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Loyalists and Their Property
The Valley of the Kedron. *A Review*
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Postscript

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LOYALISTS AND THEIR PROPERTY

By MARY GREENE NYE

Research has ventured only a little way into the complex problem of loyalist activities in Vermont, the personnel involved, and the final resolutions of their failures and achievements. Volume six of the State Papers of Vermont, 1941, deals with the sequestration, confiscation, and sale of loyalist estates, and carries an introductory chapter by the editor, Mary Greene Nye. The distribution of the volume is limited, and we believe that Mrs. Nye's introduction will interest many readers who do not have access to the book. The chapter is reprinted with the permission of Mrs. Nye and the Honorable Rawson C. Myrick, Secretary of State, under whose direction the volume has been published. Editor.

THE whole field of the sequestration, confiscation and sale of properties of those persons living in or owning property in the state of Vermont at the outbreak of the American Revolution who remained loyal to the British government, is almost entirely unrepeat. A very considerable number of original manuscript documents relating thereto have lain untouched and practically forgotten in the archives of the state for more than a century. How much more similar material may be found among the records of the early courts and other repositories within the state is not now known. Many documents relating to this period are to be found in the archives at Washington as well as of the neighboring states of New Hampshire, Massachusetts and New York, the Public Record Office of England and of the Canadian provinces of Ontario and Quebec, while others doubtless have found their way into private collections or remain unidentified in other places. That these last may at some not distant day be brought to light is greatly to be hoped. For example, if the private papers of Governor Thomas Chittenden could be located and made available to students, much trustworthy source material would be added to our historical stores.

The known records of the conventions of the town and county committees of safety and correspondence, of the general conventions,

the council of safety and board of war of Vermont, together with the early records of the general assembly and governor and council, contain much information relative to the affairs of the loyalists, and the manner in which their individual cases were handled by these various bodies, and this material is available to the student through the series of books published by the state, known as *Governor and Council* (in eight volumes) and *State Papers of Vermont*, vol. 3, bound in four parts.

The object of this present volume of State Papers is to bring to the reader or student of Vermont's history copies of such remaining manuscript records in the custody of the secretary of state concerning the sequestration, confiscation and sale of tory estates as have not already appeared in the above named volumes.

These documents form a miscellaneous group, ranging from the hitherto unpublished and very incomplete official records of the court of confiscation, through acts of the legislature by virtue of which the business was conducted, reports of the various officers in charge, petitions for relief, partial lists of persons whose property was ordered confiscated, lists of estates sold and moneys received therefor; expense accounts of various officers; accounts against confiscated estates; itemized articles sold at "vendue"; treasurer's accounts, orders and receipts; certificates of sale of confiscated lands, and many other classifications of lesser number—all of which should give the reader a fairly clear conception of what the term "sequestration, confiscation and sale of estates" signified. It should also show quite conclusively why it was not necessary to tax the pioneer settlers upon the lands granted by the new and independent state of Vermont. In the aggregate the sum covered into the state's treasury was very large, and so long as the practice continued, there must have been quite sufficient funds to keep the government functioning.

The first mention of tories, as such, preserved in any meeting of record within the present state of Vermont contained in the archives of the state, was a vote taken at the adjourned session of a general convention on the New Hampshire Grants held at Dorset, September 25, 1776, which reads: "Voted, that a sufficient Gaol be built on the west side of the range of Green Mountains at some place, that shall be hereafter agreed on, for securing tories." As a result of this vote, a gaol was ordered to be built at Manchester, with Lieutenant Martin Powell as gaol keeper. (*Governor and Council*, vol. 1, pp. 31-32.)

A brief outline of the formation, development and operation of the

various channels through which the sequestration, confiscation and sale of estates functioned, may be helpful to the general reader.

