it is a great hardship upon a Sailor, that his Lre. of Attorney shd not be credited - in Heveningham v Dr the, the Party had not been heard of for 15 years, you said you were not founded, in decreeing Distribution, without being satisfied the Party was dead.

Dr Wynne — I shall not contend that Stevens wd have the least Pretensions to the Admon if Senhouse was alive; our affid.t that he went to Canterbury stands uncontradicted; they have offered no proof of his being gone to Sea, tho, I wd not say a Lre of Attny is insufficient to ground a Judgement; yet on Circumstances, when the Presumptions are strong, that the Pty is dead; Proof shd be offered to oust such Presumptions, the Lre of Attny was given 7 years ago; Senhouse Junr has not been heard of a great while; an Averment of an opinion amounts to nothing, without it is a ground for it - you have no Evidence that the right ever vested in P. Senhouse Jr: if on one side there may be a possible Injustice, no Inconveniences ed arise on the other, you will certainly prefer the latter & grant Admon to my Client to distribute according to law, not to P.S. for the use of his Son; if after Admon granted to Stevens P.S. Jr shd appear, such Admon wd be revoked; if you granted to the Attorney of P.S. Junr you wd determine on the property of . . . . . (without a possibility of revocation) to the next of kin. We are entitled to half the Residue, wch wd entitle us to the Admon in preference of the next of kin, tho, they shd have a possible Right; if he shd not appear, there may be Injustice in preventing the next of kin from having what they wd be entitled to in default of such Appearance - I pray a new Vis & modis to P.S. Jr: to accept or refuse, & to shew Cause why Admon shd not be granted to my Client.

Dr Hay Judge — Mr Bishop appeared for P.S. the elder, to save his Contumacy, & pray Admon might be granted to him, as Attorney of the Son - Jr Stevens dead without naming an Extr, if he had, the Priority wd have been continued, as was well observed by Dr Marriot. but his Admon has no such Priority continued, Stevens in virtue of his Principal being a Delegatee, has an Interest; Citation (Repld:) issued agt P.S. Jr wch is returned, without finding him; then Stevens Proctor prays a vis, modis, on the return of wch, he will suppose pray Admon Bishop appears prematurely; for I apprehend no Admon can be granted before the vis, modis is returned; every legal Step must be taken, before the Ct can determine on the Grant of an Admon; P.S. Jr as surviving Extr is certainly preferably entitled - I shall wish to be informed, wh.r the Lre of Attorney, by one who claims as Extr, gives the Attr a preferable Claim to the Admon of a Coexr, who has acted.d or wh.r the Ct has a Discretionary power.d you may still lay your Reasons before me to govern that Discretion; at present, I have only to decree a Vis & Modis at Jenner's Petition . . .

On Holmans Anss & Petition . . .

On Inventory

Nº 96 — Stuter Admx of Stratton .. v. Hamblin

Holman — Dr Harris — Dr Calvert — Green.

Dr Harris — The Dr says the value of the Estate is not in the Inventory, because it is settled on the Widow & She ought to make her Election, wh.r she will abide by her Jointure, or put this Estate into Distribution, to be liable to Creditors: If a Woman has a Jointure, & no Bar in that Jointure the Law dont suffer her to take her Dower; I hope you will order a valuation of those Estates in the Inventory

Dr Calvert — . . . . . Hamblin is the Deed, leaving a Widow & a Sister, Mrs Stratton, since dead; we are before you on the merits of the Protest; the Admx objects only to our not charging ourselves with the Value of certain Leasehold Estates; Green answers, they were not valued when the answers were given in, but have been since, viz.t £.418 - £.82.10.0, With these, he insists she ought not to charge herself, they being settled on the Widow; (we admit this Reply, that being personal Asets, they are liable to answer debts, if in Distribution) & it is a good Answer, she is not chargeable with what is gone from her & cant be liable to Creditors; they say we cant claim under the Distribution & Settlement, I say we may, they offer no proof of the Contrary; it is notorious, a Jointure at Common Law dont bar Dower, unless specially mentioned. In a Jointure after Marriage, the Woman may elect; the Widow is in a Jointure after Marriage, the Woman may elect; the Widow is by Common & Statute Law, & cant be ousted by Implication; This

See the Statute of Uses - 27. H.8. c.10.

