

- [Referred by Committee to Board of Trade.] [p. 170.] 1735.  
24 May.  
(1737.)
- [Committee. The petitioners to have a copy of the Board  
of Trade report.] [V. p. 52.] 18 Jan.  
(1737.)
- [Committee report for the dismissal of the petition. The  
Board of Trade reported] that they had received an Account  
from the Lieutenant Governor of New York that above one  
half of the Land Petitioned for, had already been granted to  
other Persons, who had purchased their Right thereto from the  
Indians for Valuable Considerations, antecedent to their  
Obtaining a Grant thereof, and that having acquainted Mr.  
Storke one of the Petitioners therewith, he so far acquiesced  
therein, that he declared he would give the said Lords Com-  
missioners no further Trouble upon this Subject. [V. p. 179.] 6 April.  
(1737.)
- [Order accordingly.] [V. p. 209.] 21 April.
- [344.] [Reference to the Committee for Appeals of the peti- 16 May.  
tion of Matthew Ellis late of Medford, Middlesex co., Mass.,  
husbandman, a member of the Church of England, for leave  
to appeal from judgments of the Inferior Court, 11 Dec., 1733,  
and of the Superior Court 29 Jan., and 30 July, 1734, in his  
action against Richard Sprague for assaulting, beating, wound-  
ing and imprisoning him, and detaining him in prison till he  
paid Sprague a fine of 3*l.* 1*s.*] [p. 164.] Massachu-  
setts Bay.
- [Order on the recommendation of the Committee, that 9 July.  
the appeal be admitted on the usual security and that Ellis  
be allowed copies of the proceedings under the seal of the  
province on paying the usual fees.] [pp. 191, 200.]
- [Ellis's petition for an early hearing referred to the Com- 30 July.  
mittee for Appeals.] [p. 218.]
- [Committee appoint 25 Feb. to hear the appeal.] [p. 223.] 14 Aug.
- [345.] [Reference to the Committee for Appeals of the petition 16 May.  
of William Leighton, gent., of Kittery, in what was formerly  
called Maine, against two decisions in favour of John Frost,  
Massachu-  
setts Bay.

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and praying that in any similar suits against his master Ralph Gulston, his agents or workmen, appeals may be allowed to his Majesty in Council, though the sum recovered be less than 300*l.* stg.] [p. 164.]

(1736.)

2 April.

[On 9 July, 1735, the appeal is admitted on the usual terms, Ralph Gulston entering into security. After several postponements, the Committee report that Leighton's petition sets forth] that for the better providing and furnishing Masts for the Royal Navy their late Majestys King William and Queen Mary did by their Charter granted in the third year of their Reign to the Inhabitants of the Province of the Massachusetts Bay Reserve to themselves their Heirs and Successors All Trees of the Diameter of twenty four Inches and upwards at twelve Inches from the ground growing upon any Soil or Tract of Land within the Province of Main or other of the Lands Granted to them which had not before been granted to any Private Person—That on the 19th of June 1730 Your Majesty granted Licence to Ralph Gulston of the City of London Merchant his Agents and Workmen to Search the Woods in the said Province of Main and Colonys of New England where the Property in any Woods or Trees and the right of Cutting them was reserved to Your Majesty as aforesaid and there to cut down so many good and Sound Trees as might Answer the Number and Dimensions expressed in a certain Contract therein mentioned—That by Virtue of the said Licence the Petitioner did as a Workman of the said Gulston by the direction and Order of Samuel Waldo of Boston in New England Merchant the Agent of the said Contractor Ralph Gulston enter into a Tract of Land which was part of the Woods within the said Province of Main and had not been granted to any Private Persons before the Date of the said Charter and did cut down Several Trees—That on the 4th of March 1733 one John Frost of Berwick in the said County of York Yeoman sued out a Writ of Attachment against the Petitioner and one Ephraim Joy (which last person