It must be remembered that after July 20, 1764, the land now comprised within the state of Vermont was claimed by the province of New York under an order in council of King George III of England. That this tract included the counties of Gloucester, Cumberland, and parts of Charlotte and Albany of that province; that as part of New York, it was governed by and amenable to its laws and customs; that at various times officers acting under the authority of that province were appointed and served in those counties; that military units therein were supported out of its treasury; and that the first officers of whom we have any record as authorized to function as commissioners of sequestration, were those appointed by the provincial congress of New York on March 6, 1777, when James Clay of Putney, Amos Robertson [Robinson] of Hartford and Israel Smith of Brattleboro, were appointed commissioners for Cumberland County; Cornelius Cuyler of Schenectady, Harmanus Wendell of the city of Albany and Peter Van Ness of Claverack, for the county of Albany; on April 2, 1777, John Rowan of Salem,¹ Aaron Fuller of Whitehall¹ and John Moorhouse of Willsboro¹ for the county of Charlotte, while on May 2, 1777, Colonel Peter Olcott of Norwich, Colonel Jacob Kent of Newbury and Major Israel Smith of Thetford were appointed commissioners for Gloucester County. That these officials had already instituted actions under the authority vested in them by the province of New York previous to the convention of the inhabitants of Vermont held at Windsor on June 4, 1777, is indicated by the adoption of resolutions at that meeting requiring the committees of safety and commissioners of sequestration appointed under the authority of New York to "desist and surcease" their commissions, and those officials were strictly forbidden seizing or disposing of estates of inimical persons until further order of the convention. Committees of safety acting under the authority of Vermont were immediately appointed and directed to take into their custody

1. In *Heads of Families at the First Census of the United States, New York, 1790*, the name of John Moorhouse appears as being of Willsboro, Clinton County; that of Aaron Fuller of Whitehall, Washington County, and John Rowan of Salem, also in Washington County.

In 1777 these towns were all included in Charlotte County, which was formed in 1772; its name changed to Washington in 1784 (*Locus of New York, 1784*, Chapter 17) and in 1788 Washington County was divided, the northern portion being named Clinton County (*ibid.*, 1788, Chapter 63).

all estates of inimical persons who had heretofore or that might thereafter be by sufficient evidence, proved to be inimical to the American cause. (*Governor and Council*, vol. 1, pp. 60-61.)

Just prior to the adjournment of the historic session of the general convention at Windsor on July 8, 1777, a council of safety later known as the "Old Council of Safety" composed of thirteen men, was appointed to "manage the affairs of the state until the government should go into operation under the newly adopted constitution." It is a significant fact that nearly all the members of this "Old Council" became members of the "Governor and Council" and also continued to act as council of safety and board of war. The powers of this "Old Council" combined those of the legislative, judicial and executive. The council met by agreement at Manchester on July 11, 1777, and organized, electing Colonel Thomas Chittenden as president and Ira Allen, secretary. General Burgoyne's army was pressing upon the frontiers of the new commonwealth, and immediate action to protect the lives and property of the inhabitants thereof was absolutely necessary. To this end it was imperative that a military force be raised, but there being no funds in the treasury with which to equip or pay such a body, Ira Allen's suggestion to the council² that commissioners of sequestration be appointed and that the property of tories within the state be seized and sold at public vendue to furnish these sinews of war, at once found favor in the sight of that body; records show that the treasury began to fill almost immediately and Colonel Herrick's regiment was raised and their bounties paid

2. The claim made by Allen and by others for him, that he was the originator of this plan of confiscation and sale of inimical persons' estates for the use of the state, and that these sales were "the first in America of seizing and selling the property of the enemies of American Independence" can hardly be maintained in the light of such a fact as the following:

As early as December 19, 1776, Thomas Paine of Philadelphia published an article in the *Pennsylvania Journal* which contained the statement that "America could carry on a two years' war by the confiscation of the property of disaffected persons, and be made happy by their expulsion." Nor was Vermont the first state to confiscate, sell and turn into its treasury the proceeds of property belonging to disaffected persons, as is evidenced by the journal of the New York State Treasurer, which shows a credit under date of May 24, 1777, of cash received from the commissioners of sequestration of Dutchess County. Other records of that state show a considerable amount of property which had been sequestered and some sold, prior to the date of Allen's proposal. See *New York Treasurer's Papers; Loyalism in New York*, Flick, pp. 136-138; *State Papers of Vermont*, vol. 3, part I, pp. 6 and 7; *Governor and Council*, vol. I, pp. 134-135.

within fifteen days, out of the proceeds of the sale of the confiscated property of the enemies of the friends of America. The history and records of this council of safety are to be found in *Governor and Council*, vol. I, pp. 107-229.

