

1727.  
8 Feb.  
III. p.  
139.

[367.] CONNECTICUT. *Complaint of J. Winthrop.* His petition, and Order of referēce to the Committee. (A type-written copy of the petition is also in the bundle.) “As your petitioner saw the government there wholly vested in the hands of persons of levelling spirits and antimonarchical principles . . . your petitioner looked upon it as his particular duty as being the grandson and heir of the person who obtained the grace and bounty of this charter at your Majesty’s royal predecessor’s hands and which the said Company have so greatly abused, to come over to England in person to lay those grievances before your Majesty.” There are 29 articles.

1st. “The Governor is never sworn according to the several Acts passed here extending to the plantations and requiring the same.

2nd. “The said Governor and Company have not taken themselves, nor do they administer to any of the inhabitants there, the oaths of allegiance and supremacy, nor have they made any provision in or by any of their laws for taking the said oaths.

3rd. “In the oaths of their military officers no obedience is sworn to the Crown.

4th. “All proclamations issue in this province in the name of the Governor only; the issuing of proclamations is apprehended to be only in the Crown.

5th. “All the commissions they grant, as well of the Peace as otherwise, run in their own names and not in that of the Crown, and they have passed an Act in their Assembly for granting Commissions of Sewers in their own names and no recognizances are taken *Domino Regi*.

6th. “They take no care to secure your Majesty’s interest and that of your Majesty’s subjects in those parts of your Majesty’s dominions, but neglect to guard and fortify the most important harbour on all that sea coast, called New London port, and which is a key to all those your Majesty’s dominions, and is most liable to a foreign invasion.

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7th. "They have presumed, without any leave of the Crown or any power given them for that purpose by their charter, to pass Acts from time to time for the coining and emitting a sort of paper money stamped with their own impress and which they have coined and emitted accordingly, and which they force to pass as current coin for the sums mentioned in such bills and to be accepted in all payments at such price, though they are at above two-thirds discount, which is to the irretrievable damage of trade and detrimental of the inhabitants, and part of the penalties on counterfeiting such bills are a forfeiture of all the counterfeiter's estate to the colony and not to the Crown.

8th. "They never transmit their laws home for the approbation and sanction of the Crown.

9th. "They have made and passed several laws absolutely repugnant and directly contrary both to the common and statute laws of England, in violation of their charter and the liberties and privileges of the subject.

10th. "They have passed several Acts laying and imposing an impost or duty on the importation of liquors, and which duties are in some instances very excessive, particularly a duty of 15% a hogshead upon rum, though of the produce of your Majesty's other plantations, and an excise duty thereon when imported (which duties are not raised by way of grant to the Crown), and which they force to be paid, and in default of such duties being paid they have enacted such liquors to be seized and forfeited, one moiety to the informer, the other moiety to the Treasurer of the colony, and that too without any appropriation, so that no part thereof comes to the Crown, all which is apprehended to be noways warranted by their charter and to be contrary to the several Acts passed in England relating to Trade and Navigation.

11th. "They have passed an Act intituled an Act concerning free trade, wherein they take upon them to give leave to merchants to bring their ships into the ports of Connecticut in order to trade, but before any of the cargo of such ships

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can be offered to sale they oblige a duty of 12s. 6d. *per cent.* thereon *ad valorem* to be paid and to swear before a Justice of the Peace to the truth of her invoice under penalty of forfeiting the whole cargo, one-third to the informer, the other two-thirds to the Public Treasury, which duty is not raised by way of grant to the Crown nor any share of the forfeiture to go to the Crown. All which is humbly apprehended to be directly contrary to their charter and destructive to the trade and navigation of these kingdoms and directly contrary to the several Acts made now in relation thereto.

12th. "They have passed laws laying and imposing toll and other rates and imposts on the people there, which they enforce by empowering the Treasurer to issue out execution for the same in a summary way, and under which laws such rates &c. are levied on your Majesty's subjects there, though not free of their company, and which rates are not granted to the Crown, all which is apprehended to be noways warranted by their charter.

13th. "They have passed laws to prevent persons coming to and settling amongst them, and particularly have passed one law whereby a fine is laid on any inhabitant who shall sell an estate to a stranger, though such stranger was desirous to come and settle in the colony, and which is in such law mentioned to be done on purpose to prevent any strangers coming and settling amongst them, which is directly contrary to the words and intention of the charter, prejudicial to the interest of the Crown, and injurious to the true interest of the said colony, by preventing the increasing the strength and riches thereof.

14th. "The said Governor and Company have, on base and illegal pretence and contrary to the laws of God and the English nation, passed Acts to disseize the male issue from their right of succession to real estates of inheritance, by enacting that the female issue should be coheirs with the male issue and should inherit as such, directly contrary not only to the said charter but also an Act of the colony

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passed soon after the said charter and never afterwards repealed, by which all lands in the said colony are declared to be held by the possessors, their heirs and assigns of your Majesty in common soccage as Lord of the fee, and also contrary to the common law of England.

