

1726-7.

William Gordon, clerk, from a judgment of the Governor and Council as a Court of Errors, 16 Mar., 1725, affirming a judgment of the inferior court in favour of Gelasius MacMahon, Lowther's attorney, be dismissed with exemplary costs for non-prosecution.] [p. 289.]

[Committee recommend that as nothing has been done since the appeal was admitted seventeen months ago, it be dismissed with 5*l.* costs.] 14 Dec. [p. 292.]

[Order accordingly.] [p. 315.] (1727.)

8 Feb.
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16 Jan.
Connecticut.

[112.] [Reference to the Committee for Appeals of the petition of John Winthrop of New London in Connecticut, only son and heir of Major-General Wait Winthrop of Boston, and nephew and heir of the Hon. Fitzjohn Winthrop, late Governor of Connecticut, and grandson and heir of the Hon. John Winthrop, also Governor of Connecticut, that he may have leave to appeal from two sentences of the Superior Court on 22 Mar. last in favour of Thomas and Ann Lechmere relating to the real estates left the petitioner by his said ancestors, and that an Act to empower Thomas Lechmere to dispose of the petitioners' real estates may be repealed and all proceedings upon new actions lately commenced against the petitioner for the rents and profits thereof stayed till his Majesty's further order.] [p. 297.]

[Reference to the Committee for Appeals of Winthrop's petition] Containing Severall articles of Complaint against the Governor and Company of the said Colony of Connecticut and praying that the Charter Granted to them by his late Majesty, King Charles the 2d. may be recalled for their great abuse of the Power thereby vested in them. 8 Feb. [p. 319.]

[Committee recommend that the appeal be admitted on giving the usual security in 100*l.*] 18 Feb. [p. 330.]

[Committee recommend that a copy of the complaint be transmitted to the Governor and Company and their answer 18 Feb.]

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required before 1 December. Service of the order and copy of the petition on Jeremiah Dummer, the agent for Connecticut, is to be deemed good and sufficient service thereof.]

[p. 330.]

28 Mar. [Orders accordingly.]

[pp. 338-9.]

13 May. [Reference to the Committee for Appeals of Winthrop's appeal and petition for a speedy hearing.]

[p. 357.]

21 Nov. [Committee for Plantation Affairs. A memorial of Charles Lechmere, agent for Thomas and Ann Lechmere, asks delay till June as they are in want of several papers and proceedings from New England, but Mr. Winthrop's solicitor offering to let them have copies, the hearing is fixed for 14 Dec.]

[Geo. II. Vol. I. p. 186.]

16 Dec. [Committee for Appeals. The appellant's counsel heard: the respondents to be heard next Wednesday.]

[p. 193.]

20 Dec. [Committee for Appeals consider the petition which] Sets forth (amongst other things) the Charter of Incorporation granted to the said Province by King Charles the Second on the 13th of April in the 14th Year of his Reign by which the Lands of the said Colony are held of the Crown, as of the Mannour of East Greenwich in Kent in Free and Common Soccage, and the Laws which they are Empowered to make are to be wholsom and reasonable and not contrary to the Laws of England, and that the Petitioner was possessed and Entituled to a very Considerable Real Estate in the said Province as heir at Law to his said Father Wait Winthrop, and his Uncle the Honourable Fitz John Winthrop both deceased, that his said Father Wait Winthrop Dyed Intestate leaving Issue only the Petitioner and one Daughter Anne who was preferred in Marriage in her Fathers life time to Thomas Lechmere of Boston aforesaid Merchant, and that on his said Fathers Death he became Entituled to all his real Estate whereof he Died Seized in fee as his Heir at Law, and that on the 21st of February 171 $\frac{7}{8}$ at the Court of Probates held for

