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THE *Jm Rogers*
OFFICE and DUTY
OF
EXECUTORS;

Or, A TREATISE directing TESTATORS
to form, and EXECUTORS to perform their
Wills and Testaments according to Law.

What a Man may give or dispose
of by his Will; of Revocations
and new Publications of Wills.
Of the State of Things upon the
Testator's Death; what may be
done by an Executor, &c.
Of proving Wills, and of the Fees
payable for the Probates.
What Things shall come to Execu-
tors by or after the Testator's
Death.

Cases between Heir and Executor;
and of Suits by or against them;
and of the Method of Payment
of the Testator's Debts.
Of *Devastavit* or Wasting; and
of an executor in his own
wrong.
Of married Women and Infant
Executors; of Legacies; of Ex-
ecutors of Executors; of Ad-
ministrators.

Originally compiled by that Approved and Judicious AUTHOR
THOMAS WENTWORTH,
of *Lincoln's Inn*, Esq;

To which is added;

The Supplement of H. CURSON, Gent. many Hundred Re-
ferences, by a Barrister of *Grey's Inn*; and since revised and
brought down to the present Time,

By GEO. WILSON, Serjeant at Law.

L O N D O N :

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M DCC LXXIV.

Wills proved in some manors by prescription.
2 R. 3. Fitz.
Co. lib. 9. f. 43.

The proving is in the spiritual court: yet in some manors, by prescription, *wills* are to be proved before the steward, though no lands thereby pass, as appears by divers books: and in the manor of *Mansfield* is this prescription; and in others, whereof *Tremaile* was steward in King *Richard* the third his time, as he declared. And the like I may tell of my own knowledge touching the manors of *Cowley* and *Caversham* in the county of *Oxford*, where I have kept the courts of the Lord Viscount *Wallingford*, and found it in present and frequent use. And it is said by the judges in the time of King *H. 7.* That this proving of *wills* in the court spiritual is not antient, but of later time. Yea, it is acknowledged by *Linwood*, the dean of the arches, that it pertains not to the spiritual court of common right; nor is so in use in other kingdoms. The reason why the law of *England* hath herein given way to the ordinary and court spiritual, is said by *Walsh*, in *Greybrook* and *Fox's* case, to be the piety and integrity which is presumed to be in those of that function, having charge of souls. Indeed they are, as it seems to me, executors of the new testament, or last *will* and testament of *Jesus Christ*, whereby great legacies and gifts are given to men, and by pastors to be dispensed and distributed: of which distributors it is required, as *St. Paul* saith, *That they be found faithful.* And happy are they who with him can plead *Plene Administravit*, viz. that they have fully administered, as he did; much depending thereupon, viz. God's honour, the blessing, prosperity, and safety of the country, the piety, justice, conscience, contentation and salvation of men. As for

11 H. 7. 12.

Why this jurisdiction given to court spiritual,
Plow. Com.
279.

1 Cor. 4. 2.
Act. 20. 27.

for *wills* proved in *London* and *Oxford* before the mayor, that is only in respect of the burghages within those places devisable; but they were to be proved also before the ordinaries in respect of the goods, and there only where no lands are bequeathed. The proving then is to be before the ordinary, general, particular or special. By general, I mean the metropolitan or archbishop, before whom it is to be proved; in case the testator have goods valuable, called *bona notabilia*, in divers diocesses whereof he is superior.

Proved in London and Oxford, before the mayor. Vide plea in the Sup. p. 10, 15.

Vide f. proxim. Of Bona Notabilia both in Canterbury and York.

Of *bona notabilia*.

