1765 See fol. 14

Bye Day July 4th.

No 16

Woodward: v Saunders

Altham — Dr Harris — Dr Wynn — Bishop.

Petition

Q: is a pty propounding a Will to produce all ye subscribing Witnesses

Dr Hay Judge on Deliberation.

In this Case a Will has been propounded, a Commission prayd & decreed, to wch the following Objections were taken; "That there appeared to be 4 subscribing Witnesses, & only 3 examined; that one of them was not produced, without any reason assigned, & that one who was not a subscribing Witness had been examined, upon this last Objection no stress can be laid; the Commission is general, the Party is not restrained to the Examination of the subscribing Witnesses, he may examine such & as many as he thinks fit — The Qu.n is singly wh.r the subscribing Witnesses shd not have been produced by the Party propounding the Will? It has been insisted upon, that he shd produce all the subscribing Witnesses, because they are instrumentary & referred to by the Testator himself: To be sure he has referred to them; but the Case was new, no Instances have been quoted, I can find none in the Books, it is therefore res integra — I think the Party propounding is not compellable to produce all the subscribing Witnesses nor more than are sufficient; but he must bring as many as the Law requires for that Act: The Law as to personal Estates, requires 2 Witnesses, he need not therefore produce more than two, he may omit those he dont chuse to examine, not only because he may suspect them to have been tamperd with, but on account of a superfluous number of Witnesses occasioning Delay & Expence. It has been said, that the Opponent has a right to avail himself of all the Evidence appearing on the Will, that he has as much Interest as the Propounder & so has a right to hear all — But I think the party propounding is not obliged to produce more Witnesses than are necessary for his purpose, the Testator might have had 20 Subscribing Witnesses — There is another Objection to obliging him to produce them all, that the Person bringing them, makes them his own Witnesses, & cannot afterwards except to them, & if any of them shd have been tampered with, it wd be very hard that the party propounding shd be forced to produce them; Besides let the Witness be ever so unexceptionable, the Producent wd be liable to the Costs: so that there are 2 Objections to this Method. 1. that it wd be unreasonable to oblige a Party to produce a Witness who may be agt him, & cannot be serviceable, the others being sufficient: 2. That the party wd thereby be subject to the Expence. But I think there can be no Objection to the following Method, the Term probatory not being expired, tho' he has not yet been produced, he may be, & if he is not, when the Cause is called on, the Opponent may pray a Monition, suggesting that this subscribing Witness has not been examined by the Party propounding the Will, & praying him to be brought for him to examine upon Interrog.s concerning the Will, but then he must be produced at the Expence of the Party praying the Monition. If such Monition was to be prayd now, I wd direct it, upon the party proponent declaring, he will not produce him. NB Mr Altham declared he wd not produce him & monition was decreed at the petition of Bishop —

need not produce more than two.

See the Case fol. 14. 15. — 112. on admission of Althams Allon — also 195.

Delegates. Drs Marriott Meacham.

No 17

Jones & Scroop v Craven.

Tyndal. — Drs Collyer. Harris — Dr Wynne — Stevens.

Trin: Term 4 Sess:

June 28.

Correction. On Admon Cravens Allon wh.r relevant

Dr Wynne....

I am Council for Mr Wm Craven B of All Souls Coll: Oxon: The Cause began in the Court of the Vice Chancellor of Oxon, by the Proctors of the University promoting the Office of the Judge for menacing & impedeing ye Officers of the University contrary to the Statutes: they gave in articles objecting that Wm Craven, with several others on the 5 & 6th of March 1763 was found, by the Proctors, drinking & rioting at a Coffee house; that they were admonished to depart to their several Colleges; that instead of obeying the Admonition, they all went together into All Souls College, that Mr Craven did afford them Shelter in his Chambers & refused to admit the Proctors, or send away those belong.g to other Colleges, & upon the Proctors going away, he opened ye window & putting out his hand in a menaceing manner, called out "No body shall come under my Window. 2 May 1763 the Judge decreed for Mr Cravens Answers, who then alledging, that he intended to protest agt ye Jurisdiction, was assigned to exhibit his Protest the next Ct day: The Protest ran thus, "Mr V. Chanc.r I persist in protesting saving all due reverence, that I am not subject to your Authority for any thing, within the Walls of All Souls College" Then under protestation he gave his answers, admitting the fact of the Statutes of the University being as stated, & that of his being at ye Coffee house; that he went quietly home, but denied every thing relative to his menaceing or impedeing the Proctors, except that he desired they wd not come into his Chamber in ye College. The Vice Chanc.r took time to consider, & on 17th May 1763 (hav.g heard Council "Wh.r ye University have a right to take Cognizance of Offences committed within the Colleges agt the Statutes, & enter into the private Colleges for the Delinquents; or wh.r they are distinct Communities, & the Persons being within ye Walls are subject, are subject only to the Warden & Fellows of All Souls) resolved, that the Proctors have a right to vizit all Colleges, & that there is no particular Exemption for All Souls, therefore overruled the Protest: from this determination, Mr Craven appealed to the House of Congregation of Doctors & Masters: These Delegates took Cognizance of the point & decreed thus "We Delegates do confirm the Interlocutory Decree of the Vice Chancellor, & remit the Cause: from this Sentence Mr Craven appealed to the venerable House of Convocation, who on ye 23d of Dec.r 1763, reversed the Sentence with Costs, declaring it to be illegal, unconstitutional & null & void: from this Decree of Convocation, Mess.rs Jones & Scrope appealed to the King in Chancery: An Appearance has been given for Mr Craven, who is now before you with an Allon pleads that All Souls Coll: is a Body corporate, that it is their freehold & Domicile, that all the Colleges are exempt from the Entry of the University Officers: that it was erected a Body Corporate by Letters Patent 16 & 20 H6. & that for these Reasons, the members of All Souls are not subject to the V. Ch.r for Offences committed within the College Walls, but are governed by their own Statutes, Warden & Fellows.

Dr Collyer.

One of my Objections to this Allon, is, that it contains ye very same matter, as was comprized in his Answers, given in before the V. Ch.r & it seems to go, on the maxim, of every ones House being his Castle; this is the Common Law Rule & looks towards a Prohib.n It was omitted, I dare say, undesignedly, by the Dr in ye opening, that we objected upon the Appeal to 3 of the Delegates of Convocation as being fellows of the College to wch ye Delinquent belonged: