. Pencader Hundred was granted one more, who was to live within two miles of Buck Tavern, and one was appointed to live in the town of New Castle in New Castle Hundred.<sup>112)</sup>

In 1829 the complete picture was this: the New Castle County hundreds of Christiana, New Castle, Appequinimink, and Red Lion each had two constables, while the other hundreds had one each. In Kent County, Murderkill Hundred had four, Mispillion and Dover hundreds three each, Duck Creek two and Little Creek one. In Sussex County, each hundred had two, except Northwest Fork Hundred, which had three.<sup>113)</sup> After the creation of Milford Hundred from Mispillion Hundred in 1830, each of them was granted one Constable.<sup>114)</sup>

To hold the office, one had to be a freeholder, and must have been a resident of the hundred at least six months before the appointment.<sup>115)</sup> To prevent a person getting a life strangle-hold on the office, a law of 1811 denied the right to hold the office for more than three years successively in any six year period.<sup>116)</sup> In 1823 an act was passed bringing the above into one law,<sup>117)</sup> and again in 1829 the qualifications were confirmed, but a slight amendment was made relative to the three years service. If a Constable was appointed to fill an unexpired term, the time remaining in that term was not to be counted as a part of the three years.<sup>118)</sup>

A goodly part of the constable's time was spent in collecting debts by levying on, and selling the goods of debtors; and several laws were passed on this subject. One of 1792, directed the Constable to commit the debtor to jail if no goods could be found to levy on; if goods were found, the Constable waited for a notice to sell from the plaintiff. The sale was held within twenty days after receiving the notice.<sup>119)</sup> A law of 1809 compelled the Constable to

give a landlord notice of executing on a tenant's goods, within twenty days after receiving the order to do so. <sup>120)</sup> In 1818, a law required that a day, on which the Constable should make a full return with inventory, and appraisement, should be stated on the execution given to the Constable. <sup>121)</sup> Once a Constable had attached goods, he became responsible for that goods until the sale was consummated, and judgment rendered. <sup>122)</sup>

The constables were often required to attend various courts. Two were selected by the Court of Common Pleas to attend the Levy Court to carry out any orders the Commissioners might give them. <sup>123)</sup>

In that same year, 1796, the Supreme Court Judges were authorized to appoint two to attend the Supreme Court. <sup>124)</sup> After 1825 the Levy Court did its own choosing. <sup>125)</sup> In 1826, the Courts of Common Pleas, Oyer and Terminer, and General Quarter Sessions, were each permitted to select two constables of the county to attend court. <sup>126)</sup>

Other duties delegated to the constables with the dates were: 1811 - giving justices of the

peace information of free negroes unable to support  
 their children; <sup>127)</sup> attending elections to preserve the  
 peace; <sup>128)</sup> 1819 - In Milton, keeping hogs for three  
 days, advertising them, and then selling them; <sup>129)</sup>  
 1821 - in Georgetown, helping catch hogs, penning for  
 eight days, and then selling after advertising for  
 seven days; <sup>130)</sup> 1817 - destroying seines in St. Jones  
 Creek at the direction of a Justice of the Peace;  
 apprehending forgers who were not wearing a six inch  
 square, scarlet "F" on their backs; <sup>131)</sup> 1825 - serving  
 summons from a Justice of the Peace and returning a  
 full report; <sup>132)</sup> 1829 - settling annually for fines  
 with the Auditor; <sup>133)</sup> selling strays after having  
 been held a year; <sup>134)</sup> and 1831 - confining persons to  
 the Lewes House of Correction temporarily and acting  
 as keeper for that time. <sup>135)</sup>

A law of 1829 set forth the powers and  
 duties of a Constable. His power extended through-  
 out the county to execute all writs or orders from  
 any court, Judge, or Justice of the Peace. His duties  
 included keeping the peace; arresting anyone, who  
 in his presence, committed any breach of the peace,  
 and arraigning such persons before a Justice of the  
 Peace; apprehending murderers, felons, and thieves,



and presenting before the proper authorities all  
<sup>136)</sup>  
 offences in his county.

There were seven fees collectible by a Constable in 1793, ranging from ten cents to fifty cents, for an average of twenty-eight cents. A Constable chosen to serve a court received fifty cents  
<sup>137)</sup>  
 per day. Three additional fees of twenty-cents each for labor, in connection with debt cases of less than five pounds, were added in 1794. If the amount involved was more than five pounds, the fees were  
<sup>138)</sup>  
 doubled. No increase in the number of fees or  
<sup>139)</sup>  
 amounts had occurred by 1818, but in 1825, it was possible for a Constable to collect twelve fees, averaging about thirty cents per fee in addition to  
<sup>140)</sup>  
 mileage at two cents per mile.

The bond demanded of a Constable was two  
<sup>141)</sup>  
 thousand dollars.

### Collector of Taxes

The hundred collectors, appointed by the Levy Court, were chiefly engaged in collecting taxes  
<sup>142)</sup>  
 to be applied to funds for roads, and for the poor.

Usually all taxes to be collected in the hundred were collected by them,<sup>143)</sup> even the special assessments placed on each county during the Revolution, to fill the state's quota due the Continental Congress.<sup>144)</sup>

Sometimes, however, special collectors were appointed for these taxes by the General Assembly, as was explained under County Collectors. An unusual tax, collected by the hundred collectors, was a special peer tax in 1817.<sup>145)</sup> After about 1810 the New Castle County Hundred Collectors had an additional tax to collect called the dog tax.<sup>146)</sup>

Once the assessment lists were made out, the justices of the peace issued a list, certified by the Clerk of the Peace, to the Collector of each hundred, who was charged with the amount stipulated,<sup>147)</sup> and responsible to the County Treasurer for it. The Collector then proceeded to collect. This was, of course, before the composition of the Levy Court was changed in 1793.

There is some evidence to show that the collectors were not always successful in performing their chief duty. A law of 1781 called for the

replacement of a delinquent Collector.<sup>148)</sup> Nevertheless, some collectors still made little or no attempt at collecting, and the justices omitted to remove them.<sup>149)</sup> In 1783 they were still trying to collect taxes levied in 1781,<sup>150)</sup> and several years later in 1823 a Collector was appointed to a vacancy caused by death, and was directed to collect taxes due in<sup>151)</sup> 1821.

After making collections, the collectors turned over their receipts to the county treasurers, receiving duplicate receipts, one of which was turned in to the Clerk of the Peace.<sup>152)</sup> Later, in 1822, the portion of the tax due the poor fund was turned in to the Treasurer of the Poor.<sup>153)</sup> A law of 1825, concerning collectors, called for a rendition of accounts to the Levy Court;<sup>154)</sup> a custom probably in force from the beginning of the office since the appointments were made by the Levy Court.

Attendance at elections in their hundreds, became compulsory after 1811, and the collectors were directed to take along their tax books in order to accomodate any of the citizenry who were anxious to

155)  
 pay their taxes. A law of 1826, made the collectors  
 presiding officers at elections of assessors, and  
 inspectors in their hundreds, with the responsibility  
 of paying the fees of judges and clerks at such elec-  
 tions. 156)

Special duties were, upon occasion, demand-  
 ed of the collectors. In 1782 they were required to  
 put up notices in the most public places of each hun-  
 dred, requesting persons to make returns to them,  
 shewing the number of slaves, and amount of property  
 lost during the Revolution. The purpose was to  
 account for the loss in each hundred to the General  
 Assembly, which hoped to make restitution in some  
 cases. 157) Another special duty was delegated to them  
 in 1822, which demanded that each Collector make a  
 list of the retailers and wholesalers of foreign mer-  
 chandise in each hundred, in order that the Attorney  
 General might know who had not procured a license. 158)

To provide an accommodation to the tax-payers,  
 and a convenience to the collectors, the system of  
 scheduling certain days for certain places, at which  
 time the Collector would sit to collect taxes, was

159)  
started in 1821.

If the Collector could not collect a tax by persuasion, he could sell enough land or timber to pay the taxes, by a law of 1783.<sup>160)</sup> If a levy had to be taken on goods or livestock, and the delinquent refused to show his goods, then the Collector could deliver him to the county jail.<sup>161)</sup> This, of course, was what he could do; but there is no proof that this was the usual course of events in delinquent cases. A Collector of a hundred probably knew everyone in the hundred, and was related to many of them. It is, therefore, hard to conceive of a collector, so "inhuman", as to march his "coon huntin" friend, or his own cousin on his "papa's side", off to the county jail. I base my remarks on the experience of a personal acquaintance, who, many years ago, lost money on the hundred collector's job.

The collector's compensation consisted chiefly of commissions on the money collected, but some fees were created from time to time. For selling out a person, he received a constable's fee, unless the delinquent paid up before the sale was held. In

that case only one-half the fee was earned.<sup>162)</sup> A  
 law of 1821 provided that the taxes of a delinquent  
 should be increased ten per cent, which amount went  
 to the Collector.<sup>163)</sup> If the Collector had to take  
 anyone to jail, he received a fifty cent fee.<sup>164)</sup>  
 In 1826, the amount allowed for levying on goods, and  
 carrying out the sale was one dollar.<sup>165)</sup> His commiss-  
 ion on collections was fixed by the State Treasurer,  
 and Levy Court; no fixed commission was stated ex-  
 cept in cases where the taxes were discharged by  
 labor, in which case, the fee was five percent.<sup>166)</sup>

For collecting, and paying over the road  
 taxes, his compensation was fixed by the State  
 Treasurer, and the several hundred commissioners of  
 the roads, in New Castle County. For collecting  
 the poor, and county taxes, the commission was fixed  
 by the Levy Court. In Kent and Sussex, the compensa-  
 tion for all collections was fixed by the Levy Court.  
 A commission no higher than eight per cent was allowed  
 in every hundred in the state except New Castle and  
 Christiana hundreds where the commission was not to  
 exceed six per cent.<sup>167)</sup>

