mechanically sign the Release; he says, he never heard of or saw the Release till sent him by his Proctor; he had an uncertain Residue; he had a Specific Legacy of 3000£ which he gave away for 150£ Annuity for his Life, wch is an exorbitant Sum; She imposed on him, by undertaking, tho' a married Woman to leave him largely; She vests nothing in Trustees to pay him 150£ pr An: (which is no equivalent to the Sum, paid, for the Purchase thereof) She frightens him, knowing what will operate on him: I have supposed the Release real, & that you could look into the internal parts of it; I must now insist it is no Release, being conditional, & on the face of the Paper, the Conditions not performed; the Persons named are to invest a Sum in the Funds, sufficient to pay the Annuity none is invested, & the Persons named have not signed it; If you cant enter into Proof by Witnesses, you may at least look at it, & use the Evidence of your own Eyes; you may observe wh: it is signed, sealed or attested; if it is not; it wd: be no Deed, on the face of it — we are told of Receipts, but none are produced, & we are referrd to a Book, wch she has not produced for them; it is strange no better Proof has been attempted; but if there were Receipts, it wd: not be extraordinary, for the man who wd: sign a Release, wd: sign a Receipt — The Release is void for want of the Condition being compleated; I hope you will order Mr Bishop to appear absolutely. ...

Dr Hay Judge — A Citation has, in this Case, been taken out by John Coxon a Legatee in his Father's Will, agt the Exors to produce an Inventory & Account; At the Testator's death, the Legatee was only 9 years of Age, & the Inventory is said to be called for 10 Years after the Party has signd a Release to the Exors; Bishop appears under a Protest & objects to the Jurisdiction; I shall in the first place order him to appear absolutely, he may afterwards plead in Bar to the Inventory & Account, but till he appears absolutely, I shall not give my Opinion.

NB Bishop then agreed in Acts of Ct: to appear absolutely (which having done, the Court proceeded) to plead in Bar to the Inventory & Acc:

In Butlers Case I remember Gostling appeared under Protest the Ct overruled it, he appealed to the Delegates, who said he sh: have appeared absolutely, & then the Court sh: have proceeded; But till the Jurisdiction is allowd the Court cant do any thing —

The Son is admitted to be a Legatee; as such he has a Right to an Inventory & Account; he may indeed give up his Interest various ways — Before the Statute of Jac: the 2d: the Court ex Officio, could order an Inventory & Account, since, it can order it only at the Instance of a Party; It is said In Coxon has released his Interest; he in his Affidavit denies it; the Release is brought before the Court, which must have a right to look into

& see wh: it is duly executed; but not to determine the Validity of it — This has been determined in a thousand Instances, the Case of Hardwick & Grimston, is strong in point the Ecclesiastical Court would not enter into the Question, till the Temporal Ct had determined wh: it was valid or not: wh: fair or fraudulent this Ct will not determine; In this Case the Release is denied by the Party; It is on the face of it not general, but Conditional, "if the Party did so, or so." I may ne if the Condition is complied with; the Release is on Condition that the Widow shall lay out Money in the Funds, & vest it in Trustees; if it had been duly executed by all the Parties therein mentioned, I cant say it is a good Release in Bar — I mean a Release appearing fully executed, is not to be examined, wh: fraudulently, or how obtained — It was determined in Millington, Soresby That a Release was not a Bar to the Admon claimed, but to the Inventory

Release not executed so no Bar to ye Inv: & Acc: prayd

Bishop appealed — This Release appears not to be duly executed, & therefore I decree it to be no Bar, & direct an Inventory & Account to be given by the first Session of next Term. . . . . .

Ld Raym: 73. S.C. 1 Salk. 115. 5 Mod: 69 — Chamberlain v Hewetson The Plt Moved for a Prohibition to the Spe: Court, on a Suggestion that the Deft: preferred Articles in the Spe: Ct: agt her for Incontinency with Mrs Hewitson's Husband, & obtained Sentence against her; Mrs Chamberlain appealed to the Court of Delegates, who confirmed the former Sentence, & decreed the Plt to do pennance & pay Costs to Mrs Hewitson: Afterwards the General Pardon issued, by which the Penance was pardoned; & now the Deft: libelled in the Spe: Court for the Costs, where the Plt pleaded the Release of the Defts Husband which the Spe: Court disallowed, & therefore she prayd to have a Prohibition granted.

Serjt Wright for the Deft: argued agt the Prohibition, that, ubi Cognitio principalis, ibi debet esse Cognitio accessorij. to prove which Rule, & apply it to the present Case, he cited Yelv. 173. Starkey v Barton & Gore. March 73. p. 112. 2 Cro. 269. Roberts Case.

12 Co. 65. 1 Rs. 4. Reg. 57. Cro Eliz. 466. 788. 2 Lev. 64. 3 Lev. 72

A Feoffment was tried in the Spe: Court between Fritter & Whiskins.

2. He argued, that it were in vain for any Wife to commence a Suite agt the Adulteress, if this Release sh: be allowd to bar her of her Costs, which are merely the Charges of the Suite, to bring the Criminal to Punishment, therefore these Costs ought not to be releaseable by the Husband no more than the Case of Notar Sir Bartholomew Shower for the Plt, argued that the Prohibition ought to be granted, & of that Opinion was the whole Court, and Resolved 1. That the Jurisdiction of the Ecclesiastical Ct. shall extend to the Determination of the Validity of Letters Patent, Feoffments, Releases &c which come in question there, in matter properly within the Ecclesiastical Conusance, provided that in the determination of such Collateral matters, they do not deviate from the Rules of the Common Law, for, if they do, a Prohibition shall be granted.

1 Rol Rep: 426 2 Rol. Abr. 298. p. 1. 300 pl. 10.

2. It was resolved, that if a Feme Covert, sue another in the Spe: Ct for Incontinency with her Husband, & recover Costs, if the Husband release them, the Wife is barred: for since the Husband is liable to the Charges of the Suite, expended by the Wife, he shall have the Costs in Recompence; besides that, the Wife cannot have