was not Served therewith) Commanding the Sheriff of the said County of York to Attach the Goods or Estate of the Petitioner and of the said Ephraim Joy to the Value of two hundred pounds and for want thereof to take their Bodys and them safely to keep so that he had them before the Justices of the Inferior Court of Common Pleas to be held at York with and for the said County of York on the first Tuesday of April then next to Answer to the Plaintiff John Frost in a Plea of Trespass for that the Defendants with the Assistance of others to the Plaintiff unknown with force and Arms some time in or about the Months of December January and February then last past had entered into and upon a certain Tract or Parcell of Land of the Plaintiffs and in his Possession containing five hundred and twenty Acres more or less Scituate in Berwick aforesaid and called Caroline Farm and bounded by the Marks and Trees in the said Writ mentioned or however the same was bounded in the Return thereof made to Charles Frost Esqr. deceased on Kittery Record appeared And then and there the Defendants in manner aforesaid had Cut down Seven Pine Trees of the Plaintiffs then standing and growing thereon of more than one foot Diameter Vizt. about three foot Diameter each Tree and each Tree of the Value of ten pounds Six of which Trees they had since haled away And had also cut down one other Pine Tree of more than one foot Diameter Value forty Shillings and four Beach Trees of more than one foot Diameter each Tree Value forty Shillings each and one Maple Tree and four Hemlock Trees of more than one Foot Diameter each Value forty Shillings each Tree and also twenty Beach Trees or Poles three Spruce Trees or Poles five Maple Trees or Poles and two Black Birch Trees or Poles under one foot Diameter and of the Value of twenty Shillings each Tree all which Trees were standing and growing on the said Land . . and other Enormitys the Defendants then and there had perpetrated and done contrary to your Majestys Peace and contrary to An Act of Assembly of the Province of the Massachusets Bay of the 12th Year of the Reign of Your

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Majestys late Royal Father Entituled An Act in Addition to and for rendring more effectual an Act for preventing of Trespasses which (as the Plaintiff alledged by the said Writ) was to his Damage two hundred pounds which should be made to appear with other due Damages—That the Sheriff of the said County attached a Horse and other things of the Petitioner and left a Summons for the Petitioner to Appear at the return of the said Writ which he did and put in his Plea thereto in writing wherein the Petitioner by his Attorney defended the force and Injury when &c. And as to the coming with force and Arms sayed that he was in no wise guilty thereof and of that he put himself on the Country And as to the Cutting down of the said Seven Pine Trees and haling away Six of the same and the Cutting down of the other Trees and Poles in the said Declaration mentioned the Petitioner said that the Plaintiff his aforesaid Action for the same ought not to have against him because of the said Charter to the Province and Licence to the said Ralph Gulston his Agents and Workmen both which the Petitioner Set forth as is herein before mentioned and made profert of the said Licence, And the Petitioner averred as before is Stated that he did as a Workman of the said Gulston by the Direction and order of the said Waldo his Agent enter into the aforesaid Tract wherein the said Trees and Poles grew which was part of the Woods within the Province of Main and had not been granted to any Private Persons before the aforesaid 7th day of October and cut down the said Seven Pine Trees the same having been first Viewed and allowed by David Dunbarr Surveyor as aforesaid and haled away Six of the same for Your Majestys said Service which said Trees then were of the Dimensions of upwards of three feet Diameter each Tree And on the aforesaid 7th of October were of the Diameter of twenty four Inches or upwards at twelve Inches from the Ground and did also cut down the aforesaid other Trees and Poles in the said Declaration mentioned in Order to the felling and carrying away the said Seven Pine Trees for Your

Majestys Service as aforesaid the Cutting down of which other Trees and Poles was absolutely necessary for that Purpose And this the Petitioner was ready to Verify wherefore he prayed Judgment if the Plaintiff his aforesaid Action ought to have against him—That the Plaintiff brought on his Cause at the said Inferior Court on the 2d day of April 1734 without ever replying or demurring to the said Plea which therefore as the Petitioner conceives was and ought to be taken as true and as admitted by the Plaintiff to be so and therefore was a full Bar to the Plaintiffs action But the said Inferior Court was of a Different Opinion and therefore overruled the same and called upon the Petitioner to make some other Plea but the Petitioner being advised that his Plea was a good Bar to the Plaintiffs Action and ought to have been allowed as such refused to put in any other Plea Whereupon it was considered by the Court instantly and immediately (without any Proof of the Plaintiffs property or any proof of the Supposed Damages or Value of the same or referring it to a Jury to enquire of the Plaintiffs pretended Damages) that the Plaintiff should recover of the Petitioner a particular Sum of one hundred and twenty one pound Damages and Cost of Court taxed at forty Shillings—That the Petitioner appealed from such Judgment to the Superior Court of Judicature and the Appeale came on to be heard before the said Superior Court of Judicature for the said County of York (by Adjournment upon the 19th day of June 1734 at which time the said Court declared as their Opinion that the Petitioners Plea containing Sundry matters of Fact tryable by a Jury should have Concluded to the Country or the Petitioner should have pleaded the General Issue and given the Special matter in Evidence And therefore the said Superior Court considered that the former Judgment of the Inferior Court should be affirmed and that the Plaintiff should recover against the Petitioner the Sum of one hundred and twenty one pound Damages and Costs of Suit taxed at four pound Eighteen Shillings From which Judgment Your Majesty was pleased by Your Order in