The council continued in authority until March 13, 1778, upon the formal organization of the legislature under the constitution. On that date the governor, deputy governor, treasurer and council were sworn and they immediately assumed the duties of their respective offices. Their journals show that they at once became active in the work of apprehending the bodies and securing the estates of persons whom they adjudged to be inimical to the American government.

On March 25, 1778, the governor and council requested the assembly, in accordance with the recommendation of the Continental Congress, "to propose some measures which might be adopted to ascertain the particular estates to be confiscated and sold for the purpose of supplying the treasury," and on the same day the assembly resolved that the whole matter be referred to the governor and council or such persons as they should appoint to carry out the business of paying claims against estates and the disposition of the "Neat Remains" for supplying the treasury, in consequence of which the governor and council appointed the court of confiscation on the following day. The text of this act is not known to be in existence at the present time, as no laws passed previous to February 13, 1779, are on record in the office of the secretary of state. However, the first entry in the volume known as *Records of the Court of Confiscation for the State of Vermont* is a copy of the above quoted request of the council and action of the assembly upon it, which it would appear the court of confiscation used as proof of authority vested in them in lieu of more formal directions. See pp. 13, 14 post; *State Papers of Vermont*, vol. 3, part I, pp. 5 and 17; *Governor and Council*, vol. I, pp. 248-249.

On March 26 the assembly passed acts for the punishment of high treason and other atrocious crimes, and against treacherous conspiracies "as such acts stand in the Connecticut Law Book." That this was an expedient used in order to get the statutes into effect without the delay which writing original acts would cause, is evidenced by the fact that on the following February 13, 1779, another act against high treason was passed by the Vermont assembly, and amended in November 1780. (*Mss. Laws of Vermont*, vol. I, pp. 26 and 191.) The adoption of these laws defining and punishing high treason and

conspiracies afforded the basis for the confiscation of estates in Vermont similar to those that had obtained in New York immediately following the Declaration of Independence. See *History of New York*, Flick, vol. 3, pp. 350-352.

The question naturally arises as to the specific procedure in the matter of sequestration, confiscation and sale of property belonging to "disaffected persons," and it is to be regretted that there is nowhere to be found among the records a concise résumé of the methods practised. Only by piecing together various early records, instructions contained in commissions and orders, reports of persons carrying out such orders, and the all too meager records of the court of confiscation itself, are we able to arrive at any conclusion.

From the records of the Old Council of Safety it appears in general, that prior to the formation of the Governor and Council, local committees of safety were authorized to investigate cases of suspected persons, try them and on sufficient evidence confine them in gaol, under guard, until they might be released by order of council. Each case was to be determined upon its merits, and the opinion of the committee as to whether any or all of the estates belonging to such persons should be forfeited was to be included in its report to the council of safety. If the evidence proved sufficient, commissioners were appointed by the council, to sequester, confiscate or sell such estates. It would seem that the business was not entered into lightly, for we find in November 1777, in transmitting to Joseph Bowker of Rutland, his commission as commissioner of sequestration, Governor Thomas Chittenden, acting as president of the council of safety, wished Bowker "wisdom and patience" in the due execution thereof. (*Governor and Council*, vol. I, p. 198.)

From March 26, 1778, the records of the court of confiscation, together with certain acts of the legislature, as reproduced in this volume, contain the only source known to the editor, of authoritative information relative to the manner in which confiscations and sales took place.

Records to be found in this volume, or those appearing in *State Papers*, vol. 3, and *Governor and Council*, do not indicate that the methods employed in disposing of the properties of the tories or the treatment accorded them and their families differed greatly from those employed by the other states then included in the Union; certainly we have no records which imply personal treatment so cruel as that which obtained in some other jurisdictions. But there appears

to have been a peculiar animosity in some quarters toward those unfortunate individuals who were both loyal to the British government and at the same time held their Vermont lands under titles obtained from New York, as not infrequently occurred. That such persons were sometimes treated with additional severity if they fell into the hands of the Vermont officers, can hardly be denied.

In order to escape persecution, like those from the other states, many Tories, owners of Vermont estates, fled to Canada where they were granted lands and assistance in reestablishing homes for themselves,—or to Boston, and later, New York, where they were under the protection of the British army. Following the treaty of peace in 1783, a considerable number of these persons returned to their former homes and took the oath of allegiance to the United States, but often their position in society was not particularly enviable. The majority of those who went to Canada remained there, where they became the nucleus of thrifty and prosperous communities.