The county tax was paid to the County Treasurer in three installments in specified amounts, and at definite times. The poor tax was paid to the trustees of the poor in the same manner, but the road tax was paid to the County Treasurer in two parts, one half each time, at stated times. In Sussex County, however, the road tax was not levied, and therefore, it could not be collected, until the end of the time allowed the inhabitants to discharge the tax by labor. Those, thus paying the tax were awarded certificates, which the collectors of the tax were bound to accept. The Levy Court reserved the right to order earlier payments, if a need arose.<sup>168)</sup>

#### Overseer of Roads

We shall next consider the functions of the overseers of the roads and the commissioners of the roads. The Commissioners of Roads were appointed in each county, in 1796, to manage the roads through the overseers, who had long been in existence. The office of Commissioner of the Roads<sup>169)</sup> was abolished in 1815, but an office of the same name, established in the New Castle County hun-

170)  
 dreda in 1803, remained in existence. The office  
 of Overseer of Roads remained in all three counties,  
 but in Kent and Sussex Counties the office was ad-  
 ministered by the Levy Court directly, 171) while  
 in New Castle County the office was administered by  
 the commissioners of the roads who were responsible  
 to the Levy Court.

The commissioners of the Levy Court set  
 aside a portion of the road tax for supporting, and  
 maintaining the roads in each hundred, 172) with the  
 understanding that the overseers could draw upon  
 that amount through the County Treasurer as it was  
 needed. 173) If one considers any particular year  
 before the year 1793 (the year of the reorganization  
 of the Levy Court) one will find that the appointment  
 of overseers for certain bridges or roads, and other  
 business, was made by the Court of General Quarter  
 Sessions. 174) In 1797 the Levy Court received the  
 power to specify what road, or roads each Overseer  
 was to take care of. 175)

The duties of the overseers in 1797, in-  
 cluded building sheds over exposed water wheels,



cutting drains through lands next to roads, grub-  
 bing, and clearing roads, repairing bridges,  
 cutting and using timber in the roadway, and acting  
 as appraisers. <sup>177)</sup> Exactly the same duties were set  
 forth in laws of 1825 <sup>178)</sup> and 1829. <sup>179)</sup>

Before 1793 overseers rendered accounts to  
 the justices of the peace at the times when new over-  
 seers were appointed, or oftener if desired. Their  
 surpluses went to the County Treasurer. <sup>180)</sup> At the end  
 of the period under consideration, about 1825,  
 accounts were rendered to the Levy Court, and includ-  
 ed a record of amounts paid out, persons, dates, days  
 worked on roads, and number of laborers. <sup>181)</sup> In  
 New Castle County the overseers settled twice a year  
 with the commissioners. <sup>182)</sup>

#### Commissioner of Roads

The commissioners of the roads were provided  
 for by an act of the Assembly in 1796. Three were  
 appointed for each hundred to lay out roads, hire  
 laborers, and surveyors, assess damages to property,  
 examine roads, and make written reports to the Court  
 of General Quarter Sessions. If the court decided

that a road should be supported by the hundred, then the commissioners delivered written instructions to the overseers. Full accounts were rendered to the Levy Court annually,<sup>183)</sup> and a remuneration, considered adequate by the court,<sup>184)</sup> was paid by the County Treasurer.

At one time the people of Mispillion Hundred did not like the work of the commissioners in laying out roads, and succeeded in having appointed three reviewers to change the course of a particular road.<sup>185)</sup> Occurrences of this sort which, however, were probably prompted only by local jealousies, and the lack of any real need for so many officers to take care of roads, appears to have been the causes for abolishing the office of Commissioner of Roads in 1815.

In 1803 New Castle County began to manage roads under the commissioners of the hundreds, each hundred having three, to serve one year, and to be elected in the future when the assessors, and inspectors were elected. These commissioners had the power to borrow money,<sup>186)</sup> to determine what roads should be closed,<sup>187)</sup> to open and construct roads,

and bridges, <sup>188)</sup> to certify damages, <sup>189)</sup> to appoint  
 overseers of private roads, <sup>190)</sup> and to pay off debts <sup>191)</sup>  
 to companies constructing turnpikes.

Four copies of the accounts of the commissioners were made each year; two were to be posted in the most conspicuous places, one was to be sent to the New Castle County Clerk of the Peace, and one was sent to the Auditor. The accounts included the amount of road tax levied; amount collected; orders drawn on the County Treasurer; whom the money was <sup>192)</sup> for; why the money was drawn, and the amount drawn.

To summarize it may be said that the repairs to roads, and bridges in New Castle County were borne by the hundreds, and raised by a road tax levied by the commissioners. In Kent County the expense was borne by the hundreds except in certain cases, namely, where bridges crossed county boundary lines and where certain causeways and bridges were <sup>193)</sup> constructed along the main public highway.

