

# Appeals to the Privy Council

## Calendar of State Papers Colonial Series

BAR\_1685\_01

Appeal of Wytham

Barbados

*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1898), no. 1890, p. 694–713:

<b>Oct. 10.</b>	<p><b>1890.</b> Minutes of Council of Barbados. Present: Sir Richard Dutton, Henry Walrond, Thomas Walrond, Edwyn Stede, John Peers, Robert Davers, Francis Bond, Sir Timothy Thornhill, Bart. The Governor having inquired into the administration of the Government by Sir John Witham in his absence, propounded seven queries to the Council:— 1. Did Sir John Witham on taking over the Government take any oath for the due execution of his office at the Council Board? <i>Answer.</i> — He did not, and being asked by certain members if he had, refused to reply, and said it was not their business to inquire. 2. Did he take the Oaths of Allegiance and Supremacy, sign the test, take the sacrament, and take the oath to observe the Acts of Navigation? <i>Answer.</i> — He took the two first oaths and signed the test, but we know nothing of the rest. 3. Did you ever ask him if he had taken these oaths? <i>Answer.</i> — See our answer to the first query. 4. Did he not assume the style of Lieutenant-Governor on all occasions and use it in official documents? <i>Answer.</i> — Shortly after your departure he did, as the Council-book shows. 5. Did he not refuse to allow the members of Council free debate and vote in the Court of Chancery and at the Council Board, declaring that he would do what he thought fit, notwithstanding their opinions? <i>Answer.</i> — He did so, and William Beresford, one of the Deputy Registrars of the Court of Chancery, advises us that Sir John Witham in his own room altered certain orders and decrees made by consent of the Council in the Court. 6. Did he not alter certain orders and decrees of the Court? <i>Answer.</i> — See our reply to the last query. 7. Do you think that the expenses of his Government have been such as to merit the reward of half my salary, which was granted him by the King? <i>Answer.</i> — He continued his usual thriftiness and good husbandry throughout his Government.</p>
	<p>Whereupon His Excellency suspended Sir John Witham from the Council and from all public employment in the Island. [<i>Col. Entry Bk., Vol. XI., pp. 549–554.</i>]</p>

*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1898), no. 2023, p. 740–757:

<b>Dec. 26.</b>	<p><b>2023.</b> Sir Richard Dutton to Lords of Trade and Plantations, Immediately after my arrival I sent to you as just a state of the Island as I then found it in, which I hoped would be in accordance with my expectations of the gentleman whom I left here as deputy. But to my great trouble I was surprised by complaints of the Council of his great insolence to them and his oppression towards all others wherever his profit or</p>
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	<p>ambition were interested. On their daily complaints I offered some queries to the Council, whose impartiality I could trust, which have doubtless been before you some time; and I hope that I have been approved for suspending Sir John Witham not only from the Council but from all public employment in this Island. Since then the complaints against him have grown so high that I could not in justice to myself and the oppressed people suffer him to run on in his opinion, which he has often impudently declared, that he was not accountable to me for anything that he had done during the period of his government, as he called it. I thought it time to exert my authority speedily, and to let him and all men of whatever quality know, that if they dare to commit any illegal act in my government, I shall not want the resolution to punish them. By the advice of the Council I issued a warrant to the Provost Marshal to take him into custody till he gave security to appear at the next Grand Sessions, to answer such charges as might be preferred against him; which he accordingly did. I then consulted the lawofficers as to the most proper method of his prosecution, and delivered them articles which they reduced to three indictments, the first two for high crimes and misdemeanours, and the third for bribery, all of which were most clearly proved. To prove that I had no personal animosity against him, I declined to hold the Sessions in person, but issued a commission that he might have no ground of complaint that I had overawed juries or witnesses. I assure you that no man was ever heard with greater patience nor had greater time and liberty to justify himself (as he freely confessed at the close of the trial). He made all the trifling, evasive, dilatory pleas that he could, and thus took up five full days, which was the limitation of the Commission, before the trial could be ended and judgment passed against him. I was therefore obliged (as there were several indictments in the Grand Jury's hands) to issue a new Commission immediately after the trial and before the adjournment of the Court, and continue the Commission till the latter end of January. The Court will sit again on the 14th January. when there are seven pirates to be tried, five of whom were sent in chains from Carolina. I have transmitted true copies of the indictments, verdicts and judgments passed on Sir John Witham, so I need not heap a greater weight of crimes on him, though I could add many more.</p>
	<p>I cannot but remind you of the constant prejudice to the King's service from want of members of Council to make up a quorum. Had not Colonel Stede at terrible hazard to his life left his sickbed to go to Court I should hardly have been able to continue the Sessions. I have now to beg that out of the fine of 5,000<i>l.</i> levied on Sir John Witham, the King will grant enough to this Island to buy forty iron whole culverins, with carriages, for the forts which I have lately built. This is the only charge to which this country ever put His Majesty in this kind. Sir John Witham says confidently that though he be fined many thousands here yet one thousand in England will not only clear him of the other ten but also of his imprisonment. For all his confidence I shall this week estreat the fine of 5,000<i>l.</i>, and use all endeavours to find effects to levy it on. I have sent an exemplification of the estreatment to the Lords of the Treasury, with the names of his correspondents in London, for he will remove the money from their hands unless care be taken to prevent him. I have made a discovery of several outstanding debts due to James Holloway, who was lately executed for treason. They amount to four or five hundred pounds, and I have asked for the directions of the Treasury thereon. I shall not trouble you with repetition of</p>