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the County of New London in Connecticut Letters of Administration was Granted to the Petitioner of the Goods, Chattells Rights and Credits of his said Father and he Entered into Bond to the Judge of the said Court of Probates in Three thousand Pounds Penalty with Condition for his making a true Inventory of all and Singular the Goods Chattells and Credits of the said deceased and Exhibitt the same into the Registry of the said Court of Probates and truly to administer the same according to Law—But the Petitioner having paid and advanced to and for and on account of the said Thomas Lechmore than the said Anne his Wifes share of the said Intestates personal Estate come to the Petitioners hands amounted to, And the said Thomas and Anne Lechmore having possessed most part of the said Wait Winthrops Personal Estate and not having required the Petitioner to Exhibit any Inventorys or account of his Administration and the Petitioner having Discharged all his said Fathers Debts Save only one Bond of Debt for three hundred Pounds on which he duly discharged all Interest and would have paid of the principall but the Obligee declined accepting the same, The Petitioner did not for these reasons think it necessary to Exhibit any Inventory or account of his said Administration. But in order to Ruin and oppress the Petitioner Six Years after the said Letters of Administration so Granted to the Petitioner, Vizt. in July 1724, the said Thomas Lechmere applied to the Court of Probates Insisting he was in Right of his Wife Entituled to a proportion of the said Wait Winthrops real Estate but that he was kept thereout by the Petitioner not having Inventored and Administered the same and caused the Petitioner to be Summoned by the Court of Probates to shew cause why he neglected to Inventory the Intestates Estate and finish his Administration according to his Bond upon which the Petitioner Exhibited an Inventory of the said Intestates personall Estate in the said Court of Probates and the Petitioners at the foot thereof insisted Administrators had nothing to do with Lands they belonging to the Heir

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at Law and that he was in possession thereof as his right of Inheritance according to the Law of England, and therefore he was not obliged to Exhibit any account of the real Estate that not being Cognizable by a Court of Probates and which Inventory the Petitioner prayed might be accepted and Recorded but the Court declared they were satisfied the same was not a true and perfect Inventory of all the said Intestates Estate within that County and that the Petitioners Objections were against Law and Decreed that the said Inventory should not be admitted and refused to accept it as such an Inventory of the Intestates Estate as ought to be Exhibited, and the said Thomas Lechmore in the same July put the Petitioners said Administration Bond in Suit against him and at the same time in his own Name and the Name of Abell Wally brought another action against the Petitioner as they had been Suretys for him in an Administration Bond for his duely Administering the Intestates Estate in the County of Suffolk in the Massachusetts Bay, Alledging such Administration Bond had ~~been~~ sued and recovered from them on account of the Petitioners not having Exhibited an Inventory or brought in his Administration Accounts, And the said Thomas Lechmore also at the same time brought four Severall Writts of partition in his own Name and in the Name of his Wife Anne Stiling her only Daughter and Coheir of the said Wait Winthrop. to recover from the Petitioner one third of the real Estate in the said Writts mentioned insisting the said Anne was Coheir thereto with the Petitioner, and as such by the Law of the Province She was Entituled to one third of the said real Estate and that on full and fair hearings the final Judgments in all the said Six Actions were given for the Petitioner That it thus appearing the Petitioners Inheritance could not be Splitt and tore to peices by the common ordinary means of Justice (as the Law was then understood, some more irresistable way was to be found out to oppress the Petitioner, and for that purpose the said Thomas Lechmore preferred a Petition to the General Assembly in 1725, in the Name of himself