15th. "They will not allow the common law of England to take place there, even when they have no particular law of their own.

16th. "The said Governor and Company have denied the subject there the benefit of Acts of Parliament passed in Great Britain which have particularly mentioned the plantation, particularly an Act intituled [title omitted— 11 and 12 Wm. III given in margin]; the benefit whereof your petitioner demanded of them and was refused.

17th. "They have no law to make felony punishable with death, nor burglary until the third time of conviction.

18th. "The justices and members of all their Courts of Justice throughout the said colony are the leading members in their General Assembly, and bear the whole sway in all matters transacted there.

19th. "They assume to themselves Admiral jurisdiction by suffering their justices to try facts which are only cognizable by a Court of Admiralty, in opposition to a Court of Admiralty established in New England by commission from the Admiralty in Great Britain, and have passed Acts giving the Courts of the colony such a jurisdiction.

20th. "They have erected Courts called Special County Courts and Special Superior Courts, which are called and held at pleasure, contrary even to laws made by themselves, and that without any certain stated known times of meeting, and which was done as your petitioner humbly apprehends to vex, entangle and destroy the property of the subject, and to these special called Courts persons are surprized in actions of great consequence only at six days' notice (the action being brought and tried in that time), and all which particularly happened in several actions lately depending

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between your petitioner and Thomas Lechmere and his wife, your petitioner's sister."

Articles 21 to 27 refer to proceedings on Winthrop's action against his sister and her husband. *Cf. III. pp. 140-8.*

26th. "The Superior Court of this colony deny to grant appeals to your Majesty in Council, notwithstanding it was signified to them by her late Majesty that it was the inherent right of the Crown to receive, hear and determine appeals from all the plantations without exception, and they have not only denied granting such appeal but insisted their charter knew nothing of your Majesty in Council, and have dared the subject demanding such appeal to go and complain that they denied to allow such appeal to your Majesty, publicly bidding him to take evidence of their so doing as if they were an independent Commonwealth of their own and owed no allegiance to your Majesty, which they particularly did to your petitioner on his demanding an appeal from judgments lately given by them against your petitioner in favour of the said Lechmere and his wife.

27th. "That the said Governor and Company in General Assembly have also dismissed applications made to them for appeals from the judgment of the Superior Courts to your Majesty in Council and have treated the demanding the same as a contempt of their authority under their charter and have imprisoned and fined the subject for humbly insisting on such appeal and claiming the benefit of the Common Law of England and of Acts of Parliament passed in Great Britain expressly mentioning the plantations, and for humbly asserting the English liberties expressly granted them by their charter, and for leaving a caution against their proceedings in prejudice to the property of the subject against the said laws, all which was done by them in their last Sessions in relation to your petitioner as will appear on the Journals of the said Assembly.

28th. "Fines and penalties imposed by the Courts of the colony are by Acts of Assembly there given to such Courts to defray their charges.

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29th. "That the said Governor and Company have not *Jura Regalia* granted them by their charter, yet they pretend an absolute authority without any dependence on the Crown, and they alone of all your Majesty's dominions pay no acknowledgement nor own any service to the Crown."

18 Feb. ———. Committee report for a copy of the petition to be sent to the Governor for his answer.

19 Sept. ———. Gov. Talcott's answer to the 29 articles, with various papers authenticated by him. (The bundle also contains copies of these papers.)

(1) Denied. Record of the administering of the oaths to Gov. G. Saltonstall, 14 May 1724, enclosed.

(2) Record of the Governor, Deputy Governor, Assistants and Deputies taking the oaths on the same date.

(3) The only oath for military officers is for the Sergeant-Major, but he and other officials take the freemen's oath, which puts first allegiance to the Crown. Copies are enclosed.

(4) The same form is used in issuing proclamations as in Massachusetts. (Copy enclosed.) The corporation stands ready to correct it when they shall be better instructed.

(5) Denied, and a copy of a commission enclosed. The law for Commissioners of Sewers prescribes no form at all.

(6) The colony has been kept secure hitherto: a French privateer was repulsed at New London without loss. There are four cannon there, although it is not a security to the other ports.

(7) Paper money was not issued till necessitated by Queen Anne's orders to furnish the troops in expeditions against the French. It has been called in ever since and only 12,000*l.* or 13,000*l.* is outstanding.

(8) The Charter does not require the laws to be sent home.

(9) Any laws contrary to British statutes have been passed in ignorance, and they are ready to repeal them. But they understand the clause in the Charter to refer only to Acts made for the plantations, and that they might make laws

diverse from the common law of England, Wales and Berwick-on-Tweed. If this be so, it answers the next five articles.

