

ACTS OF THE PRIVY COUNCIL (COLONIAL). 277

§ 159 *cont.*]

1770.

[At the request of counsel on both sides, the appeal is ordered to stand over to a future day.] [IX. p. 338.] 26 June. (1772.)

[Reference to the Committee of Hardyman's petition for a day for hearing another appeal from a decree of the Chancellor, 11 July, 1767, in relation to the estate of James Lawrence.] [X. p. 318.] 8 Oct. (1773.)

[160.] [Reference to the Committee, and by them on 4 Dec. to the Attorney and Solicitor General, of the] petition of William Wharton, Joseph King, William feuilletau, Aretas Akers, Christopher Mardenbrough and Henry Seaton of the Island of St. Christophers Esquires complaining of several unwarrantable proceedings of the Assembly of the said Island in 1769, and particularly for having ordered the petitioners and Anthony Bryan (since deceased) to be taken into Custody and confined in Goal; and also complaining against Craister Greathead Esquire Chief Justice, and Alexander Douglas, Henry Bennett and Francis Phillips Assistant Justices of the said Island, for having on the 10th of April 1770 (in consequence of a Letter received from the Assembly) ordered Sundry Actions brought by the petitioners against James St. John Serjeant at Arms, and Henry Berkeley Esquire the Deputy Provost Marshall to be discontinued with Costs: [and praying that these orders be set aside and the actions brought to a fair trial,] that His Majesty will pass such Censure upon the proceedings of the said Assembly and Judges as in His Majestys great wisdom shall seem meet; And that his Majesty in Compassion to His Subjects of the said Island would give such directions as shall in future secure to them their Rights and Liberties. [pp. 485, 627.] 14 Sept. St. Christopher.

[Similar references of a like petition of John Gardiner. His actions were brought against John Fahie, Speaker of the Assembly, and were dismissed on 12 June, 1770, Douglas not being included among the judges. The Chancellor and Chief Justice have refused to discharge him although he has brought writs of *Habeas Corpus* returnable before them.] 30 Nov. and 4 Dec.

[pp. 605, 626.]

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1770. § 160 *cont.*]

(1772.) [Orders in accordance with the Committee report of 31 March,
22 April. agreeing with the Attorney and Solicitor General, who reported]
That the two first Articles in which the petitioners are immediately concerned are in a Judicial Course of proceeding, In the third they have no peculiar Interest, and in all the parties complained of are unheard. That by the Representations laid before Your Majestys Attorney and Solicitor General, exparte, and without hearing what may be alledged on the other side, the House of Assembly seems to have corrupted it's own Constitution by affecting a power which they have not, analogous, and coequal to that of the House of Commons in Great Britain under Colour of which they have Voted, that no member of the Council shall vote in the Election of Members of Assembly, in direct Violation of the Law for freedom of Elections ; That they have taken upon them to Declare a Seat in their Assembly void by their own Authority and to command the issuing of a new writ ; To swear in Members, to punish absent Members and Strangers by imprisonment ; to Declare privileges and Enforce them by punishment, and to Act by less than a legal Number of Members—These pretensions they have carried to such excess as to Imprison seven Gentlemen of their own Body, one of whom has lost his life by their violence, and when they sued out Writs of Habeas Corpus returnable before the Governor, and other such Writs returnable before the Court of Kings Bench and Common Pleas, the prisoners were not only denied redress in both Places, but the Counsel who argued for them were Imprisoned by the Assembly as for a Contempt of their House, and when Actions at Law were brought for such Imprisonment in the Court of Kings Bench and Common Pleas, the Assembly took upon itself to Command the Judges of that Court to Order a Discontinuance of such Actions with Costs to be paid by the Plaintiffs—That Your Majestys Attorney and Sollicitor General conceive it is manifestly unfit to give the petitioners any relief in this course, which may possibly be obtained by them in one more regular, But that they

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1770,

think the Order of Court that the several Actions brought by the petitioners should be discontinued with Costs to be paid by the plaintiffs was an Arbitrary proceeding, in which no Attention was had either to the Substance or forms of Justice, that the Record, if it should be thus unjustly corrupted could not be brought up in the common course of Appeal to Your Majesty so as to give the parties Injured Redress, and therefore they conceive it necessary to Justice and proper that an Order should be issued to the Court of Kings Bench and Common pleas to proceed as if no such undue Order had been made, and for that purpose that the proper Continuances should be entered, Or in case the several plaintiffs should be advised to discontinue and proceed anew that no such Irregular Interruption should be given to them for the future ; That the Authority of the House of Assembly to Imprison will then come directly in Question on those Actions, and they conceive it will be unfit to give any Directions or Express any Opinion which may prejudice the merits of a Question which may probably come before this Committee in its Judicial Capacity, But they think it may be adviseable for Your Majesty to give Instructions to the Governor of the said Island to keep his Assembly more within the legal Bounds of a provincial Council, and to hinder them from usurping Authorities inconsistent with the peace and good government of the Island.

[The law officers considered Mr. Gardiner's case precisely similar,] except only in one Circumstance, which is, that at the time of signing his petition he remained in the Common Goal, but as that would be over at the rising of the Assembly they thought it unnecessary to give any opinion on that Head especially as it would be impossible for Your Majesty to send over any Orders for his Deliverance without deciding upon the very point of the Actions which are now Depending between all the petitioners and the officers of the House of Assembly.

[IX. pp. 132-6, 171-3.]

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1770. § 160 *cont.*]
- (1772.) [Reference to the Committee of a Board of Trade report of
28 May. 21 May with a draft of the instructions to the Governor, and
also an address of the Assembly of St. Christopher to the late
Governor with their answer to a remonstrance presented to him
by Wharton and others similar to that presented to his
Majesty.] [IX. *p.* 266.]
- (1772.) [On the Committee report of 17 June, the instruction ordered
19 June. on 22 April is approved—P. R.] [IX. *pp.* 292, 315.]
- (1775.) [Reference to the Committee of Gardiner's petition for leave
5 April. to appeal from a judgment of the Court of Errors, 13 May,
1774, affirming a judgment of the Court of King's Bench and
Common Pleas, 15 March, 1773, in his action against St. John
for illegally imprisoning him.] [XI. *p.* 476.]
- (1775.) [On the Committee report of 21 June, the appeal is admitted,
30 June. and order given for allowing the petitioner properly
authenticated copies of all the proceedings. The appeal was
referred on 20 Sept., 1776, and on 10 April, 1777, was ordered
to be heard on 17 July.] [XII. *pp.* 31, 56 ; XIII. *pp.* 140, 428.]
- 19 Sept. [161.] [Reference to the Committee of the petition of
Pennsyl- Samuel Pike, merchant of London, and late of Cork,
vania. brother and heir of Richard Pike of Stoke Newington,
showing that he preferred a bill in Chancery in London
in 1757 against Richard's executors, Samuel Hoare and
Nathaniel Newberry, merchants of London, which bill was
dismissed in 1763 and the petitioner advised to try the matter
in Pennsylvania where the disputed lands lay: that on
30 Mar., 1769, the Supreme Court there, after refusing several
very material evidences, gave judgment against him: that
his counsel took exception to the verdict in order to appeal
to his Majesty in Council: and praying, that as he has not
yet received the proceedings of the Court of Philadelphia, he
may be permitted to prosecute his appeal even after the
expiry of the 18 months allowed by an act of Pennsylvania.]
[*p.* 488.]
- 30 Nov. [Reference to the Committee of Hoare's petition that Pike's
petition and appeal be dismissed with costs.] [*p.* 605.]