Dr Hay, Judge

Pltf.—
It is agreed that Probate passed in 1767, that the Legacy was paid at the same time, & that the Pltf, as Legatee, is in possession of the Rents & Profits of the Houses bequeathd her by the Will; She now as Ext̃rix cites the Exors to prove the Will by Witnesses

Q. Shall she be allow'd to call now, for such Proofs as she might have required at first?

Much Injustice might arise if a Person merely by getting a Probate, was to be esteemed so fixd in Possession, that he c̃d not be called upon — Every next of kin may at any time, call in a Probate, upon fresh Information tho, they sh̃d have received any Advantage under that Will, they may have received that Legacy & acquiesced in cautiously & inadvertently; as to the manner of doing it, the Court, I take it, orders the Legacy to be brought into Court, before the Legatee is allowd to contest, as he w̃d otherwise have an undue Advantage & fight the Exors with their own money; the Exor is not in the same Situation, as if she had been called upon to prove in solemn form, for if she had, the next of kin w̃d have been bound there is a difference between a next of kin & a stranger Legatee in ordinary Cases, because the first will be entitled in distribution, I order the Legatee to bring in the Legacy, before she calls on the Exors to bring in the Probate — Adderley undertook to bring in the Legacy next Court, Stevens to appear absolutely —

The Legacy ought to be brought in before the Exors are called on to bring in the Probate.

Bye Day H. T.
Prerogative

No 152.

Jones v Chapman

Bargrave — Major — Crespigny

I never thought the Letter of the Secretary of the Treasury, was a proper Authority to the Kings Proctor to appear for the Crown, the Letter should be signed by the Lords of the Treasury; they are the proper Officers, & responsible for the Advice given; Application should have been made to the Kings Advocate, & the State of the Case laid before him, had the Proctor acquainted the Kings Advocate, he would have judged whether a Prayer to intervene in behalf of the Crown was proper; the first Question, is wh̃r there is an Authority to pray an Intervention? the Ct will next consider wh̃r the Crown is entitled to intervene under the special Circumstances of the Case? The Officers of the Crown sh̃d take care to have a proper Authority, before which they have no right to ask the Opinion of the Court; I never knew such an Application, as the present, made to the Court — It is matter of Consideration what kind of Right the Crown has against an Admon.

Q. Has the Kings Proctor a proper authority to pray an Intervention on behalf of the Crown?

Q. Is the Crown entitled to intervene under the special Circumstances of this Case? ...

I dont remember an Application made, on the part of the Crown, except in the Case of Stote & Tyndall to contest the Interest of the Party It began in Sir Geo. Lee's time the Question was, wh̃r the Auth of the Party would not be sufficient to oust the Crown?

An Allegation however was given; Dorothy Wilson was the Deed; Stote appeared, & without stating any Degree of Relationship, gave an Allon

generally; the Court said the Cause was open, Parties were not there contending, which varies it from the present Case; I will not go farther; the Crown is not appriged of the Consequences, when they pray to intervene in a new Case, & in a new way; the Case should be fully stated to the Crown by its Officers; the Authority given by the Crown must be as good as that given by a private Person; In Stote's Case nobody was in possession no Oath was taken by an Admor; It is a Question of great Consequence, wh̃r the Crown can call in an Admon at any time; × I remember a Warrant signed by the Lords of the Treasury, which was not brought to the Court till after the Board was changed; that Warrant was refusd till it was signed by the Succeeding Comrs of the Treasury Here an Admon granted by the Court, is called in by a Party, who alledges himself to be next of kin to the Deed, he has a right so to do, because I am bound by the Statute to grant it to the next of kin, who is so, the Parties may dispute with each other: It dont appear to me, the Crown is informd of the State of the Case — Sir Geo. Lee admitted the Crown to be a Contradictor to an Interest. ...

E.T. 2 Ses:
Prerogative

Jenner — No 153. Coxon v Jordan & Hills — Bishop

Dr Harris — Dr Marriott

Dr Marriott

John Coxon is the Deed; he made a Will dated 28 March 1744. & thereof appointed his Wife Alice Jordan, then Coxon, & John Hills Exors: they proved the Will in Febr. 1745. The Deed gave his Exors, 3000£ in trust for his Son John; & if he died before 21, or Day of Marriage, then for his Wife; he gave the Residue to be laid out in the Stocks, the Interest whereof was to be paid to his Wife for Life, & then to his Son John who was about 9 years old, at his Father's Death; his Mother afterwards was at a considerable Expence in the Maintenance of her Son John, & in his Education at Cambridge; the Deed was a Pawnbroker, & his Estate consisted chiefly of Pledges amounting to about 3000£ — If Mrs Coxon, during her Sons Minority had not carried on the Business, there w̃d not been sufficient to maintain her, & her Son, or scarce any thing left when the Son came of Age on the 31st of Decr 1757, at which time he was so well satisfied of his Mother's Care & management of the Estate, that to enable her to live comfortably, he released his specific Legacy of 3000£, & accepted of 150£ Annuity for his Life, in lieu of it, which will appear by a Deed brought in, duly executed — Ten Years have elapsed since the Date of this Release, & 22 Years since the Testator's death; The Son being now in Scotland, & very profligate, has thought proper to call on his Mother, tho, he has no Interest, for an Inventory & Account; Jenner took out the Citation,