#### Assessor

Before 1781, there was one Assessor for

each hundred, but the territory became too large for one man to cover efficiently. To remedy the difficulty, the justices of the peace were instructed to divide the large hundreds into two or more districts, and to arrange for annual elections to obtain the needed assessors.<sup>194)</sup> In 1814, a law directed that the election be held at the same place as the general and special elections.<sup>195)</sup> To qualify as a candidate, one had to be an inhabitant and freeholder of the hundred; anyone qualified to vote at general elections for Governor and other state officers could vote at the election of assessors.<sup>196)</sup> By the statement of a law of 1826, a vacancy in the office was filled through appointment by the Levy Court.<sup>197)</sup>

The law, providing for a division of the larger hundreds in 1781, outlined the assessors' duties. They were to meet together to assess those who were taxable. The completed assessment list was given to the Clerk of the Peace, who made duplicates. When the Levy Court sat as a Court of Appeal on assessments, the assessors were required to attend.<sup>198)</sup> In 1796 a law more specifically laid down the procedure of an Assessor. He was to estimate, and find out

a manufacturer's or merchant's stock on hand; the amount of stock imported; the net profit accruing to the owner therefrom; the value of lots, and houses; the owners of property; the rents from houses; the tenants and the value of slaves. With this information in hand, the assessment list was to be made out. 199)

In 1825 the assessors, after being elected, were required to attend the Levy Court to take an oath or affirmation, to receive instructions as to how to assess, and make returns, and to hear the reading of the law on valuation of real and personal property. 200)

By 1825 the assessors were required to attend the Levy Court at least three times a year, to receive instructions, to sit as a Court of Appeal, and to have themselves assessed. 201)

After 1811, when the dog tax law became operative in New Castle County, the assessors had an additional burden. An extra book was required in which the assessors recorded the name of every dog owner, and number of dogs. 202)

The pay of the assessors was one dollar and eighty cents per day for assessing. 203) If he

was attending the Levy Court, he received the same pay as the members of the court, but if he was doing some work at the direction of the court, a just remuneration would be provided by the court. <sup>204)</sup>

### Inspector of Elections

The Inspector of elections has several times been mentioned in his relations with other officers. Elected by the hundred voters, his duty, as the name suggests, was to attend the elections, and see that they were conducted fairly. Into his hands, prior to an election, the Sheriff placed a list of officers to be chosen; a list of the qualified voters; two suitable ballot boxes, with sealing material and tape; tally lists; and copies of the oath or affirmation of the inspectors and judges of the elections. <sup>205)</sup> With the help of the Sheriff and the clerks, the Inspector conducted the election, for which he received one dollar and a half. <sup>206)</sup> At the election, the inspector's chief task was tallying votes. <sup>207)</sup> On the following day the hundred inspectors met with the Sheriff, Coroner, or Prethonetary and formed a Board of Canvass to determine the number of votes received by each

candidate, and to make a certificate of the election.  
 208)

The clerks of elections were not regular hundred officers, but were chosen at each election by the Inspector, and freeholders to read the votes, and aid in keeping tally lists. As the votes were read, at least two clerks kept a record of the votes cast.  
 209) Their fee was cut from one dollar and one half to one dollar by 1825.  
 210)

#### Fence Viewer

Another minor hundred officer was the Fence Viewer. The Courts of General Quarter Sessions, at their May sessions, appointed the number of persons that they thought necessary for each hundred as Fence Viewers, whose duty was to view fences and see that they were kept in repair. If an inhabitant was suffering injury to his crops by a neighbor's animals, which gained access to the crops through the said neighbor's broken-down fence, he could call in all of the Fence Viewers of the Hundred to view and act as a sort of jury to decide upon the case. The Fence

Viewers were attended by two justices of the peace. Because it was difficult to get all of the viewers together at one time, a law of 1804 provided that any three, or a majority of them, and one Justice of the Peace, could perform the same duty in the future. <sup>211)</sup>

The viewers apparently could order the fence repaired and charge the owner, as well as award damages to a person suffering loss because of an inadequate fence. <sup>212)</sup>

The fees established for the Fence Viewers in 1826 were three cents for mileage, and one dollar a day for every day's attendance on business. <sup>213)</sup>

### Ranger

The remaining officer to be considered under hundreds is the Ranger. Due to the prevalence of many domestic animals roaming about the country, the Assembly, in 1786, instructed the justices of the peace, in their Court of General Quarter Sessions, to appoint one person in each hundred to act as Ranger.

His duty was to effect a diminution of the number of stray animals by receiving every one turned over to him. A record was kept of identifying



features of each animal, and advertisements were posted. If the owners did not appear within six months, the Ranger sold the strays. However, none of the larger animals, as, for example, horses and cows, could be termed strays unless they were more than a year old; and could not be sold until after a year had passed.

Any person could hold an animal for a month, but could not act as a Ranger for a longer period without running a risk of paying a fifty pound fine.

The Ranger received fees for his work, and was required to make an accounting yearly with the Overseer of the Poor, and any two justices of the peace. His collections went to the Overseer of the Poor for the use of the poor.

