Consistory of London
4th Sess: Hil: T. Feb: 21

No 49

Knipe ol: Spier. agt Spier

Grene ____ Dr Bever ____ Dr Wynn ____ Bogg ____

On Boggs Petition.

Dr Wynn ____ opened his Case, it being Boggs act—

Dr Bever ____ This is a Cause of Substraction of Legacy promoted by Dame Mary Knipe ol: Spier as Daughter & Legatee named in the Will of Richd Spier deed, agt James Spier, Sonl & sole Exor in sd Will, wherein Deed gives all his personal Estate to his sd Son, subject to pay sd Mary a year for sd D.S. for 10 years, if she & sd James shall so long live &, for securing the payment of the same directs sd James do within one month execute a Bond next after his Decds death, execute a Bond to such person as Dorothy shall appoint, conditiond for payment of sd Annuity, the first payment to commence from next Quarter Day after Decds death, & if sd James shall refuse, shall not nor will upon the reasonable request of sd D.S. execute such Bond, gives to sd D.S. 100 to be paid out of his personal Estate, within 12 Months after his Decease — Decd died 8th of May 1764, & J.S. not having executed a Bond, as directed, but having refused to execute it when applied to by sd D.K. ol.S. this Suit was instituted & Libel for sd 100 as due & payable, by reason of the Non Execution of a Bond as directed by sd Will — Allegative Issue has been given to sd Libel & an Office Copy of sd Will exhibited in proof, the Subscription thereto & Identity of the Parties names confessed—

30 Sept: M.T. Bogg as Proctor for J.S. made the following Tender in writing; viz That he tendered the Legacy according to the Tenor of Decds Will, & alledged his Party, is ready, now, to pay the Annuity of 5 with Arrears & Interest from the time they became due, & prayd his Party to be dismissd — Said Tender was immediately refused by D.K.'s Proctor, who would have called on the Cause for hearing, but Bogg prayd to be heard on this peticon, wch was assigned, & appears a Repetition of sd Tender, & an Offer that his Party is ready to appear personally & be admonished to pay sd Annuity — This Submitted, Wch? under these Circumstances the Bequest of sd Annuity is ceasd & the Legacy of 100 become due & payable — Grene alledges the Tender to be not made, till after the Time the penalty was incurrd pursuant to the Will —

Dr Wynn. ____ I am Counsel for the Son of the Decd — a Person to entitle herself to the Penalty, must shew he has not complied with the Directions of the Testator; it is very likely to be Altercation between the Exor & Legatee wch? she sd receive the Annuity or the Legacy of 100 — She sd shew it to be the fault of the Exor, that she has made such reasonable request — They have introduced 2 Affts of Relations of the Party — Witn? says he saw the Party in the Kitchen offer the Exor a Paper wch he apprehends to be a Bond; that the Exor said, would give her only what the Law wd give; where is the Bond? the Drawer of the Bond cd prove something — The other Witn: says something more, but is not likely to be more correct; thd, suppose the fact proved there is no proof of the ..... he might refuse to execute an unreasonable Bond, conditiond perhaps for 20 p Ann:

Dr Bever. ____ The Tender was necessary to be made to Mrs Spier herself, for in all Legacys the Party interested is to look to doing the proper Acts — It is the Duty of Exors to give notice to the Legatees under the Will; how can they know, she came in time, the Legacy was not due when she offered the Bond — Herne & Shelbrook Winch: Rep: 69 — A Testator possessd of an Estate in fee, made Lease, & devised the Reversion to J.S. gave the Exors the Lease for Life, conditioning to give Bond for the payment of 20 p Ann: to J.S. no Bond being given, the Possession was decreed to the Reversionary Legatee — The Condition becomes absolute . . .

Dr Wynn ____ There does not appear in that Case an Alternative, as there is here; another difference is, the Testator says upon a reasonable demand made; in this Case the Testator has thrown the Demand on the Legatee

Judge Dr Bettesworth for Dr Clarke ____ In this Case Sd Spier gives the Plt a Legacy of 10 a year, on failure of payment thereof by the Exor on demand made by the Legatee, give her a Legacy of 100, wch is rather more beneficial than the Annuity — The Exor has now made a Tender of 5 to Annuity with Int: but I dont find that he now offers to give Bond; there are 2 Affts Dat

that a Bond was tendered — I think the Son has not complied with the Condition, that the Tender was not well made, therefore I decree him to have forfeited the Penalty, i.e. the Legacy of 100 —

