

KING'S BENCH PRISONERS *versus* MARSHALSEA PRISONERS: on Mr. Frederick Ashfield's Will. Tuesday, 17th June, 1760. Marshalsea or Palace Court, Court prison, is a description in a will, not of the King's Bench prison.

This was a claim of a legacy, supposed by the prisoners in the prison of this Court to be left to them: and the matter came on (by order of the Court,) in the paper, to be argued. The short and single question was "whether the following bequest was made to the prisoners in the prison of this Court, or to those who were in the prison of the Palace Court."

[1038] Frederick Ashfield, of Richmond in Surry gentleman, devised his copyhold estate (already surrendered to the use of his will,) and also all his personal estate, (after, &c.) to trustees to be sold; and directed the produce to be laid out in freehold lands. Then he further directs, that his trustees shall, for ever, issue, pay, and dispose of the rents and profits, unto and amongst such persons, who, for the time being,

shall be poor prisoners and insolvent debtors in the Marshalsea prison in the borough of Southwark in the county of Surrey, and real and fit objects of charity; for and towards their subsistence during their respective imprisonments there; in such manner, and in such parts and proportions, as his said trustees and the survivors of them and their heirs should from time to time order, direct, and appoint.

Mr. Gould, for the prisoners in the prison of this Court, argued that this devise belongs to the prison of this Court.

The jurisdiction of this Court, in the present question depends upon the Act of 32 G. 2, c. 28, § 9, which gives power to the several Courts therein named, to examine into and order payment of bequests made to poor prisoners in the several gaols or prisons within their respective jurisdictions. By which order, the prisoners of this Court will be bound, if the determination shall turn against them: but the prisoners of the Palace-Court prison will not be bound by any determination of the Judges of this Court; in favour of the prisoners of this Court.

The devise is "to the prisoners in the Marshalsea prison in the borough of Southwark:" which must mean the prison of this Court.—In support whereof, he cited Co. 10 Rep. 69, 71, 72. The case of *The Marshalsea*; and Spelman's Glossary, title Marshal. And he observed that the defendant who is a prisoner in the King's Bench prison is, and is always supposed (in the declaration against him) to be in custod' mareschalli Mareschalsiæ domini Regis: the other, (the defendant in the Palace-Court,) in custod' mareschalli Mareschalsiæ hospitii domini Regis. He also cited 1 Bulstr. 207 to 212, *Cox v. Gray*, at large; and argued that therefore, propter excellentiam, this devise: is to the prisoners of the prison of this Court.

Mr. Field, contra, for the prisoners of the Palace-Court, argued and sufficiently shewed that this devise must be understood to be to the prisoners in the prison of the marshal of the household.

[1039] Lord Mansfield was clearly of that opinion. He observed that not only in vulgar speech, but likewise in many Acts of Parliament, the prison of this Court is called the King's Bench prison; and the \*other is called the Marshalsea-prison. Both of them indeed are in the borough of Southwark: but each of them has its respective appellation. And this testator used the name that was always used by every body else in common parlance; without searching Spelman's Glossary or my Lord Coke's or Bulstrode's Reports, to find the strict and legal name. This a sufficient reason for us, not to make any order at all in the present case.

Therefore no rule was taken.

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\* V. Cowel's Interpreter, sub verbo Marshalsee, expressly accord': also Blount's Nomolexicon, Marshalsee. Note—This respective appellation of each of these prisons was agreed by the marshal of this Court (on appeal to his own candour by Lord Mansfield,) to be the name used in common parlance.