whatever right was in Jn the Husband, vests in Thos his Brother
That there are 2 Parcels of E.J. Stock. of 1250 £ each expectant & due to E.J.
as follows viz.
Sir Gilbert Heathcote. gave by Will 8 Aug: 1732 to Sir Wm Heathcote & Theodore
Jacobson Esq 2500 £ upon Trust that they shd pay the yearly Dividends to his
Dr Dame Anne Jacobson for her life, for her sole & separate Use & from
after her death, transfer & dispose thereof unto all & every, or such one or
more of her Children or Grandchildren who shd be then living, in such
Proportions, as she, notwithstanding her Coverture, by her last Will
shd appoint. 17 Decr 1735. Ly Jacobson, by Will made the following appointment
of the same, viz that the Dividends of 1250 £ shd be paid to the proper
hands of Hester her Dr, then Wife of Jn Walton, during her life, for her
sole & separate Use, & after her death, to all her Children that shd be living
at sd H. W. s death, share & share alike, & for default of Issue, the sd Dividends
to go to her Dr Anne, in like manner, for her sole & separate Use, & after
her Death to such Child or Children as shd be then living & for default of
Issue of sd Anne, to be transferd to the Exors, Admors, or Assigns of Hesther.
H. W. died intestate; her Husband J. W. took Admon & died, & then Ly
Morgan (the other Dr of Ly: J.) died without Children. There was a Suit
in Chancery between Mrs L. W. & the Trustees under Sir G. H.s Will, & Ly
Morgan, J. W. in his Bill prayd the sd Trustees might transfer sd
2500 £ or a Moiety thereof according to the Will of Sir G. H.

Chancellors Decree

6 Dec: 1740 The Cause was heard before the sd Chancellor who declared that so much of
the sd Appointment, made by the said Dame Anne Jacobson touching the respective
moieties of the sd 2500 £ E.J. Stock, as directed the same to be transferd to the Child or
Children of sd Hesther Walton & Anne Jacobson, that shd be living at their several
Deaths, was void, as not being warranted by the Power given to her by the Will
of Sir Gilbert Heathcote, but that so much of the Appointment, as gave over the
sd sev.l Moieties to sd Hesther & Ann, on the respective deaths of either of them
without leaving any Child living at the time of such Death, was warranted by
the sd power & good, & therefore ordered 1/2 the Dividends of sd 2500 £ shd be paid M.W.
during her life, the other 1/2 to sd Ly A.J. during her life accord.g to Ly M.'s
Will, & after their Deaths, or the Death of either of them, any Person or Persons
interested in, or entitled to any part of sd E.J. Stock might apply to the Ct concern.g
the same, as any of the Contingencies shd happen.
The other parcels of Stock consisting of 4288. 15. 0 S.a Ann.a being the residue
of Ly Jacobsons Estate was devised as the former sum
The Question is wh: the Representative & next of Kin of John, admor of Hester
Walton his Wife, is entitled to the Admon de Bonis, of Hester, or her next of
Kin? Which Goods did not fall in during Hester's life time?

Dr Wynne for Ho: Walton

Stat: of Frauds Cont. extends to Husbands Admon to Husb: because he has a sole property in his Wife's Goods

NB

The Husband has undoubtedly a right to the Admon of his Wife in exclusion of
her next of kin by 29 Car 2. because they are not mentioned 22 Car 2. which dont
extend to Estates of Femes Covert dyeing intestate. Whatever is in possession or
reversion, must be the Husbands, who has a right to dispose thereof & if he dies
intestate, it wd go to his Admor. They say the right wch H. W. had to 2 Sums
of Money by the two Wills, was not certain, but meerly contingent or eventual
that therefore Mrs W.'s next of kin have a right to the Admon, & that her Husb:
d not transmit them to his Exor. But in truth 1250 £ E.J. Stock, was an imme
diate reversionary Interest depending on the life of one person only, the
Ct of Chancery has: determind that Lady J. had exceeded her power, this was certainly
a reversionary Interest transmissible to the Husband & by him to his Representative.

reversionary Int: transmissible

The Case of Jacob v Wynne 1 Peer Wms 378. is in point, there it was determind
a Chose in Action goes to the Representative of the Husband. The right of Admon
follows the Right to the Estate. Where Admon is granted to the Representative of

Chose en Action

the Wife, he must be a Trustee for the Representative of the Husband, so determ:
in the Case of Humphrey v Bullough. Trasy Atkins 455. Mr Forbe has given
his opinion conformable thereto.

