Warrant; they have only these two Remedies, an Inventory & Commission of Appraisement, in both which Nye will be at their Mercy; they are to shew, the Commissioners are not to hunt & search, you cant give that Instruction, unless you had a Jurisdiction; there is a Canon which enjoins Parties, to make Oath (when they apply to the Inferior Cts for Probates or Admons) there are no Bona Notabilia; let them apply to the Ct of Chichester, where he may have an Inventory & Commission of Appraisement, if he has a Remedy in another Place, you will not give him one here.

The 3d Article I couple with the first; they shd state where the Bond was at the Time of the Intestate's death, without that, the Article is useless; if the Specialty was in possession of the Deed, the Jurisdiction of the Ct is not founded; How can it be proved? you will not force them to come by Compulsory

Dr Wynne — An Admon from this Ct is good (a) tho, there are not bona notabilia an Admon from an inferior Ct is void, & every thing done under it, if there are Bona Notabilia — The first Article is Sufficient, if it stood by itself; the Plt assumes the Proof that the Deed had Bona Notabilia; it admits of Proof by Witnesses & by Answers.

The 2d, is a positive Averment; that it does appear; I dont see why you cant have the Answers of the Partys; the Dr said by Canon they must swear there was not Bona Notabilia; I believe there is such a Canon, but it is notorious no Oath of this kind is taken these Parties may refuse to answer voluntarily, but when they are to be examined on Oath, they will be cautious how they speak. Suppose we could prove by Witnesses, that they had seen the Books a short time before the Deed's death, & there appeared simple Contract Debts in the Diocess of Winchester.

With respect to the 3d Art: the Dr assumes as clear Law, that the Debt is where the Specialty is; I have looked into the Books, particularly Wenbworths Office of an Exor, & the reason there given is most unsatisfactory; it wd prove too much, that no Debt whatever shd found the Jurisdiction, for the Person of the Debtor who gives a Bond is not more transitory than that of any other Debtor; it is said to be the old Law, this is exploded; It is not pleaded in our Article that Piercy & Gregory have Ct; they take Admon in ye Diocess of Chichester because the Deed died there, the Facts laid are proper if we can prove them.

Dr Burrell — I readily agree with Dr Harris that this is a nice Question, & deserves the particular Attention of the Ct, not only because it concerns the Jurisdiction, but that the relief of an injured Pty depends on it; this Ct will (I am sure) upon all occasions avoid intruding upon other Jurisdictions, but it will likewise support its own, you Sir will hear every Suitor, & administer strict Justice; & I believe, you will find, that the Interposition of the Ct was never more necessary than in the present Case, where the Deft.s have taken every Step in their power, to violate the Law, & injure my Client; I acknowledge a point Admon was desired at Chichester to the Plts & Deft.s who were then amicably inclined to each other, but no sooner was the Admon granted, but the Deft.s pulled off the Masque, possess'd themselves of all the Books, Papers, & Writings of the Deed, & refused to allow the Plt (tho, a Co-Admor, & so equal in power) the liberty of having access to them; Dr Harris says they fell into quarrels; with great reason, such Behavior demanded Resentment; & the Plt finding on Enquiry that the Deed left Bona notabilia applied to this Ct for Admon, but to his Surprize found a Caveat entred by Piercy & Gregory the same Day the Admon was granted at Chichester, than wch there cannot be a stronger Presumption, that there was reason for their Precaution i.e. Bona Notabilia, otherwise it was preposterous for them to take such a Step when all Parties were in Amity with each other.

(a) The Doctrine laid down by ye Common Law is this, that in the former case it is only voidable, in ye latter, absolutely void.

& there was no Reason to suppose such an Application would be made to the Perog: Ct — We state in the first Article that there are Bona notabilia, & assume the Proof of it, & in the 2d Art: we say it will appear by the Deeds Books &c. I am told the Decd had a Debt owing to him in Ireland, that, if true, will found the Jurisdiction, & the Presumption is in favor of ye Plea. The Dr desires we shd state where the Bond was at ye Decds death, we say if it was in his Custody it is not Bona Notabilia, when that Point comes to be argued, I hope to be able to offer Reasons wch may induce the Ct to pronounce it Bona Notabilia; I am told, in Cases of this Nature, Payment has been refused without a Prerogative Probate & Admon; the Canon noted by the Dr is Bonitum fulmen, it is entirely disregarded, & I do not beleive it is enforced in any Inferior Ct in the Kingdom. I hope you will be of Opinion to admit this Plea as laid.

Judge — Dr Hay — Matters of Jurisdiction are as much of Right, as any other Questions, & must be determined by the same Rules; If the Decd died possessed of more than 5£ in Different Diocesses, or Peculiars this Ct has a right to the Probate or Admon) of the Province of Canterbury, if the Decd left Effects only in one Diocese, this Ct will not assume the Admon of them; where there is a doubt about the Fact, & a Party asserts the Decd left Bona Notabilia, it would be manifest Injustice to refuse him an Opportunity of proveing it, when one asserts, & another denyes a Position, it must be examined into, & tried;

The first Article would in my Opinion be admissible, if it stood alone; the Plt is to make it out as he can, & has a right to the Defendants Answers to the Allon, & might have exam: Witnesses to prove it, if he had stopped at this General Plea; he may also plead more specially, & go into what he thinks fit, to shew Debts where he can.

The 2d Article pleads that the Books &c. in the Deft.s possession is one way of proving his Position, but not as the only method; the Court wont immediately grant a Commission of Inspection & Appraisement, because that supposes my Jurisdiction to be founded, & would be Inquisitorial indeed — Dr H: said he might have gone to Chichester & demanded a Commiss of Inspection & Appraisement, & also an Inventory, so he might but he says the Ct of Chichester has no Jurisdiction, & chuses to come here; the Question is, does the Jurisdiction appertain to them? where a man has two Remedies, he is at liberty to make use of either; he may here demand the Answers of the Defendants, upon Oath, wh: they beleive the Jurisdiction of this Court to be founded, by the Papers in their Hands; if he is not aided by their Answers, he may then go to Chichester & pray a Commission of Inspection, to see if they have sworn truly; I beleive the Canon cited, has never been complied with, unless it shd have been in those Jurisdictions where Dr Harris presides, I therefore lay no stress upon it.

v. fol. 133 . . . . The 3d Articles pleads a Bond; this Point was before me on an Act, in Hopwood & Luckis, I rather gave a Recommendation there, than a decisive Opinion; Suppose it shd turn out, the Bond was not in the Diocess of Chichester when the Man died; there is an End of the Question; if it was in the Decds possession, at that time, there is room for Argument; I do not enter into the Law now; I am bound to admit the Allon, & require the Answers of the Deft.s as to the Jurisdiction bill that is founded, I cannot aid, but then the Law would require me to give every Aid in my Power. — Plea admitted as laid.