So laid down by Ld Coke, all the Law Books, the Dr brought no authority to shew a general Jointure barred Dower; it is too hard to say the Widow shall have no Distribution; the Ct will never force her to make her Election, it has no Authority so to do; if the Widow may claim both, she cant be obliged to charge herself with these Estates

Dr Hay Judge — The Qu: is on the Inventory, to wch Mrs Stuter has a right; the Party may give one Submodo, on any Proctor saying such ought not to be charged for such reasons; I wont give an opinion wh.r the widow shall or shall not make an Election, the Ct will have the whole Account of the Deeds Effects, & the Qu: will then be open on the Merits, wh.r the Widow shall make her Election; I think there must be a valuation of the Estates mentioned; it is admitted the Settlements do not Bar. Ja.s Leigh Grenes Client to give a fuller Inventory

Consistory nov. 26. 30 Sep. — Cricket Dr Harris v.no 97 Wright v Wright Dr Collier Clarke

Dr Harris — Stated that a Libel had been given by Mr Wright pleading the Marriage, & Adultery, by the Seduction of John Russell a Lad of 17. that 5 Witnesses have been examined, upon whose Evidence I hope you will think the Charge fully proved.

Dr Collier — I am Council for Mrs Wright, who is sued by her Husband for Adultery said to be committed with an Apprentice of 17 Years of age; She is about 64, & has had 22 Children by her Husband; Cricket gave a libel, & the Ct assigned to hear on the Admission the next Ct Day; We say there is an essential Vice in the Proceedings, which cannot be cured, & on wch I must desire the Opinion of the Ct; It is a Rule of Law, that the Admission of the Libel, is of the Essence of a Cause; there is no Libel before the Ct. It will be said, we have consented by giving an Issue; the Proctors may consent to time & Place, but not to the Merits.

Dr Harris — The Ct ed not assign Cricket to prove, if it had not admitted the Libel. It is therefore to be presumed the Libel was admitted.

Dr Betteworth Judge — There have been many Assignations in this Cause, without the Knowledge of the Ct, wch helps on the fidelity of the Registrar & Proctors, an Irregularity has happened; the Assignation to answer, implies the Libel was admitted; I must think the Objection comes too late, & that the Irregularity, if any has happened has been cured

Evidence — In Russell deposes to several Facts, especially, that when he was sitting up for his Master, Mr Wright came down into the Kitchen in her Shift; the Candle being burnt out, bid him follow her up Stairs, he did so, she said it was not worth while to light another, he might lye down on the Bed by her, he refused; she then said he might get into Bed, he refused to take off his Cloaths, she bid him unbutton his Waistcoat, for the Buttons us'd hurt her Breast, he then deposes to several endearing Expressions, & to his having carnal Knowledge of her.

Dr Harris — I wd ask the Doctor, wh.r any thing is more common, than for an old Woman to marry a young man; Russel was asked wh.r he had received any money, he answers, he was promised money, but did not expect the performance thereof; it is the Expectation wch destroys the Credit, the Interrogatory being put, the Answer is taken for true; an Objection is likely to be taken by the Dr to his Evidence on this Acct but there is strong circumstantial Evidence, that the Lad was seen leaning on the Bed; She confesses "that Russell, did, & did, & shall do it again" "& again" this Confession coupled with Proof on another Occasion, not in order to procure a Divorce, is considered as an Objection - in Grover v. Grover, you pronounced for the Divorce, where there was no Evidence but the Coachman, who was the Particeps Criminis - Wheatley v Fowler (a) Wheatley was prosecuted for Fornication, there was no Evidence, but the Party with whom he committed it, except the Circumstances of his being indecent with other Women; the Ct gave Sentence agt him, which was confirmed by the Delegates on Appeal - the Common Law admits the Evidence of the Particeps Criminis . . .

Query wh.r a Proctor being assigned to prove Facts & Libel had not been admitted, many Acts done by both Proctors subsequent thereto; the Objection can be taken to Process being null? -

(a) He was a Methodist Preacher at Norwich, the Cause was heard in the Arches & there appealed from Sr Ed: Simpson, to the Delegates . . . . .