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was or had been Church land, and was therefore to go toward the maintenance of a college or school intended to be founded in Bermuda, but finally on 26 March, 1728, agreed to sell at 10*l.* per acre. Though the petitioner offered to pay the third of the purchase money demanded at the time, it was finally paid half by him and half by Mary Symonds, and he has since paid interest on the remainder. Early in 1734 Bowry and Symonds in collusion with Fleming forcibly expelled the petitioner, his overseer and negroes, from the plantation. The petitioner therefore brought a bill against them, to which they put in a demurrer that on his own showing he had not fulfilled his partnership with Mrs. Symonds. On 13 Nov., 1735, the Court held that as to any breach of covenant to his damage he should not have sought relief in equity but at law, and left him to take his remedy thereat, and that as to his complaint that the land was not rightly forfeited, he should seek relief in the Court of Exchequer. On the Committee report of 20 April his appeal from this order is sustained, and both the demurrers overruled with costs.]

[*pp.* 194, 195–202, 227.]

24 Nov.
Rhode
Island:

[390.] [Reference to the Committee of the petition of James MacSparran, clerk, incumbent of St. Paul's in the Petti-quamscot Purchases and in King's County, Rhode Island, complaining of proceedings in the Inferior and Superior Courts upon his writ of ejection against Robert Hassard, tenant to Joseph Torrey, for recovery of 280 acres of land set apart for an orthodox minister, and of having been denied liberty to appeal on 30 March, 1736; and praying that the Courts be ordered] to try the Merits of the said Cause securing to the said Hassard some pleas filed by him in Barr to the Petitioners action, [or that the petitioner's appeal from the judgments already given be admitted.] [*p.* 24.]

(1737.)

26 Jan.

(1737.)

21 Feb.

[Committee report for admitting the appeal.] [*pp.* 91, 95.][Order accordingly. Security given on 2 March by MacSparran and Thomas Sandford of London, merchant.] [*p.* 128.]

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(1738.)
28 Feb.

[Committee report. The appeal sets forth] That Samuel Wilber and others since called the Partners in the Petequams-cut Purchase having purchased from the Indian Natives the Inheritance of one or more large Tracts of Land which are now with the said Colony of Rhode Island (and which Purchase was called the Petequamscut Purchase from a great Pond or Lake of that Name Comprised therein) and being Seized thereof The said Partners Agreed amongst themselves to give a Tract of that Land for the Benefit of an Orthodox Minister And thereupon at a meeting of them held on the 4th of June 1668 they drew up and Signed an Agreement in writing containing Several Clauses relating to the said Purchase (and one amongst the rest) in the following Words—" That a Tract of three hundred Acres of the best Land and in a Convenient Place be laid out and for ever set apart, as an Encouragement the Income or Improvement thereof wholly for an Orthodox person that shall be Obtained to preach Gods Word to the Inhabitants "—That there having been some difference between those Purchasers and the Purchasors of other Lands relating to Bounds and other Matters, a finall Deed of Agreement was duly Executed Sealed and delivered by all Partys on the fifth of December 1679, whereby it was finally Agreed Determined and Concluded for the said Partys and their Heirs for ever that the Lands that were Sold and laid out by the said Samuel Wilbor and Company to Ivich Bull and several other Persons mentioned in a List annexed to that Deed which should happen to be without the Western side of their Tract, should be allowed and made good to them ; And in the List annexed to that Deed amongst several Parcels of Lands for the said Ivich Bull and others was expressly mentioned in the following Words " For the Ministry 300 Acres "—That afterwards many Particular Parcells or small Tracts of Land being laid out or granted to particular Persons and the said Company of Purchasers being Encreased in Number they became a Town called King's Town in King's County (and which Kingstown is since Divided into South

