[123] EARL OF WARWICK *v.* GREVILLE. Prerogative Court, Trinity Term, July 11th, 1809.—Primogeniture gives no right to an administration.

Judgment—Sir John Nicholl. The question in the present case arises upon the grant of an administration to the goods of the Right Hon. Charles Greville who has died intestate.

The deceased left two brothers, one sister, and a nephew the son of a deceased sister; the property must be distributed amongst the four; and there are three persons to whom administration may be granted:

The Earl of Warwick, the elder brother, prays that it may be granted solely to himself, or to himself jointly with his brother Mr. Robert Greville: the younger brother, Mr. Robert Greville, prays that it may be granted solely to himself, and he is supported in this prayer by the nephew Mr. Churchill, who is entitled to an equal distributive share of the property: the sister, Lady Frances Harpur, prays first that it may be solely to her brother Robert, then solely to Lord Warwick, or jointly to him and her brother Robert, and lastly, solely to herself, or jointly to herself and the elder or both brothers.

The statement is rather complicated, but the result of it is that there is a moiety of the interests concerned praying the sole administration for Mr. Robert Greville; a quarter of the interests pray-**[124]**-ing the sole administration to Lord Warwick; a quarter praying the sole administration to Lady Frances Harpur; a quarter the joint administration to the two brothers; a quarter a joint administration to the elder brother and the sister, or to both the brothers and the sister, for Lord Warwick unites in praying that it may not be jointly to himself and his sister.

The (*a*) statute leaves it to the ordinary to grant **[125]** letters of administration to the next of kin; all here have an equal interest; all except the nephew stand in an equal degree of relationship; none have a legal preference; the selection rests with the discretion of the Court; that discretion, however, is not to be arbitrarily or capriciously assumed, but to be a legal discretion governed by principle and sanctioned by practice; in exercising it the Court is not to be guided by the wishes or feelings of parties, but is to look to the benefit of the estate and to that of all the persons interested in the distribution of the property. The first duty of the Court then is to place it in the hands of that person who is likely best to convert it to the advantage of those who have claims, either in paying the creditors or in making distribution; the primary object is the interest of the property.

The claim of Lord Warwick to the sole administration rests merely on the circum-

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(*a*) The jurisdiction which the Ecclesiastical Court exercises over the effects of persons dying without a will rests on a very ancient foundation: in the early periods of our history the ordinary had by common law the absolute disposal of the personal property of all intestates; and, under the pretext of applying their goods to religious purposes (in pios usus), possessed itself of them, not only in cases where the deceased left a widow and children or other near relations, but in defiance also of the just claims of creditors. On this footing the law continued under the Norman kings and the first sovereigns of the line of Plantagenet; but when the free spirit of our constitution, which had been long labouring under the pressure of the feudal institutions and the shackles of Papal superstition, commenced those struggles which ultimately led to its emancipation, the abuses practised by the ordinary in the administration of the effects of intestates became in their turn subjected to correction and control.

The 32nd article of the Magna Charta extorted from King John expressly provides against them; but it is a curious fact, and one which strongly marks the influence of the Papal power in England at that period, that this article was wholly omitted in the Magna Charta of Henry III.

13 Edward I. st. 1, c. 19 (commonly called the Statute of Westminster), made the estates of intestates liable to the payment of their just debts.

31 Edward III. st. 1, c. 11, compelled the ordinary to depute the next and most lawful friends of the deceased to administer his goods.

21 Henry VIII. c. 5, placed the law on the footing on which it now stands.

stance of his being the elder brother; none of the other parties interested support that application; Lady Frances did execute a proxy, praying that it might be either solely to herself or jointly or solely to her brother, but she has since retracted that, and her last proxy is that it may be solely to herself or jointly with him or to both her brothers.

Primogeniture gives no right; if things are precisely equal; if the scale is exactly poised, being the elder brother would incline the balance, but it would not weigh against the wish of the majority of interests. In the present case there are two [126] interests out of the four praying that the sole administration may be granted to the younger brother, and against that majority the claim of primogeniture could not stand, this would give a decided preference, if nothing else did, to the younger brother.

But it has been said there is not a majority of interests this way, inasmuch as there is an equal number of interests praying for a joint administration; this is not correctly the fact: no two parties have joined in praying for a joint administration, Lord Warwick does not pray to be joined with his sister; the other brother does not pray to be joined with Lord Warwick or the sister; it is Lady Frances only who prays to be joined either with Lord Warwick or with both the brothers.

Assuming, however, that Lord Warwick and his sister did unite in praying for a joint administration, the interests indeed would be even, but it would be an application for a joint, opposed to an application for a sole, administration. It has been correctly stated that the Court never forces a joint administration because, if the administrators were at variance, it almost put an end to the administration. Further, the Court prefers ceteris paribus a sole to a joint administration, because it is infinitely better for the estate; administrators must join and be joined in every act, which would not only be inconvenient to themselves, but, what is of more consequence, must be inconvenient to those who have demands on the estate either as creditor or as entitled in distribution.

Supposing, then, there was in the present case an [127] equality of interests, and that the Court had to choose between a sole and joint administration, still the sole, all other circumstances being equal, would be entitled to the preference; here are also considerable creditors who support the application for the administration being granted to Mr. Robert Greville. I collect that there is some doubt whether the estate may be solvent or not much more than solvent; it may be of considerable importance that the affairs should be managed in the most speedy and advantageous manner; the wishes of the creditors are not in all cases of weight, but they are entitled to consideration where the estate is considerable, the demands heavy, and the solvency in the slightest degree doubtful.

These considerations are sufficient where a moiety of the interests, supported by considerable creditors, join in praying the sole administration to be granted to one of the brothers to whose fitness not the slightest objection has been raised; there are other considerations which it is not necessary to enter upon except so far as to state that they tend to the same conclusion; there are reasons, however, for not unnecessarily discussing them. I wish, however, distinctly to state that the Court, in feeling itself called upon in the discharge of its judicial duty to grant the administration to Mr. Robert Greville, is not governed by any circumstances which reflect in the slightest degree on the honor and character of the noble earl who is the other party to this suit.

Administration decreed to Mr. Robert Greville.