altham has also brought in a Commission, Affid.ts in wch the Witnesses swear, they beleive that Mary Randall by her Bequest to Mr Geo Francis, meant the Exor an eminent Butcher at West Grinstead, & not Geo Francis his Nephew an Infant, who was not used to be called Mr. There were 2 Geo Francis, & this Affid.t dont shew that G. F. jun.r was an improper person to be called Mr, for if the reason had been the Witnesses own, he wd have said because he was very young or quite a Boy, whereas the saying, because he was an Infant, shews that an Attorney drew the Affidavit: the words & reason are his: In our Law, we call them Minors after Seven years of Age: Our Witnesses say the deed had a great regard, for this Nephew of Mr G. F. the Exor, wch makes the presumption very strong, that he was the Person intended to be benefitted by the Legacy of £20, & her Declarations of her great obligations to the Exor, & fears of not being able to make him amends, make it very unprobable that she shd intend him so small a Legacy, but highly probable she intended him for her universal Heir — But even if the Exor is the Mr G. F. meant for the Legatee, there have been Cases where Exors have had a specific Legacy & yet the Residue has been decreed to them: the Case of Newstead & Johnson 1740. Blinkhorn & Teast 1750. & a case in 2 P. Williams 340 where a Person had a House left to him, & yet the Ct decreed him ye Residue as Exor: If the Bequest of a Legacy to the Exor, excludes him from the Residue, the Gift of a Legacy wd also exclude a next of Kin; the same reasoning wd hold in both; viz: that where the Testator had given a part, he never cd intend the whole: yet there is a judicial Determination of next of Kin, specific Legatees, hav.g the residue decreed to them: so that I hope my Client will be thought by the Ct entitled to the Residue, even tho, you shd be of opinion, that he is a specific Legatee in the Will

Dr Wynne... I am Council for Mr Whittington Couzen German Couzen German once removed to the deed, Mrs Mary Randall, who having appointed Mr Geo Francis her Exor he has been cited at the Instance of my Client to an Inventory & Account: there is an Appearance under protest Mr Whittingtons Interest is confessed, wch is sufficient for the present purpose; the reason of the Protest, is not now that Mr W. has no Right, as next of Kin, but that the Exor is not obliged to give an Inventory & Acc.t being entitled as Exor to the undisposed Residue: the Cases quoted, of specific Legatees hav.g the residue decreed to them as Exors, are Determinations in another Ct & take their rise from that of Foster & Munt in the time of Ld. C. J. Jeffries where Legacies were given to the next of Kin; but in this Will there is nothing given tous as next of Kin, so it is different to the Case alluded to by Dr Harris: the Qu: now is, wh.r there is a probability of Interest, viz in Distribution (an ostensible reason not being deemed sufficient) to found us in calling upon the Exor? We certainly have a right to do it; as Exor he takes Probate under the Condition of giving an Inventory & Account; & it appears neither from ye Will (but the reverse) nor from the Evidence, that he is at all entitled to the Residue: there is not one Witness who says a Word of the Deed hav.g ever declared her Intention of giving the Residue to him, she might not be acquainted with the Law, she might intend him the Residue & think, the making him Exor, was giving it him, but her Intention must follow the Law: there being no declared Intention it must be collected from the Will alone, from wch you cannot form a persuasion, that the Legacy of £20. was intended for Geo Francis ye younger one of his Age wd never have been called Mr & the Witnesses swear he did not use to be so; if therefore G. F. jun.r is not the Legatee, Mr G. F. the Exor must be, as such, not a nude Exor, & not entitled to the undisposed Residue, but must give an Inventory & Account...

Judge Dr Hay... The Testatrix gives a Legacy of £20. to a Mr Geo, Francis, the next of Kin cites the Exor to Inventory & account, who alledges in Bar, that he has the Residue; the Qu. is wh: the Exor, is a nude Exor, or not? this depends upon Law & a Fact: the Exor is to prove he is not a specific Legatee: it appears on Affid.t that there were two of that name: the Witnesses swear they verily beleive from her Declarations, as to Mr Geo Francis the Exor, that she intended him to have the Residue; but allowing this Evidence its whole force, that doubt make it certain the Exor was not the person intended for the Legatee, & there are two Witnesses who swear the contrary: he must make it clear, that he was not the person to whom the Legacy was left: It is the duty of an Exor to give Inventory at the Sute of any Person hav.g an Interest, however slight; it used to be done at the time of taking Probate: if it is doubtfull wh.r the next of Kin has any Distribution, the Exor must give Inventory, because he is obliged to do it without being cited; the Ct can direct one, & it is always done in the Country, therefore I overrule the Protest — This Ct is not authorized to pronounce the Exor a Trustee for the next of Kin, (the Ct of Chancery can) & direct him to distribute accordingly, tho, it virtually may by pronouncing, Mr Geo Francis the Legatee, to mean Geo Francis the Exor....

Exor obliged to give Inventory without being cited

Prerogate

No 29 Talbot v. Ryan. July. 4

Bargrave — Dr Collyer — Dr Bever — Holman

As to ye Validity of a Will

Dr Collyer... Wm Ryan is the Party decd; he left a Will, wherein he app.d Edw: Talbot sole Exor, & gave his Sisters £20 a piece: Cath: Ryan (now Stewart) took Admon as to an Intestate, wch has been called in at the Sute of the Exor. It appears that 2 Witnesses subscribed the Will; one is dead, the other swears to the Sanity & to the Subscription of the Deed, & to its being subscribed by the other Witness in his presence: there has been 1 Witness exam.d to ye Handwriting of the Deed Witness. the Query