

1734.

Costs—That the Petitioner Appealed from the said Judgment And his Appeale came on to be heard before the Superior Court of Judicature at their Sittings begun the 14 day of August 1733 when the said Superior Court gave Judgment that the said Jonathan Thomas Edward and Ann as Executors of the said Jonathan Waldoe deceased, should recover against the Petitioner Possession of the Premises sued for with 16*l.* 8*s.* 0*d.* Costs unless the Petitioner should pay them 320*l.* within two Months after entring up the said Judgment with Costs That the Petitioner moved for an Appeale from the said last Judgment to Your Majesty in Council, which the said Court refused him . . .

[IV. *pp.* 120–1.]

3 April.

[Order accordingly.]

[*p.* 145.]7 Nov.
Massachu-
setts Bay.

[322.] [Reference to the Committee for Appeals of the petition of Gillam Philips of Boston, son and heir of Henry Philips of Boston, gent., deceased, for leave to appeal from an order of the Governor and Council of Massachusetts Bay, 2 Nov., 1733] Approving of a Division which had been made of the Real Estate of the said Henry Philips between the Petitioner his Mother and Sisters pursuant to two Orders of the Judge for Probate of Wills on the 6th of April and 15th of May 1733.

(1737.)

[*p.* 36.]

20 April.

[The appeal was admitted on the usual security on 12 Feb., 1735, but the Committee order] that before a day be appointed for hearing the same the Sollicitor for the Appellant do Satisfye their Lordships, that all the Respondents have been duly Summoned.

[*pp.* 95, 100, 166, 186; V. *p.* 203.]

(1737.)

21 July.

[Reference to the Committee of a memorial of Samuel Wilks, agent for Massachusetts Bay, setting forth that the judgment from which Philips appeals is] founded upon a General Law passed in that Province for Settling Intestates Estates That as the said Law hath been Constantly Observed and put in Practice ever since the same hath been passed and hath long since Obtained the Royal Approbation, [and praying]

in behalf of the said Province that the Validity of the said Law may not be any ways drawn into Question on the hearing of the said Appeale or if it be that the General Court of the said Province may be heard by their Counsel in Support thereof and that nothing may be done to impeach the force and Validity of the said Law but that the same may remain and Continue in full force. [V. p. 267.]

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[Committee appoint 13 Jan. to hear the appeal, on which day they hear counsel and adjourn the case till 16 Jan.]

(1737.)

23 Dec.

[V. pp. 353, 374.]

(1738.)

16 Jan.

[Committee report. The petition sets forth] that the said Henry Phillips being seized of a considerable Real Estate and also possest of a large Personal Estate in Boston aforesaid dyed some time since intestate and without Issue leaving behind him his Mother Hannah Phillips Widow the Petitioner his only Brother his Sister Hannah Savage Wife of Habijah Savage Esqr. Faith Savage Wife of Arthur another Sister and the Representatives of Mary Butler deceased who was a third sister of the said Intestate that upon the Death of the said Henry Phillips that is to say on the 17th of July 1730 Administration of his Goods and Chattles Rights and Crédits was granted to the Petitioner his only Brother who duly administred the Personal Estate that the Petitioners said Mother and Sisters and the Representatives of the said third Sister upon the death of the said Henry Phillips insisted that they were intituled to an equal distributory Share of the Intestates Real Estate with the Petitioner under two several Acts past in the said Province the one in the fourth Year of the Reign of their late Majestys King William and Queen Mary intituled an act in addition to and for the explanation of the Act for Settlement and Distribution of the Estates of Intestates, whereas the Petitioner insisted that he was by the Common Law of the Realm Solely intituled thereto as Heir at Law to his Brother and that no Act of that Province could vary the Common Law of the Realm or change or alter the

