of Hubert Sapsell decd, who was a copartner & Creditor of Wargent Nicholson decd; & prays that before Admon be permitted to issue under Seal to Mr. Orts, she do exhibit on Oath, a true Inventory of the Goods of sd Decd, left unadministred, & give sufficient Security faithfully to administer the same, & that such Security do justify themselves to be worth the penalty of the Bond; Adderley econ: alledges Sapsells claim is not full or plain, to ascertain any certain or liquidated debt, due from W.N. to H.S. but is matter of Account unsettled, therefore insists S.S. is not entitled to an Inventory on Oath from Orts, or can oblige the Sureties to justify – Adderley alledged Bond to have been given by sufficient Sureties in 2000ol. who are not objected to by W.N's next of kin, but approved by them; therefore prayd Stevens Peton to be rejected, Sapsell to be condemned in Costs; & Admon de Bonis of W.N. already decreed to his Client may be decreed to issue under Seal – & contra Stevens alledged it appeared by S.S's Affidavit, that W.N. & H.S. were Copartners at H.S.'s death, & that by Law whoever becomes the Legal Representative of W.N. will by his Survivorship be entitled to receive all monies due & remitted on said Partnership Account; that large Sums are remitted, & that S.S. as Adm.x of H.S. is greatly interested the due Admon of W.N. & that by the Law & Statutes of this Realm, particularly 21. H8. c 5. "The Ordinary before he grants "Admon of the Goods of a Person deceased, shall take Surety of "him, or them, to whom he grants the same, for the true Admon "of the Goods, Chattels, & Credits, wch he, or they, shall be so author-"ized to administer." Adderley alledges 20£00 Security given; Stevens denys it appears by any Proceedings in this Cause that the sufficiency of such Security hath been reported, or approved of by the next of kin; Stevens dont object to the Admon passing under Seal to Orts, the Sufficiency of the Sureties being first enquired into & reported by the Officers of this Ct, or they justifying themselves on oath to be worth 2000ol & prays Ad prayer as to Costs to be rejected.

It by no means appears to you that H.S. was a Creditor, from Mrs S.'s Affidt & that she, as his Representative is a Cred.r she speaks only to her beleif, the Ct expects Certainty; a Partnership is alleged to have been entred into from 1730 to 1737. Both the Partners were living from 1737 to 1761 – 30 years are nearly elapsed from the Conclusion thereof: it is not to be presumed, that he wd have made W.N. Exor, if there was an unliquidated Account between them: This is only hearsay, & not sufficient Proof of an Interest, as a Creditrix entitled to an Inventory; a Creditor must shew, not only the Nature of the Debt, but a certain Debt, tho, he need not mention the whole; when the Account is settled, she may turn out, Debtor to W.N.'s Estate: but supposeing her a Cred.r for Argument sake, is she entitled to a Justification, from the Sureties, when the next of kin do not object? the clearly is not; that has been repeatedly determined by your Predecessors: under the Statute of H8. the Bond was given by the Party himself; those Bonds the Common Lawyers esteem illegal, & obtained by Coercion of the Clergy, wch occasioned the Statute of Car. 2.

23. Car. 2. B.R. Ventr. 166. Raym. 225. 2 Keb. 818. 2 Lev. 36. 3 Keb. 219. 2d 6 — ....

Bp of Exeter v Starr. In debt upon a Bond; the Condition recited, that whereas the Obligor, was excommunicated for not coming to Church, & that the now Plt. at his Instance & Request, had absolved him; that if he shd obey all the lawfull Commands of the Church, that then &c — The Deft demurred, supposeing the Condition to be agt Law, & so the Bond void – Hale said, if a Man were excommunicated, that there was a Writt de Cautione admittenda; sometimes they took an Oath of the Party, ad parendum omnibus Ecclesiæ

Mandatis licitis & honestis; & that was called Cautio Juratoria, & sometimes, Cautio pignoratitia, was given; he said also, it was held 8 Car. in Com: Banco, that where the Ecclesiastical Ct took a bond, of an Admor to make distribution of what remained of the Intestates Estate, after Debts & Legacies satisfied, or to dispose of so much to pious uses, that the Bond was void; for they presumed the Party in such Cases to be under a kind of Coercion . . . . . .

