at liberty to chuse. Mr Campbell must have his Remedy agt Mrs Ors as Admin.x she is only Trustee for him; for I must decree the Admon to her, as next of Kin with Costs to the Time of pronouncing for her Interest

Appealed

Prerogative

No 28 Winchester Langdale & Wood v Gough als Strode — July 30 — On Admon of an Allon

Bog — Dr Wynne — Dr Harris — Mayor

Dr Harris

Mrs Eliz.h Gough died, leaving a Will, dated Jan.y 18. 1760, & another June 6th. 1762. in one Allon we particularly set forth how Mrs Lucy, Naomy Gough, the daughter of ye deed is entitled to the Fortune, viz. by ye Will of Mr Ferdinando John Paris: the Will of 1760 has been propounded on the part of Mrs Strode, & this Allon is Subsidiary: we formerly pleaded that Mrs Paris recommended Miss L. N. Gough to her Husband, to be provided for by him: that after his Wives death, for the better care he took her, her mother home to his House, adopted her as his Child, & declared he wd leave her his Fortune; & that he made this declaration, even after her Marriage with Strode, but added, he must now give it under some private Trust: that she then recommended her mother to be her Trustee, & that she accepted of the Trust accordingly. That Mr Paris's Will was dated Jan.y 7. 1746, & that a Letter of the same date was found, together with the Probate in Mrs Goughs Custody: that the Persons setting up the Will of 1762 are Strangers, & that the Contents of the Paper were never read to the Deed. In this present Allon, we plead 62 Exhibits, Notes, Messages, &c annexed to Interrog.s necessary to the Allon, that they might not plead them. pleads that legacy are given to Miss Eyre, whom they called Insolent &c. "Mr. Eyre will find she must be Slave to Him & his Insolent Daughter, & the dirty Shift he keeps" That Miss Eyre is ye Daughter of Francis Eyre Esq, the Person they wd intend by him, & she is meant by his Insolent Daughter. Mr Jones Clerk to ye said Mr Eyre Solicitor is a Witness

"This Day (20th Sept. 1762) due to my child Ten Gui.s, viz. in Crown Pieces

Dr Wynne

I am Council for the Exors named in the Will of 1762, who are also Trustees under it for Miss Lucy Naomy Strode, to whom the fortune is left for her life, & to her Heirs after her, & for want of Issue to these Trustees themselves; the Dates of the Skps wch have been taken in this Cause, will sufficiently shew how unwarrantably it has been delayd. Mrs Eliz. Gough died Jan.y 23. 1763. On 2d Sep. Hil. T. (29 Jan.y) 1763. Bog prayd Probate. On the Bye Day. Mrs L. N. Gough opposed: the Will was propounded in an Allon, Witnesses were examined, & 1 Sep: Trin. T. Publication was decreed on the Petition of Bog: they asserted they wd plead a former Will, & Republication, & Admon was granted to Mr Robinson, the Nominee of Mrs L. N. Gough als Strode; their Allon was admitted in Mic: T. 1763, to wch this is supplementary, & only 3 Witnesses have been examined. Major declared he shd give an Allon 1 Sep: Trin. T. last. we have waited for it almost 2 Months; it now consists only of 3 Articles immaterial & irrelevant, with a long list of Notes, Papers, whose contents are not by any means expressions of tenderness from Mr Paris to Mrs Strode. Custody & Imposition have been alledge; nothing can appear from these Notes to instruct those Articles, but supposing they could, that you wd even examine wh.r Trust, or not (as you cannot) yet general letters only wd be no sort of proof of leaving a Trust in her favour. theft wd not admit such quantities of Papers, that do not make to the Cause: & wd serve only to

continue an affected delay: they are out of time; if proper shd have been annexed to the Allon, but must appear in a very different Light after 2 years.

Judge
Dr Hdy.

If they had been offered with the Allon originally pleading the Affection, Exhibits are to attend it. The Identity of the Papers is confessd, Witnesses need not be examined to them: the rest is observation, let them come in time

July 30.

Prerogative

No 29 Dovee in the Goods of Anne Bax deed — A. Wh. ecclas. Papers are to be taken as part of ye Will

Clarke — Dr Wynne.

Dr Wynne

This is an Application for the opinion of the Ct, from a Person who has administred as Exec.x in a Will of Mrs Anne Bax deed, dated 11th Jan.y 1761 has since found 2 Papers of a Testamentary nature, & is desirous of knowing whether she must take Probate of them. In the Will of Jan.y she made a disposition of her Estates, in trust, with a Clause, "that there shd be paid out of the Profits, such Sum or Sums as she shd direct, by Note or Notes under her hand". She by a Paper gave several Legacies, wch she directed her Exec.x to pay. The Will & Paper were proved March 28. 1765. The Papers subsequently found, were 2 Letters addressd to Mrs Betty Foreman, In the one dated Sep: 29. 1762. are these Words "Remember if I shd not live to go to Feversham to give my keys to Jane Smith, you will find a Will, but it is not to my mind, & I am too unhappy to make another". She also gives Mrs Foreman a Legacy of £50, mentioning the doing several Acts for her, wch were then imperfect, & many other things. the other is of the same date & nearly of the same purport, & contains moreover the Words "Desire Anne Dovee to give all to my Brothers & Sisters". The Controversy mentioned in the Letter was determined in her Life time. The person addressd, was Betty Foreman her Servant, who had left her long before her death: the Account mentioned, was settled before & she had another person who managed her Affairs, & not ye person taken notice of as Manager in that Letter. the Qu. is wh.r these papers are to be taken as Part of the Will.

Judge
Dr Hay

The Question may depend upon Circumstances: but upon ye face of these Papers, Mr Dovee need not take Probate of them, unless she pleases: they are not addressed to the Exec.x & Exors are not obliged to take notice of Papers not relating to the Will, wch these seem not to do. If the persons interested set them up, Citation wd issue at their Instance.

Mich.s Term 3d Sep:

Nov.r 23 1765

Prerogativelt

No 30 Holmes v Fleet

Gostlin — Dr Collyer — Dr Wynne — Holman

Dr Collyer

Caveat being entred by Mrs Fleet Daughter of the deed, was warned by Frances Holmes the Husband, it is said he barred himself by a Settlement before Marriage. The Husband in that Case, has a right to every thing, not covered by the Deed. Gostlin prayd Admon to Frances Holmes. Holman alledged that previous to ye marriage he had agreed, that whatever Goods &c she then possessed shd be vested in Trustees to be to her sole Use, & disposed of by her as if sole. the Deed is in 1744 & conveys, leases, messages, India Bonds, Debts, Plate, & all other Goods & Effects whatsoever in trust for her the said Sarah Kingston, that ye survivor & Survivor the sufferer to receive the Interest, if she shd survive her Husband: her discharge to be sufficient notwithstanding the Coverture, her Goods &c not to be liable to his debts, that they shd permit her to let, sell, mortgage such Tenements Hereditaments

1. If ye Husband be entitled to Admon to his Wife having no Interest