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Kingstown and North Kingstown) And a General Survey of the said Petequamscut Purchase was made and of the Particular Parts and Shares which had been laid out therein, And at a meeting of the said Proprietors in or about the Year 1692 John Smith their Surveyor, did by their Order upon the Platt of the said Purchase and on that Lott thereof which was Designed for the Ministry, Write the Word—Ministry That the same might be thereby distinguished from other Lands laid down in the said Platt which was a further and a final Confirmation of the said 300 Acres of Land for the Ends and purposes aforesaid—That the said Township not having obtained an Orthodox person to preach Gods Word to the Inhabitants for some Considerable time after the said Original Donation Laying out and Confirmation of the said 300 Acres Mr. Henry Gardner the Elder entred as Occupant on about 20 Acres, part of the said Ministerial Lands and one James Bundy a very poor Man entred (as it is now pretended) as Occupant on some other Part thereof which said Bundy was so far from being Settled thereon, or having any Interest therein that it appears by the Votes of the Town Council that from the Year 1702 to the Year 1715 he was frequently Warned out of the Town unless he could procure Security to Indemnify the Town from any Charge which he or his Family might Occasion and that under threats of Corporal punishment in Case he did not depart—That at a Quarter meeting of the Town Council on the 7th day of December 1713 they passed a Vote in the following Words—“ Voted that Whereas there is a Farm of 300 Acres of Land laid out and given by the Petequamscut Purchasers for the Ministry And for as much as no Minister has Appeared, Yet, to Accept of the said Land It is Ordered that the Town Council of this Town shall and is hereby Empowered to lett out the said Land to him or them, until such time that a Minister do Appear to accept of the same.”—That at another Town Council held on the 8th of March 1713 One William Congdon Offered to the Town Council 10*l.* 13*s.* a year for Seven Years for the Land laid

to the Ministry by the Purchasors of Petequamscut an three persons were Appointed to give a Lease to the said Congdon by Order of the said Town Council but nothing further was done thereon, nor any Lease granted, Neither had the said Inhabitants as Yet obtained any Orthodox person to preach the Word of God to them.—That in the Month of June 1720 the said Inhabitants applyed to the Lord Bishop of London and to the Society for the Propagation of the Gospel in Foreign Parts to Obtain an Orthodox person to preach the Word of God to them—That in August and September 1720 the Petitioner was duly admitted into Deacons and Priests Orders Successively and was Appointed a Missionary by the said Society to those Parts—That in October 1720 the Petitioner duly obtained a Licence from the Lord Bishop of London to Exercise the Petitioners Function in New England and also a Testimonial of the Petitioners Subscription and Declaration to Conform to the Litingy of the Church of England as by Law Established—That in the Year 1721 the Petitioner (who then was and still is an Orthodox person) Arrived in Rhode Island and took Possession of the said Church of Saint Pauls (which Stands within the said Purchase) and Officiated therein and preached the Word of God to the Inhabitants of the said Purchase And before the Petitioners said Arrival there the said Henry Gardner delivered to the Petitioner the Possession of 20 Acres part of the said 300 Acres the Ministerial Land and the Petitioner entered thereon and possesses the same to this day having leased out the same at the rent of 7*l.* 10*s.* per Annum to a Tenant one Mr. Thomas Potter But one George Mumford a Person Dissenting from the Church of England having got into the Possession of the remaining 280 Acres, refused to deliver up the same—That the Original Donation of the said 300 Acres in 1668 for an Orthodox Person to preach Gods Word to the Inhabitants was a matter Publicly known by Tradition in that Country And it was well known that the said Original Instrument was in the hands of one Jahleel Brenton Esqr. (a Gentleman who