and his Wife Setting forth the said Severall Judgments given against him and that they were never likely to recover of the Petitioner one third of the said real Estate tho' the same descended as they alledged to the said Anne and the Petitioners as Coheirs of their Father without the aid and Relief of that Assembly, and that either by the Insufficiency of the Diction of the Law of the Colony already made or by the Courts Sense or Exposition thereof for they had no Remedy by the Common Law as appeared by the said Judgments against them, nor could have any remedy by the Court of Probates for that the Petitioner refused to Inventory the Real Estates, and as the Law of the Colony had given them a Right to one third of the Premisses it was not consistent with the Honour of the Colony by that the Government would afford some indisputable Method for their obtaining their said right, and to that end they prayed the Assembly to Sett aside the said Judgments and to grant a new Tryal wherein they might Notwithstanding the Exposition of Superior Court upon the Law will support their said Actions of Partition which Petition tho' of so very Extraordinary a Nature the Assembly received and ordered the Petitioner to attend to answer the same. That the Petitioner put in his answer Insisting there was nothing contained in the said Petition that called for the Interposition of the Assembly or in which they ought or could give any relief, Notwithstanding which and without any hearing the Assembly resolved that Relief might and ought to be had in the Probates in such like Cases by a new Grant of Administration Exhibiting an Inventory of the whole Estate and a Distribution made according to the Rules of Law upon the whole and at the same time tho' they came to this Resolution they Dismissed the said Lechmeres Petition.

That the Petitioner by this very Extraordinary resolve finding the Danger he was in again Exhibited to the Court of Probates a full and true Inventory of his Fathers Personal Estate come to his hands valued and appraised and again Insisted in writing at the foot thereof that the administrators

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had nothing to do with the Lands they belonged to him as heir at Law and as his right of Inheritance according to the Law of England and that no Real Estate ought by Law to be Exhibited as not Cognizable by a Court of Probates and the Petitioner moved the Court to have the same accepted as a full Inventory of all the Intestates Estate within that Colony proper for a Court of Probates by Law to Demand and offered his Oath that it was the whole Personall Estate of the Deceased. But the Court insisting on the Petitioners taking an Oath that it was an Inventory of the whole of the Intestates Real as well as personall Estate which the Petitioner refused to Comply with Insisting he ought not to Inventory any real Estate whereupon the said Court by their Sentence of the 29th of June 1725 Rejected the said Inventory and refused to accept the same from which Sentence of Denial the Petitioner appealed to the Superiour Court—That after the said appeal and before it came on to be Determined the said Lechmore Commenced a Suit in the Court of Probates to have Administration Granted to him of the said Intestates Estate and the Petitioner being Summoned to Shew Cause why Administration should not be Granted to the said Lechmore for Cause insisted on his said Appeale being dedepending and which Cause the said Court allowed from which allowance the said Lechmore also appealed to the said Superior Court. That on the 28th of September 1725, The Superiour Court on hearing the Petitioners Appeal Declared that they were of Opinion that Real as well as personall Estates were ordered to be Inventoried by the Law of that Colony and that all Courts of Probates ought to be in their Administrations thereby. Notwithstanding the Laws of England do not ordain that Real Estates should be Inventoried and thereupon ordered that the Petitioner should not be admitted to Evidence to the said Inventory by any other Oath than that which was agreeable to the Laws of the Province and Affirmed the Judgment of the Court of Probates and Condemned the Petitioner in Costs, from which Judgment the Petitioner prayed and was allowed

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a review to the next Superiour Court, And the said Lechmores Appeal coming on at the same time the Court also in that Suit affirmed the Judgment of the Court of Probates, from which Sentence the said Lechmore prayed and was allowed a Review likewise.

That on hearing the Petitioners said appeal in the Review on the 22d March 172 $\frac{5}{6}$ the Court affirmed their said former Judgment and Condemned the Petitioner in Costs, and on the said Lechmores Review which came on at the same time the said Superiour Court forasmuch as the Petitioners said appeal was then determined adjudged that the said Letters of Administration formerly granted the Petitioner should be vacated and the same was thereby vacated, and that the said Thomas Lechmere and Anne his wife should have Administration on the Deceased Estates and the said Superiour Court thereby Granted Power of Administration to the said Thomas and Anne Lechmere on the said Intestates Estate and Condemned the Petitioner in Costs, from both which Judgments of the Superiour Court the Petitioner prayed but was in a very Extraordinary manner denied an Appeale to His late Majesty in Councill but which Appeal he was admitted to upon his Petition to his late Majesty, That the Petitioner finding his Inheritance in this Iminent Danger of being torn to Peices all application for relief to His Majesty being denyed him to prevent if possible anything being done in the premisses till he could lay his Case before His Majesty Entered and fyled his Protest as heir at Law to his Father against Granting Letters of Administration to his Fathers Estate to any other Person whatever the Court having before Lodged that power with the Petitioners and also against any Division of any Real Estate pretended to belong to the Petitioners Father, all such reall Estate being the Petitioners undoubted right of Inheritance who was Seized and possessed of the same according to the Laws of England and which he was Entituled to under the Charter of the said Court contrary to the Law of England—Notwithstanding which the Judges of the said Superiour Court the same 22d of March Granted

