

640 ACTS OF THE PRIVY COUNCIL (COLONIAL).

1739. Neighbouring Colonys that they may have an Opportunity to Consider thereof and to Offer any Objections they may have thereto. [p. 384.]
- (1741.) 6 May. [Committee. A copy of the Board of Trade report to be delivered to the Secretary of the Trustees.] [VII. p. 49.]
- 6 Sept. [473.] [Reference to the Committee of the petition of Col. Nevis. Thomas Pym to be restored to his seat in the Council in Nevis, from which he was removed by the Governor for absence, though he was less than eight months away on his necessary and unavoidable occasions and no inconvenience whatever arose to his Majesty's service by reason thereof.] [p. 341.]
- 2 Nov. [Committee order the Board of Trade to lay before them an account of the reasons transmitted to them by Governor Mathew for removing Pym.] [p. 384.]
- 28 Nov. [Committee report for restoring Pym, as the Governor's reasons for removal are not sufficient. Pym's petition alleged that, had he gone from Nevis to Antigua to get the Governor's consent, he would have lost his voyage to England.] [p. 434.]
- 27 Dec. [Order for restoring Pym.] [p. 490.]
- 6 Sept. [474.] [Reference to the Committee of the petition of Charles Antigua. Dunbar, Surveyor-General of his Majesty's Customs in Barbados, Bermuda, and the Leeward Islands on behalf of his Majesty, Governor Mathew and himself, for a short day for hearing his appeal from a sentence of the Admiralty Court in Antigua, 25 July, 1738, in favour of Henry Webb, Esq., on behalf of James Coleman, on a libel exhibited by Dunbar for condemnation of the *Pretty Polly*, Timothy Carter, master, with her guns &c., for unlading contrary to divers statutes.] [p. 343.]
- (1740.) 6 June. [Committee order for hearing on 30 June, and, as no appearance has been entered to the appeal though two years have elapsed since the sentence, for affixing the usual summons for parties to attend.] [VII. pp. 92, 141.]

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[The Committee report that, as no appearance has been entered for the respondent, they have heard the appeal *ex parte*. The appeal sets forth that on 3 July, 1738, the *Pretty Polly* anchored in the harbour of St. John, Antigua, without notifying the Governor or the Naval Officer or any person authorized in that behalf, or giving them any inventory or bill of lading, and on 4 July landed goods contrary to the Navigation Acts; that the petitioner therefore seized ship, tackle and goods, and on 15 July exhibited a libel against her in a High Court of Admiralty at St. John; that on the usual process of the Court being issued, Harry Webb, Esqr., appeared on behalf of James Coleman and pleaded property in the vessel, and was given till 25 July to put in his plea, on which day he pleaded as proctor for Coleman that Carter did not unlade divers goods contrary to the true intent and meaning of the Navigation Acts.] To the Plea the Petitioner filed a General Replication And the Matter of the said Libel coming on to be heard before the said Court of Admiralty of Antigua The Petitioner proved by the Oath of Richard Jameson the Mate of the said Schooner the unlading of four Pipes of Spanish Wine from on Board the said Schooner by the express Order and Direction of the said Timothy Carty the Master and putting the same into a Ships Long Boat then lying along side the said Schooner and that immediately after the said long Boat Sailed away with the same towards a Neighbouring Bay in the said Island called Haddons Bay and that the said Schooner likewise immediately after having thus delivered the said Wine Weighed Anchor and Sailed for the South part of the said Island and the Defendants Proctor Admitted at the Tryal that no Entry at all had been made at the Custom House in Antigua nor any Report made to the Commander in Chief on the said Island by the Master of the said Schooner That the said Webb offered no Evidence on his part but his own Deposition and an Affidavit of Peter Hussey Merchant Sworn at Montserrat and a Certificate alledged to be from the Treasurer of Montserrat but of which