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professed himself to be a Dissenter from the Church of England) and to him the Petitioner Caused a Civil Application to be made, to Deliver up or else to Record that Agreement or Donation as being the Original foundation of the Petitioners Right, in regard the Subsequent Transaction alone without that mentioned meerly that the Land was, for the Ministry which was a Doubtfull Phrase But the said Jahleel Brenton thought fit to refuse to Deliver the said Original Agreement and even to deny that he had the same in his Custody altho the Petitioner has now lately discovered and proved that the said Jahleel Brenton then had the same and showed it privately to his Relations That the said George Mumford refusing to deliver up the said 280 Acres to the Petitioner and the said Jahleel Brenton Concealing and Denying the said Original Donation the Petitioner did as well as he could in such Case and brought his Action of Ejectment for the said 280 Acres against the said Mumford in the General Court of Tryals to be held at Newport for the said Colony of Rhode Island on the first Tuesday of September 1723 In which Action of Ejectment the Petitioner founded his Title upon the said Transactions in 1679 and 1692 only and did not nor Possibly could set up the said Original Donation in 1668 which so particularly exprest for whom the said Land was intended And the said Mumford Appeared and Pleaded to the said Ejectment but on a Tryal thereof in September 1723 and again by rehearing in March 1724 the Jury found for the Defendant in the said Action Costs of Court And the said Mumford Continued in the Possession of the said 280 Acres That in 1732 One Mr. Joseph Torrey Alledging that he was called to the Dissenting Ministry somewhere in New England Came into South Kingstown and pretended to preach to Persons of the Presbyterian Perswasion And he Demanded possession of the said 280 Acres from the said Mumford who altho' of the like perswasion with the said Torrey did not care to part with his Possession—Whereupon the said Torrey brought His Ejectment in the inferior Court of Common Pleas to be

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held at South Kingstown against the said Mumford for the said 280 Acres, and the said Torrey having more favour with the said Jahleel Brenton than the Petitioner had, he in his Declaration set out for Title the said Original Donation in 1668 and the Subsequent Transactions in 1679 and 1692 also But he Alledged, tho without Foundation that all or the Major Part of the said Proprietors of the Petequamscut Purchase had been Presbyterians and in setting forth the Words of the Original Donation in his Declaration he inserted several Words to Express that the Donors gave the said Lands for a Person (in their Sentiments) Orthodox to preach &c. Whereas no such Words are contained in the said Donation And he therein Charged that the said Lands had remained in Abeyance from the time of the first Grant to the 17th of May 1732. That the said Mumford appeared and pleaded to the said Torreys Ejectment and the Cause was Tryed by a Jury in June 1732 who found a General Verdict for the Defendant Mumford And the said Torrey Appealing to the Superior Court the Cause was tryed by another Jury in September 1732, when the Jury found a Special Verdict That if it was the Opinion of the Court that the said Torrey was an Orthodox Minister According to Law then they found the Land sued for and Costs of Court but if not they found for the said Mumford Costs That the said Superior Court on the last Tuesday of March 1733 on Arguing the said Special Verdict Adjudged that the said Torrey was not an Orthodox Minister According to Law and therefore Confirmed the Judgment of the Inferior Court That the said Torrey thereupon desired and for his part was immediately Admitted by the Court to Appeal to His Majesty in Council . . And during such time (as the Petitioner has been informed) some overtures were made by the Friends of both those Partys to prevent that Disputes affecting the Common Cause or Interest of the Presbyterians That the said Lords of the Committee on that Appeal between Torrey and Mumford and on the Evidence given in that Cause and on the Defence which was then made Reported their

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Opinion to Your Majesty And Your Majesty by Your Royal Order in Council of the 18th of July 1734 was pleased to reverse both the said Judgments below and to Order that the said Torrey should be put into Possession of the Lands in Question which the said Mumford was so willing to Comply with that he did not only Permit the said Torrey to take the possession but upon the 21st of October 1734 (which was as soon as ever Your Majesty's Order Arrived in Rhode Island) the said Mumford on the back of the said Order Endorst and Signed with his own Name a formal Livery and Seisin of the Premisses there within mentioned to the said Torrey, and this he did so early and hastily as 5 days before ever your Majesty's Order was recorded there which was a matter no ways required by the said Order and which the Petitioner humbly represents to Your Majesty as an Instance that the said Mumford was not upon Adverse Terms with the said Mr. Torrey, That the Petitioner finding that the said Mr. Torrey could and had got at the said Original Donation in 1668, And had now put it upon Record, so that the Petitioner also might get at the same was preparing to bring his Ejectment against the said Torrey in Order to a Real Tryal of the right of the said 280 Acres . . so soon as ever the Determination of the Cause between Torrey and Mumford should be known But the Petitioner was for a short time prevented therein For the said Mr. Torrey Flusht at his good Success in the Cause with Mumford as to the 280 Acres in a few days after the Arrival of Your Majestys aforesaid Order in Rhode Island—Presently sued out a Writ against Ephriam Gardner Esqr. and afterwards on the 25th December following filed his Declaration in Ejectment against him in the said Inferior Court of Common Pleas for the remaining 20 Acres which were in the Occupation of the Petitioners said Tenant Potter That the said Ephriam Gardner as being the Defendant named in the Plaintiffs Declaration Nominally appeared and Pleaded and Defended the said Action for the said 20 Acres but under the Petitioners Direction whose right alone (and not the said Gardners) was

