Dig. 84. Tq. L. S. ... impugning the Will shd forfeit his Legacy – they dont state, we demanded the Legacy; they came & offered it, was it reasonable we shd refuse it? It is common in fraudulent Transactions, to give Legacies to the Parties most interested; those who are benefitted by a Legacy are seldom conusant in the Transaction; we desire to rel. Wh. the Deed was sensible & how we came to be left out, we have a right so to do –

Dr Harris Judge. I dont think I can concern myself in Papers of this Sort or order Mrs Sedman to deliver them back; Every Exor is bound to prove a Will by Witnesses, it is an Indulgence to prove in common form; if Mrs St. had any particular Equity to demand, she must do it; Equity; she is one of many Relations, has a right to put the Ex. upon a Proof by Witnesses & I am not at Liberty to refuse it. I give no Costs, tho they are sometimes given on a motion; It has often been determined a Legatee may oppose a Will: This is a very particular Case –

4 Sess. T. T. Prorog:

Jenner — Dr Wynne — Browne — agt — Browne — Alexander — Dr Collyer

Grant of an Inventory

No 66

Dr Wynne ..... Wm Browne made his Will & therein appointed his Wife sole Ex. & Universal Legatee; a Caveat was entred by the Brother; the Caveat was warned, Alexander app. for the Brother who declared he opposed the Will, we stand now assigned to bring in an Inventory for wch I insist there is no Occasion; The Use of an Inventory is to have a Constat of the Estate; if the Party cant be benefitted who prays, the reason ceases; a Discretionary power is always exercised by the Ct. Fleet v Holmes Arches 1755 E.P. made his Will, appointed his Wife Exec. & gave his daur a Legacy of 1000£ at 21. The Daur contested the Will, prayed an Inventory, having brought her Legacy into Ct; there was a Sufficient Constat said Sr. Exec. the Daur is not entitled to an Inventory –

Sr Tho Raymond 470 Boon & Boon. Prorogative 1682 ×

Dr Collyer ..... In the Case of Fleet & Holmes, the Legacy being brought into Ct. the account was gone, so that the only Qu. before the Ct was upon the Interest; make it appear by Inventory that you are able & willing; a Legacy is something definite –

Dr Hay Judge .. This Case has been strangely conducted on the part of Jos. Brown who contested the Will; his Interest is confessed; he called the Widow before the Ct to have an Inventory, as on an Intestacy, yet confesses the Will, by wch he confesses he has no Interest – Before the Answer were given in, he prayd an Inventory; she was assigned, & if the Proctor

the Alertness of the other Proctor will not prevent me giving him an Inventory if I can, tho, not as a Brother; the Ct used to do it ex Officio, 'tis so in the Case of Minors; 'Tis not so on Debts on account, because, there must be something certain – Has says there is something due from the Dead; Upon his Affidavit of a credible sort appears due; She confesses Assets, but not a certain Sum, that is no precise Answer to the Demand; a Confession of Assets is no Bar to an Inventory, because you can't plead that Confession in a Ct at Common Law; In the Case of Holmes & Dd the Confession was in the Arches where the Demand was made; Boon & Boon is very different from the present Case; in that a Legacy was to be paid at 3 times the present Case; in that a Legacy was to be paid at 3 times the present had been made, & the 3d tendered, therefore the Ct of 2 Payments had been made, & the 3d tendered, therefore the Ct of Delegates, notwithstanding 21 Rls. would not have ask the Party & decree an Inventory – Does she offer to set it down? I dont say I wd not use discretion, where there was a Confession of Assets accompanyd with a Proposition to depart, or a Proxy, where the Debt was small & the Estate to pay it very considerable; I cant decide the Debt there – I decree an Inventory; unless a satisfactory Declaration is given, or Reason assigned why an Inventory shall

× Boon & Boon 1682. The Judge was of opinion there was no need of an Inventory, the party praying it Rad: no longer any Interest it appearing there was sufficient to satisfy the Demand by y Exors offering to bring y Legacy into Ct. this Sentence was confirmed by y Delegates & afterward on a Commission of Review ..

not be granted; you may give a satisfaction equivalent thereto Justice requires an Inventory to be given, wch in certain Cases where Trade is concerned, is infinitely difficult & expensive; it is now very different from the Time when the Statute was made, at wch Period, the Chief of personal Estates, consisted of Household Goods, & the Stock on the Farm – Trade was in its Infancy & the Public Funds had no Existence –

Trinity Term 5 Sess: May 28 Prorogative Ct

Dr Collyer .....

