

§ 446 *cont.*]

1737.

proceedings of the Supreme Court of Pennsylvania against them : with Committee report of 29 July, and Order of 18 Aug.

———. Address of the Deputy Governor and Assembly of Maryland—5½ very large pages—similar to the petition of the Maryland Council (*cf.* 1 June) : and Order of reference, 29 Nov. Received 1 Nov.

———. List of papers depending before the Committee. 2 Nov.

———. Petition of the Penns against the Order of 18 Aug., alleging that the Committee report was obtained by surprise and upon spurious representations *ex parte*. They desire that they be protected and their tenants quieted. Received 2 Nov.

———. (*a*) Address of the Assembly of Maryland to Lord Baltimore, representing fresh encroachments by the government of Pennsylvania, in arresting and detaining in prison W. Rumsey, W. Cannon, — Powell and others. Undated.

(*b*) A relation of Cresap's case, witnessed by Risner, Joy and Minshar.

(*c*) List of 33 of those concerned in Cresap's affair.

[447.] SOUTH AND NORTH CAROLINA. *Reward for boundary commissioners.* B. of T. report on the petition of A. Skene and J. Abercromby, proposing to follow precedents of 1711 and 1729 (Virginia—Carolina boundary) for payment by a warrant from the Treasury. In 1729 the Treasury determined the sum, the fund, and the proportion in which it was to be distributed. In 1711 100*l.* was paid to each commissioner though but a month out, and 20*s.* a day to each surveyor. 14 June. III. *pp.* 566–7.

[448.] LEEWARD ISLANDS. *Complaints of W. Smith and S. Cust.* Gov. Mathew's answer (10 *pp.*). Cust, Smith's trustee, is regarded as a nominal person only. Smith artfully blends the preservation of his Majesty's prerogative with his own private claims and treats the Governor coarsely through his whole petition. The controversy is not so much between Smith and the Governor as between Smith and the people of Antigua. Mathew has never discountenanced 20 June. III. *pp.* 496–7.

1737. § 448 *cont.*]

Smith's lawful rights, and the trouble has arisen from Smith's wilfulness in rejecting the Governor's protection and control. When Mathew arrived as Governor in the latter end of 1733, Smith had provoked most people by exacting exorbitant fees, and about that time judgments were given against him for extortion, and many more suits were designed (over 50 by Wm. Glanville), but Mathew regarded the multiplication of these as vexatious and intervened with the Attorney General to put a stop to the proceedings. Before Mathew's arrival the Assembly had complained of a pretended customary docket of fees set up by Smith. The Governor attempted to mediate, and it was referred to three able lawyers and the gentleman who was Secretary when the docket of 1703 was established to prepare a new docket. Smith's objections to this were heard by the Governor and the Council of Antigua. In the end the Governor could not assent to the docket prepared, because the Council refused to make any allowance for transcribing the minutes of the Council for transmission to the Board of Trade. At the very time that Smith was petitioning against the Governor for lessening his just fees &c., the Council addressed the Governor with a complaint of his countenancing Smith's exactions &c.—a proof of his impartiality. In the case of the judgment for F. Carlisle, in which the sum was below that limited for an appeal, Smith did not apply to the Governor for a writ of error, but obtained an Order from his Majesty. Although Smith represented the later case of T. Jarvis as similar, the Governor judged it otherwise; further, the special Order in the other case did not authorise him to dispense with his instruction generally, and accordingly he did refuse a writ of error. As to the species of money in which the Secretary is paid, he could have sought legal redress in the island and the Governor would never have interposed. But the docket of 1703 was settled before Queen Anne's proclamation or the Act of Parliament settling the value of coins, and the money current in Antigua was lower in value than it is now. The proclamation and Act fixed the value of the Spanish

§ 448 *cont.*]

1737-8.

coins (then the only specie current in all the colonies) so much above the par of exchange that the Spanish coins were exported from all the colonies, and gold and foreign silver (not Spanish and not comprised in the proclamation or Act) have become the chief currency. From the necessity of having small pieces of money to pass in change, Spanish reals have been taken in payments for 30 years at the rates now current (above the value limited by the proclamation), but this could not be prevented by Government. Mathew consulted the Council about it in 1715, when he was acting in the absence of the Governor, and was unanimously advised that no action should be taken, as it was impracticable to execute the Act. If the Secretary were paid all his fees in Spanish coins according to the proclamation, he would remit them to Great Britain, and the whole amount now current would be exported in two years. As for the docket of 1703 enforced in Feb. 1736, it is the only one established by a proper power and has never been disallowed; it appears of equal validity with the fees fixed for the Pro-vost Marshal at the same time, which have remained the only rule for that officer until now. The Governor was in St. Christopher when the Assembly and Council of Antigua requested him to enforce the docket, so that he cannot be suspected of influencing them. An order reciting what are the fees legally established cannot be deemed arbitrary or against law; it was left to the Attorney General to prosecute extortions contrary to law. Smith continues to receive fees for services other than those comprised in the docket. He was not heard before the proclamation was issued, because it was only a reminder of existing laws; when a new docket was proposed, Smith's objections were heard.

1738.

[449.] MARYLAND AND PENNSYLVANIA. *Boundary conflicts.* Petition of F. J. Paris, agent for Pennsylvania; and Order of reference, 23 Jan. Three cases of violence by

1738.

20 Jan.
III. pp.
340-2.