

no good plea to an action brought upon a debt preferred by Law to plead payment of a debt which the Law esteemes unfitt to be preferred and so conclude fully administred. For according to Law and Reason every executor at his Owne perill is to take care that he pay his Testators debts in such Order as the Law and policie of the Country requires And if he gives preference to a debt which the Law postponeth he shall be compelled to pay the debt to which the Law gives p<sup>r</sup>ference out of his Owne monyes and shall not be helped by pleading fully administred. Now in this case the executrix by her Own Act and for her Own advantage did not Only give preference to a debt which the law of the Country postponeth but extended and tooke in execution for satisfaction of the same all the Testators estate reall and personall And all that the testator as a Factor had in his hands belonging to his master And to secure her in the possession of all this prevales with the Court to make a new kind of writt for her Guard. Now though this judgment were notoriously erronious and all the proceedings thereupon yett it cannot legally be reversed, Because there is no party who Ought to bring a writt of Error that can be compelled to bring one But in regard it is not pleadable against the pet<sup>r</sup> or any Other Creditor for the reasons aforementioned it will prejudice no person Besides upon y<sup>r</sup> petitioners bill your Lōpps Court may decree that it shall be sett aside and never made use off, And if Gittings be made a party to the pet<sup>rs</sup> bill the Court may decree him to vacate the said judgment.

As touching my Opinion what I thinke fitt to be done by the petitioner upon the whole matter.

I humbly conceive that he may preferr his bill in y<sup>r</sup> Lōpps said Court as a Court of equity against Boague the administrator of Mary the mother and against the infant and Gittings to charge them to sett forth upon Oath 1<sup>o</sup> what Deeds evidences and writeings they haue concerning the said purchased lands 2<sup>o</sup> what bookes or papers of Accounts they haue relateing to the accounts between Bateman deceased and the petitioner 3<sup>o</sup> what assetts they received of the estate of Bateman or his wife 4<sup>o</sup> what profitts they haue received of the said purchased lands 5<sup>o</sup> what monyes or effects belonging to the pet<sup>r</sup> and which were in Batemans hands at his death haue come to their hands and to sett forth the errors and collusion in relation to the said judgment and proceedings. He must thereupon pray to haue all the said Deeds writeings evidences bookes and papers brought into Court to haue the truth of the particulars aforementioned appeare Also to haue the said Lands to be decreed unto him And a decree to haue them conveyed to him, To haue Satisfaction decreed to him Out of the estate, And the judgm<sup>t</sup> vacated. All which that Court as a Court of equity being Satisfied of the equity may decree and compell to be executed.