No 67 Cockerline agt Cockerline

Fuller .. Drs Harris & Wynne — Dr Collyer ..... Grene

Daniel Cockerline died 11 Nov: 1764. had: duly executed his last Will in writing & thereby appointed his Brother Mich: Cockerline, Wm Herd & Sam: Salte Exors & his Brother M. C. residuary Legatee – 15 Nov. W.H. & S.S. took probate 3 May 1765, Rob: Cockerline Fullers Client cited the Exors to bring in the Probate & prove the Will by Witnesses; Grene brought in the Probate, & gave an Allon, propounding the Will, on this Allon Witnesses were examined, Publication passed & the Cause was assigned for Sentence on the 2d Assignation – Bye Day in March 1766, the Cause was heard, the Evidence being read, the Ct doubted wh. it was sufficient to warrant a Sentence, & Fuller had no Authority from his Client to proceed, the Ct. ordered the Cause to stand for further Informations; R.C. afterwards wrote Mr Fuller word, he withdrew his Opposition & had appointed Fountain his Proctor, who exhibited for him, alledged Fullers Proxy to be revoked, & declared he wd proceed no further; then Grene prayd to be dismissed & that the Probates might be decreed out of Ct. Fuller objected thereto, Till his Bill was pdid, but afterwards waved that Peton, the next Ct Grene repeated his former Prayer when Fuller exhibited as Proctor for Anne Gage & Eliz: Nelson Widows Sisters of Dec.d; Rebecca Wife of ..... Chapman, Mary Cockerline a Minor, Nieces of dec.d, prayd he might be allowed to intervene for them & that Grene shd be assigned to answer to his Clients Interests; G. denyd F. ed intervene, as the Cause was ended, he being only called upon by R.C. & F. had: for him, consented the Probates shd be delivered out of Ct, & alledged he wd proceed no farther. Fullers first Peton referred only to his Bill, on wch head, the Ct said Business must not be delayd on that Account, it is the Business of the Proctor to take Care whom he trusts, he has a Remedy at Common Law. As to Intervention, it is mere matter of Favor, not of Right, or strict Law; Intervenire is laid down in the Books to be the same as supplicare, it will then depend on the Circumstances of the Case; but if there is no Cause, if it is extinct with respect to the original Parties, there can be no Intervention; but suppose it is not extinct, it is an improper time to intervene, after the Cause is concluded & Publication passed, when we cannot strengthen our Case, are precluded from making farther Proof; I dont say, they have not a right to come in at all, but it must be originally, we shd propound the Will again; it wd be very strange if they were allowed to take Advantage, & bind us down to what the Ct has obiter, declared to be insufficient proof – the Case is different in a Ct of Appeal; there the Cause may be proceeded in anew; I have no Objection to their Intervening if the Ct will rescind the Conclusion of the Cause, & give us an Opportunity of examineing Witnesses on another Allon, as in the first Instance –

Dr Harris .... as Intervenors, they must take the Cause, in the same State it now is; I take Intervention to be not merely matter of Petitionary Prayer but of Right – The Ct may oblige every Exor, ex officio to prove by Witnesses – If a Proctor dont call upon all the next of Kin to contest, he must have a reason for his Omission; It is for the Advantage of the Exor to have every body interested, before the Ct we intend giving no Plea, but to hear the Cause on their Evidence –

Dr Wynne ... If Dr C's Objection holds, We can not intervene; but by the last Assignation, the Ct. assigned the Cause for further Informations, it was not, therefore, at an End, Q. prays at a subsequent Day, the Probates may be delivered out of Ct. Jo. for R.C. agrees. Ju. objects on account of