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Council of the 9th of July last to allow the Petitioner to bring this his Petition of Appeale to your Majesty in Council. [He therefore prays that the judgments may be reversed, and the money restored to him. The Committee recommend that the judgments should be reversed and the money paid restored to Leighton: that he should withdraw his plea and plead not guilty, and on the general issue be at liberty to give any special matter in evidence. At the new trial the evidence is to be reduced into writing and recorded with the verdict, and an appeal allowed to the King in Council.]

(1736.)

[*pp.* 179, 200, 217, 223, 419, 421-5.]

29 April.

[Order accordingly.]

[*p.* 438.]

(1738.)

21 Dec.

[Reference to the Committee of Leighton's petition complaining that the Governor, Council and Superior Court of Massachusetts Bay have refused to carry into execution the Order in Council of 29 April, 1736.]

[*VI. pp.* 66, 11.]

(1739.)

23 Feb.

[Committee report. The petition sets forth the order of 29 April, 1736. On 18 Sept., 1736, the petitioner's attorney produced it before the Superior Court of Massachusetts, where it was publicly read and ordered to be recorded, but consideration postponed till the sitting in June, 1737. On the third Wednesday in June, 1737, the petitioner's attorney by his written motion moved the Court to award execution against Frost] and also moved in writing that the said order might be observed and complied within all respects, the Petitioner being ready (as he had at all times been) to comply with what was thereby enjoined him to be done on his part And on reading such Motion the said superior Court made an Order declaring that as the Subject matter of that motion requiring the most Mature consideration, the Court would advise thereon until their next sitting That such Order of the Superior Court delayed the Petitioner another whole Year and at the said Inferior Courts next sitting for the said County of York on the third Wednesday of June 1738 the said Superior Court made another Order That having advised upon the said

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Motion till that term they did then in Answer thereto, say that in case the Action mentioned in the said Royal Order came upon Tryal again before that Court in the Method directed to, they should endeavour to do what to Justice appertained, but, as to giving an Order for an Execution against John as prayed for, that Court having considered the Royal Charter, together with the Laws of that province and the Constant usage and practice of that Court were of Opinion that they had no Authority to give Order for such an Execution; That the said Superior Court having thus taken near two years time to consider whether they would obey Your Majestys said order or not and having at length declared they could not pay Obedience to it the Petitioner had no other Resort in that Country, but to apply to Your Majesty's Governor there (who was particularly charged to take Notice of such Order and Govern himself accordingly). [Leighton therefore presented a petition to Belcher, setting forth the state of the case, and praying for the execution of the Order in Council.] Such petition was not addrest to your Majestys said Governor in his Council, but nevertheless the said Governor thought proper to lay the same before the Members of the Council in that Province (who are not of your Majestys Nomination but elected by the Assembly from time to time subject to the Governors putting a Negative on or rejecting any such Councillors) That the said Council on the 14th of September 1738 returned their Opinion upon the said Petition to the said Governor in writing, That as the said Leighton had layd Your Majestys Order therein mentioned before the Justices of the Superior Court and moved the said Court that they would award Execution for the One hundred and twenty one pounds Damage and four pounds Eighteen Shillings Costs and that your Majesty's said Order might be observed and complied with in all Respects and the said Court had given their Opinion that they had no Authority to give Order for such an Execution which Opinion was made matter of Record in the said Court and for as much as no Application