to be Affected by the said Action And the said Action came on to be Tryed by a Jury before the said Inferior Court on the 24 of June 1735 who found a General Verdict for the defendant and Costs of Court From which the said Torrey Appealed to the Superior Court where the same was again Tryed by another Jury on the 2d of September 1735 who again found another General Verdict Confirmation of the former Judgment and Costs of Court That as soon as ever the said Torreys Ejectment against Gardner for the 20 Acres was over, the Petitioner (against the next inferior Court) did on the 2d of December 1735, Sue out a Writ against Robert Hazard Gent. Tertenant of the said 280 Acres, and filed his Declaration in Ejectment before the said Inferior Court of Common Pleas on the 24 of the same December against the said Hazard for the said 280 Acres [the detention of which] he laid to be to his Damage 4,000*l.* Current Money of New England and thereupon he brought his Suit &c. That on the 31st of the same December the said Defendant Hazard filed a most extraordinary Plea and Answer (as called) to the same wherein the said Hazard came into Court and Defended the Force and Injury when &c. and offered (in one and the same paper) two Pleas in Abatement Three more Pleas in Barr to the said Action and finally the general Issue not Guilty That thereby the said Hazard insisted that the Petitioners Action ought to abate First Because the Land was not bounded Westerly upon the High way as the Petitioner had Declared, Secondly Because the Petitioner had omitted Setting forth the Northerly Bounds.—In Barr First For that the Reverend Mr. Samuel Nyles a Gentleman of the Presbyterian Perswasion who was Chosen by the People of Kingstown to preach the Gospel among them was upon his Entrance into the Ministerial Office in the Year 1702 put into the Actual Possession of the Lands Sued for and from that time by himself and Tenants enjoyed a Quiet and uninterrupted Possession of the same in right of the Presbyterian Ministry (under which the said Hazard said he held) for more than twenty Years which the

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Defendant was ready to Verify wherefore he prayed Judgment if the Petitioner of his Action ought not to be barred, Second, For that the Petitioner the Plaintiff had on the 4 of July 1723 in his aforesaid Capacity and on the pretended Right of the Church of England brought his Ejectment against Mumford for the very same Lands now Sued for which was Tryed in September 1723 and a Verdict was found and Judgment was given for Mumford to recover Costs of the Petitioner and that the Petitioner entered and Prosecuted a Rehearing at the next General Court of Tryals held at Newport on the last Tuesday of March 1734, And the aforesaid Verdict and Judgment were Affirmed and the said Mumford assigned his Costs and that the Petitioner Demanded but did not prosecute, an Appeal to Your Majesty in Council therefrom which the Defendant was ready to verify and thereupon he said the Petitioner of his aforesaid Action ought to be barred being Litigious and Vexatious and of that he prayed Judgment— Third for that the Reverend Mr. Jos. Torrey Clerk as the Setled Preacher of the Word of God to the Inhabitants of South Kingstown of the Presbyterian Perswasion was on the 21 of October 1734 put into the Actual Seisen and Possession of the said Tract of Land by the Petitioner Demanded and that Pursuant to Your Majestys Order in Council of the 18 of September 1735 by one Deed of that Date in writing Indented and under the hand and Seal of the said Joseph Torrey the said Land was by the said Joseph Given Granted Assigned and made over in Trust unto Peter Coggeshall David Cheesbrough Benjamin Church and Nathaniel Townshend Junior all of Newport Gentlemen and William Mumford and James Holme both of South Kingstown Gentlemen, To have and to hold unto the said ffeoffees in Trust their Heirs &c. for the ends and purposes in the said Deed mentioned and Expressed as by the said Deed in Court to be produced will Appear under which the said Peter Coggeshall David Cheesbrough &c. Defendant now holds the premisses all which the Defendant is ready to Verify and thereupon prays the Judgment