Grene prayd all Facts to be propounded by the first day of next Term —

For fuller Answers

Consistory of London
4 Sess: H.T. Feb. 21 ____

No 50

Earle agt Earle

Dr Wynne ____ Drs Collier & Harris

Dr Collier ____ an Allon of Faculties has been admitted & Mr Earles Answers prayd; we say his Answers are evasive — we say he has an Estate of 500 p Ann: he answers 132 subject to a mortgage of 3500 — that he has only the Reversion of 20 a year — we object that the Money pretended to be owing, exceeds the value of the Estates; here is 132 in Land subject to such a Sum, It shd be specified, what Sums, else we are cut off from our Proof —

Dr Harris ____ he shd give a fuller Answer, to the Estate of Leigh, he says it is so small a Sum as 20 p Ann. we say 12 — 4th Art: We lay that Mr Earle is possessd of a Share in Covt Garden Playhouse wch brings in 20 p Ann, & we object that he has not answerd precisely enough, for it stands in the Alternative he shd say wh? he has any Share, or wh? it is worth so much

In .... Art: we lay he has purchased some additional Freeholds; How does he answer? he owns he has a House, but does not answer to the additional Purchase, he shd speak precisely to the Quantity of the Estate — We lay, that he has received 1500 for fines; She tells us a long Story of his expending the money; we want a definite Answer to adjust the Quantity of Alimony, he talks of Elopement; that is a Suggestion of his own, it is not in Cause what she carried away is nothing to the purpose; the Q is, what is her worth? how can you judge what the Mans Estate is from such vague Answers; let him state precisely wh? the Estate is in his own hands or not; he says it is mortgaged for 300 or 400 l, very extraordinary in so small a Sum — Her carrying away the Plate is extra — We say there are Things to the Amount of a large Sum in Town & Country the answers only to the one — He is a rich Man to call 800 a Trifle.

Dr Wynn ____ It is no matter wh? by purchase or Descent; he admits he has a House &c he specifies the Particulars of the Fortune received with his Wife; he is ready to answer to the Allon of Faculties, what Deductions are made from what he received from his Wife — He answers in such a manner that it dont signify how many Houses he had, he answers as to the Sum 800 l

Fuller Answers decreed . . .

Dr Bettesworth Judge ____ I decree for fuller Answers

Arches. Bye Day Sal. Feb. 22.

No 51

Griffin agt Rice

Alderley ____ Dr Harris ____ Dr Marriot ____ ____ Bishop . . .

Dr Marriot . . . I am Council for Waller Rice, an Infant who has taken Probate as Exor of Rice Griffin, who was Exor & Resid: Legi of Abel Griffin — The Suit began on the part of Mathew Griffin Brother to Abel; the Judge decreed Admon de Bonis non of Abel in paam, taking no notice of the Caveat entered by Waller Rice — there are 2 Caveats before the Ct

Dr Harris. . . . Sam: Lowry was not appointed Guardian to Waller Rice, & Rice Griffin had no right to appoint a Guardian to his Nephew — Our Objection is, the Judge, pronouncing for the Minors Interest without any Certainty of his appearing lawfully by his Guardian — The Minor has not appeard properly before the Inferior Ct or here; nor Constat that he was Exor or that he appeard lawfully; if the Admon was improperly granted to my client, he was not to be devested of it improperly

Dr Marriot . . . The Exor of an Exor has Priority legally vested with an Interest; the Judge satisfied of this, calls in the Admon, declares it void, but does not say to whom he will grant it — he does not determine, but it is sufficient for revoking it, to shew upon the face of the Plea, that there is an Exor of an Exor who has continued the Priority to the first Testator

Dr Harris . . . Our Grievance is this; we deny Waller to be Exor, & the Judge calls in the Admon without putting the Minor upon the Proof of his Int: the Cause is Welch — all our Proctor desired was to be satisfied — nor did he appear properly — A Testamentary Guardian can be appointed only by the Father — Nothing appeared to the Judge but a Bit of Paper called a Citation, wherein he stiles himself Exor of an Exor

Dr Hay Judge . . It is certainly true, that the Exor of an Exor is the Exor of the first Testator, insomuch that he need not take Admon de Bonis, he may act under the original Probate — to be sure there is an Irregularity in the Proceedings — Abel Griffin dies, appoints Rice Griffin Exor & Resid: Legatee

L: are the Proceedings to be quashd the Minor not appearing by his Guardian? . . .