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had been made to the Governor, till after those proceedings in the Superior Court, the Council were of Opinion that, in those Circumstances it was not proper for the Governor to do any thing in that Affair that the said Governor was not content to guide himself meerly as by the Opinion of the said Council before whom he had layd the said Petition but in Order to shew his own Sence thereof he on the 18th of September 1738 with his own hand signed an Answer at the Foot of the Petitioners said Petition to him, that the there foregoing advice of his Council, being agreeable to his own Sentiments he was prevented from doing any Service in the Affair. [Leighton, considering that he is labouring to vindicate, at his own expense, his Majesty's right to the woods reserved for the Royal Navy, and that his Majesty's authority has been set at naught in this matter, prays for relief. The Committee, after hearing counsel on both sides, recite the order of 29 April, 1736, and recommend] that the same be forthwith and without delay carried into Execution And for the better Enforcing the said Order that Your Majesty may be pleased to Direct the said John Frost immediately to restore to the Petitioner the Money paid by him for Damages and Costs and that in Case he shall refuse to comply therewith the Superiour Court in the said Province do take the necessary Steps to Compell him thereto. And that your Majesty may be pleased likewise to Direct the Petitioner forthwith to withdraw his former plea in the Inferiour Court and to plead the General Issue not Guilty And their Lordships Do further humbly Report as their Opinion that as well the Inferior Court as the Superiour Court of Judicature in that Province may be required to pay due Obedience to Your Majesty's Aforementioned Order, as likewise to Your Majestys Order to be made hereupon And to Cause such Order as likewise the Aforementioned Order to be Recorded in the said Courts if they have not already Recorded the said former Order And that nothing may be wanting to carry Your Majestys Commands hereby Signified into due Execution Their



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Lordships are of Opinion that Your Majesty may be pleased to Order and require Your Governor of the said Province to Support Your Majestys Authority and to cause every particular herein contained to be without delay duly and punctually complied with. [VI. p. 113-118.]

[Orders accordingly.]

[VI. pp. 137-142.]

(1739.)  
22 Mar.  
(1743.)  
23 Mar.

[Reference to the Committee of the memorial of David Dunbar, surveyor-general of his Majesty's woods in North America, setting forth that the order in favour of Leighton has not been complied with, and] apprehending that if an Order from his Majesty in Council be immediately sent to the present Governor to put the said former Order in Council in force it will have so good an effect as to deter others from attempts of the like kind. [VIII. pp. 351-2.]

(1743.)

[Committee : the memorial is read, and consideration thereof postponed.] [VIII. p. 420.]

31 May.

(1743.)

Letter from the Clerk of the Council to the Governor of the Province of the Massachusetts Bay relating to the enforcing an Order in Council made upon the Appeale of William Leighton against John Frost.

21 June.

Sir,

Colonel David Dunbar Surveyor General of His Majestys Woods in North America has presented a Memorial to His Majesty in Council Setting forth that some of the Undertakers for supplying His Majestys Royal Navy with Masts Yards and Bowsprits in New England have been Sued there for cutting Trees by His Majestys Royal Licence by Proprietors of Lands on pretence that such Lands were private property before the Reservation of Pine Trees in the Charter granted to the Colony of the Massachusetts Bay by King William and Queen Mary upon which Suits Damages were recovered in the Courts there against the said Undertakers That upon hearing an Appeale brought before His Majesty in Council by William Leighton against John Frost the Judgments of the Courts in

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New England were reversed and the pretended proprietors were Ordered to repay the Money and Costs they had received and the then Governor Mr. Belcher and the Judges were directed to give due Obedience to the said Order in Council—And the said Memorialist Complains that the said Governor and Judges have refused to obey the said Order and that he Conceives such Opposition and Interruption may be of the most dangerous Consequence to His Majestys Service if not timely prevented Which Memorial having been taken into Consideration I am Commanded by the Lords of the Privy Council to transmit to You a Copy of the said Order in Council made upon Leightons Appeale dated the 29th of April 1736 and also a Copy of an Order in Council dated the 22d of March 1738 for enforcing the said former Order, and at the same time to Signify to You His Majestys Pleasure that in case the said Orders have not been already carried into Execution that You do Cause the same to be Complied with forthwith and without further delay—And You are to transmit an Account of Your proceedings herein to His Majesty in Council And in case the said Orders have been already carried into Execution you are then to transmit an Account thereof to His Majesty in Council—I am &c.

W. Sharpe. [VIII. pp. 452–3.]

18 June.  
Jamaica.

[346.] The Lords of the Committee this day took into their Consideration the State of the British Islands and Colonys in America And being attended thereupon by the Lords Commissioners for Trade and Plantations the Committee recommended it to them to draw out with all expedition a Particular State of each of the said Islands and Colonys, and also to cause an Abstract to be made of all the papers relating thereto which were moved for in the Addresses of the House of Commons of the 12th of May last And lay the same before this Committee together with their Opinion thereupon And the said Lords Commissioners were desired to begin first with the Island of Jamaica and to lay a State thereof before this Committee on Wednesday next at Seven o'clock. [p. 180.]