

72 ACTS OF THE PRIVY COUNCIL (COLONIAL).

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prizes taken in America during the time the Prize Offices were allowed to continue, *i.e.*, he held, till 24 June.

Read [201.] BERMUDA. *Complaints of E. Jones, Secretary and*
18 Aug. *Provost Marshal, against Governor Bennett.* (1) Petition, infor-
II. p. 448. mation and complaint (3 *pp.*); (2) 87 articles by way of
information and complaint (16 *pp.*).

(1-2) The Governor issues commissions and grants lands in his own and not the Queen's name.

(3-4) relate to his suspension of Jones and the grant of his offices to others.

(5) He has misapplied moneys raised by Act of Assembly, and has made John Davis, his private secretary, Treasurer of the island without taking any security.

(6) The Secretary's office has been rifled, and none of the original Acts of the island are now to be found.

(7) He had an Act passed granting a duty on liquors imported for two years only, discontinuing an Act of Gov. Day's time which contained no such limitation.

(8) No accounts of the receipt of powder-money have been allowed to be given to the public for several years.

(9) The Governor puts the public seal to commissions to privateers and others, which he does not record in the Secretary's office.

(10) He gives passes to persons leaving the island, for French Governors to use them kindly, promising to do the like to French prisoners.

(11) He allows French and Spanish prisoners to go about all over the island, and does not suffer the Provost Marshal to have charge of them.

(12) He embezzles the stores and ammunition, which he has taken out of the charge of the Provost Marshal, and entrusted to a sentinel of the Company of which he himself is captain.

(13) This sentinel, Daniel Ubanks, he has also made marshal of the Admiralty Court for trying pirates &c.

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(14) The Governor retains the rents of the glebe lands on pretence of keeping them for the next incumbent.

(15) When Mr. Robert Baron, the late minister, complained of this at home, the Governor and Council got numbers of the most scandalous persons in the island to swear debauches against him, although, on his leaving the island, the Governor and Council had given him a certificate of piety, good life and behaviour.

(16) The Governor is a great trader to St. Thomas, Curaçao and other foreign ports, to the prejudice of the Customs and of honest merchants.

(17-8) In Aug. 1705 he traded illegally with three ships bound from Lisbon to Virginia, which lay off the island.

(19) That in exchange for French prisoners sent to Martinique in a privateer he was concerned in, he brought back not English prisoners but brandy and wines : " who on the return of the said ship met with several of the Council on one of the small islands and drank to such a pitch of the said brandy and wines that they stripped themselves and danced naked before Mr. Holland, the minister, and would have burned their clothes and fired their guns (which must have alarmed the country) in the middle of the night, had they had fire with them."

(20) Vessels coming in for wood and water are allowed to trade on making the Governor a present.

(21-2) A sloop, which had merchandise belonging to the Governor on board, being plundered by the Spaniards, another trader brought an action, and in an unfair trial recovered the value for the Governor from the owner of the sloop.

(23) The Governor examines letters carried on board ships entering or leaving, and keeps back what he pleases, to the great prejudice of trade.

(24-6) He allows the soldiers of his Company, on giving him their pay, to keep public-houses &c. and never do duty but at a muster ; he suffers false musters ; he " discharges

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soldiers for money, which they generally raise by marrying the inhabitants, and when discharged leave their wives and children to take care of themselves."

(27) He encourages idlers to cheat the inhabitants and run into their debt by enlisting them in place of those he discharges; he has thus taken out of prison, *e.g.*, one taken up for clipping, one committed for felony, and one "in on execution."

(28) He keeps only seven or eight soldiers on duty at the forts, and uses two of the barracks as his private storehouses.

(29) A Justice of the Peace, a friend of the Governor's, having inherited a debt due from the Governor, was displaced without cause signified.

(30) By the Governor's orders, Mr. Minors, who acted as Secretary during Jones's suspension, removed the books from the Secretary's office, and "wrote fair in other books what was thought fit," but would not return the original books and papers nor make oath that the others were true records. In one case the new records did not correspond with an attested copy which Minors had formerly given to Lieut. Robert Henley.