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Letters of Administration to the said Intestates Estate to the said Thomas Lechmore and Anne his wife and took the usuall Administration Bond from the said Thomas Lechmore and his Suretys and Letters of Administration and Bond Extend only to the Goods, Chattels Rights and Credits of the Deceased which the Petitioner had before duely administered.

That the said Thomas Lechmore under colour hereof Inventoried and appraised all the Petitioners real Estate and Exhibited an Inventory thereof before a Speciall Superiour County Court held for that purpose on the 29th. of Aprill 1726, which the said Court Notwithstanding the said Lechmore by his Letters of Administration or his Administration Bond had nothing to do with real Estates took upon him contrary to Law to Sitt Specially and receive the said Inventory and by their Acts of that date approved the same and ordered it to be received and the said Lechmore also then Exhibited to the Court an account of Thirty Eight pounds Seven Shillings and four pence for Charges time spent in the Administration and of a Debt due to Robert Latimore for 318 Silver Money, (which was the Bond the Petitioner had offered to Discharge as aforesaid, and for which he had duly paid Interest) which account the said Court also allowed and ordered to be kept on fyle, and the 12th day of May 1726, the said Lechmore being Conscious he had no power over any real Estate by virtue of the Administration Petitioned the Assembly Setting forth that no personal Estate of the Intestate had come to his hands the Estate come to his hands being all real and finding there was due from the said Estate 356*l.* 7*s.* 4*d.*, being the two Sums in his above account mentioned and no Moveables to pay the same he prayed the Assembly to Enable him to pay the saide Debts by ordering them to Sell and dispose of so much of the said Lands thereby to defray the said Debts with other necessary Charges.

That the Petitioner being Informed of this Application that the Assembly might do nothing herein without the fullest Notice possible the Petitioner presented a Memorial to the Governor

and Company agreeing in Substance with the above recited Protest and declaring that he being aggrieved with the aforementioned proceedings should lay the whole by appeal before His Majesty. But which Remonstrance of the Petitioners the Assembly the same day Dismissed, and immediately afterwards on the said Lechmores Petition—Granted him a power to Sell the said Lands and ordered that a Bill should be brought in for that end in form, whereupon the Petitioner entered and fyled his Protest with the said Governor and Company to the effect with that beforementioned, and further Protesting against their Proceeding to Grant Power to any pretended Administrator to Sell any part of the Petitioners real Estate under Colour of Debts due from the said Deceased as they would answer the same before His Majesty in Councill, which Protest the Assembly declared had in it a Shew of Contempt to the Governor and Assembly and the Authority there Established, and therefore on the 25th of the same May they Ordered the Sheriff to bring the Petitioner to the Barr of the said Assembly to answer for the Contempt manifested in the said Protest and immediately afterwards passed an Act Empowering the said Thomas Lechmore to Sell so much of the said Lands as might be Sufficient to Discharge the said Debts and the necessary Costs the said Lechmore taking the advice of the Superiour Court in such Sale and Enacting such Deed or Deeds of Sale to be good, and the Petitioner being brought to the Barr of the Assembly he was for his said Protest Committed to the Custody of the Sheriff, and next day fined Twenty pounds to the Treasury of the Colony for his Contemptuous Expressions (as the Assembly was pleased to term them) and the Secretary was ordered to Issue Execution to Levy the same.

