affid.t that on executing the Release, it was agreed between them, that £100 shd remain to reimburse him his Expences as Admor: he has effectually on his Oath declared, there remains a Surplus to be distributed: the Setting off, is a future Question, the Inventory is the present: the Release is not for every part, if he admits there was any thing left wch shd be distributed hereafter, as he does in this affid.t he must give an Inventory, so I must decree one; a Release & Receipt may be a Bar.

Prerogative

Bye Day
Is an admr of a Creditor entitled to an Inventory?

No 35 Molyneux agt Maye

Gostlin — Dr Wynne — Dr Calvert — Bishop — peton

Dr Calvert — Robert Barber is the Deed, he made a Will, appointed Michael Maye Exor. 17 August a Citation was taken out by Sarah Molyneux Admin.x of Mary Barber a Creditrix of the deed, who appears by the Books of Mary Barber indebted to her £ 55 9 7. 4½ with Int: due thereon — This objected that they have not specified y.e particular Sort of Debt, but only that it remains on the Books, you will observe, Sir; we have had posession of the Probate 4 Years — The Plt will expect to be informed how this Debt was contracted

Dr Wynne — The Plt is Admin.x to the Deed Mary Barber, she swears as such as fully as she can, must be supposed to know no more: It is, or may be a Book Debt — The Question is Wh.t this is such a Debt as can entitle the Creditrix to an Inventory? The Person does not say the Deed was not indebted, as to her being possess of the Probate 4 Years, immaterial, as she might not have been informed of the Debt till lately

Judge
Dr May
To entitle a Cred.r to an Inventory y.e Affid.t must be made of y.e Debt.

To entitle her to an Inventory she must make an affid.t of her Debt; she is not herself the Creditor, but the Admin.x of the Creditor; she swears positively to a Debt appearing on the Books; perhaps she may never be able to set forth what Debt it is; so the Oath of an Assignee of a Bankrupt will be sufficient — She has gone further than she need have done she swears positively, not to her Belief: the affid.t is full, the Creditor may say how the Debt particularly arises, the Appearance of a Debt, in the Case of y.e Representative of a Creditor, is sufficient to entitle him to an Inventory

Prerogative

For Sentence 2. Janry

See Fol. 19 92.

No 36 Foster agt Wright

Bishop — Dr Marriot. Wynne. Birkett — Dr Collyer. Harris. Calvert. Major

Dr Marriot — Thos. Burnell Esq.r is the Deed — he was born March 1717. & died 16th Dec.r 1763, being about 46 years old at his Death; he made his Will dated 16 Aug.t 1741, & thereby appointed Carrier Thompson & Thos. Trollop his Exors, & Jane Foster, mary Hooke Wife of Jn.o Hooke & Judith Green, now Judith Porbington, Anne Green after.d Dawkins Wife of Francis Dawkins, Wm Foster, Humphry Hyde, Thos. Hyde Resid.e Legatees — Carryer Thompson & Thos. Trollop of Exon, Anne Green after.d Dawkins, Wm Foster, Humphry & Thos. Hyde Resid.e Legatees died in the Testators life time, & Jane Foster, mary Wife of Jn.o Hooke & Judith wife of Jn Porbington are the Surviving Resid.e Legatees & the Partys promoting this Cause — The Deed also made 3 Codicils. 1st Codicil dated 26 Aug.t 1741 (B)

Gives additional Rings
Hydes legacy to Owen.

2d Codicil 12th Feb.y 1744/5 (C)

Wm Barker y.e younger added as Trustee to preserve contingent Remainders — Dr Burnell & Uncle's Name omitted — my Entail after his man Burnell

3d Do. — 17th Feb.y 1746 (D)

The Deed has given the Bulk of his Estate amongst all his Relations except Mary Wright a first Cousin (who brings this Suit) the reason she was left out appears in some measure appears in some measure from an Answer of one of her own

Witnesses, viz. Anne Moor; to an Interrogatory on the part of y.e Deed Foster, framed to shew that Mary Wright's Father owed y.e Deed 800 £, & had tricked him out of it —

The above Will & Codicils have been opposed by the old Mary Wright, & propounded by Bishop on the behalf of the Surviving Residuary Legatees, thereon 8 Witnesses have been examined — Major For Mary Wright gave an Alton pleading Insanity & examined 48 Witnesses thereon, In reply towards Bishop gave another Alton, & examined 29 Witnesses thereon

18 Feb.y 1765. Publication was Decreed, & the Cause assigned for Sentence on the first Assignation the Bye days, & continued to the 6th of June 1765, when Mary Wright Spinster appeared personally & gave an exceptive Alton to two of Bp.s Clients Witnesses, viz. John Skeath & Jn Gann NB "Jn Skeath who was exam.d on the Exc. p. Skeath doth said, that he hath not thought from his first Condidit Knowledge of the said deed, that he wanted natural Sense, nor Knowledge of the said deed, that he wanted natural Sense, nor however declared as much, or to that, or the like Effect — how-ever this exceptive Alton they have pleaded a Paper Writing subscribed by y.e said Jn Skeath marked B wherein he says "he thinks y.e deed was not in a Capacity for making a Will, or of Understanding enough to dispose of his Affairs, that he always thought y.e deed was always wanting natural Sense"

The Exception to Infavin was, that on his Examon on the Condidit he swears that he believes the Subscription to Infavin to y.e Codicil, marked C. dated Feb.y 12th. 1744/5 to be his Father's Hand writing, whereas he goes on & says after, that his Father died April 19th. 1743. wch is one year & 9 months before the Codicil was made, so that it could not be his Father's Subscription — The Cause now stands for Hearing on the Evidence, upon the Question of Sanity, at the particular Period when the Will & Codicils were executed —

Dr Collyer — In this Case, there are no nearer Relations than Cousin Germans; Mrs Portington is a Stranger in Blood, the Will is very intricate & full of Law Terms, Uses, Trusts, Limitations, wch require very uncommon Understanding the Dr has inferred how as sane. till the Commission deemed him a Lunatic, but it is not in y.e Commiss.rs found, that he was insane only then — The Ct shd be satisfied as to the Instructions the Writer does not say the deed sent for him — he says when he came Mr Burnell took these Instructions out of his Pocket — Mr Foster y.e Writer of the Will says he explained the Instructions, what! a Man's own Instructions! he tells you the deed was of sound mind & Memory; upon the Interrog.y says that the deed on y.e 26th of Aug.t was very capable of making a Will wch required Common thought, but being a weak man, cd not take upon him to speak he cd do every thing wch required great de-liberation.

Bd Rubens, was Foskes Clerk, he says, he never knew y.e deed was sent for to attest the Execution, that he did so, believes him to be capable of understanding, at that time y.e Expressions used in the Will, in their Extent, as the difference of Joint-Tenants & Tenants in Common

The other subscribing Witness was Skeath to whose Evidence we have given an exceptive Alton, because on y.e 10th of Sept.r he signed a Declaration, that he knew the deed to be subject to Fits, & that when he Jn. Skeath, was called to witness a Codicil of y.e deed, he did not think him very fit to do such an Act

In Gann Witness to the 2d Codicil, when exam.d to y.e Hand writing is positive it was his fathers writing, but thought it