

1759.

[407.] [Reference to the Committee of the petition of Thomas Dering, of Boston, executor of Henry Dering, for a day for hearing his appeal from a judgment of the Superior Court of New Hampshire, 12 Dec., 1758, affirming judgments of 8 Dec., 1757, and 10 June, 1758, in his action against Thomas Packer of Portsmouth, N.H., for payment of a debt of 2,460*l.* and six per cent. interest due to Henry Dering, in good public bills of credit of Massachusetts Bay or current lawful money of New England secured by a bond in the penalty of twice the amount of the debt.] [p. 189.]

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New
Hampshire.

[Order is given in accordance with the Committee report of 10 July. The case arises from the depreciation of the many issues of paper money in the New England colonies. The appeal set forth] That no part of this Bond was paid 'till April 1744, when, and at several subsequent times untill April 1750, the said Thomas Packer made several Payments to the said Henry Dering upon account in old Tenor, money amounting in all to 3,110*l.* All which are regularly endorsed upon the Bond ; and it appeared by Calculation, that upon the 16 of April 1750, after allowance of the several Sums so paid the Principal Sum of 2,123*l.* 14*s.* 5*d.* old Tenor, remained due on the said Bond. That some time in the year 1750, the said Henry Dering died, having first made his Will and the Petitioner his Executor. That in February 1751, the said Thomas Packer offered the Petitioner some Paper Bills on the Credit of New Hampshire, which he alledged were of the value of 2,000*l.* and upwards Old Tenor, and some Bills of Credit on the Colony of Connecticut, pretended to be of 200*l.* Old Tenor value, and desired the Petitioner to satisfy himself thereout for what was due on the said Bond, but the Petitioner objected that as the Bond was payable in Lawfull money of New England or good publick Bills of the Massachusets (which New Hampshire and Connecticut Bills were not) he could not take the Bills offered without an allowance of the Discount for the difference between the value of the Bills tendered, and then the Current lawful money of New England or

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Massachusetts Bills, which at that time were of greater value than either those of New Hampshire or Connecticut, but the said Thomas Packer refused to allow the same, and desired the Petitioner to put the Bond in Suit. That the Petitioner apprehending his demand to be clear and reasonable, expected the said Thomas Packer would not have persisted in his refusal to satisfy him according to the Tenor of the said Bond, and therefore did not put it in Suit 'till November 1757, when he brought his Action of debt for 4,920*l.*, the Penalty of the said Bond (being of the value of 3,600*l.* Sterling) against the said Thomas Packer in the Inferior Court of Common Pleas in the Province of New Hampshire to which Action the said Thomas Packer pleaded Conditions performed, but as there was no Evidence or even pretence, that the Debt was paid, the Jury found a Verdict for the said 4,920*l.* Whereupon the said Thomas Packer moved to be heard in Chancery upon the forfeiture according to the Law of the said Province in such Case, which being granted, he pleaded a tender made in February 1750-1, and insisted that Interest ought to cease from that time, the Court allowed the said Tender, though made in Bills on the Credit of New Hampshire, not Current in the Massachusetts, and adjudged that Interest ought to cease from that time, and that the Petitioner should recover only 345*l.* 6*s.* 9½*d.* Bills of Credit of the said Province of New Hampshire, of the New Tenor, and 7*l.* 8*s.* like Bills for Costs of Suit, whereas in fact, upwards of 3,000*l.* lawfull money of New England were then due. [On appeal, the Superior Court gave the same judgment, and Dering then obtained a review in the same Superior Court, alleging that Packer] had made no legal tender of the money due on the Bond, the Condition whereof was to pay 2,460*l.* in good Publick Bills of Credit of the Massachusetts Bay or Current Lawfull money of New England with lawfull Interest on or before the 30 of January 1735. And that in February 1750-1 upwards of 2,460*l.* of said money was due, at which time Bills of Credit of Massachusetts were of greater value than any of the Bills

