Merits — As to the 3d. relative to the nature of the Suite, I think the Party may proceed either way: by Suite of Jactitation or Nullity; the Determination is in effect the same in both Cases; in the former, the Ct virtually & by Implication declares a Nullity, yet the reason of that Sentence does not appear; the Cause of it is not declared, it might be either Consanguinity or Frigidity; I rather think this method of proceeding in the Nullity more eligible, (that wch is pointed out by the Act of Parl: wch enacts a Penalty, of wch the Sentence of this Ct is declaratory, I therefore overrule Mrs Page's protest, & order her to appear absolutely —

Delegates Feb. 19. 1765

No 13 Anne Cs. Anglesey. v. Juliana Cs. Anglesey.

Bishop. Dr Collyer Dr Clarke

Assigned for Serjt's Inn

Dr Collyer..... I am Council for Anne Dowager Lady Anglesey, Widow of Rich: Earl of Anglesey, agt Juliana styleing herself Lady Anglesey Widow, of the said decd Rich. E. of A. The Appeal is from the Prerogative Ct of Dublin, in a Cause originally instituted upon the Grant of Probate or Admon to the late Rich: E. of A. between Juliana Donavan, styling herself Widow & Ex: & my Client the real Widow — In April 1759. the Decd made a Will, appoint Juliana his sole Exex by the description of Cs of A: in Feb: 1761. E. Rich: died: On his death, Caveats being entred, on behalf of my Client, & her 3 Daughters, Dorothy Dubois, Caroline White, & Eliz: Hide, the Caveats were warned by Juliana, & Citation agt Cs Anne & her daughters, with Intimation to shew cause, why Probate & Admon shd not be granted to Juliana as Widow & Exex: the respective Proctors were assigned to allege their Clients Interests: Juliana's Proctor lodged the Will in the Registry, & gave an Allon, pleading the Execution Sanity &c An Answer was given by Anne's Proctor, & an Allon, also, of 5 Articles, pleading that the Decd had Goods in divers Dioceses, & was therefore subject to the Jurisdiction, & propounded her Interest: Juliana's Proctor exhibited Exceptions in writing "that his party was not obliged to join Issue with Anne "the pretended Widow, for that she never was married or contracted "to the Decd: therefore has no right to oppose the Will." The time for Answers was continued 2 Court days, when Anne's Proctor gave an Allon pleading Courtship, Cohabitation, & Acknowledgement of her & the Children: that Anne obtained a Sentence for Separation by reason of Adultery: that the Decd was condemned in Costs of Suite & for nonpayment was excommunicated; that he died excommunicate; & that Persons excommunicate are intestable, therefore the Will null & void: Juliana gave a peremptory Plea, That the Decd was previously married to another Woman, that there was Consummation, Cohabitation, & Reputation, that she died intestate in 1741. & that Ld A. obtained Admon to her as Husb: that therefore Anne's marriage was void, being pleaded to have been in 1727; whereas she covenanted in an Instrument dated 22 Decr: 1726 never to trouble him: Juliana joined issue on the point of marriage: an Allon was offered by Anne, pleading the Deed of Settlement, to shew she was his Wife; they pleaded that Ld & the other Woman in 1729 put in an Answer in Chancery upon their Honor: the Judge allowing the Exception, rejected this Allon pleading a Deed as a Circumstance only to shew that Earl Rich: acknowledged Ly Anne & her Children as his lawfull Wife & Issue: hereupon it was appealed, & a Peton being presented to Ld Chancellor, a Caveat was entred by Juliana & a Commission prayed to Ireland: the Ld Chancellor appointed to hear all parties, & the Qn was, wh: the Commission shd be granted here, or in Ireland; his Lsp said it was an affair of consequence, an Earldome & a great Estate was in dispute, therefore he wd not trust it out of the Kingdom; he was very explicit; said the Judge in Ireland had neither Law nor Equity to support him, & wondered what pretence he cd have for rejecting the Allon, for that the Copy authenticated was as good as the Original.....

Dr Clarke... I am Council for Juliana Cs of Anglesey, agt Anne Simpson the pretended Widow of Rich: E. of A. & her 3 Daughters. The Dr has stated the proceedings in the Original Cause so fully, that I shall trouble the Ct: long: the Admission of the Allon now in question, consisted of 3 Articles, pleading in behalf of Anne, 1 that the decd intending to provide for her as his Wife, did charge his Lands with 2000£ pln: as a Jointure, & with 10000 — 8000. & 7000, for his Daughters according to their Qldrships: 2 That the Daughters are therefore parties. 3 pleaded that a Copy of the Deed was thereunto annexd: You will observe, It was a Copy authenticated only by one Witness, & the Exceptions made by my Client were, that it is obscure, & such as she is not obliged to answer: that the Original Deed is not annexd, that the Copy is insufficient. The Qn: now, is only wh: the Judge did right in rejecting this Allegation, with nothing but the Copy of the Deed pleaded & annexd.

Assigned to Serjeants Inn. by Comn: Drs Ducarel & Harris Meacham

Prerogative Ct

No 14 Foster v Wright See Fol. 86

Term. Trin: 2 Sess: 1765

On Admission of Wrights exceptive Allon

Bishop — Dr Marriott: Wynne Dr Collyer. Harris — Major.

Dr Collyer... Thc: Burrell Esq of Ryall in Rutlandshire, is the Decd he made Mrs Foster Resd: Leg: who has propounded a Will & Codicil dated 17 Feb: 1743 & is opposed by my Client Mrs Wright, as 2d Cousen to the decd they have examined their Witnesses & Publication has passed, & we are now before you with an exceptive Allegation to the two Witnesses John Gann & J. Skief: as to Gann, we plead his swearing that the name subscribed to the Will & Codicil, was his Fathers hand writing, whereas they are dated a year & half after his Fathers Death. Our Exception to Skief is, that he has sworn to the Capacity of the Decd after having given a declaration under his hand, in the presence of 2 Witnesses, that he was not capable. This Allon is exceptive to these 2 Witnesses; the one deposeing to the Sanity of the Decd the other to the handwriting of a subscribing Witness: the matter pleaded is so very essential to the Cause, that I hope, Sir, you will be of opinion, this Allon is proper to be admitted.

Dr Marriott. King's Advocate I am Council for Mrs Foster: The principal Objection I have to make, to the Admission of this Allegation, is that it is quite unnecessary to give an exceptive Plea: for unless any Exceptions can be brought to the Competency of Witnesses, those ariseing from little variations are proper for the hearing, upon the merits. The Station of the Witness is to be considerd, he was only a Farmer; This is only a declaration opposed to a Deposition upon Oath: It was a very singular Transaction: the Attorney goes to Mr Skief, & over a Bottle contrives to turn the Discourse upon Mr Burrell's Sanity, & gets him to sign a Paper, that the Decd was insane: but 16 days after he deposes to his Sanity; when he was sober, & had time to recollect himself, he deposes contrary to that extorted Declaration: the Nature of the Transaction proves he was drawn