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Course of Discents And that the said two Acts were void and Null for want of Power in the Assembly of the said Province to enact the same and the Petitioner refused to Distribute the said Intestates Real Estate That thereupon on the 6th of April 1733 The Judge of the Probate of Wills and granting Administrations made an Order empowering five Freeholders to make an equal Division of the said Intestates Real Estate between his Mother Brother and Sisters and their legal Representatives in five equal parts and upon the 7th of May 1733 the said five Freeholders made their Return of Division and Partition of the said Intestates Real Estate which was Valued at four Thousand pounds And they Divided the Estate into five parts and sett off and allowed one fifth for the Petitioner and one fifth a piece for his Mother and the two Sisters and the Children of the third Sister, which Return being presented to the Judge of Probates and Administrations he was pleased by his Order of the 15th of May 1733 to allow and approve thereof That the Petitioner conceiving himself aggrieved by the said Orders directing and approving the said Division and Distribution and also by the said Division and Distribution itself on the 10th of October 1733 preferred his Petition of Appeale therefrom to the Governor and Council of the Massachusetts Bay Assigning the three following reasons First That he was the only Brother and Heir at Law of the said Henry Phillips and as such the whole Real Estate of the said Henry Phillips by the Law of England Discended to him Second That the Power given the Province of making Laws was by their Charter expressly restrained so as the same be not repugnant or contrary to the Law of the Realm of England But that the Act of the fourth of King William and Queen Mary for Distribution of Intestates Real Estates and the proceedings of the Judge of the Probates and Administrations grounded thereon was repugnant or contrary to the Laws of the Realm of England and consequently ipso facto Void And Third That by the Law no Judge of Probate had any thing to do with Real Estates or the Crown of Descents

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The Right and Trial thereof appertaining to the Kings Courts and therefore in the Form of the Letters of Administration no Power was Delegated to the Administrator concerning the Real Estate And therefore the Petitioner by his said Petition to the Governor and Council prayed Reversion and Costs That the Petitioners said Appeal came on to be Argued before Your Majestys Governor and Council of the said Province on the 2d of November 1733 when the Court Affirmed the said Order of the said Judge of Probates for Dividing the Real Estates of the said Henry Phillips among his Mother Brother and Sisters That the Petitioner conceiving himself greatly aggrieved by the Order made by the Governor and Council on the 6th of November 1733 preferred his Petition to the said Governor and Council praying leave to Appeale from the said Order of the 2d of November 1733 to Your Majesty in Council on entering into the usual Security, upon reading which Petition the same was Ordered to be Dismist That the Petitioner thereupon applyed by Petition to Your Majesty in Council to be Admitted to an Appeale from the said three Orders . . The Lords of the Committee having on the 13th of this Instant and again on this day fully heard the said Appellant and also Faith Savage one of the Respondents by their Council learned in the Law (the other Respondents not appearing tho' duly Summoned in New England) And their Lordships having likewise fully Examined and maturely Considered all the Proceedings in this Cause humbly represent to Your Majesty that it appeared to their Lordships that the Act of Assembly aforementioned Intituled an Act for the Settlement and Distribution of the Estates of Intestates was passed in the said Province of the Massachusetts Bay so long since as the Year 1692 soon after the New Charter of Incorporation was granted to the said Province by King William and Queen Mary And that the said Act was Ratified and Confirmed on the 22d of August 1695 by the then Lords Justices in Council and that several other Acts of Assembly in Addition thereto and Explanatory thereof have been since

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passed in the said Province of the Massachusetts Bay and particularly An Act passed there so lately as the Year 1731 Intituled An Act in Addition to the Act Intituled An Act for the Settlement and Distribution of the Estates of Intestates, which last Act appears to have been confirmed by Your Majestys Order in Council of the 27th of January 1731 And their Lordships further humbly Represent to Your Majesty that by Certificates under the hands of Josiah Willard Esqr. Judge of the Court of Probate of Wills and for granting Letters of Administration &c. in the said Province and of John Boydell Register of the said Court duely transmitted under the Seal of the said Province the last of which Persons had been possessed of the said Office of Register from the Year 1717 and certified that he had carefully Examined the Records of the said Court from the Year 1692 It appeared to their Lordships that from that time it had been the Constant usage for the several Judges of the Court of Probates &c. to cause the Estates of all Persons dying Intestate to be distributed pursuant to the Tenour and according to the Direction of the said several Acts of Assembly. Their Lordships Do therefore Agree humbly to Report as their opinion to Your Majesty that the said three Orders and the Division made under the same now Appealed from be Affirmed and that the said Appeal be Dismist.

(1738.)

[V. pp. 375-8.]

15 Feb. [Order accordingly.]

[p. 424.]

19 Dec.

Rhode
Island.

[323.] [Reference to the Committee of a representation of the Governor and Company of Rhode Island] setting forth that there has been a long Controversy between them and the Province of the Massachusetts Bay about the Eastern Bounds of the said Colony and therefore humbly praying that His Majesty will be graciously pleased to Determine the same and that in the Interim Instructions may be given to prevent any Violent attempts for the future by either party on the Inhabitants of the lands in Dispute.

[p. 49.]

(1735.)

13 Jan.

[Referred by Committee to Board of Trade.]

[p. 80.]