214)

The Assembly seems to have forgotten the above act, as that body provided for the appointment of a Ranger in 1803 to receive and apprehend only hogs in Appequinimink Hundred. Evidence that the importance of the office was diminishing, is found in

the fact that the law provided for fining a person  
for refusing to accept it. <sup>215)</sup> The need for rangers  
had apparently disappeared completely in 1829, for  
in that year, the Assembly repealed the law estab-  
lishing the office. <sup>216)</sup>

## NOTES

## CHAPTER V

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## CHAPTER VI MUNICIPALITIES

### Introduction

Municipal government was in its infancy in the State of Delaware from 1775 to 1831, for the simple reason that the urban populations of the various towns were too small to require supervision. Only the towns of Wilmington, New Castle, Milford, Smyrna, Lewes, St. Georges, Laurel, and Dover had instituted systems of local control by 1831. It is doubtful that even all of these had acquired populations large enough to warrant town officials as administrators of government. The adoption of town systems of government was more likely due to the peculiar pride in growth and the magnifying eyes of small-town citizenry. To hear ones place of residence called a town was much more stimulating than to hear it called a village. Even today, we have urban centers, which are fundamentally, and essentially towns, but which are called cities, and which are incorporated as such.

### Wilmington

The first town in Delaware to have a muni-

cipal government was Wilmington. While still under the jurisdiction of England, in 1739, a charter incorporating Wilmington as a borough, was granted.<sup>1)</sup> When after the Revolutionary War, English control was relinquished, and when, subsequently, the state government was established, the structure of the borough government was modified from time to time through state legislative action secured by petitions signed by the town's inhabitants.

In the late 1700's and early 1800's, the borough officers of Wilmington were: First Burgess, Second Burgess, and their assistants,<sup>2)</sup> a High Constable,<sup>3)</sup> and a Health Officer.

The burgesses sometimes collaborated with the health officer. An example of such collaboration is to be found in a law of the year, 1799, which provided that the importation of persons, or goods from an infected ship could be prohibited by the burgesses and their assistants, if advised to do so by the health officer. Authority extended to quarantining the ships and preventing all contact with land.<sup>4)</sup> With their assistants, the burgesses

composed a body very similar to the present-day town council, exercising about the same powers over town management. Regulation of wharves, public streets, partition fences, and party walls, and the raising of funds needed by the town, mentioned in an act of 1785, apparently came under the jurisdiction of the burgesses.<sup>5)</sup> More specific instructions for the regulation of streets were outlined in a law of 1799. If five freeholders made application to the burgesses, requesting the paving of footpaths and gutters, the burgesses were bound to consider the matter. A period of two months, however, was given the owners to do their own paving, after which the burgesses proceeded with the work if the owners neglected to do anything. The same law stated that the burgesses, and assistants should view any nuisance complained of. If they decided that the object of complaint could be called a nuisance, a warrant was issued to the Constable directing him to notify the owners to remove the said nuisance.<sup>6)</sup> The burgesses, in addition to governing by authority granted by act of Assembly, also had to carry out acts passed in a general town meeting of all the freemen.<sup>7)</sup>

The High Constable was perhaps the "town cop" of that day. In 1785 he acquired an additional office, that of Collector for the town. However, if it so happened that the people, at their annual election of the Constable, should have difficulty in deciding upon a suitable person to act in both capacities; or if the Constable should be too greatly inconvenienced to exercise the office of Collector; then the burgesses and their assistants were to meet<sup>8)</sup> in October of each year to appoint a Collector. In 1823 the High Constable was still an active officer in the borough of Wilmington, and was, in that year, required to give a bond subject to the approval of<sup>9)</sup> the burgesses.

The management of the city's water supply was granted to the borough by a law of 1799. The extent of the control was jurisdiction over the wells, and pumps in the streets, and alleys. It became the duty of the burgesses to make periodic inspections of these pumps and wells. If one was in need of repair, and remained so for three months, it became the property of the borough.<sup>10)</sup> In 1804 the Wilmington Spring Water Company was incorporated under private control as a stock company to insure

a better water supply for the town. After fifty years the borough was to have an opportunity to buy out  
11)  
the company.

One year later, in 1805, a fire company by the name of the Friendship Fire Company was incorporated in the borough with full powers of an independent  
12)  
corporation.

The big change in the management of affairs in the borough of Wilmington came about in 1809, when the government was completely reorganized through an act of Assembly.

The officers of the town were two burgesses, a High Constable, Treasurer, Assessor, and a Borough Council, all of whom were elected annually by ballot on the first Tuesday of May. Any free white male over twenty-one years of age, who had been assessed for taxes and had paid up, could vote.

The Council was a legislative body of thirteen members whose meetings were open to the public, and over which the first or second burgess presided. Meetings were held at least once a month, and special

meetings could be called by the First Burgess, or upon the demand of five members of the Council. Nine members constituted a quorum, and no ordinance could be passed without a majority agreement following a second reading. A vote to repeal an ordinance required a discussion at the previous meeting. If any two members of the Council requested it, a vote was taken by ayes and nays, and recorded in the minutes.