	the constant business entailed by the maladministration of this high criminal, Witham. I ask not for reward, but only that I may not be discouraged. I have no salary nor perquisites paid to me, and have to borrow money at interest to support myself and family. Everything is dear, and nothing to be had but for ready money. <i>Signed</i> , Ri. Dutton. 2½ pp., <i>closely written</i> . <i>Endorsed</i> . Recd. 13 March. Read 17th. [ <i>Col. Papers, Vol. LIV., No. 128, and Col. Entry Bk., Vol. VII., pp. 266–270.</i> ] <i>Annexed</i> ,
	<b>2023.I.</b> Copy of the indictments against Sir John Witham. <i>First indictment</i> .— 1. For not taking the oaths for due administration of the Government. 2. For eluding the Statute of Navigation by not taking the oath. 3. For imposing unusual oaths on the Council. 4. For denying the Council freedom of debate in Chancery. 5. For rasing and altering the records of the Chancery Court out of Court. <i>Verdict</i> .— Guilty. <i>Sentence</i> . — Fine of 3,000 <i>l.</i> <i>Second indictment</i> .— 1. For taking the title of Lieutenant-Governor without any commission. 2. For appointing a special Court of Sessions by an unwarrantable commission in a matter in which he himself was concerned. 3. For appearing in the Court of Common Pleas in his own cause and overawing counsel and the jury. 4. For false imprisonment of one Richard Lintott, and (5) of Richard Alford. 6. For illegally ordering a forcible entry. <i>Verdict</i> .— Guilty. <i>Sentence</i> .— Fine of 3,000 <i>l.</i> <i>Third indictment</i> .— For bribery. <i>Verdict</i> . — Guilty <i>Sentence</i> . — Imprisonment during the King's pleasure and fine of 5,000 <i>l.</i> 3 pp. <i>Endorsed</i> . Recd. 12 March 1684/5. [ <i>Col. Papers, Vol. LIV., No. 128 I.</i> ]

*Calendar of State Papers Colonial, America and West Indies, Volume 12: 1685–1688 and Addenda 1653–1687*, J.W. Fortescue, ed. (London, 1899), no. 94, p. 8–27:

<b>March 27. Whitehall.</b>	<b>94.</b> Order of the King in Council, referring the petition of Sir John Witham to Lords of Trade and Plantations for report. <i>Signed</i> , Wm. Bridgeman. 1 p. <i>Endorsed</i> . Recd 28 March 85. <i>Annexed</i> ,
	<b>94. I.</b> The petition referred to, addressed to the King and the Committee. By Royal Warrant of 10 December 1682 the Lieutenant-Governor was granted half salary and perquisites during the absence of the Governor on leave. I administered the Government during Sir Richard Dutton's absence, not without marks of the Royal approbation, including appointment to hold first rank in the Council of the Island. No sooner, however, did Sir Richard Dutton return, than he sent to me an overture that I should assign my half salary and perquisites to him, and, on my refusal, resolved to force me. He thereupon summoned and examined some thirty persons for any information that he could obtain against me, and framing thereon three charges, committed me to the Provost Marshal till I should find bail. Three several indictments were then prepared against me, wherein were contained several frivolous matters not mentioned in the warrant of commitment, whereof copies were refused to me. Nor was I even allowed counsel, but was required to plead at once, or have judgment entered against me. I pleaded that your Majesty and the Committee were my only proper judges in matters of maladministration, but the plea was not admitted. Though I was so ill that I nearly died in the Court, I was obliged to defend myself; my