ment of the Court if the Plaintiff ought not by Law to be barred of his said Action—But if the Court should overrule the said Pleas in Abatement and Bar, then the Defendant (reserving them for a further hearing at the next Superior Court) Pleaded to issue not guilty of the Trespass and Ejectment in manner and form as the Plaintiff had declared And of that he put himself upon his Country &c.—That the said Cause came on before the said Inferior Court of Common Pleas on the 6th of January 1735 at which time the said Court Overruled the Defendants Pleas in Abatement and the Defendant reserved the same Then the Court in their Judgment recite at length the Defendants first Plea in barr . . upon which Plea the said Inferior Court barred the Petitioner and gave Judgment that the Defendant should recover of the Petitioner his Costs, Taxed at three Pounds four Shillings and Eight Pence That the Petitioner Appealed therefrom to the next Superior Court of Judicature and duly presented his reasons of Appeale Answering the Defendants several Pleas in Barr and shewing why the said Judgment was Erroneous and ought to be reverst And therein Shewed first how manifestly untrue the said Defendants said first Plea in Barr was and Appeared to be of the Defendants own shewing Secondly the Petitioner insisted upon the Falsity contained in the Defendants Second Plea in Barr there being in Truth no proceedings between the Petitioner and Mumford at all, in the Year 1734 nor within ten Years of that time—Thirdly the Petitioner insisted that the matter of the Defendants third Plea was no Barr in Law to the Petitioners Action And after Shewing how the Defendants several Pleas clashed and Militated with each other the Petitioner insisted that the Defendant ought by Law to be held to his first Plea or otherwise to wave that and stick to his Second or third Pleas And prayed a Reversion of the former Judgment That the Defendant put in his General Answer insisting the Judgment Appealed from was right and Just and therefore praying a Confirmation thereof and Additional Costs That in the said Inferior Court and again

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in the said Superior Court both the Defendant Hazard and the Petitioner put into Court several proofs and Records which were received by the Court and go to the Merits of the Cause and accordingly those Offered by the Defendant the Court have made a part of the Record but those offered by the Petitioner the Court (after five days keeping and Considering the same) delivered out again and would not Suffer to be part of the Record That on the 30th day of March 1736 the said Appeal was heard before the said Superior Court of Judicature whose Judgment is entred up in the following words—" The Appellees First Plea in Barr being Overruled the Court Ordered the Second Plea in Barr to be amended by altering the Date of the Judgment therein recited making it 1724 when it was in the Answer 1734 against the Consent of the Appellant who insisted upon it to be contrary to Law And upon the Appellees remaining Pleas in Barr reserved the Court do Barr the Action and Assign the Appellee his Costs of Suit Taxed at four Pounds fourteen Shillings and four Pence And the Court reject the Papers that were delivered to the Clerk after the Case was pleaded to and Determined because they were never heard during the Tryal " The Appellant prayed for an Appeale to Your Majesty in Council but not granted that the Petitioner conceiving himself very greatly aggrieved by the proceedings and Judgments of the said Courts and being Advised that the said Superior Court of Judicature which was only a Court of Appeales and had no Original Jurisdiction and how had not the Original Record of the Action and pleas before them only a Copy or Transcript thereof could not in any case upon an Appeal to them Amend the Defendants Plea put in before the Inferior Court and that whatever power the Court might have yet that by the Rules of Law they ought not upon the Arguing of a Plea to suffer such a Plea to be amended as went to the destruction of the Action—But that howsoever that might be the Petitioner was Advised that from his having formerly brought One Ejectment against one Mumford (a Stranger to these Partys) in 1723 And upon a quite different Title also

