At the Court at St. James's

the 8th Day of August 1766

Present

The Kings Most Excellent Majesty in Council.

Duplicate

Upon reading this Day at the Board the humble Petition and Appeal of John Bryant late Master of the Brigantine or Vessell called the Recovery from a Sentence given in the Vice Admiralty Court in New Providence in the Bahama Islands on the 13th of March 1765 in favour of Samuel Gambier Esquire Advocate General of the said Islands James Bradford Esquire Collector of the Customs, John Brown Esquire Naval Officer, and Samuel Gambier Esquire Deputy Searcher for the said Islands upon an Information Exhibited in the Vice Admiralty Court for Condemning the said Vessell and her Cargo for Trading Contrary to Law (to which Appeal the petitioner was admitted by Order of His Majesty in Council of the 11th of July last,) and humbly praying that a short Day may be Appointed for hearing and Determining the said Appeal — It is Ordered by His Majesty in Council that the said Petition and Appeal (a Copy whereof is hereunto annexed) be, and it is hereby referred to the Right Honourable the Lords of the Committee of Council for hearing Appeals from the Plantations, to hear the same and Report their Opinion thereupon to His Majesty at this Board.

W. Blair.

To the Kings most Excellent Majesty in Council.

The humble Petition of Appeal of John Bryant late Master of the Brigantine or Vessell called the Recovery

Sheweth

That the Brigantine Recovery, whereof your Petitioner was Master) was the Sole property of Thomas Bylestor in the Province of the Massachusetts Bay in New England Merchant who Loaded her there with a Cargo of Lumber and Fish and cleared her out from thence for the West Indies, there were also 32 French Accadian Passengers. The said Ship set Sail from Boston in New England under the Command of the said John Bryant on or abt. the 5th Sept.r 1764 & Arrived at the Port of Cape Nicola-Mole in the Island of Hispaniola on the 25th day of the same Month of September where he landed the said Accadian Passengers And on the 29th of the same Month Sailed from thence for Cape Francois on the said Island of Hispaniola where he Arrived on the 3d Day of October following and there the Master disposed of his whole Cargo & after staying there 'till the 24th of the same Month he proceeded with his said Brigantine back to the aforesaid Port of Cape Nicola Mole, where he arrived on the 29th & took on Board a Cargo of 107 Hogsheads of French Molasses for the Sole Account of the said Thos. Bylaston Except 14 Hogsheads of Molasses which belonged to your Petitioner & after continuing at that place 'till the 2d day of February 1765, he Sailed from thence in his return to Boston, but the Mate of the Ship dying and the Master being dangerously ill, and there not being any Person on Board who was capable of Navigating the Ship, except the Master, they were obliged to Bear away for New Providence as well for the safety of the Brigantine & Cargo as for the preservation of their Lives.

The

The Brigantine soon after arrived off Nassau in New Providence & came to an Anchor within Reach of the Guns of Fort Montague Eastward of the Town of Nassau & whilst she lay there was Seized by the Officers of his Majestys Customs & Conducted into the Harbour of New Providence, as for breach of the Statute of the 4th of his present Majesty Granting Duties in the Plantations.

On the 15th day of the s^d Month of Febry 1765 a Libel or Information was given into the Court of Vice Admiralty in the said Province by Saml Gambier Esqr your Majestys Advocate General in the Bahama Islands Settingforth, that on the 14th of the said Month Ja^s Bradford Esqr Coll^r of his Majestys Customs John Brown Esqr Naval Officer & Saml Gambier Esqr Deputy Searcher for the aforesd Islands, had Seized as forfeited to your Majesty, to General Wm Shirley Esqr Govr of the s^d Islands & to themselves the s^d Brigantine or Vessell called the Recovery of which your Pet^r was Master, for that the said Brigantine or Vessell was then lying at Anchor within two Leagues of New Providence Loaded with a Cargo consisting of 110 Hogsheads or some other great quantity of Molasses or Syrrups contrary to the form of the Statute in that Case made & provided the said Molasses or Syrrups being the produce of some or one of the Plantations in America not under the Dominion of your Majesty & which had been Laden on Board the said Brigantine or Vessell since the 29th Day of Septr then last And the Master (tho' required) not producing a Certificate that Bond had been given to some Officer of his Majestys Customs in the British and American Colonies, that the said Molasses should (the danger of the Seas & Enemies Excepted) be brought without Fraud or wilfull Diminution by the said Vessell to some of his Maty^s Plantations or Colonies in America or to some Port in Great Britain — Wherefore they prayed that the said Brigantine or Vessell with her Boat Tackle Furniture & Apparel & her

her afores.d Cargo or Lading might for the Causes afores.d be adjudged by this Court to remain forfeited, One third part thereof to the use of the King, another 3.d part thereof to the use of the said Gov.r & the remaining 3.d part thereof to the use of the said James Bradford John Brown & Sam.l Gambier pursuant to the form of the Statute afores.d

That your Pet.r by Jas Rigby one of the Proctors of the said Court gave in a claim in your Pet.rs behalf as Master as afores.d for the s.d Brigantine & Cargo as being the property of Tho.s Byleston of Boston in the Province of the Massachusetts Bay in New England Merch.t and a Subject of the Crown of Great Britain wherein he set forth that the s.d Brigantine was duly Registred and Navigated pursuant to the Statutes, & that she Sailed from Boston on the 7.th Sept.r 1764 with a Cargo of Lumber & Fish cleared out for the West Indies and that she proceeded to the Island of Hispaniola where she soon after arrived & disposed of the Outward Cargo & there purchased a Return Cargo of Molasses on the Sole Account of the afores.d Owner (Except 14 Hogsheads of Molasses which were your Petitioners) with which she Sailed from thence on her return to Boston afs.d, but that the Mate being Dead & your Pet.r dangerously ill, they were obliged to proceed to New Providence, & were there seized as afores.d And he further setforth, that as the said Brigantine Sailed from Boston sev.l Days before the said Statute or Act of Parliament began to be in force, and as the said Brigantine was never in an English Port from the time she Sailed from Boston until her arrival in New Providence afores.d, it was impossible to give such Bond and obtain such a Certificate as is setforth in the s.d Information & as there is a Duty imposed by the s.d Act on Foreign Molasses your Pet.r did then tender the same to be received by the proper Officers & prayed his Ship & Cargo might be discharged.