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no Proof was made and against reading which Affidavit and Certificate as also the Defendants own Evidence the Petitioner Objected at the hearing below insisting the same ought not to have been read But in which the Petitioner was overruled And the Petitioner therefore complains of there being read below and Appeales against the same insisting they ought not to be read on this Appeale as not being proper or Legal Evidence But in case the same could be read the Substance of the Claimants Deposition was that in November 1737 Sixty Pipes of Madeira Wine were imported into the Island of Antigua and consigned to him to dispose of on the Account and Risque of Bononi Hancock of London Merchant and that he then either paid or became Answerable to the Treasurer of Antigua for the Duty of all the said Sixty Pipes That not being able to dispose of so large a Quantity of Wine in Antigua he in January following exported five of the said Sixty Pipes and consigned them to Mr. Peter Hussey of Montserrat and that Hussey afterwards Sold one of the said Pipes which proved very indifferent and Hussey complained to him that the other four Pipes were altogether unmerchantable and writ to the Claimant to Order them up to the Island for that they were an Incumbrance on him but that afterwards on the Arrival of Henry Hancock (Son of the Person who Originally Consigned the said Sixty Pipes to the Claimant) into the Island the Affair was taken out of the Claimants hands That he often heard the said Hancock say Publickly that he would send for the said four Pipes of Wine from Montserrat and that he believed the four Pipes which had been seized by the Petitioner were the very same four Pipes he had Consigned to Hussey and said he was well perswaded no Fraud was designed by such Unlading because there could be no temptation to it for that he had heard both the Petitioner and the Deputy Collector Declare that if they had been applied to for leave to have Landed the said four Pipes they would have Separately granted it And the Substance of Husseys Affidavit was that the four Pipes of Wine lately sent

from Montserrat to Antigua in the Schooner Pretty Polly Timothy Carty Master were some of the Wines Consigned to him by the Claimant that the said four Pipes of Wine returned in the said Schooner Pretty Polly then under Seizure as he was informed were so bad and unmerchantable that he could not Sell them at Montserrat neither did he pay any Duty for the said four Pipes of Wine at Montserrat the Dutys being remitted by the Treasurer on Account of the Badness of the Wine in Support of which the Supposed Certificate from the Treasurer of Montserrat was produced That the whole of this Deposition Affidavit and Certificate (Supposing them to have been Legal Evidence and such as could have been read and Supposing they proved what they were produced for which the Petitioner insists they did not) would yet be no Justification of the Claimants Plea nor any Defence against the Petitioners Libel That on this Evidence on both sides the said Court of Admiralty was pleased to pronounce the following Judgment Vizt. Which Paper and Depositions being Considered by the Court and it appearing thereby that no Fraud was or could be Committed there being no sort of Goods on Board the said Schooner but the four Pipes of Sour Wine proved to be Delivered from on Board and it appearing also that those very Pipes had paid the Duty in this Island some time before of which one half was received or drawn back on their being Exported to Montserrat And it being also certain that no Duty could be Demanded for the said Wines (Supposing them not to have been heretofore imported into this Island) upon Oath made of their being Sour or Unmerchantable and such Duty if paid would be wholly remitted or returned on like Proof of their turning Sour or becoming Unmerchantable within one Month after their Importation And it also appearing that the said Wines were unladen from on board the said Schooner through Inadvertence or Ignorance and not with any fraudulent design it being done openly in the Day and off the Harbour of St. John And also that the several Officers would (had they been

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Applied to) have given leave to the said Master to have landed the said Wines without making the usual Entrys or paying the accustomed Dutys or Port Charges And it being a Rule even in the Courts of Common Law (where the Letter of Law is precisely Attended to) that Acts of Parliament are to be so Construed that No Man that is innocent or free from injury or Wrong be by a Natural Construction Punished or Damaged It is therefore the Opinion and Definitive Sentence of this Court that the said Schooner with all her Furniture and Apparel be acquitted and Discharged. [From this decision the petitioner appeals. The Committee recommend that his appeal be sustained, the ship and wine confiscated, and divided in the usual manner.] [VII. pp. 142-147.]

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10 July. [Order accordingly.]

[VII. p. 156.]

27 Sept.
Jamaica.

[475.] [Reference to the Committee of the petition of Jacob Mendez Guttirez, of Jamaica, merchant, surviving executor of Moses Guttirez, deceased, Judica Guttirez, his widow, and Jacob and Joseph Guttirez, his sons and residuary legatees, all of Jamaica, deceased, for a short day for hearing his appeal from a Chancery order of 20 Oct., 1738, dismissing the appellant's demurrers and ordering them to answer a bill brought by William Forbes and Sarah his wife for a discovery of the estate and effects of Moses Guttirez in order to their having their share thereof.] [p. 350.]

(1740.)

19 June. [Order in accordance with the Committee report of 13 June, that the order of the Court of Chancery be affirmed, and that the appellants pay to the defendants 20*l. stg.* costs. The appeal set forth that William Forbes and Sarah his wife, who was the daughter of Moses Guttirez, filed their bill in Chancery against the petitioners, and against Jacob de Castro, the other executor, since deceased, praying for a discovery of the estate and effects, and for a settlement] and that the said Forbes and his Wife might have a Share and Proportion thereof equal to the rest of the Children in the same manner