Judge Dr Hay

In these family disputes, the Court must go into Particulars. In Admons respecting personal Estate, there is no Distinction necessary between Senior & Junior; I must examine therefore, who is most likely to take Care of the Effects; I observe on Rd Prouds Affidavit, as Committee he has not done his duty and collected in, the Effects – The best rule is to decree it, according to the Prayer of the majority of Interest – If a Proxy had been exhibited from Edward, then I shd think it ought to be granted of course to as it is, I think Edward & Samuel joining together, it shd be granted to Samuel, notwithstanding Richard says Samuel has received the Rents of several Houses, &c. which he may have done by his own Authority – I therefore decree the Admon. to Samuel.

Hil. T. 3 Geo

Prerogative

Dr Marriot....

Dr Wynne....

Bishop 145 Senhouse v Stevens Tenner

Dr Marriot Dr Wynne

began & stated the Case

If you are not bound by Law, you will not revoke the Admon, to grant it to the Exor, to whom it is of no Importance, as he has no Interest; the Admon was well granted to Jonathan Stevens, in pain of the contumacy of Peter Senhouse; It wd be a dangerous Doctrine to lay down, that you cant render Parties contumacy, unless they have been personally served; That is very frequently impossible; Senhouse is a man of a rambling Disposition, who leaves no account with his Father, where he goes, & is therefore very improper to be entrusted. The Question is, wh. in point of law, nothing can bind a renouncing Exor? I know, where there are Co-Executors, & one proves, & the other refuse, those who refuse may come in at any time; but in that Case the Execution is vacant; here it is full, for the Person has administered almost all the Effects.

Dr Hay Judge

The Question is, wh. the Admon granted on ye Contumacy of Peter Senhouse, shall be revoked, & a Probate be now granted to Senhouse, as Surviving Exor?

when Jn Stevens the Joint Exor proved the Will of Smith the Testator, Power was reserved to Peter Senhouse, the other Exor, but it wd have been all one, if it had not; for upon his Appearing he wd have been undeniably entitled to the Probate; Jn Stevens dyeing & Petr Senhouse not appearing, Admon de Bonis of Smith was granted to Jonathan Stevens the next of Kin & residy Legatee of Jn Stevens, as thinking it best to grant it to the Representative of the Joint Exor, after a litation vis & modis, had been decreed, & returned, without effect, agt Peter Senhouse;

If it had appeard that Petr Senhouse had survived, I shd have preferred, his Attorney, as surviving Exor, Residing; of Smith the Original Testator, to the Admon of the Co-Executor decd – It is said Jonathan Stevens has administered almost all the Effects; notwithstanding that, I think I am bound to grant it to Senhouse or his Attorney –

where an Exor is personally cited, or you could affect him with the knowledge of the Admon granted, he wd be bound by it, but not where the Party is abroad, & as soon as it comes to his knowledge, applys for it –

Contumacy is of 2 Kinds, Voluntary, & presumed;

Q Shall an Admon be revoked, (wch was granted, on ye Contumacy of ye Surviving Exor) & Probate be granted to such surviving Exor or a new Admon to his Attorney?

Voluntary, when the Party knows of the Citation & disregards it. Presumed, when he is only supposed, but not proved to be informed of it; the latter is not conclusive; therefore, I am bound to revoke the Admon, the Exor has a right to the Probate. If it had been granted to the Attorney of the surviving Exor I shd have revoked it, & granted Probate to the Exor –

There are many Cases, where Admons wch are well granted may be revoked –

I have known the Exor, coming in person has had it, tho, it has been said, that what is once well granted, cannot be revoked –

Admon. revoked....

Prerogative

Lushington 146 Nye v. Piercy & Gregory Fuller

Dr Burnell, Wynne Dr Harris

See the Case stated fol. 305.

Q Shd a Bond found in the possession of ye Deed, at ye time of his Death, in ye Diocese of C. be proved there the Debtor living in another Diocese. or is it Bona Notabilia & to be proved in ye Prerogative

Dr Wynne....

The Question is, whether this Bond, found, in the Decds house at Horsham, (being given to him by a Person, who lives in another Diocese,) I authorize the Consistory of Chichester to decree the Admon, or is it to be accounted Bona Notabilia, & the Prerogative Court of Canterbury to have the Jurisdiction?

The 95th Canon settles the Quantum of Bona Notabilia at 5L

It speaks only of Goods & Chattels, in different Dioceses –

The Common Lawyers, indeed, have distinguished, between Debts by Specialty & Debts by Simple Contract, but with some Variation; the Reason assigned, is very unsatisfactory, "because the Person of the Debtor is moveable"; If you could enter into the Reason, it would prove too much; for the Person of a Bond Debtor, is not more moveable, than that of a Debtor by simple Contract – I dont know any reason why the Cases reported in the Common Law Books are to guide your Decision; we know of no settled Rule in our Courts as to this Point Sir Geo Lee gave no Opinion in the Case of France & Aubrey, nor did you Sir, in that of Hopwood & Lukis. See fol. 193...

Dr Burnell...

It is admitted on all Sides, that the Decd, was Creditor of Walter Nye, of Ockley in Surrey, & in the Diocese of Winchester in 60L by Bond, which was in the Decds possession, at Horsham, at the time of his Death. which brings on the Question, how far, such Bond, is to be esteemed, Bona Notabilia, & wh. it will found the Jurisdiction, of the Prerogative Court of Canterbury.

in order the better to clear up this Point, it will be necessary to recur to the Opinions of Ancient Writers upon the Subject.

The Ordinaries formerly granted Admons, in respect of the several Goods, which Persons died possessed of, in their several Dioceses, but that being found inconvenient, because the Creditors of the Intestate, were compelled to bring Actions severally, agt the respective Admors, the Prerogative of the Bp to grant Admons, where there were Bona Notabilia in several Dioceses, was, by Composition, or some other Agreement, wch is now run into Prescription, vested in him, except where the Rate of Bona Notabilia, was fixed at more than 5L, (as in London at 10L by ancient Composition,) in wch case it was to remain unaltered.

The Old Ecclesiastical Writers, speak very superficially, as to what shall constitute, the Locality of a Bond Debt, so as to include it under the Rate of Bona Notabilia –