names of W. & T. then she might speak positively — If she She prove a Creditrix, & so be entitled to an Inventory, she ought not have any Claim to the Securitys justifying, since the Statute of Car. 2. a Creditor can only have an Inventory & account, but I hope you will not think the Evidence before you proves her to be a Creditor —

Dr Collier ... No Reply, usual on these motions, but Dr Hay indulged Dr Collier

The Statute saying Security shall be given, leaves it to the discretion of the Ct to settle the Quantum — If an Estate requires a Constat, that Constat requires a Security — The Species of the Debt does not alter the case; if a Legatee can have a Bond assigned, why shd not a Creditor; his, may be the greater Interest; you may as well decree it, ex Officio to a Creditor, as Sir Geo. Lee did to a minor —

Dr Hay & Judges ... This is a Case which has been frequently before the Ct. I have argued on both sides, & I know several Cases, of Creditors, objecting to an Inventory, or Security, or to the Quantum of it; The present Case is as follows, W. N. died intestate, his Widow took Admon, & died leaving Goods unadministered; Orb is Admx de Bonis non of W. N. — Mrs Tapell is Admx with the Will annexed of H. T. who was in partnership with W. N. & in consequence thereof a Creditor in 4/10 of the outstanding Debts; Mrs Tapell therefore insists, that she is a Creditor of W. N. as She is the Representative of H. T. To this it is objected, first, that her Affidavit is not clear, & dont ascertain any Debt to be due from W. N. to H. T. She has alledged the Partnership was not settled in H. T's lifetime; that since his death 9500 in the Hands of Barnes, Bland, Barbers, & that she is informed, that Orb, as the Admx of the surviving Partner may receive the Moneys due to the Partnership, that she is entitled to 4/10 of the Money already come to hand, that Orb & her Securities are low Persons, therefore prays they may justify: She says, she is informed & believes; she can swear no more, it being very different from a Debt to her — The Debt I think is clear enough, there being no contradiction to 9500 l being in the said Bankers Hands, 4/10 of which is a certain Sum; Where a Creditor sweares makes a certain Demand, it is sufficient; the Ct can go no farther; than, when a Creditor applies, to require an Affidavit of the Debt; I think Mrs Tapell has sworn fully in her Affidt you cant go into a Contradiction when the Affidt certifies the Debt on Oath — The next Question is, what is she entitled to from the Admx it is admitted, she is entitled to an Inventory, & even to an Appraisement; but she prays Orb & Surebies may justify the simple Question is, wh? she is entitled to her Prayer? By 31 Edw. 3. The Ordinary was bound to grant the Admon to ..... or the most lawfull Friend of the Dead; perhaps the Ordinary took Liberties in his Construction of those words, for 21 H. 8. requires it to be granted to the Wife or next of kin, taking Security for the due Admon of the Goods, Chattels, & Credits of the Dead: I believe it was only personal Security, the Statute did not authorize him to join others in the Bond. before the Statute of 4 Edw. 3. the Ordinary administred the Effects himself; he exceeded his Authority, as he at first obliged the Admor to pay over the Rem? to him under the Statute of Edward, he now directed the Admor to give Security, not to pay Debts, but to distribute as he thought fit: the Ct of Law prohibited the Ordinary, not for taking Bonds to pay Debts, but because he directed the mode of Distribution, & so he granted it to the Wife, or that next of Kin, who wd give Bond so to do — Since 22 & 23 Car. 2. no Bonds have been given, other than according to the Tenor of that Statute, so that the Ordinary is now wholly ministerial; the Sureties under this Bond, have been considered as bound for the faithfull Admon, viz. that the Admor shall bring in his Account, & not for the payment of Debts.

a under the Statute of 4 Hen: 8.

