Giving Instances of Ws bad Behavior, but this method of pleading might run into a prodigious Length, as the other must be at liberty to contradict. the 6 Art: they dont object to. (Bishop offered to subduct the 3 special Articles) The best way is to plead generally, otherwise the Opponent may go into Justificatory Pleas, the rule being, that what is pleaded by one Side may be contradicted by the other; it is the Way at Common Law; as particular Charges lead to Questions wch are not material to the Point in issue. If this was any thing that wd disqualify W. from being a W. at Common Law it might be pleaded

N.B. The Reg.r said it was the Practice of late years to plead generally.

Prerogative
July 5.

Gosling No 85 — **Smith v Maddox** — **Altham** — Sentence

Dr Wynne — Dr Calvert.

Dr Wynne... Benj.a Fish of Great Marlow in Bucks made his Will & appointed Sarah Smith Widow Sole Ex.x It is dated Oct.r 28. 1765. & appears to have been executed in the presence of Wm Allen, Jn Ellis, & Abel Bird whose names are subscribed: On Mrs Smith applying for Probate, she was prevented by a Caveat entred by Altham for Abel Hart. There 4 different Assignations were read/ Ellis & Bird, the 2 Surviving subscribing Witnesses do not swear to seeing the Testator sign & seal, but that the Testator was at that time of sound & disposing mind. (Wm Allen the other W is dead, but his Character & hand writing are examined to & proved by Bird) (that Deed pointed to the 3d Paper wch he said Allen had just signed &. is this sufficient to validate the Will?

Dr Calvert... I am Council for Mrs Mary Maddox Niece & next of kin of Benj.a Fish dec.d they plead in this Allon, that the Will was executed in the presence of Allen & Ellis, then Bird was called in; this neither of the Ws establish; I apprehend there is no Proof that the Will was executed at all, it is so defective, the 1st has no satisfaction of the Execution, Allen the principal being dead; I will not insist, every W must sign in the presence of each other, but the Attestation is contrary to what is in Plea, they say it in the presence of Allen & Ells, but Ells & Bird say, they were called in one after another & desired to witness it, that the Will was not executed in their Presence, the Qu: therefore is, wh.r this is a Sufficient Execution?

Dr May Judge. The Ws speak very fully to being requested to attest; I think there is very full proof of Execution, tho no Oath is necessary for a Will of Personal Estate, that Execution & that Deed was capable, wch is also fully proved. I pronounce for the Will.

Prerogative
July 5

Cumberlege No 86 — **Norris v Barnaby** — **Longden**

Dr Wynne — Dr Harris

Dr Harris.... prayd Longdens Client to be dismissed in consequence of the Assignation made, for the Allon to be given a Week before. whereas it has been given only 3 Days before

Dr Wynn..... made an Apology for the Delay from the difficulty of getting at Reg.r being a Cause of Instr.

Dr May Judge.. The Assignation was to give an Inventory & see Portions allotted to him as a Nephew; but the Admon has not been called in; I will proceed, & not tie up the Party, & this being the only point, I dont see the Necessity of such Haste; In Pedigree Causes Partys must have time to make out & deduce their Claims. An Assignation is not like a Decree, it is to be enforced or relaxed according to Circumstances; I meant as Client shd be dismissed if no Allon was given, but not for failure of a few Days, as to time: 2 Continuations are sufficient on any Assignation — The Allon was admitted then without Opposition —

Prerogative
July 5.

Greene No 87 — **Jackson Admin.x of Collins v Innes** — **Cheslyn**

Dr [illegible] — Dr Calvert

In Burnett died Oct. A. 1762 leaving Jane Collins Widow, his only Sister & next of Kin. he made his Will May 27. 1762. in writing & therein named Rob.t Griffith his Sole Exor & Universal Legatee, he proved the Will Dec.r 6. 1762. May... 1763 Citation issued agst him to bring in the Probate & shew Cause why Admon shd not be granted to Eleanor Jackson, Wife of Tho.s J. Admor of Chapman Collins the Sister Appearance was given for G. & the 4 Subscribing Ws were examined, they have given full Evidence of Sanity, Instructions, reading over Execution. Greene gave

an Allon pleading general Incapacity; Griffith gave an Allon pleading Capacity & examined Ws. Thorson, 2 of whom, Coz. Tho.s Scudamore Esq.r & his Lady, in whose Service he lived, allowed him an Annuity, they depose to seeing him giving Rec.t & Capacity you will find that Jenny Collins who is now acting as an Interest went to see him a Month before his death when he declared he did not know her & would not own her for his Sister & N. Othin not being content wth wt.s & Judgm.ts Ws are liable to Cost

