Dr Calvert. — The Dr hinted there was no express Consideration to induce the Settlement; the Marriage itself is a Consideration; the Husband may make a Settlement without any Portion; but it is expressly said, "in Consideration of a Marriage Portion to be had"; the Dr h[a]s objected the 27 H. 8. c 10, but all the Lawyers hold, that unless the Jointure is settled expressly according to that Statute, it shall not bar Dower, but the Common Law shall take place; it must be an Estate to come from the Husband immediately, but the Intent is not, that she is to have no greater Estate; I find 2 Cases applicable to the present Question. Glover & Bakes, where the Question was upon a Settlement as follows, viz: "in full Satisfac: "tion of all Right of Dower, or any Claim or Right by Common "Law, Custom of the City, or any other Usage, Law or Custom" (Atkyns Rep. 439.) Ld Hardwick Where such express Words are used as "any Law Usage or Custom" it must be understood she was intended to be barred, as she must claim under the Statute of Distributions which is a Law, it is expressly provided for.

2 Vern. 724 … Davila v Davila — Davila settled 1500£ in full of Dower Thirds, Custom of London or otherwise, out of his real or perso:nal Estate: Ld Cooper. This will bar her of her Share in Distri:bution, for Words are never to be confined or restrained from their natural Signification —

Another part of the Prayer is, that we should declare, whether we will take under the Settlement, or the Statute: but if the Settlement bars, we have no Option, & the Court cannot say we shall claim, if we have no right.

Dr Harris … I contend, it is a voluntary Settlement, & on no valuable Considera:tion; Marriage is not a sufficient Consideration; If a Man makes a voluntary Settlement, it is invalid with respect to Incumbrances, it will not barr a previous Debt; No Court would allow a Widow

2u: if true … both by the Statute & the Custom

Judge … Dr Hay … When the Cause was last before the Court, I thought the Widow should give the Value of the Estates mentioned in the Inventory (reser:ving to her all Rights due by Law) tho, not immediately distributeable because if she had only a Life Estate in them, they would on her Death, be distributeable, as well as the rest of the Decd's Effects noware; it was not determining the Point, the Ct only thought an Inventory should be given, the 2 now is. whr the Distribution shall be made between her & the Sister, each, a moiety? the 1 2u: whr the Marriage Settlement, if good; bars the Widows distribute:able Share of the Residue? Dr Harris has argued only by Analoge, from the Statute of Uses.

2 2u. As the Statute of Distributions, obliges Children, legally ad:vanced, to bring their advanced Shares into Hotch-pot, & as that Stat: meant Equality, the same reasoning holds with respect to the Wife. It is to be observed there is not a Word said of the Widow, & the Heir at Law is excepted; the Share advanced, is brought in merely for the Benefit of the Children, & the Wife is to have no Share of it: No Cases are cited, as determined expressly in this or any other Court on the Point; In a Case entirely new, I wd not determine hastily, without looking into Precedents, & therefore will take time to consider of it till the first Day of next Term —

Hil. T. 5th Sess. Dr Hay …. The first point was, whether the Widow should set forth the Value of the Leasehold Estate, settled on her, upon her Marriage, she refused so to do, the Ct Decreed she should; for if it is distributeable, it is proper the Value should appear, if it is not, no Prejudice can arise thereby — The Question now concerns the Distribution; the first Point insisted on, is that a Settlement of Personalty in Jointure by 27 H. 8. bars Dower — There is no Expression in the Settlement, to denote whether it should bar, or not; x It is admitted, that before the Stat: of H. 8, she was not barred at Common Law — By the Statute the Jointure must be in Bar of Dower, & by exclusive words, which not being expressed here, I question whether under the Statute it wd be a Bar —

xCoke's Instit. c 41 …

The Ct has always granted ye Admon with ye Interest — It was so in Davila & Do. the Spl Ct had granted Admon to ye Brother, ye Wife being barred Thomas & St Quintin. The Widow was called on, to bring in ye Admon, & shew Cause why it shd not be revoked, for on looking into ye Settlement, she had barred herself: it was doubted whr it cd be revoked, being once granted, determined it could, because she had barred herself; if the Settlement expresses as much, it will operate

x Coke Littleton. Lib. 1. Sec. 41. A Jointure is no Bar of Dower at Common Law, for a Right or Title that one hath to a Freehold cant be barred by Acceptance of Collateral Satisfaction — Since Littleton wrote, by 27 H. 8. if a Jointure be made to ye Wife according to ye Purview of that Act, it is a Bar of her Dower, so as she shall not have both Jointure & Dower; to making a perfect Jointure within that Statute, 6 Things are to be observed. 1. Her Jointure by ye first Limitation, is to take effect for her Life, in possession or profit presently after her Husband's death — 2. That it be for ye Term of her own Life, or greater Estate. 3. it must be made to herself & to no other for her — 4. It must be in Satisfaction of her whole Dower — 5. it must be expressed & averred to be in Satisfaction of her Dower — 6 it may be made either before or after Marriage — (Note) the 4th & 5th were only quoted as apposite to the Case — NB Coke Littleton says likewise, a Devise by Will can't be averred, to be in Satisfaction of her Dower, unless it be so expressed in the Will