(10) The duty was reduced after five months to *3d. per gallon*. Its employment for the support of the government was concluded to be for his Majesty's service.

(11) This is an ancient law: it contains restrictions to trade not prohibited by law and not against the Navigation Acts. A resolution of 13 Oct. 1726 is enclosed declaring that the Act applied only to persons coming from the neighbouring plantations.

(12) It would be unreasonable to erect a corporation and allow no means for its support.

(13) The object is to keep vicious and chargeable persons from thrusting themselves into towns without their consent; some got in formerly by the purchase of a few feet of land; in such cases the vendor is now to pay *20l.*; "strangers" means strange to the town, not to the colony. A copy of the Act is enclosed.

(14) Winthrop's principal object. Partition, and not primogeniture, is the rule of inheritance in all the New England colonies, and the Massachusetts Act has presumably been approved. Two variations have always been made:—(a) If the estate is likely to be damnified by dividing the land, the eldest shall have it, paying to the other children their rateable parts; and (b) daughters shall take their portions in moveables so far as they will extend, and the residue only in the lands.

(15–16) No particular law is mentioned. The courts are better furnished with books of the common law than could be reasonably imagined from the poverty of the country.

(17) A gross mistake. There is a whole chapter of capital laws, and many have suffered death by the hands of justice.

(18) "A charge against the colony for improving the most able men to fill our seats of judgment."

(19) No instance is given, "and I am not able to name any."

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(20) The same length of time is allowed in all other courts, and appeals and reviews are allowed there as in other courts.

(26) After the first hearing, Winthrop demanded an appeal and was told that he must first go through the course of law in the colony—a review by the court and then a petition to the General Assembly. The Chief Judge, “out of the great veneration he had for his ancestors, lest the opinion that he inherited their authority as well their effects should carry him forth to such a degree as would expose the court to contempt or himself to censure, as he had sometimes formerly had occasion to observe, treated him with all gentleness, care and tenderness, at length prevailed with him to take the next step.” But instead of further process, he “with an uncommon air of majesty demanded his appeal, which the court informed him they had no law nor rule to grant.”

(27) The record of the General Assembly, 12 May 1726, is enclosed to show that Winthrop’s application was dismissed on account of his own neglect to take the proper and usual measures for his relief. The Charter prescribes no form of procedure in relation to appeals, and no particular direction has been given by Act of Parliament or by Order in Council. “All that I have understood by the word ‘appeal’ in the common law is a complaint, and that in the ecclesiastical courts only is the word in use in England as it is here improved for the removal of the whole cause to an higher tribunal; and I never understood that his Majesty in Council ever took the trouble of the trial of titles of land, and many of the actions here are conversant about nothing else.”

(28) A misrepresentation. The fees and fines are all or most of them paid into the Treasuries, out of which the courts are paid according to the allowances made them by Acts of the Assembly.

(29) The Governor doubts not of the sufficiency of his preceding answers to take off all accusations of disloyalty and the usurpation of arbitrary power.



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There is one more enclosure from the records of the Assembly *re* Lechmere's petition considered on 12 May.

Also two copies of (a) a letter from the B. of T., 23 Feb. 1698, requiring the transmission of the laws of Connecticut, and (b) another letter of 24 Ap. 1699 stating that a copy of the laws had been transmitted to the Board by Col. Winthrop on 27 Oct. 1698.

And two copies of a paragraph in a Connecticut law about houses and lands to be secured for heirs, the eldest to have a double portion unless otherwise ordered by County Court or Court of Assistants.

———. Order referring the Governor's answer to the Committee. 4 Dec.

List of papers *re* Winthrop's complaint, from his petition dated 16 Jan. 1727 to papers referred to in Gov. Talcott's second answer and delivered by Mr. Dummer, 11 Dec. 1728.

[368.] ANTIGUA. *Barton v. Bondinot*. Committee report for receiving the appeal. It appeared from the examination of Thomas Clark that the papers had long since been sent by the ship *Oleopatra*, which had never been heard of since she left Antigua. 18 Feb. III. p.120.

[369.] COUNCILS. *New Jersey*. B. of T. representation for C. Van Horn. 23 Feb. III.

*App.* II.

———. *Virginia*. B. of T. representation for W. Dandridge; and another of 29 March for J. Custis. 22 March.

[370.] ACTS CONFIRMED. *Antigua*. B. of T. representation; Order of reference to Committee, 13 May; and Committee report, 31 May. 9 March. III.

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———. *Virginia*. B. of T. representation; Order of reference, 13 May; and Committee report, 31 May. 16 March.

———. *New York*. B. of T. representation. 12 July.

———. *Jamaica*. B. of T. representation. 23 Aug.