That the Petitioner humbly lays the whole of these Proceedings before His Majesty by which the many Extraordinary and unjustifiable Steps appear that have been taken against him in order to Disinherit him of his Inheritance and to Sett up his Sister as Coheir with him, and to make a Division of his

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Real Estate between him and his Sister contrary to to Common Law of England and the Royall Charter of the said Province and in Consideration thereof and of the many hardships of the Petitioners Case, the Petitioner humbly prays his Majesty to reverse the said two Sentences of the Superiour Court of the 22d March 1728^g with Costs and Damages to the Petitioner and to order the said Administration so Illegally and Irregularly Granted to the said Thomas Lechmore and Anne Lechmore to be called in and also to Sett aside and Discharge all Subsequent Proceedings Granted thereon and that His Majesty would Repeal the said Act passed by the Assembly, Empowering the said Thomas Lechmore to Sell and Dispose of the Petitioners said real Estate and that His Majesty would make such order and give such Directions in relation to the Behaviour of the Governor and Company of the said Province of Connecticutt and the Judges of the said Severall Courts as should be thought proper and that the Petitioner ought to have all such further and other Relief as the Circumstance and Nature of his case should Require: Their Lordships having heard all Parties concerned by their Counsel learned in the Law on the said Petition and Appeale, and there being laid before their Lordships An Act passed by the Governor and Company of that Colony, Entituled An Act for the Settlement of Intestates Estates By which Act (amongst other things) Administrators of Persons dying Intestate, are directed to Inventory all the Estate whatsoever of the Person so deceased as well movable as not movable and to deliver the same upon Oath to the Court of Probates, and by the said Act (Debts Funerals and just Expences of all Sorts and the Dower of the Wife (if any) being first allowed) the said Court of Probates is empowered to Distribute all the remaining Estate of any such Intestate as well Real as Personal by equal portion to and amongst the Children and such as legally represent them except the Eldest Son who is to have two Shares or a double Portion of the whole, The Division of the Estate to be made by Three Sufficient Freeholders on oath or any two of them

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to be appointed by the Court of Probates: Their Lordships upon due Consideration of the whole matter, Do agree humbly to Report as their opinion to Your Majesty, That the said Act for the Settlement of Intestates Estates should be declared Null and Void being contrary to the Laws of England in regard it makes Lands of Inheritance distributable as personal Estates and is not warranted by the Charter of that Colony, and that the said three Sentences of the 29th of June 1725, of the 28th of September 1725, and of the 22d day of March 172⁶/₈ rejecting the Inventory of the said Intestates Estates exhibited by the Petitioner, and refusing to accept the same because it did not contain the Real as well as personal Estate of the said Intestate and declaring real as well as personal Estates ought to be Inventoried, may be all Reversed and Sett aside And that the Petitioner be admitted to exhibit an Inventory of the Personal Estate only of the said Intestate, and that the Court of Probates be directed not to reject such Inventory only because it does not contain the real Estate of the said Intestate, and that the said Sentence of the 22th of March 172⁵/₆ vacating the said Letters of Administration granted to the Petitioner and granting Administration to the said Thomas and Ann Lechmore should be also Reversed and Sett aside, and that the said Letters of Administration so Granted to the said Thomas Lechmore and Anne his Wife should be vacated, and that the order of the 29th of April 1726, approving of the said Inventory and ordering the same to be recorded should be discharged and Sett aside, and that the original Letters of Administration granted to the Petitioner should be Established and ordered to Stand, And that all such Costs as the Petitioner hath paid unto the said Thomas Lechmore by direction of the said Sentences may be forthwith repaid him by the said Thomas Lechmore, and that the Suit brought by the said Lechmore and his Wife on which the said Sentence was made may be Dismissed, And that all Acts and proceedings done and had under the said Sentences or any of them or by virtue or pretence thereof may be Discharged and declared