1 Bulstr. 422

1 Salk. 315. . . . 6 Anne . . . .

Bp of Canterbury v Willis in debt on a Bond entered into by an Admor to the Ordinary, on taking Letters of Admon; the Question was, Whether an Admor by Virtue of this Obligation, was bound to go & give in his account in the Spi: Ct, without being cited? And by Holt C.J. who delivered the Opinion of the Ct. it was said; 1st that it appears by the 31 Edw. 3. that an Exor was compellable to account before the Ordinary, & so was an Admor; but then the Ordinary was to take the Account, as given in, & c.d not oblige them to prove the Items of it, nor to swear to the Truth of them: So it was if a Creditor sued in the Ecclesiastical Ct, for he had a proper remedy at Common Law; but if a Legatee had sued for an Acc.t in the Eccles.t Ct, the Deft (before the Statute) was compellable to prove the whole Acc.t for the Legatee had no other Remedy, & the Eccles.t Ct. wch had a Jurisdiction of Legacies, c.d not otherwise do Right; yet in such a Case, if the Exor w.d pay him, he c.d not sue further, for he had Right done him, & the Exor was not liable; but of necessity, the Right ought to be done. 2dly – A Person entitled to Distribution, on ye 22 Car. 2. is in Consequence entitled to sue for an Acc.t as a Legatee was: for the Next of kin, is a Legatee by the Statute, & as such, shall have the same remedy, as the other Legatee might before the Statute – The Condition of the Admon Bond was, to account when required. So it appears by Co. Entr. 128. Ergo he was not to account before he was legally cited, wch c.d not be ex Officio, & therefore the Stat: of Jac: 2. whereby the Ordinary is prohibited from citing him in ex Officio, had really no Effect at all, for the Law was so before: but since the Statute of Car. 2. the Condition of Admon Bonds, being, that he account at a Day certain, he must account accordingly at his Peril, & that without Citation or Suite, & the Acc.t must be in Ct, & if he comes at the day, & no Ct is held, he shall be excused; for he may plead he was there, ready, & not ut. ve. But then this Acc.t is not examinable, unless a Party interested comes in, & controverts it. And whereas by the words of the Condition, he is to administer well & truly; that, shall be construed, to bring in his Acc.t & not, to paying the Debts of the Intestate; & therefore a Creditor shall not take an Assignment of the Bond, & sue it, & assign for Breach the Non payment of a Debt to him, or a Devastavit committed by the Admor, for that w.d be needless & infinite –

Raym: 407. . . .

Before Sir Geo. Lee. 1755 . . . .

Ormerod v Newton. Geo. Ormerod, died, leaving 2 Children, & their Mother Guardian; a Creditor prayd an Inventory, & that the Security shd justify; Sir Geo. Lee, said he c.d not do it at the Suite of a Creditor; but he w.d do it ex Officio, merely for the Benefit of the Minors, & ordered a Justification accordingly.

Dr Wynne . . . . I am also Council for Mrs Orts, who after a long Litigation, has established her Interest, but is not yet thought, to have been sufficiently hard upon & therefore Mrs Sapsell is desirous of creating a farther delay, under a pretence, she is the Representative of a Creditor of W.N. decd –

By Law & Practice, a Creditor has a right to an Inventory, but then the Ct will have a Constat of the Debt, & not put Admors to Expence without an absolute necessity: Dr Collyer says S.S. is a Creditrix in 4510 of 9500ol as appears by her Affidavit, which is very long, & very vague; but Length & Satisfaction are different; she speaks only to her Beleif of Points, she might know: she calls herself Admin.x with the will annexed of H.S. the Facts stated, destroy any grounds of her Beleif; the War may account for the Interval of 10 years; but what became of the whole till 1761. Can it be imagined, without very full proof, that an Acc.t of a Partnership of the 30 yrs date remains at present unsettled; She speaks to her beleif of money in the Hands of Barnet & Bland; why did she not inspect the Books of those Bankers, & see what monies stood in the joint