not only to bar her of Distribution, but Admon — There is another reason why ye Argument of Analogy from real to personal Estate will not hold; the right of Suc:cession differs, the half Blood will not inherit to real Estate, ye Argt from Analogy wd prove too much, for if ye Laws shd … they shd in all Cases — 2dly — If she is not barred, the Settlement shd be liable to Distribution, because there is no Consid:eration — Marriage is a good Consideration agt ye next of Kin, tho perhaps not agt Creditors — If a Man leaves a Legacy, it will be good agt a Resid: Legatee, but not agt even a simple Contract Creditor; it dont follow, that being liable to Debts, it is liable to Distribution — The next point is, whr under ye Equity of ye Statute, this shd be considerd as an Advancement of a Child & brought into Hotch pot; I think you cant reason from thence, ye Statute directs ye one, but not ye other — 1 Jac. 2. & Stat: of Distributions abridges ye Widows Right — The Stat: of Jac. 2. puts ye Mother on a footing with ye Brothers & Sisters; Statutes of this Sort are not to be extended; It says nothing about bringing ye Widows part into Hotch pot; when there are other Children it is not for ye Benefit of ye Widow; She is not benefited by a Childs Share being brought into Hotchpot; hers shd not therefore benefit ye Child, & if not in that Case, surely Bottom

Hilary Term 5 Sess. Prerogative Court. — No 104 — Healey agt Mathews

Bargrave — Dr Burrell — Dr Compton — Goodwin —

Dr Burrell … Silvester Healey formerly belonging to the Tyger M. of W. but late to the Lenox Man of War is the deceased —

24 March 1764 He made his Will & appointed John Healey his lawfull Father (who resides in Ireland) sole Exor & Universal Lega:tee. 26 June 1764. He died in London, & on the same Day John Mathews, the other Party, (who is an utter Stranger in Blood to the Decd, clandestinely snapped up a Probate of a pretended Will, dated 31 March 1758. as the sole Exor therein named, John Healy being then in Ireland, & consequently unable to oppose the Grant of such pretended Probate —

In the Vacation of Trinity Term 1764. A Decree issued under Seal of this Court agt the said John Mathews to bring in sd Probate & shew Cause why it shd not be revoked, & together with said Will be declared null & void, & why Probate of the true original last Will dated 24 March 1764 shd not be granted to Jn Healey the Father of the Decd, & sole Exor named therein —

7 Septr 1764. This Decree was returned, with a Certificate on Oath of the Due Execution thereof, when Goodwin appeared for John Mathews, brought in the Probate, & both Proctors propounded their respective Clients Will & have examined Witnesses to prove them — The Subscribing Witnesses to the Will of 1758, are Rd Burke, Chr. Tye, & Richd Streek — Mathews has examined Tye & Streek together with Geo. Brockbank, who is said to have been present at the Execution of the said Will, tho, he is no Subscribing Wit:ness thereto, & those 3 Persons speak very fully to the Execution so that the fact of their Will, if these Witnesses are to be credi:ted, seems to be fully established — (Burke a Subscribing Witness & the Writer of the Will not exa:mined —)

The Subscribing Witnesses to the Will of 1764. are Charles Cathcart Grant, Captain of the Ship, John Powel, the Master, & Stephen Gudgeon an Assistant to the Captains Clerk —

Capt: Grant a Subscribing Wt of the last Will not examined …… The whole Effects, consist of Wages & Prize Money only, & will not amount to 30£. & as Capt: Grant wholly resides in Scotland, the Expence of examining him there, by Requisition wd have cost more than the present Cause wd bear; We have therefore examined only Powel & Gudgeon, which we submit, is sufficient, as nothing but Personal Estate is concerned; for tho, there shd be many subscribing Witnesses to a Will, the Party propounding it, is not obliged to examine all of them, but only so many as the Law requires to make the same a valid Will, as was determined in the Case of x Woodward v Sanders. But if this Objection is taken, Mathews is liable to it, in a greater Degree, for he has omitted examining Burke, who is not only a subscribing Witness, but the Writer of the Will — As there is some Contrariety in the Evidence of Powel & Gudgeon, it may be necessary to state it to the Court — Powel says "That on or about the 24th of March 1764, the Lenox to wch the Decd then belonged, being at Sea, St. Gudgeon & the Decd came into ye Cabin to Captn Grant & ye Deponent, that Decd then executed his Will in presence of Capt: Grant, Deponent & Gudgeon; that he, & Grant subscribed their names thereto, in ye Decd's presence, & particularly mentions, that Capt: Grant asked Decd if he gave such Will, as his last Will, & Decd answered yes, & was at that time capable of making a Will, & that the Will propounded by us is the Will he saw so executed. Gudgeon says That on or about March 24. 1764 in

x July 4. 1765. Bye Day after Trinity Term: wch see fol. 24. of this Book ….

Not where the Kindred are more remote; the Cases are not immediately applicable; they seem only to imply, that Where there is no Stipulation, there shall be no Bar; there are few Cases on litigated Points of distribution; the Widow is not to bring those settled Estates into distribution, all others must — Where a Man covenants to make a Settlement, & dont carry it into Execution, ye distributive Share being more than is covenanted for, shall be in satisfaction thereof — I am of Opinion, that the Widow is entitled to her distributive moiety —