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Null and Void, And also that the said Act of Assembly passed in May 1726, empowering the said Lechmore to Sell the said Lands should be declared Null and Void, And it Appearing to their Lordships that the said Superiour Court by an order bearing date the 27th of September 1726, and made pursuant to the said Act of Assembly allowed the said Thomas Lechmore to Sell of the said Real Estate to the Value of Ninety pounds current Mony there for his Charges, and three hundred and Eighteen pounds Silver Money to answer the said Bond due from the Intestate :—Their Lordships are of Opinion that the said order of the Superiour Court should be declared Null and Void, and also that the Petitioner should be immediately restored and put into the full and quiet Possession of all such parts of the said Real Estate as may have been taken from him under pretence of or by virtue or colour of the said Sentences, Orders Acts and proceedings or any of them, and that the said Thomas Lechmore do account for and pay to the said Petitioner the Rents and Profits thereof received by him or any One under him for and during the time of such his unjust Detention thereof. [Geo. II. Vol. I. pp. 195–202.]

(1728.)

13 Feb.

[Order accordingly.]

[I. p. 230.]

(1728.)

19 Nov.

[Committee. It being represented that Mr. Dummer had received an answer from the Governor and Company of Connecticut above six months since and neglected to lay it before his Majesty, he is ordered to attend on Wednesday next.]

[I. p. 390.]

(1728.)

27 Nov.

[Committee for Appeals. Upon examination it appeared that the paper delivered in by Mr. Dummer was not the true answer of the Governor and Company of Connecticut, he having drawn it up here. He is ordered to deliver the true answer within two days and Mr. Winthrop is to have a copy thereof. He is allowed to withdraw his own paper.]

[I. p. 398.]

(1728.)

4 Dec.

[The answer of John Talcott, Governor of Connecticut, is referred to the Committee for Appeals.]

[I. p. 404.]

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- [Committee for Appeals. Mr. Dummer to attend on Wednesday 11 Dec. with the original papers referred to in the Governor's answer, which is not complete without them.] 1727.
(1728.)
4 Dec.
- [I. p. 407.]
- [Committee. Mr. Dummer delivers the papers accordingly : copies are to be given to Mr. Winthrop and the originals returned to Mr. Dummer.] (1728.)
11 Dec.
- [I. p. 411.]
- [113.] [Reference to the Committee for Appeals of the petition of Richard Staple, commander of the ship *Charming Nelly* of London that, as the proceedings are duly transmitted, he may have leave to appeal from a judgment of the Governor and Council of Antigua as a Court of Errors, given on 5 July 1726 in favour of William Glanvill, by which] the Petitioner alledges he is Condemned in the Sume 1,149*l.* with Costs upon pretence that he had Carried Lawford Cole from that Island who was Indebted to the said William Glanvill in the sum of 1,200*l.* Antigua money. 8 Feb.
Antigua.
[pp. 319, 335.]
- [Order affirming the judgment, in accordance with Committee report of 18 May.] 31 May.
[pp. 360, 365.]
- [114.] [Reference to the Treasury of the petition of George Eames gent. relating to payment of 140*l.* for convicting Bridstock Weaver and William Ingram of piracy, which sum he alleges he advanced to the captors, Henry Trechill and Ezekiel David.] 8 Feb.
Piracy.
[p. 320.]
- [115.] [Reference to the Admiralty of the petitions of persons who served under Sir Chaloner Ogle in H.M.S. *Swallow*, and of their wives, widows, children and relations, for their respective shares of the produce of the piratical effects taken by the said ship, over and above what has been already distributed amongst them.] 8 Feb.
Piracy.
[p. 321.]
- [116.] [The Committee observing on consideration of the report of the Board of Trade on the boundaries of New Hampshire (102)] that particular notice is taken therein of the present 15 Feb.
Nova Scotia.