(31) The proceedings of the Quarter Sessions have been removed from the Secretary's office. No copies are to be allowed without special orders from the Justices of the Peace—which have several times been refused.

(32) He has made Col. Anthony White Chief Justice. White was formerly arrested by Jones as an accomplice of pirates. He is believed to have married his mistress to his own son, and, when the latter resented it, sent him to England and had him kept in Bedlam as a lunatic till he died.

(33) In an action by White against his predecessor, Capt. Gilbert Nelson, for words spoken on the Bench, execution was stayed till the Lord Chief Justice of England's opinion was had; yet Nelson was committed to prison and has had his bed and provisions taken from him and been detained three years by order of the Governor.

(34) Chief Justice White, in order to oppress Nelson, has made an order that no prisoner may bring an action unless he first give security to pay costs and damages.

(35) John Dickenson, White's son-in-law, has been made a Justice of the Peace, although of very ill principles and an accomplice of the notorious pirate, Thomas Tue.

(36-42) Among the papers removed from the Secretary's office were records of proceedings against Daniel Smith, a known pirate, who had confessed to being with Capt. Avery when he seized the Mogul's ship. Smith was sent home with copies of the proceedings, but the captain of the ship on which he sailed was his cousin, the son of Col. White; and he did not deliver the papers. By order of Gov. Day, Jones had seized Smith's lands, and for this he was, on Smith's return, indicted by permission of Gov. Bennett, and Smith was made one of the jury who found the indictment. Bennett declined to allow further proceedings against Smith until the Secretary's office had been rifled. Col. White and Col. Walker, both uncles of Smith, were allowed to qualify as commissioners for the trial of pirates along with Capts. Richard Peniston and Thomas Harford, both great favourites of the Governor. Mr. Woodward, Register of the Court of Admiralty, was also turned out without cause shown and Mr. Minors appointed. Smith was then acquitted, and given a certificate to protect him from being prosecuted elsewhere.

(43) To strengthen his party, the Governor has by commissions granted in his own name raised a troop of dragoons of eight officers and 40 men. This is in any case a hardship to the rest of the inhabitants, "who are obliged to do duty and watch for those who are entered into the troop, whilst they are excused from all such service."

(44-5) The Governor grants commissions in the militia to seafaring men, which often protects them from being impressed. When these men go to sea, he regrants the commissions and so is able to oblige many of the inhabitants. More than 40 such commissions were granted in 16 months.

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(46) In this way and by commissions of the peace &c., the Governor has great power over the election of the Assembly. "The Governor issues out his writs directed to the Justices of each Tribe to choose four to serve as Assembly-men, the Justice himself (by the express words of the writ) not being exempted but liable to be chosen. At the day of meeting the Justice sets up or names one to the inhabitants as a fit person, who thereon sets up or names the Justice, who then sets up or names a third, who sets up or names a fourth. And all that are so set up or named are generally chose, so that of 36, which is the number of the Assembly, the Governor is sure to have 27 of his own commissioned officers or creatures, by which means he gets what he pleases passed and done in the Assembly, who administer an oath of secrecy to each other, so that whatever he proposes to them is past and done without any person knowing thereof."

(47-8) On 25 Oct. 1701 he issued a proclamation that no Justice of the Peace or Judge of Assizes suffer any affidavit to be made against any person till the person complained of had notice, so that he might be present—on penalty of being put out of the commission. In this way no complaint of oppression can come to a hearing in the island.

(49) In contempt of the Order in Council in Jones's favour, the Governor refused to reinstate him in his offices or to let Mr. Minors, the Secretary, and Mr. Greatbatch, the Provost Marshal, account to him for the profits of these offices since his suspension. So long as he was in the island, the Council and the Chancery Court were not allowed to meet, nor were any Assizes held.

(50-1) Writs of error have been several times refused—*e.g.*, to Jones himself. In 1700 Col. White and Thomas Smith (father of Daniel), whom he had arrested on warrants from Chief Justice Nelson, were acquitted of an assault on him ; and in Dec. 1701 he was sentenced to a fine and imprisonment for perjury—in bringing an action for assault against White and Smith and then swearing that White did not

strike him but held him while Smith beat him. The fine has been remitted by the Privy Council, but the Governor has always refused a writ of error, by which the scandal of the judgment should be taken off. This case "is the chiefest pretence that hath been made use of to support and carry on a seven years' prosecution against him."

