Prerogative
M. T. 2 Sep. 1766
Dr Hay Judge...

No 93

Mayor — Lady Vis Mayo ... v. Brown.
Drs ... Wynne ... Dr Collejer ..... Bargrave.

On Admission of Bs allon.

Dr Hays Opinion

The several Proceedings on both sides were stated. Mayor did not press the Opponent; Jurgd the Peton to be brought; the Indulgence of the Ct has been much abused; for at the close of the last Term the Peton pretended to be in agitation, was withdrawn: Ly Mayo's peton was laid before the Ct last Session, but I saw I cd do nothing on it; that too is withdrawn; the Question is now on the Admission of the Supplementary Allon; it is very late, 8 Years, after the Original Plea. there have been great Delays on both Sides; Ly Mayo's Act. stopped the Cause; she threw Mr Brown into Gaol for Costs, wch she wanted to get before the Cause was proceeded in: this Allon is liable to Dr Wynne's Objection, that these things might have pleaded in the first Allon; I cond see why they were not: the first Objection is to the Article wch refers to the Plea of legitimacy of Ly Mayo, that is certainly no different Point, from the Qu: who is to have the Admon. Ly M. denies Brown being the Husband, he denies her Legitimacy; they might have gone on pari pasu; It may be objected on the hearing, that such Evidence shd not be received, but that is wt no weight agt the Allon; it appears neither Party chuses to come to an End of the Affair; I have no reason to refuse the Exhibits, they will not create Delay; Ly Mayo is to shew, that tho, he was the Husband de facto, she was not de Jure, having another Wife then living. I think the Allon shd be admitted.

Prerogative
30 Sep: Nov. 24...

No 94

Gibollet ... agt Lawington & Connor.
Fountain Dr Harris ... Gent. ... Gostling Dr Wynne.

Dr Wynne

A Decree issued at the Instance of Anne Gibolet (wife of Emanuel Gibolet) the universal Legatee in the Will of Anne Simpson, dated Dec: 2. 1757, setting forth that a Cause depended in the Prerogative Ct of Cant. of bringing in the pretended Letters of Admon, with the pretended last Will & Testament dated Aug: 8. 1754 & pretended Codicil dated Sep. 21. 1754 annexed, of all & singular the Goods Chattels & Credits of said deceased heretofore surreptitiously obtained by Anne wife of Geo. Lawington, one of the Resid. Legatees therein, & shewing Cause why it shd not be revoked, & said Will & Codicil be declared void, & why Admon with the true & original Will & Testament dated Dec. 2. 1757 shd not be granted to Anne Gibolet the Universal Legatee named therein & exhibiting an Inventory on Oath, & thereby citing In Connor as Exor in a pd Will Dec. 2. 57. to leave in the Registry all Scripts &c to declare whether she will propound the Will Dec. 2. 57. The Decree was returned the Bye Day after Trinity Term; an Appearance was given by Gostling Jun. for Connor, who brought an Affidavit of sd Ct with a Schedule annexed, being an Account of all Scripts, such Schedule (marked A) being a Copy of a Deed of Gift heretofore executed by Deed, wch J. C. annexed to his Affid. for the satisfaction of Parties, tho, he had been advised it was not testamentary; & that the Original wd have been annexed, had not a Suit been depending in Chancery, in wch J. C had been called on, to bring such Deed into the Ct &c. Gostling then exhibited a special Proxy under J's hand & Seal, alledged he wd not propound the Will Dec: 2. 57. therefore prayd his Party to be dismissed. Fountain for Gibolet alledged said Affid. was not full & prayd J. C. might bring in the original Writing; the Judge assigned to hear thereon July 2. it was Continued to this Day. Fountain on extending his Petition, objects to the Affid. as not full, because the Names of the Pltfs & Deft. in sd Suit in Chancery, are not set forth, nor the time when commenced, or when the order (referred to in the Affidavit) was made, therefore praying J. C. may be assigned to exhibit a fuller Affidavit, setting forth the a pd Particulars. Gostling in Answer thereto alledges, that such Deed of Gift appears from the face of the

not testamentary, therefore his Party is not obliged to bring it in; that he annexed a true Copy of it to his Affid. of Scripts, to give the Parties every Satisfaction he cd that he omitted the names of the Pltfs, Deft in sd Suit, to avoid Redundancy in his Affid: Fountains Client being herself a Deft in that Bill filed Oct. 28. 1758. by In Eyer Committee of the Person & Estate of Anne Simpson, a Lunatic, who being since dead, said Suit is abated, but may be revived by her Representative, therefore his Party is amenable to Chancery for the Deed of Gift, & apprehends the Ct cant compel him to bring the Deed in, as it is not testamentary, & that he ought to be dismissed with his Costs, had: fully complied with the decree, as it appears by his Affid. that no Will &c has come to his Possession or Knowledge.