The Borough Council was vested with considerable power. It enacted ordinances to improve the conditions of health, and to prevent the spread of contagious diseases. In these cases the jurisdiction of the Council extended a mile beyond the boundaries of the town. Other powers included the right to organize a board of health; determine and remove nuisances; provide lighting; establish night watches; fix street, and alley boundaries; regulate docks, and wharves; direct auctions; govern public amusements; fix the standard weight of bread, and standard cordage of wood; keep the records of the standards of weights and measures plus the penalties; appoint corders of wood; decide upon fees; regulate

markets; direct the sweeping of chimneys; provide a water supply; and help the burgesses enforce the borough ordinances.

A special duty of the Council was estimating, and drawing up the town's budget for the ensuing year. Once completed, one of the burgesses would order the assessors to begin their work, which was to be completed in sixty days. A Court of Appeal, composed of the members of the Council heard appeals for revisions of tax assessments, after which the collectors began to collect.

Henceforth the executive power was in the hands of the burgesses, who were also conservators of the peace, having the same powers in Wilmington<sup>13)</sup> as the justices of the peace had in the county.

#### New Castle

The town of New Castle, before acquiring a system of government, petitioned the Assembly for aid. The town meeting seems to have been the medium of determining needs, and acting upon them. In 1794 the town desired to erect piers in the harbor,

and petitioned the Assembly for financial aid, suggesting that the money be raised by a lottery. The Assembly complied by appointing managers to conduct the lottery, and supervise expenditure of the money. These managers were to be aided by a committee of three, appointed at a town meeting, after ten days public notice, and three advertisements of the purpose  
14)  
of the meeting.

A real municipal government was set up in 1797 by an act of Assembly. The officers were five commissioners, a Treasurer and a Clerk of the Market aided by the constables and justices of the peace of the county.

The five commissioners were appointed by the General Assembly to serve one year. Thereafter, on the first Tuesday in May, the free white freeholders, who were taxables, elected the commissioners annually. The original five commissioners were particularly instructed to procure the services of a surveyor to lay out the town along the existing lines; to plot the town, and establish land marks with posts, or stones in the middle of the streets;



to estimate the costs necessary to do these things; adjust boundary disputes; repair the market house and drive public pumps.

An important power of the commissioners was the levying of taxes. They assessed and fixed the rate. Then the list was published, and set up in the court-house so that all taxables could note the amount of taxes due the town from them and make payment within the limit of twenty days.

Other duties or powers included the laying down of pavements and gutters, to be paid for by the owners of the abutting properties; regulating party walls upon application; supervising construction where a building might interfere with the foot pavement; regulating partition fences, and appointing town officers. A check of the commissioners was made, at an annual accounting, to a committee chosen as a kind of auditing committee by the towns-  
15)  
people.

In 1825, a special act of the Assembly granted the commissioners the power to lay a special  
16)  
tax to procure fire-fighting apparatus for the town.

The treasurer of the town was appointed by the commissioners and his chief duty was to receive the taxes levied by the commissioners.

The Clerk of the Market was elected at the same time as the other town officers. He was the overseer of the market, and operated under the authority of the commissioners. Whenever necessary, but at least once a year the commissioners appointed three of the townspeople to fix the rents for the stalls in the market-house. For his work, the clerk received all the fines, and one-half of the rents. The remaining one-half went towards the upkeep of the market-house.<sup>17)</sup> In 1806, an act of Assembly set aside Tuesdays and Fridays as market days, instructed the clerk to give bond in the future, and made him also the receiver of any hogs running at large. In the following year the commissioners were given full authority to make regulations governing the market. After 1813 a vacancy in the office of clerk was to be filled by a Justice of the Peace within<sup>18)</sup> the town.

### Milford

The town of Milford, like New Castle, was governed by special acts of the Assembly before a town government was instituted. Oddly enough, Milford acquired an incorporated fire company five years before the town government was established by an act of the Assembly.<sup>19)</sup> The incorporation of the town occurred in 1807.

The officers of the town were five commissioners, an Assessor, and a Treasurer, who were elected for one year by the inhabitants of the town who were qualified to vote at a general election.<sup>20)</sup>

An Inspector of Accounts was added to the list of officers in 1808,<sup>21)</sup> and a Conctable in 1829.<sup>22)</sup>

The qualifications of voters was also altered in 1808. Thereafter, only residents of the town, who were free, white, twenty-one, and who held lands or property could vote.<sup>23)</sup>

The commissioners were empowered to have all the streets and alleys surveyed, and mapped; to fix land-marks in the streets; to levy taxes for the care of the streets; to institute a lighting

system; to hire watchmen; and to lay a special tax on people living on lighted streets to pay for the lights. The latter was repealed the very next year.<sup>24)</sup>

The duties of the Assessor included the inspection of the properties in the town in order to make a fair assessment, and the publishing of the assessment list. In 1808, he was given the task of selecting the place for holding the election, and naming two freeholders as judges of the election.