Dr Calvert... restated the Case for Jackson — We consented to the Probate, we have pleaded Custody. Incapacity &c you will find the Deed was an old man 80 years old who had fits, was so superannuated 5 years before his death that our Ws say he was incapable of receiving the Annuity allowed him by Mrs Scudamore he was a voter at Hertford. & Cr make out, how he was qualified, who was his Tenant &c that he forgot a Barber, his Acquaintance, who had shaved him 20 Yrs; & is also deposed that Griffiths Mothers, who were endeavouring to get a Deed of Gift from Deed, asked him wh.t he had signed that Paper, that he answered in a foolish manner he did not know, nor what were the Contents of that Paper

Dr May Judge.... If a next of kin gives a Plea & fails in the Proof of it, he renders himself liable to Costs; but where there is good ground for Litigation, the Ct will frequently give none, or if given, they are moderated according to the Circumstances of the Case; if there is not Reason to think from the Evidence that it is an unreasonable Opposition, the Ct will moderate them, it is the Case of a Representative of a next of kin, there are many Instances of forgetfulness in People of 80, I think I ought to pronounce in favor of the Will, but do not give full Costs.

Prerogative
July 5.

Bargrave No 88 — **Best Adm.x of Marcha v Whaley** — **Grene**

Dr Wynne — Dr Burrell

~~[illegible]~~ Wm Peake late Exor. Benj.a Legr E. A. surrendered the Testator's without having Proved. March. 7. 1764. Admon was granted to Peter Marcha the Executor

Dr Wynne... Anthony Henry Marcha died intestate in 1763. leaving behind him a Widow & 3 Infant Children. The Widow Sept.r 3. 1763 renounced the Admon, as well for herself, as in the Capacity of Guardian to her Children) wch Goods un administred, of wch Admon is now applied for by Charles Best Bond in £350, residing now at Leghorn, Admon is also applied for by Charles Whaley a Creditor By Book sin 3527 now resident at Colchester in Essex. the Bond has been shewn, & Whaley has made Oath of his Debt.

Dr Burrell.... agreed with Dr Wynne in the State of the Case, who therefore proceeded to the Argument as follows.

Dr Wynne.... The Qu.n now before the Ct is wh.r Admon de Bonis of A. H. M. shall be granted to the Attorney of a Bond Creditor, or to the Simple Contract Creditor himself; the Widow having renounced for herself & Children who are the next of Kin, it is entirely in the Discretion of the Ordinary; my Client who applys by his Attorney is a Relation of the Deed, therefore ceteris paribus is preferable to the Opponent, but he is also a Bond Creditor, by that has a prior Title, as the Ct usually follows the Rule, laid down by the Common Law, for payment of Debts; another reason is, Mr Best is the prius Petens; Mr Marcha, being abroad delegates his Power to Mr Best, who tho, an Att.y is responsible in his own Person, he is equally amenable to the Ct with Whalley, must give the same Security.

Dr Burrell..... The Consideration of the Ct is always employed, in attending to the Interest of the Intestates Estate; tho, there is a Preference at Common Law in the Order of paying Debts, that will not weigh in the present Case you will keep this single Point in view, wh.r the Bond Creditors Attorney or the Simple Creditor himself is most likely to take the best Care of the Effects committed to his Care? I cannot help thinking the Simple Contract Creditor ought to be preferred to the Bond Creditor himself in the grant of Admon de Bonis, because as the Debt of the latter must be paid first, if the Estate dont extend a Shilling beyond that Demand it becomes of the utmost consequence to the former, to use this Diligence in the Discharge of his Trust, the more he makes of the Deads Effects, the less he will lose of his Demand; & con: the Bond Creditor knowing his Debt will take place of all in an inferior degree, becomes less attentive to the Benefit of others, when he is convinced he shall not be sufferer; if this Doctrine is allowed I am sure, it will not be denyd, to hold much stronger in the Case of an Attorney, who knowing, he himself cannot be a Sufferer, may reasonably be presumed to be more indifferent in the affair than even his Principal

Qu: Is the Att.y of a Bond Cred.r in 300. or a Cash Creditor himself in 30 entitled to Adm.on de Bonis, grant of King's Bond &c renounced