

## 14. APPEALS TO THE KING IN COUNCIL

Appeals from the governor and council to the King in Council, in cases in which the real value in dispute exceeded £300, were regularly allowed, as of course, upon application. These "appeals home," as they were sometimes called,<sup>1</sup> were effected by simple prayers to the Court of Appeals, upon which the appeals were granted and entered; and within a year<sup>2</sup> the transcripts were then to be transmitted, and assignments of error or reasons transmitted with them. Neither in the royal instructions to Governor Copley, in 1693, nor in the provincial statute of 1694, was there any provision for a stay of execution or supersedeas upon appeal to England, and Bordley was quick to take advantage of the omission in the litigation with Jonathan Forward and his agents and factors.<sup>3</sup> The defect was corrected by the royal instructions of 1727<sup>4</sup> that execution should be suspended upon the giving of security. After decision on the appeals to England, formal written judgments upon the report and advice of the Privy Council, under its seal, would be received by the court, entered, and given effect. One of these judgments is found transcribed at length here in the case of *Forward v. Powlson*.<sup>5</sup> Examination of the records of the Privy Council has failed to disclose any entries concerning the appeals noted in the cases of *Bennett v. Frisby*, *Smith v. Hemsley*, and *Skirven v. Willis*, and they were presumably not perfected.

## 15. THE CASES BEFORE THE COURT

It will probably be sufficient to explain the litigation here recorded briefly, in groups under the headings of the several remedies sought, except that cases instituted in the course of one complex litigation must for a convenient understanding be explained together. In general, the remedies pursued, and the forms in which they were pursued, are explained in the contemporary English text books, abridgments, and digests, and in the modern histories of English law, and only a few local peculiarities need be dwelt upon. Proceedings outside the course of ordinary litigation are not listed here.

## I. THE CASES OF POWLSON, FORWARD, BORDLEY, COCKEY, GORDON, AND ROGERS

This is the complex litigation of many cases interlaced which it seems well to disentangle in a single statement. Parts of it fill with their records a large

<sup>1</sup> 2 Harris & McHenry, 365. The younger Dulany, in 1773, said these appeals home had been more common theretofore than of late times. *Loc. cit.* Ten such appeals were taken in cases in this volume.

<sup>2</sup> *Gordon v. Lowther* (1726), *Ld. Raym.*, 1447.

<sup>3</sup> *Post*, p. 700.

<sup>4</sup> *Post*, p. 530; *Acts of the Privy Council, Colonial Series*, III, 126-127; G. A. Washburne, *Imperial Control of the Administration of Justice in the Thirteen American Colonies, 1684-1776* (New York, 1923), pp. 19, 62, 63.

<sup>5</sup> *Post*, p. 436.