(52) For signing a certificate in favour of Jones, Samuel Duffy, formerly of the Council and Justice of the Peace, was fined 50*l.*, and William Bryan expelled from the Assembly.

(53-5) The greatest part of the money raised in the island during the last seven years for fortifications and other charges has been spent in prosecuting Jones and others. The inhabitants have been further impoverished by the pay of the Assemblymen, and by making them travel from place to place to follow the adjournments of courts, Assemblies &c. Great taxes have been imposed for carrying on the prosecution of Jones, and persons imprisoned and their goods seized for failure to pay it.

(56-7) That the Sunday before Jones came away the Governor encouraged Davis to challenge him; and, if he had not privately left the town that evening, he had been waylaid.

(58-60) That the Governor granted a writ of *ne exeat regno* against one Capt. John Bayly, when at the same time he would hold no courts, and refused to accept undeniable security.

(61) The Governor holds a "Testamentary Court" monthly, wherein he hears by way of petition matters which are triable only at Common Law.

(62-4) He has appointed as Attorney General Thomas Burton, whom the Court of Quarter Sessions formerly declared incapable of holding any office. Capt. Matthew Newnam was prosecuted for having accused Burton to the Governor of bribery &c.; but, witnesses having been produced to prove justification, the case was adjourned from time to time till words were extorted from Newnam for which they fined him 100*l.*, for which he is now a prisoner, no further notice

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being taken of the original charge. At this trial Burton objected to ten out of the twelve jurors returned by Jones without showing any cause, and this he also does in other cases.

(65-7) Bennett's predecessor, Gov. Day, was detained in the island till he died, by Bennett's allowing him to be prosecuted there in several trifling and vexatious suits. When he pleaded the Act of Parliament for punishing Governors in England, the judge declared "that if the said Day would be tried by English laws, he must go to England for them, for they would try him by their own laws." Day was fined 50*l*. "for speaking the following words as pretended, viz. 'Christian is a conjurer, Clipp Castle is another, and so is Ambition the Christian's brother.' " The minister, Mr. Baron, was reprimanded by the Governor for praying with Day when he was sick, and durst not visit him but by stealth.

(68-70) Mr. Larkin, who was sent out to settle the Admiralty Courts for trying pirates in America, was closely imprisoned for several months, and no letters allowed to pass to or from him. He died from the effects of this soon after an order had been received for his release. While he was in the island, no Admiralty Courts were held. The warrant for his imprisonment was said to be granted by the Governor and Council, but nothing appears thereof in the minutes of Council delivered into the Secretary's office. Bennett "held his sword to the breast of one of the Queen's slaves, a mulatto, and who lived as a servant to the Governor, threatening to run her through if she would not swear a rape against Mr. Larkin, and because she refused to do it had her publicly whipped."

(71) Thomas Barrow, having a dispute with the master of a ship which was to carry him to Jamaica, said that he did not question but to have justice done him when he came to Jamaica. For this he was imprisoned and fined 40*l*., and such a character of him was given to the Governor of Jamaica that he would not let him practise at the bar.

(72) On the death of Capt. Sandys, Lieut. Robert Henley waited on the Governor to write in his favour for the Queen's Independent Company of soldiers. For words said to be spoken on the Governor's announcing that he meant to have it for himself, Henley was imprisoned for twelve months and his wife and five children almost starved. On his release, he and his family were drowned on their way home to England.

(73) On the trial of Capt. Gilbert Nelson for proceedings whilst he was Chief Justice, he proved, by the Council Book and his commission, that the witnesses against him had sworn falsely; yet the Governor allowed the same persons to act as his judges in subsequent cases.