The treasurer's chief task was to collect taxes. He was required to give bond and to settle his accounts with the commissioners at least once a year, but more often if called upon to do so.<sup>25)</sup>

The Inspector of Accounts was to inspect and approve, or disapprove of all orders for money drawn on the town Treasurer.<sup>26)</sup> In 1829 the names of the majority of the commissioners were to appear upon the orders, signifying that the order was just and necessary. Then the Inspector wrote "Allowed" and signed his name.

The Constable, the last officer, created in

the town up to 1831, had the same powers as any other Constable, except that his jurisdiction was limited to the confines of the town of Milford.

In 1829 the town was progressing under the same system instituted in 1807 with the few additional officers mentioned, and with no change in their duties.<sup>27)</sup> The only change occurred in 1830, when the qualifications of the voters were again changed. After that date, anyone who was entitled to vote at a general election and had paid the street tax<sup>28)</sup> within the year preceding the election, could vote.

### Smyrna

Smyrna, which was known as Duck Creek Crossroads until an act of Assembly changed the name in 1806,<sup>29)</sup> grew and took the name, "Smyrna", because of its importance as a grain shipping port.<sup>30)</sup> By 1817 it was large enough to require a local system of control, and a municipal government was set up. Since the government was the same as that of Lewes, except for a few minor details, we shall deal with the exceptions only, and explain the Lewes system fully. The differences were that

the councilmen in Smyrna were called commissioners, just as in New Castle, and Milford; the qualifications for voting permitted any free white male over twenty-one, and who held real estate, to vote; and the hours for holding the election in Smyrna were from ten in the morning until six in the evening.<sup>31)</sup>

In 1825, the time for holding the election was set for the first Monday of March. If the three freeholders delegated to judge the election failed to put in an appearance, the voters were to choose one freeholder as judge and one to act as inspector.<sup>32)</sup>

### Lewes

As with the other towns, Lewes occasionally was the subject of legislative action by the General Assembly. On one occasion, in 1794,<sup>33)</sup> the Assembly gave a section of land to the town, and in 1801, an act was passed to prohibit swine running at large in the town of Lewes.<sup>34)</sup>

In 1818 the municipal government was organized. The same officers that governed Milford were appointed for Lewes, except that instead of being

called "Commissioners", they were to be known as "Trustees". The same powers were delegated to them also with the additional authority to charge a ground rent of one-fourth of the amount a building would rent for, if the building extended on a street or lane.

To vote, one had to be a free and white male, twenty-one years of age, a resident of Lewes, and the possessor of a lot with a dwelling house, or a lot at least sixty by two hundred feet.

The Treasurer had the same powers as the Milford Treasurer, but also had to give a one thousand dollar bond.

The Assessor had to take an oath obligating himself to perform faithfully his duties; otherwise, his duties were the same as the Milford Assessor.<sup>35)</sup> In 1831, however, an act of Assembly directed him to evaluate all buildings, and to determine the rental value, fixing it at six percent of the actual value of the property, when it could not<sup>36)</sup> be determined otherwise.

In 1831 an act of Assembly provided that future elections of the town officers should be held at the court-house, and anyone could vote who was qualified to vote for representatives in the state Assembly, or who had paid a tax for a house, or store on public ground. The same law granted the Trustees the right to build a house of correction for confining persons who committed a breach of the peace, or participated in a riot.<sup>37)</sup>

#### St. Georges

Chronologically St. Georges was the next community to acquire a municipal government through an act of Assembly in 1825. The town officers were just five Commissioners, and a Treasurer to collect taxes appointed by the commissioners. The duties of the commissioners were practically the same as those of any other incorporated town except Dover.<sup>38)</sup>

#### Laurel

Two years later, in 1827, Laurel was incorporated with a government which was a duplicate of that of St. Georges, except that a Treasurer was



appointed only when deemed necessary by the commissioners.<sup>39)</sup>

### Dover

Dover, ordered to be laid out in 1683, but actually laid out in 1717,<sup>40)</sup> did not acquire a town government until 1829. Like the other towns, Dover had five commissioners, an Assessor, and a Treasurer, but unlike the others, Dover also had a Collector and a Town Clerk. The last four officers, instead of being elected by the inhabitants, were appointed by the commissioners. If one of the Commissioner posts was vacated, the other commissioners filled the vacancy. This meant that only the original election of commissioners, under the guidance of the county Clerk of the Peace, was necessary.

The duties of the commissioners were more varied than those of the other towns. In addition to attending to the surveying and regulating of streets, plotting the town, attending to taxation, and laying out pavements and gutters, the commissioners were to lay pavements in front of the State House, and plant ornamental trees, have additional wells

dug, provide fire fighting apparatus, and erect a market-house. The latter duty, or power was not carried out.

## Villages

The many villages of Delaware had no systems of government in the sense that towns had them. There are indications that a few had town meetings, and it is probable that infrequent meetings were held in all the villages. Many of them were the subjects of acts of the Assembly for correcting some problem, while some received no attention from the Assembly, except when changing their names.