Dr Harris..

We have an Affid. of Griffiths that there has been no Cause in Chancery these 4 Years, from whence Mr Connor will appear guilty of a great Misdemeanour in what he has sworn. Qu. Shall the Deed Poll be taken as part of the Will of Ann Simpson decd. The Deed was voluntary, on account of affection, the Consideration only 5 Shillings, to In Connor, in trust for Anne Gibolet, not to be liable to the Debts or Controll of her Husband. The Will has the usual preamble; it recites the Deed, & says, my meaning is, that the said Deed shall stand valid, &c. I do confirm the said Deed, & appoint In Connor Exor for Anne Gibolet . . . . . .

Dr Wynne

In Connor the Exor in a Will of Anne Simpson dated 2 Dec: 1757. is objected to by Anne Gibolet, for not having sufficiently described the Suit in Chancery; if such Account was necessary, he has given it, by saying "you know as much as I do". Connor apprehends he is liable to be called on again, therefore thinks he cant bring in the Original; indeed what Purpose would it answer, as the Will has the Deed in it verbatim; this is not suggested to be an untrue Copy of the Deed; It has not the least Complexion of a Testamentary Paper, it has all the Requisites of a Deed; it divests herself, vests the whole in A: why shd it be in the Registry of this Ct. Trusts are the very foundation of the Jurisdiction of the Ct of Chancery.

Dr Harris..

The Qu: is wh: the Deed is part of the Will? Connor has mentioned this Paper; Gostling own he is possessed of it: Mrs S. declares her Will to be in manner following, confirming the Deed, without which there is no Devise; there is no Testamentary Trust, no Legacy, only an Exor; the Will without the Paper is nothing. a Copy is insufficient if the Original can be had: the Doctor said, there was nothing for the Deed to give; she had disposed of all by the Deed; but Mrs Gibolet chuses to take under a Will; you cd not give Costs to a Man who has not brought in a full Affidavit; the Deed Poll may not be good as a Deed; it may as a Will; so far as it is Testamentary this Ct has Cognizance of it. . .

Dr Hays Judge...

I dont look on the Deed to be testamentary; no Paper can be Testamentary wch wd take effect before the Testators Death; they might have entered from the Signature thereof: the Deed Poll, as recited in the Will, cd be good, so far as it goes; but I cant order an Original Paper to be brought, wch on its face is not testamentary; cui Bono? why shd she desire it? she has 2 Strings to her Bow; for if it is not valid as a Deed, it may operate as a Will; I cant comply with her Application; the next Qu. is wh: the Affidavit is full? it certainly is, & wd have been, if he had made no reference to the Deed Poll, for this Ct can have no Jurisdiction of a Deed; if a Paper is brought in as Testamentary, it must be current & part of the Will, when as the Deed took effect in the life time of Deed; I must reject Fountains Petition; for Connor has not been in fault, but as his Affid. has occasioned this Application, by mentioning the Deed Poll, I shall only give him the Costs of this Day. £1. 6. 8.

Bishop

No 95

Stevens ... agt ... Senhouse ... Jenner ...
Dr Wynne ... Dr Marriot.

See the State of the Case fol. 205....

Qu: wh: Petr Senhouse Jr survived the Deed? See fol: 205 th

Dr Marriot...

The Cause we shew is the strong Probability, that Petr Senhouse Jun: survived the Deed; it is in the nature of a Joint-tenancy; the Executorship survives, tho, applies, is only an Admor of an Exor, therefore it does not pass to him; it wd respect to my Client; Stevens has no Claim, but as resid. Leg: nor does the Admon always follow the Interest. Vaugh: 182. there is no Priority in an Admor, there was the Case of Price & Price before you, where the Exor had twice renounced; you wd not grant the Admon even to an Exor of an Exor