1713. before Sir Charles Hedges ... Stanley v. ..... A Creditor objected to the Security, because he was a Part? Man; it went to the Delegates, who said the Ordinary has nothing to do with the Security of the Suite of a Creditor — Oxley Bowwater & Griffin. It was said a Creditor under the Statute of Distributions, has nothing to do with the Bond, he has no right to an Assignment of that Bond, wh an Admor is bound to give — Hughes v Cook. The Question was wh? a Creditor shd have Notice of the Securitys, & Liberty to object thereto; Sir Geo Lee so did — the same Determination took place

1738 — Sir Geo. Lee ... a Creditor had no right to object — In Hackman v Black — Young v Bop. 1760. Sir Edw. Simpson determined an Admon Bond was not assignable to a Creditor to sue on it; if so what has he to do with the Securitys, which are only given for the faithfull distribution — (N.B. the Registrar said such a Bond had been delivered out of a Country Ct) The Chancellor of Lincoln gave as a reason, that the Admor had not given an Inventory, as the Statute required; it was not that the Cred.? cd assign as a Breach, that the Admor had not paid his debt; nor a Devastavit: but it was on account of a Breach of the Statute of H. 8. But in the case of Young v Bop, the Ct said, the Creditor had no right to sue the Admon Bond; if he cd not, then why justify? it was not for him, but the Distributee, that the Stat. of Distrib.? was made: the reason of the difference might be, that there wd be great difficulty, if these Bonds were to be assignable for Creditors; who under such Circumstances wd be security for Admons. The Question is not what the Law shd be, but what it is: the Consequence of the Bond not being assignable, is, that the Creditor has no right to object. I will follow Sir Geo. Lee in the case of Minors & next of kin, in other Cases, I am unwilling to do anything ex Officio, not prescribed by Statute, or the constant & uninterrupted usage of the Ct, after Determinations in the Delegates — It is better the Law shd be certain than variable — I think Adderleys Client, as Admx & next of kin, is entitled to Admon going under Seal, & that Mrs Tapel is only entitled to an Inventory —

x On appeal from the Consistory of Lincoln ....

A Sess. T. T. Commiss.? of Surry

Maplesoff & others. v. the Rector. Ch: Wdns & Parishioners of Chertsey.

Grene — Dr Wynne, Bever — Dr Calvert, Burrell — Collins

Dr Calvert ... The Question now before the Ct. is, wh? Mrs Pembroke, can intervene for her Interest, in the faculty prayd by her late Husband, or wh? The Suite abates by his death? The Ct has declared an Exor, of a Decd Party is not a proper Person to proceed in the Grant of a Faculty: I dont mean to support it as a general Proposition, that the Cause abates, on the death of a Party; for I have known a Legatee intervene; & in the Goods of Mrs Worthey, the Syndic of a College, had leave to intervene for the Interest as a Legatee — But I say, a Personal Action, must die with the Person, that there is no Right transmissible in it, that this is of that sort, therefore not within the general Rule abovementioned — There are only 2 Ways, Representation, or Intervention; Mrs Pembroke is not her Husbands Representative, as he has app: Exors; & she can't intervene, as she has no Interest in the Cause; it was a mere personal Indulgence to Mrs P. & she had no Interest at the time of this Application: If an Exor dies, a Legatee may afterwards intervene, for his Interest to support the Will, because he had an Interest when the Exor was living; a Party is suffered to intervene, not for the purpose of creating an Interest, but to support one already in Being; Mrs P. is not in that Predicament; besides, the reasons on wch one Person, asks an Indulgence, may not subsist, with respect to another; it is probable Mrs P. may cease to be a Parishioner, her Circumstances may be totally altered by her Husbands death: the Priority cant be carried on; if a delay has happened, it is not our fault or that of the Ct, but unavoidable; Suppose only one Person had applied & died before the Grant had taken place, wd the Ct leave it to the Family? if it had been once granted, indeed, the Family wd have a right to it — it wd be a great absurdity to grant A Pews to 3 Persons. Even in matters of Grace the Ct thinks it self bound by the Practice: there has been no Intimation, that all Objections may be made to the Pty who

Q. ought the Widow a Pty pray a faculty for a Seat to be allowed to intervene for her Int: & does the Cause abate by the death of the Pty?

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