In July, 1783, the British Parliament appointed a commission of five "judicious persons," to classify and examine the claims for losses and services of American loyalists, and to make settlement thereon. More than five thousand claims were presented.

This commission first sat in England, and a considerable number of the more prominent and well-to-do claimants either went to London personally or sent their claims by agents who represented them, but it soon became evident that to do justice to all the claimants, it was necessary that their claims be examined in America where witnesses could be heard and evidence more easily introduced. Thereupon, commissioners were sent to Canada and New York to investigate and adjust these claims. These commissioners sat between the years 1785 and 1789, and examined and ordered paid claims which amounted to many millions of dollars. Among the records of this commission which have been available for study, the *Ontario Bureau of Archives Report, 1904*, and transcripts of certain of the *Audit Office Records in the Public Record Office of England* (to be found in the New York Public Library) has been found a list of nearly one hundred and fifty persons, both resident and nonresident, who claimed losses covering lands in Vermont. That these names may be made available to students, the list appears as an appendix to this volume.

STATE PAPERS OF VERMONT

The volumes under the general title, State Papers of Vermont, form such valuable primary source material for many types of historical and personal investigation that we asked Mrs. Nye to supplement the chapter reprinted with a few explanatory notes covering the contents of the volumes published to date.
Editor.

The series of volumes entitled *State Papers of Vermont* has been published by the state under the direction of the secretaries of state by authority of No. 259 of the Acts of 1913, which authorized the secretary of state to prepare for publication "the charters of all towns and gores granted by the state, such volumes or parts of the papers of the surveyor general, including the reproduction of maps thereof, and such other of the manuscript records of his office as in his judgment are of general public interest."

VOLUME I. *Index to the Surveyor Generals' Papers*, published in 1918, is an index, arranged by towns, to the information contained in the manuscript volumes of the surveyor generals' papers lodged in the office of the secretary of state. This information includes data relating to charters, boundary lines, surveys, area, plans, incorporations, vendues, etc., and was prepared by the late Franklin H. Dewart.

VOLUME II. *Vermont Charters*, published in 1922, was prepared by Mr. Dewart, and contains copies of charters granted by the state of Vermont, including towns, gores and "grants," together with lists of the names of the grantees, from the charter of Bethel, dated December 23, 1779 to that of Sterling on October 18, 1805.

This volume also contains the extremely valuable historical and descriptive notes originally compiled by Hiram A. Huse, state librarian, in 1895, continued and brought up to the publication date of the volume. These notes contain a summary of the grants by the governments of France, New Hampshire and New York which covered territory now comprised in the state of Vermont. This is in addition to data relative to the grants of the government of Vermont, as well as notations on changes in town lines, consolidations, annexations, etc., together with references to source material for additional data.

VOLUME III. *Assembly Journals and Proceedings* (bound in four parts), consists of the journals of the general assembly from March 12, 1778 to January 27, 1791, and was edited by Vermont's historian, Walter H. Crockett.

The journals which appear in the first two parts of this volume, published in 1924 and 1925, covering March 12, 1778 to October 24, 1783, had never before been officially printed. An introduction by James Benjamin Wilbur assists greatly in evaluating the historical significance of these journals and their place in Vermont history.

Parts three and four, published in 1927 and 1929, are reprints of the assembly journals from February 19, 1784 to January 27, 1791. These journals had become exceedingly scarce, and as they contained records of many important historical events during the years just prior to Vermont's admission into the Union, they were added to Volume III. Mr. Crockett added many very valuable notes to these volumes.

VOLUME IV. *Reports of Committees to the General Assembly*, published in 1932, was also edited by Walter H. Crockett. This volume contains a compilation of selected committee reports upon various matters before the general assembly during the period from March 1778 to October 1801.

VOLUME V. *Petitions for Land*, published in 1939, contains all the petitions asking for grants of lands in Vermont which have been preserved in the archives of the secretary of state, dating from January 1, 1778 to October 9, 1811. This volume was edited by Mary Greene Nye.

VOLUME VI. *Sequestration, Confiscation and Sale of Estates*, published in 1941, contains copies of documents in the office of the secretary of state which relate to real and personal estates of the loyalists (or tories) of the Revolutionary period, including a copy of the hitherto unprinted original journal of the court of confiscation. This volume was edited by Mary Greene Nye.