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and failing to recover therein—Or from Mr. Torreys having brought an Ejectment in 1732 against the said Mumford and recovered therein on an Appeale to Your Majesty in Council as between those Partys only Torrey and Mumford there was not the least Shadow or Pretence for a Barr to the Petitioners Ejectment against Hazard a meer Stranger and a Person whom the Petitioner sued upon a different Title But that the same was made a handle of Purely to delay and prevent the Petitioners coming to his Right and to Expose him to a very grievous expence and the Trouble of Several Voyages to England and Several Applications to Your Majesty for Justice And which Design Appears the more plain in the very last Act of the said Superior Court whereby the said Superior Court tho' they had finally and absolutely barred the Petitioners Action did nevertheless refuse him the Common Priviledge of an Appeale to Your Majesty in Council when the very same Court on giving Judgment for the same Individual 280 Acres of Land against Mr. Torrey instantly and immediately allowed him an Appeale to Your Majesty in Council [wherefore he humbly begs a short day for hearing his appeal. The Committee] thereupon Agree humbly to Report to Your Majesty as their Opinion That so much of the Judgment of the Superior Court held on the 30 of March 1736 as Barred the Appellants Action Be Reverst ; And that the said Respondent do restore to the Appellant the four Pounds fourteen Shillings and four Pence Costs taxt against him in the said Court And that it be remitted to the said Court to proceed in hearing the Merits of the Cause. [pp. 433-45.]

[Order accordingly.]

[p. 476.]

8 Mar.
(1740.)

10 July.

[Reference to the Committee of MacSparran's petition for a day for hearing his appeal from a judgment of the Superior Court of Rhode Island, 2 April, 1739, on Hassard's writ of ejectment to recover 280 acres of land set apart for an orthodox minister.]

[VII. p. 160.]

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(1741.)
28 April. [Committee order for hearing on 8 May.] [VII. p. 463.]
- (1752.)
7 May. [On 25 Feb., 1752, the Committee appoint a day for hearing. On the report of the Committee of 2 May, it is ordered] that the said Judgment of the said Superior Court, Be, and it is hereby affirmed. [The report of the Committee seems to show that no proceedings had taken place in the long interval.] [XIII. pp. 525, 536; XIV. pp. 46, 51, 70.]
- 27 Dec.
Virginia. [391.] This day Ferdinando John Paris Solicitor Entered an Appearance for Mr. John Hack to the Appeale of Frances Burges Widow from Virginia. [p. 48.]
- (1737.)
21 Feb. [Reference to the Committee of the petition of Frances Burgess, widow, and of Lemuel Gulliver her lessee, for a short day for hearing their appeal from a judgment of the General Court of Pleas in Virginia, 15 April, 1736, in favour of John Hack in an ejectment brought against Hack in the name of Gulliver on the demise of Frances Burgess for recovery of ten messuages and 2,266 acres of land with their appurtenances.] [p. 130.]
- (1737.)
2 Nov. [Committee. On perusal of the proceedings] It appeared that the Case agreed upon between the Partys, and which was received by the Court in Lieu of a Special Verdict, and upon which the Judgment Appealed from was founded was defective in not having Stated how the said Frances Burgess became Heir at Law to David Tox the Testator in the said Proceedings mentioned—And their Lordships Apprehending this to be a Material Fact and necessary to be Asserted before they can make their Report to His Majesty on this appeale Do therefore think it proper to Order that the said Record be remitted back to the said General Court of Pleas who is hereby required to State how and when the said Frances Burgess Lessee of the said Lemuel Gulliver became Heir at Law to the Testator David Tox and how she derives her Pedigree as such from the said David Tox And in case the Fact shall not be agreed upon by the Parties, that the same be tried by a Jury and Establishd and made part of the said Case Agreed upon between the