of Credit either of New Hampshire or Connecticut of the said Denomination or Tenor, because there was then in the Treasury of Massachusetts, Gold and Silver to Redeem said Bills, and the times of Redemption were by the Laws of the said Province fixed to begin in 1750, which was not the Case with respect to the Bills of New Hampshire or Connecticut. And the Petitioner further alledged, that the said Thomas Packer in fact never shew'd him one Bill of Credit either of Connecticut or New Hampshire, but only said he had such a Sum in those Bills; however the Petitioner insisted, that Bills of on Connecticut or New Hampshire, could by no means be a Legal Satisfaction of a Bond for Bills of Credit on Massachusetts, or lawful Silver money of New England, and a tender of ever so many of such Bills, could be of no Validity in this Case. That by the aforesaid Judgments of the said Courts, upon the Equity of the Bond, the Petitioner was not only aggrieved, by the allowance of such tender and the Stopping of Interest, as aforesaid, but also by a further allowance of the sum of 165*l.* old Tenor, which the said Court made upon the bare Oath of the said Thomas Packer that the Petitioners Testator Henry Dering was indebted to him in 165*l.* for three fourths of 220*l.*, which one Jeremiah Smith had paid to the said Testator upon his the said Thomas Packers Executing a Conveyance dated 28 January 1734-5 to said Jeremiah Smith and one William Nelson of certain Land in the Town of Londonderry in the said Province of New Hampshire (three fourths whereof the said Thomas Packer alledged to him) and for which the said Thomas Packer alledged that the said Testator had never made him any allowance, whereas the Petitioner insisted, that this Alligation was supported by no Evidence except Packers own Oath, and that this transaction, as well as the date of the said Conveyance, was prior to the date of the Bond given by Packer to the Testator, and that the Petitioner had never heard of this pretended debt 'till after the Commencement of the Action, and therefore the same ought not to be allowed. [The former judgments being

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affirmed, Dering appealed to his Majesty in Council, by whom it is now ordered] that all the said Verdicts and Judgments, except the Verdict and Judgment of the Superior Court of Judicature for the Penalty of the Bonds and Costs, be reversed And that the Item of 165*l.* claimed by the Respondent be rejected.—And that Interest ought not to stop. But that upon the Respondents paying to the Appellant within Six months after Your Majestys Order herein shall be Entered in the said Superior Court of Judicature in New Hampshire 1187oz. 14dwts. 20grs. of Silver (which is ascertained to be Equal to the sum of 2,197*l.* 7*s.* 11*d.* of the late old Tenor Bills of the Massachusetts Bay being the Principal Interest and Costs now remaining due on the said Bond, computed at the rate of thirty seven Shillings to the Ounce of Silver) together with the Subsequent Interest which at the time of such Payment shall become due on the Principal Sum of 1,349*l.* 11*s.* 5*d.*, to be paid in Silver, valued and Computed at the Rate aforesaid, he be relieved against the said Judgment and Penalty of the said Bond, and thereupon all Proceedings to be stayed and the said Bond delivered up to be Cancelled, and in default of such Payment within the time above-mentioned the Appellant is to be at Liberty to Sue out Execution upon the said Judgment for the same together with five pounds Sterling for Costs. [*pp.* 431, 435-9, 443.]

9 Nov.
Jamaica.

[408.] [Reference to the Committee of the petition of Dally Jackson Woodhouse of Jamaica, a minor, by Peter Woodhouse, merchant, his next friend, that the Council dismiss with exemplary costs for non-prosecution the appeal of Colin M'Kenzie from an order of the Jamaica Chancery, 23 Aug., 1758, on a bill filed by Woodhouse for an account of his mother's estate withheld from him by M'Kenzie.] [*pp.* 23, 193.]

(1760.)
5 April.

[Reference to the Committee of M'Kenzie's petition for a day for hearing his appeal from the above order and a Chancery decree of 4 May, 1756.] [*p.* 335.]

(1764.)
3 Aug.

[On the Committee report of 27 July, the order of 23 Aug., 1758, is reversed and further proceedings directed on the order