(74) Dr. Josiah Starr has been persecuted since an action of assault was brought by him in 1701 against Jeremiah, brother of Daniel Smith, the pirate. He was repeatedly made to give security without being brought to trial till 1704, when a worthless person made oath that he had heard the doctor read a letter saying that an account should speedily be given of the recent protection of villainy, perjury and roguery in the island. The doctor offered to prove a copy of his letter, which did not contain such words; but he was found guilty and sentenced to be whipped by the common hangman, and accordingly received 39 lashes on his bare back before the Governor's window, where he and the Council stood to behold the same. They "kept him tied to a post above an hour with his naked back in the scorching sun, while they contrived an order (grounded upon a sham information) for breaking open and rifling the said Doctor's study and taking away his papers. On his attempting to secure a writ of error to have the sentence of whipping reversed, the persecution was resumed from July 1705 to June 1707, and he was continued in prison from assizes to assizes without trial.

(75) John Woodward, (the former Register of the Admiralty Court), was similarly kept in prison for near two years

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without trial, while his wife and four children were starving. Attorney General Burton had alleged that Woodward said to him that he (Burton) led the Governor by the nose.

(76) Jones contrasts with the treatment of Dr. Starr and others the Governor's admission to bail of an Indian fellow, belonging to Thomas Smith, who had been committed by the whole bench of justices.

(77) The only window for air on the side of the prison where the wind commonly blows in summer was stopped up by the Governor in the midst of summer, and the door of the small room in which Nelson, Starr, Newnam, Woodward and others were confined kept close locked.

(78-9) Generalised from the foregoing cases.

(80) On the oath of Richard Peniston that Adam Baldock was drunk and drew his sword upon him, the Justices, without indictment, information or jury, had Baldock publicly whipped in open court. After this, he took the first opportunity to leave the island with his family.

(81) In face of the Court of Quarter Sessions, Daniel Serogham, a favourite of the Governor, assaulted Samuel Harvey, formerly a Councillor and Judge. Harvey complained, but was himself fined and bound over to the next Quarter Sessions, and so from one sessions to another for a considerable time.

(82) Thomas Dunscomb having been fined 40s. by the Justices for insulting words to Mr. Holland, the minister, a fee of 12s. was levied from him by distraining and selling a slave, but no surplus was returned.

(83) "The Justices make a trade of summoning people before them upon every trivial occasion, and take 11s. or 12s. commonly for hearing every paltry matter."

(84-5) After the order for Larkin's release, Bennett got a petition for his longer continuance in the government signed by calling out the militia and bringing each man to the drumhead to sign in his presence. "Such as refused were reprimanded and threatened, and several have since felt his displeasure."

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On a later occasion he got his petition signed by calling all the inhabitants of each tribe to appear at their respective churches to give an account of the number of persons in their families.

(86) The Governor keeps immoral servants, drinks to excess &c.

(87) The Governor has caused a heavy tax to be levied—in truth for carrying on his prosecution of Jones; and has promised thereout 500*l.* besides expenses to Col. White and George Tucker, whom he has sent to England.

[202.] JAMAICA. *Hutchins v. Russell*. Petition of J. Clarke; 18 Aug.
and Order of reference. II. p. 570.

[203.] NEWFOUNDLAND. *Supply of powder*. Admiralty 10 Sept.
memorial *re* Capt. Clifton's accounts. II. pp.
570-1.

[204.] BARBADOS. *Mackaskell v. Robinson*. Petition of 11 Oct.
N. Mackaskell; and Order of reference of 17 Oct. II. p. 571

[205.] NEW HAMPSHIRE. *Military Stores*. B. of T. repre- 8 Nov.
sentation for sending stores for the inhabitants, who are much II. pp.
weakened by the attacks of the French Canadians and frontier 571-4.
Indians;—the stores to be issued by the Governor only as
necessary defence requires, and regular accounts to be
transmitted. Fort William and Mary, near finished by
Col. Romer when recalled, is the most considerable place of
strength in the province. Romer then offered to have it finished
for 100*l.*, but he now judges 200*l. sterling* necessary to finish
it with barracks and a guardhouse. If this be granted, the
Governor should be directed to exhort them to provide for a
sufficient guard to be regularly kept in the fort, and also to
take care that the powder duty be duly paid in kind. The
agent's proposals for sending 200 disciplined men to do duty
in the fort, for a fourth rate man-of-war to cruise off the
Eastern coast, and for packet-boats to be set up for the
continental colonies as they are for the islands, were not con-
sidered, the Board deeming the ships of war usually appointed