Of this latter group, there were many.  
A tabulation of them follows.

Little Creek Landing changed to Little  
Creek; 42) Fast Landing changed to Leipsic; 43)  
Halltown changed to Marydel; 44) Joseph Caldwell's  
Tavern, or Irish Hill changed to Canterbury;  
Whitwell's Delight or Mulberrie Point changed to Bowers;  
Woodleytown changed to Locustville; Five Points changed  
to Rising Sun; Lewisville changed to Sandtown; 45)

Guinea Town changed to Williamsville;<sup>46)</sup> Head of  
 Broadkilm changed to Milton, in honor of the English  
 poet.<sup>47)</sup> Pine Grove Furnace changed to Concord;  
 Rock Hole changed to Millsborough;<sup>48)</sup> and Arthur-  
 ville or Butterpat changed to Hartley.<sup>49)</sup>

Other villages were also occasionally the  
 objects of further Assembly action.

Frederica, in earlier times known as  
 Indian Point, Old Landing, Johnny Cake Landing, or  
 Geforths Landing,<sup>50)</sup> was the object of a law prevent-  
 ing swine running at large in 1796,<sup>51)</sup> and again in  
 1801 when the law was repealed.<sup>52)</sup> Again in 1806  
 the Assembly provided for the raising of one thousand  
 dollars by a lottery to repair the Frederica Cause-  
 way.<sup>53)</sup>

The village of Bridgeville experienced a  
 change in name from Bridge-Branch in 1810 through  
 an act of Assembly;<sup>54)</sup> and later, in 1822<sup>55)</sup> and  
 1829,<sup>56)</sup> two laws respecting the prevention of  
 swine running at large were passed.

In Georgetown, through an act of Assembly,

hogs running at large were regulated in 1795,<sup>57)</sup> but  
 the law was repealed in 1802,<sup>58)</sup> only to be revived  
 again in 1829.<sup>59)</sup> In 1801 the Assembly reduced the  
 number of alleys in the town by providing that some  
 of them should be closed.<sup>60)</sup>

The Assembly passed an act forbidding swine  
 to run at large in Camden in 1791, and provided that  
 the villagers should meet annually to choose two free-  
 holders to receive the fines from the justices of  
 the peace.<sup>61)</sup> In 1821 the same law was again passed,  
 except for a stipulation that the money was to be used  
 for the village as the inhabitants thought best.<sup>62)</sup>

Swine laws were also passed for Milton in  
 1811,<sup>63)</sup> and 1829.<sup>64)</sup> In 1819 the Assembly provided  
 for the appointment of three commissioners to deter-  
 mine the limits of the village, survey and plan new  
 streets, mark the streets, and plot the village.<sup>65)</sup>  
 However, this was not an act of incorporation, but  
 an arrangement for special functions.

Two acts were passed by the Assembly for  
 the village of Kenton. The first changed the name  
 from Greg-Town in 1806,<sup>66)</sup> and the second was in

respect to hogs running at large.<sup>67)</sup>

Newark was aided by the Assembly in 1812 through the authorization of a lottery to raise four thousand dollars to help pave the main street, and repair the market-house, and English school-house.<sup>68)</sup>

Seaford and New Port were also favored by the passing of the usual swine laws.<sup>69)</sup>

These references to the various villages do not give a clear-cut picture of village government. For the most part they show two things, that most of the villages changed their names through the Assembly, and that most of the villages were bothered by pigs rooting up the streets, a nuisance also abated by the Assembly. It is this latter matter to which reference is most frequently made. One may conclude, therefore, that the villages were too small to have any need for governmental control beyond the occasional elimination of such nuisances. Although no authority can be cited, one may conclude, also, that the villages were content to be governed by the regular hundred officers of the hundreds in which they happened to be situated.

Of all the villages, mentioned, two stand out as having perhaps taken the first steps toward home rule. They were Camden and Milton. The Camden town meeting seems to have been cooperating with the hundred officials in solving some of the village's problems. Milton had taken a long step toward becoming an incorporated town.

### Wood Corder

The office of Wood Corder was established in 1742,<sup>70)</sup> and was still in existence at the end of the period being considered. A law of 1796 stated that the buyer of firewood in each town and village must pay one-half of a ten cent fee to the Corder, or his deputy, for each cord of wood corded,<sup>71)</sup> or measured. In 1803 a law made the measuring of the wood compulsory under penalty of a fine, and encouraged the attendance of the Corder when called, by also providing a fine against him for not appearing.<sup>72)</sup> By 1815 the office was apparently not being filled in every village and town, for a law of that year, qualified the former compulsion by stating that when one had been appointed, and sworn,<sup>73)</sup> the wood must be measured. In 1829, further

indication of the decreasing importance of the office was indicated by a law which provided for the appointment of the wood corders, if a need for them was proven. The appointments were to be made by the Court of General Quarter Sessions. If a vacancy occurred when the court was not in session, the Justice of the Peace could fill it.<sup>74)</sup>

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## CHAPTER VI

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