On

On Motion of the Informers the Judge ord.d your Pet.r to bring in all his Ships Papers, which were accordingly bro.t into & left in Court.

The Register is dated at the Customhouse New York in America the 13.th Octo.r 1762 & is Sworn to by Tho.s Boylston before the Gov.r of New York; Settingforth that he the said Tho.s Boylston of Boston in New England Merchant is the Sole Owner thereof And that no Foreigner directly or indirectly had any Share or Interest therein.

The Clearance is dated at the Customhouse in New England the 1.st day of Sept.r 1764 & is Signed by the proper Officers there & setforth that John Bryant Master or Commander of the Brigantine Recovery Burthen 40 Tons or thereabouts, mounted with Guns Navigated with Six Men Plantation Built Registed at New York 13.th Octo.r 1762 bound for the West Indies (having on Board 47,000 Feet of Boards 20,000 Shingles 7000 Hoops 10 Hogsheads of Fish 110 Barrels of Mackrell 10 Barrells of Alewives 450 Bunches of Onions 24 Keggs of Salmon & 250 Shook Hogsheads) had Entred & cleared at his Maj.ys Custom house at Boston in New England according to Law.

On this Evidence only & with.t any Examination whatever being taken on the 13.th of March 1765 the Judge pronounced his Sentence in the said Cause, whereby he declared as follows "That for asmuch as it appears to me that "the Allegations contained in the afores.d Information have been "fully proved I do adjudge & Decree that the said Brigantine "called the Recovery & her afores.d Cargo of Molasses, together "with her Boat Tackle Furniture & Apparell shall remain "Forfeited to our said Lord the King, the afores.d Gov.r & the S.d "Officers of the Customs, & Order that the same be Sold at "Publick Vendue (Notice being first given of such Sale) to the best

"best Bidder & the one 3d part of the Money arising from "the Sale thereof to be pd into the Hands of the Collector for "the use of his Majesty his Heirs & Successors, and one third part "to his Excellency the Govr of these Islands, & the other third "part to the Prosecutors in this Cause the Charges of the "Seizure being first deducted out of the Gross proceeds of such "Sales. And I do Order the sd John Bryant the Claimant "in this Cause to pay the Costs of this Suit as they shall be "Taxed by the Court pursuant to the directions of the Statute "in this Case. And I do further Order that the said Brigantine "Recovery with her Boat Tackle Furniture & Apparell be "Inventored & appraised by Benjn Darrell Shipwright and "Robt Savage Mariner & that the Cargo or Lading thereof "be Inventored & Appraised by Thos Bunch & Ebenezer Love "Merchants & that the Inventorys & Appraisemts of the said "Brigantine her Appurtenances & Cargo be made & returned "upon Oath into this Court on or before the 21st day of this Month."

That your Petr thereupon by his said Proctor prayed leave of the sd Court of Vice Admiralty to Appeal from the sd Sentence to the proper Court in Great Britain, which the Judge of the sd Vice Admiralty Court was pleased to refuse.

That your Petr being greatly aggrieved by the sd Sentence pronounced by the said Court of Vice Admiralty & also by the sd Courts refusing your Petr the Liberty of Appealing therefrom, your Petr did present his humble Petition to your Majesty in Council setting forth to the effect hereinbefore Stated & praying that your Petr might be at Liberty to Appeal to your Majesty in Council from the sd Sentence of the sd Court of Vice Admiralty in New Providence, which Petition having been referred to a Committee of your Majestys most Honoble Privy Council their Lordships made their Report thereon & an Order was issued on the 11. day of July 1766. whereby your Petr was admitted to Appeal to your Majesty in Council from the sd Sentence of the Vice Admiralty Court in New Providence upon entring into the usual Security here

for

for prosecuting the same to effect with in a Year & a day & abiding the determination of your Majesty in Council thereupon & paying such Costs as shall be Awarded by your Majesty in Council, in Case the said Appeal be dismissed.

That such Security has been since Entd into on the behalf of your Petr as was required by your Majestys said Order in Council.

Your Petr therefore most humbly Appeals to your Majesty in Council from the sd Sentence of the Court of Vice Admiralty in New Providence & prays that your Majesty will be graciously pleased to appoint a short day for the hearing of this your Petrs sd Appeal with Summons as usual for the sd Saml Gambier the Advocate General in the said Province, the sd Jas Bradford Collector of your Majestys Customs the sd Jno Brown Naval Officer & the sd Saml Gambier Deputy Searcher or their respective Agents, to appear to & defend the same. And that thereupon your Maty will be graciously pleased to Order that the sd Sentence given by the sd Vice Admiralty Court in New Providence may be reversed, and that your Petr may be restored to all which he hath lost by means of the sd Sentence of the sd Vice Admiralty Court with Damages & Costs and that your Petr may have such further & other Relief in the Premes as the nature of his Case may require, & as to your Majesty in your great Wisdom & Justice shall seem meet.

And your Petitioner shall ever pray &c.

✓ 8th August 1766
Ship Recovery
(Duplicate)

Bryant
agt
Gambier
& others

Order in Council
(Referring the
Petition of Appeal