defence was ridiculed and omitted to the jury; my judges were many of them my accusers; and I was found guilty, and fined eleven thousand pounds, a sum not only impossible for me to pay, but altogether disproportionate to the alleged offences. I appealed to your Majesty in Council, but no notice was taken; and I was committed, ill as I was, close prisoner to the Provost Marshal, till I should pay the two fines of three thousand pounds apiece. The other fine of 5,000*l.* was imposed on the suggestion that I had taken a negro girl for a bribe, though there was but one witness, and that of illfame, yet on the 26th December, 1684, I was summoned before the Court of Exchequer to shew cause why I should not pay it. I offered sundry matters in plea of abatement, but in vain. Judgment was given for the levying of five thousand pounds on my estate, and a *fieri facias* immediately issued for the purpose. I beg that my case may be enquired into, that true copies of all the proceedings may be allowed to me, that I may be released from prison, and further proceedings against me stayed pending the enquiry. *Copy. 5 pp. Inscribed. Read in Council 28 March 1685. [Col. Papers, Vol. LV., Nos. 73, 73 I., and (under date 26 March) Col. Entry Bk., Vol. VII., pp. 288–289, and 310–314.]*

*Calendar of State Papers Colonial, America and West Indies, Volume 12: 1685–1688 and Addenda 1653–1687*, J.W. Fortescue, ed. (London, 1899), no. 95, p. 8–27:

**March 27. Whitehall.** 95. Order of the King in Council. Approving the following report of Lords of Trade and plantations; and directing Lord Sunderland to prepare a letter accordingly. *Signed*, Wm. Bridgeman. *The Report*. Since our report of 13 January (*see preceding volume*) we have received further particulars of Sir Richard Dutton's proceedings towards Sir John Witham, the queries that he addressed to the Council and their answers (*see preceding volume*), and the three indictments preferred against him. We have received no letters or papers in his defence from Sir John Witham since his trial, nor the plea in answer to the indictment, which ought to have been forwarded by the Secretary; but we cannot omit to point out that the Chief Judge appointed by Sir Richard Dutton for the Sessions was Henry Walrond, whom Sir John Witham had dismissed from the post of Lieutenant-General. On the whole we do not think that Sir Richard Dutton has done well in calling to account in this manner one who has borne the chief command on the Island, but since matters have gone so far, and Sir John Witham has appealed to Your Majesty, we advise that all orders for execution against him be suspended and all issues superseded, and issues superseded, and that if execution in any case be actually passed, restitution shall be made to him; that meantime he be set at liberty and have his papers restored to him, and that he be allowed to appear here himself or by counsel as he shall prefer, and to send over all documents necessary for his defence; also that Sir Richard Dutton send more particular and authentic account of the facts and evidence against Sir John, and that he be forbidden to reverse Sir John Witham's decrees in Chancery on any pretended defect of authority. *Dated*, Council Chamber, 17 March 1685. [*Col. Entry Bk., Vol. VII., pp. 271–279.*]

*Calendar of State Papers Colonial, America and West Indies, Volume 12: 1685–1688 and Addenda 1653–1687*, J.W. Fortescue, ed. (London, 1899), no. 439, p. 99–114:

<b>Oct. 31. Council Chamber.</b>	<p><b>439.</b> Lords of Trade and Plantations to the King. We have examined the case of Sir John Witham on one side and Sir Richard Dutton and Mr. Henry Walrond on the other. We find that in spite of the Royal orders, Sir Richard was unwilling that Sir John should receive the half salary, and gave him to understand that, unless he resigned it, it would be the worse for him. Sir John refusing, Sir Richard suspended him from the Council. Then came the trial before Grand Sessions. We find that Sir Richard did force Sir John to come into court, on pain of forfeiting his recognizances, though he could not do so without endangering his life. Three indictments were preferred against him on matters for which Sir John was accountable to Your Majesty and to no other person whatever. The first indictment was that he had undertaken the government without taking the oaths; which Sir Richard should have administered to him before he left the Colony. Sir John has proved to us that he was refused copies of this and of the other indictments, and that his plea taking exception to the jurisdiction of the Court was rejected. Of the second charge, of assuming the title of Lieutenant-Governor, Sir John has acquitted himself, proving that he was so styled by the King and by this Board. Sir John has also acquitted himself of the third charge, of bribery, and has proved to us that he was refused the liberty of appeal to Your Majesty. We find also that Henry Walrond, a person whom Sir Richard Dutton had shortly before represented as unfit to serve Your Majesty and whom Sir John Witham had dismissed from the post of Lieutenant-General, was made chief Judge for the purpose of the trial. We conclude therefore that the proceedings of Sir Richard Dutton and Henry Walrond are altogether violent and malicious: and we recommend that Sir John Witham be restored to all his dignities, that the fines imposed on him be wholly remitted, and that he may have leave to take his remedy at law against Sir Richard Dutton. <i>Signed</i>, Jeffreys C., Rochester, Clarendon, C. P. S., Sunderland, Craven, Middleton. [<i>Col. Entry Bk., Vol. VII., pp. 348–352.</i>]</p>
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