Judge — is, whether the Will is valid or not?

Dr Hay — I think this so clear a Case, that I will not trouble the Council. the Will is indisputably valid; Here is 1 Witness to the Execution: it is always usual to establish a Will upon the Evidence of the Character of a Deed Witness a direction to sign the Name of a Testator, will be a signing by the Testator, but it is not allowable to be proved by the Testimony of that single Witness, however one Witness is sufficient in the present Case to prove the Handwriting of the Deed Witness, on account of the other concurring proofs: I am of opinion to pronounce for the Validity of this Will —

Prerogative — See Fol. 10

Neale v Neale & Piper — No 24 — July 4th.

Cumberlege — Dr Wynne — Dr Harris — Greene

Wh: ye Admx shall be excommunicated for not giving further Security

Dr Harris — Mrs Piper the Admin: was cited by the Curator of Minors, their Grandfather to give an Inventory & Account, of the Estate of Mr Neale her first Husband; it thereby appeared to be more considerable than was at first imagined; the Ct then directed the Securities to justify — On their refusal, you said, you cd not revoke the Admon, but ordred the Admin: to give further Security, on pain of Excommunication; the Qn therefore now is, whr the Excommunication is to go under Seal, by reason of her not getting such Security; & there is the Affid: of a Person who heard 4 People refuse; having done therefore all in her power to comply with the Order of Court, I hope you will be of Opinion, not to let the Excommunication go under Seal —

Dr Wynne — Our Application is on behalf of 6 Children Minors: the Mother takes Admon, & brings 2 Persons as Security; she ought to have known whether they were responsible & wd justify: however she soon marries again without taking any Care to secure the Money for the Minors; the Children are innocent & it wd be extremely hard they shd suffer thro her neglect — the Husb: & Wife swear they have applyd to sevl persons who have refused to be Security, but none are named, if any had, it wd be more credible, whereas by specifying none, she puts it out of the power of the other party to contradict it: there is indeed a reason pretended, because Neale is concerned: but that can have very little Weight as no Act can be done without the Admx: if the Excommunication was to pass, there appears great probability that it wd not be attended with Imprisonment, for when passed, she wd in all likelihood find Security —

Judge Dr Hay — If the Widow has used her Endeavours to comply with the Order of the Ct & has shewn it to their Satisfaction, she is in time to prevent the Excommunication going under Seal — She took Admon, there was no Objection on her not being able to find sufficient Security at the time the Admon was granted: she married again, the Guardian then applied to have all the possible care taken of the Estate, that the Security shd justify; they have refused to justify; they prayd to have the Admon revoked; but the Court said there was a great difference between revoking an Admon once well granted, & making an Election whilst it was open, as to granting it to the Guardian or

Widow! (I doubt wh: the Ct cd go farther than obliging the Party to give the Security;) but tho, the Ct wd not revoke the Admon, it directed the Widow to give Security, on pain of Excommunication; she & her Husband swear to have applied to all her Neighbours & Acquaintance; the other Witness swears to hearing four Persons refuse to be Security; then the Return is, that she cannot comply with the Order; I wd enforce my own Decrees but the Ct wd not be cruel; Lex non cogit ad Impossibilia; I dont see why the Guardian does not sue for Distribution, for then he might come at the Securities; The Husband of the Widow has given bond since the Excommunication directed, all that can be done, has been done to secure the Minors Interests, & I think in this Case, sufficient Reason has been shewn, to induce the Ct not to proceed; I therefore dismiss the Widow, but grant a Decree, as is now prayd by Mr Cumberlege to exhibit an Inventory & see Portions allotted — — — — —

Delegates — No 25 — Merry v Jamison & Co — July 5 — On Admon of an Allow about a Bottomry Bond

Gostlin — Dr Wynne — Dr Clarke

Dr Clarke — This in Appeal from the high Ct of Admiralty: the Ship Ld Anson whereof Mr Merry is the Owner, in April, May, & June 1763. lay at in Virginia; & the Ship wanting repairs, the Captain applyd to my Clients Jamison & Co. for £1000 to be employd in refitting, victualling, & Lading this Ship, for the Port of London; to secure the Repayment the Masters gave my Clients a Bond of Bottomry, & Bills of Exchange, on Mr Merry the Owner, with Bond as well as the Bills he refused to pay: the Ship arrivd in Augt 1763. havg made considerable Freight. 17 Sepr 1763 Action was entred, & a Warrant issued to arrest the Ship; her Jackel &c in whosesoever hands they shd be, to answer to my Client, Bail was entred, & a Libel has been given consisting of 9 Articles, setting forth that sometime in 1761 or 62. the Ship Ld Anson was freighted on a Voyage to Quebec; that she was about 400 Tons burthen, that Mr Woolcomb was sole Commander; that the Ship lyeing in Hampton River, the Master havg no fixd Credit there Messrs Jamison & Co. supplied the Capt. with money to ye amount of £1000 to refit, victual & Lade her, else she cd not have proceeded safely to London; that for Security the Capt: made over the Ship, Tackle &c and gave a Bottomry Bond; the Identity of the Persons is pleaded, & the Bill of Sale: that in Augt 1763. she made freight to the Amount of £1500. that Mr Merry had been frequently applied to for the payment but had as often refused; & the Motion was that he might be compelled to payment by Sentence of the Ct. This Libel the Judge below admitted, from wch Admission Gostling has appealed —

Dr Wynne — I am Council for Mr Merry: 17 Sepr 1763 Action was entred in £2000 8ber 1763. he bailed the Ship &c. 14 Novr 63. the Judge of the Admy admitted the Libel, assignd to 22d Novr when Mr Jamison prayd to be heard on his Petition "That this was a grievance & cd not be appealed" The Answer is it wd be an irreperable damage, for we plead they did not take such previous steps, as ought to be, & always are taken abroad, to empower ye Captn to hypothecate There was no Schedule of the Repairs; No Advice of ye Officers, Mariners, or Certificate under their Hands, that ye Ship cd not proceed on her return, till those repairs were done, for wch ye money is