WHAT shall be said to be *bona notabilia* is considerable; for thereabout hath been much diversity of opinion: some holding that they must be of forty shillings value, some five pounds, some ten pounds; yea, some that the value of a penny sufficeth to draw it to the archbishop from the particular bishop. But that difference of opinion I conceive to be now cleared by a canon made in the first year of King *Charles* his reign at a convocation then held, whereby it is established, that five pounds shall be the sum or value of *bona notabilia*; yet therein is this *Proviso*, that where by composition or custom in any diocesses *bona notabilia* are rated at any greater sum, the same shall continue not altered. It is likewise thereby provided, that if any man die *in itinere*, viz. in his journey or travel, the goods which he then hath about him shall not cause that administration shall be committed, or the *will* proved, before the metropolitan.

Can. 92, 93.

In the Diocese of London, it is 10 l. by composition.
Swinb. 414.
Vide post. Sup. p. 11.
Canon law made 1 Jac. c. 9.
Vide post. Sup. p. 27.

Having

Swinb. 418.

Having considered of the value, now another point observable is, what things shall be said to be *bona notabilia*. And as to *that*, debts owing to the testator are *bona notabilia*, as well as goods in possession, their value being answerable: yet, I think if the penal sum of the bond be but five pound for payment of a less sum, although the bond be forfeited, yet in the spiritual court, where respect to conscience suppresseth the favouring of executors, this will not be taken to be *bona notabilia*, viz. of five pounds value, although in law the whole penal sum be a duty. But if the debt be five pounds or more, though it be desperate, or due from the King, against whom no suit can be, but only by petition, yet this will stand for, and as *bona notabilia*, as I take it, in the court spiritual; though thereabout I can but conjecture, since the rules of our law determine it not. And this point, touching the King's being debtor, I find debated in the late Queen's time, but not resolved, so far as I find. But there *Popham* at the bar urged that no debt should be *bona notabilia*; and if it should, yet not such for which no remedy by suit, as in that case, the Queen being debtor. Yet a farther question local is touching these debts or things in action, in what place or diocese they shall be said to be as *bona notabilia*, viz. whether in the place where the debtors be, or where the obligations, or other specialties be? And as to this, the law hath been taken, that because the persons of the debtors be moveable, passant and transitory; therefore these debts shall be said to be, and to make *bona notabilia* where the bonds or other specialties be, and not where the debtors inhabit and dwell. And so was it

not

Goods considerable or conspicuous.

Bona Notabilia where the Specialties be.

21 Eliz.

not long since conceived by Justice *Walmsley*, and Justice *Beaumont* in one *Pretyman's* case, no other contradicting it. Herein therefore many are mistaken, who only in respect that the persons of the debtors do dwell in foreign dioceses, other than the places of the death of the testator, or where his other goods were, do take administration in the prerogative court, though the specialties remained where the party died, or his goods residue were. But in case the debts be only by contract, without specialty, then indeed they are to be esteemed *Bona Notabilia*, there and in that place where the debtor is, as the said judges well conceived the difference. But in case land be given to executors for payment of debts or legacies, this shall not be *Bona Notabilia*, as I take it, though it be *Assets*.

Hil. 17 Eliz. M. Com. Da. Vide 13 & 14 E. Dy. 305.

Bona Notabilia where the debtor is.

Of the validity and invalidity of probates.

AS to the third point, we will first see of what validity an erroneous proof is, and thereabout we shall find this difference. Admitting that one hath not *Bona Notabilia* in divers dioceses, so as of right the proving of the will appertaineth not to the metropolitan, and yet the will is proved before him; this is not merely void, but stands in force till it be reversed by some sentence upon appeal; as was resolved between *Vear* and *Jefferies*, in the late Queen's time. But on the other side, in case one have *Bona Notabilia* in divers dioceses, or a peculiar and a diocese, and yet the will is proved before the particular bishop within whose diocese part of the goods are; this is merely

Not void, but voidable, for that the metropolitan hath jurisdiction over all the dioceses within his province, and for that cause it can't be void, but only voidable by sentence. Vide post. Sup. p. 27. 118.

22 Eliz.

Because by no means he can have jurisdiction of that cause which belongeth to his superior.

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and