Dr Calvert for Mr Jacobson

an Admor conveys no privity to his Exor; An Admor is only considerd as a
Trustee. The Statute of Frauds is silent with respect to the death of the Husband
therefore it remains upon the footing of the Statute of Henry 8. The Representative
of the Decd. 2 Sess Hil. T. 1701. Hindslow v Snells Admon had been granted to
the Creditor of the Husband, the Ct revoked it & granted it to the Brother of the
Wife — 8 Oct: 1713 — 1736 Amherst v Amherst Ct Admon in Whole to the
Wife (as her most faithfull Friend) by
NB The Husb: de Jure has a right to the Admon, in exclusion of the next of kin to the Wife
Stat: 31. Edw. 3. ch. 11 — Cro. Car. 166. Johnson v Row — Coke Lib. 4. fol. 51. And: Ognels Case. It is put out of doubt by 29 Car.
because the Case of Femes Covert dying intestate is not mentioned in 22 Car. 2 — 29 Car. 2 leaves it on the footing it was before the
Stat. that Ach

came by Appeal from Exeter, was between the Exor of the Wife & the Admor of the
Husband, from the Arches it went to the Delegates, who affirmd the Decree of the
Arches — These Cases I shd apprehend to be sufficient, we pray a general Admon & say
NB these are Effects wch will not go to the Husband, who has only a contingent eventual
Interest, whilst Ly Morgan lives; By such Int: the Husband acquires no property.
It is not a chose en Action, in wch he wd have a present right tho, not a present
possession

Dr Tidy. Judge.

This Case has depended from 19 Decr last, there can be no detriment for me to
consider a little longer, of my Judgement: I wd always pay a great deference to
Authorities in this Ct tho, perhaps I might be of a different opinion, if the
Point was open, I wish Dr Wynne wd look into the Cases cited by Dr Calvert
agt the last Session, when I will give Judgement. . . . .

Dr Tay . . . . .

next of kin may declare he renounced incautiously any time before Admon passes under Seal

Sch. Eccles. Jurs. Prerog.
I apprehend the Retractation of Mr Jacobson is res integra, as the next of kin
may declare he renounced incautiously, at any time before Admon has passd
under Seal. The Question now before me, is, to whom the Admon de Bonis non
of Esther shall be granted, wh: to the Representative of her Husband, or to Mr
Jacobson her next of kin? the first claims it as being entitled to the Interest
in right of the Testator; the last, as next of kin to Esther, or under 31 Ed: 3.
as next lawfull Friend. In this point the determinations are various;
it is a Case to be conceiv'd how fallacious the Cases quoted from the Books
are, Swaston v Eccles 1701. There Admon was granted to a Creditor of
the Husband; the Ct revoked it, & granted Admon to the Wife's Brother:
Dr Andrew, in his Notes on that Case, says, the reason was, because there
were Choses in Action wch did not vest in the Husband, but went to the
next of kin of the Wife. Amherst v Amherst 1713. was determind on the same
Principles. so was Coke v Reeves. Pugsell v Fowles. Every thing in the Wife
vests in the Husband, who is considerd as her next of kin, unless she has
Choses en auter droit. The late Determinations in Chancery have said so.
Hole v Doleman. 1736. The Husband died without taking Admon, &
the Qu.n was, who shd have the simple Admon, it was decreed to the next of
kin of the Wife. Dr Bettesworth, Dean said the ct was ministerial in the grant
of a simple Admon, & that it was not to attend the Interest, but to go to the next
of kin of the Wife who wd be only a Trustee.
Kindleside v Cleaver. 1743. The Question was, wh: Admon de Bonis of many
Goods shd be granted to the Exor of her Husband, or the Daughter of the
Wife who was her next of kin, Dean Bettesworth decreed Admon to the
Daughter of the Wife, saying, he saw no difference between an Admon de Bonis
& an original Admon, he did not think y Admon shd follow the Interest, as
Doubts may arise concerning the Interest, wch may lay the Ct under difficulty
when it has no Jurisdiction in that point, that the Ct was ministerial to
which the Statute. 31 Ed: 3. has: given it to the most lawful Friend, & 31 H. 8. said
who that Friend is; consequently the next of kin will be a Trustee for the
ptys interested; this may be hard but the law has said so. A Resid: legatee
who is equivalent to an Exor, is equally entitled to the Admon tho there shd
be no residue, it has been so determind in Ventris; because the Testator
had reposed that trust in him, to manage the Estate for the Benefit of
all Parties — As to me, the Qu.n is res judicata, in Kindleside & Cleaver, where
Dean Betteswort's Sentence was affirmd by the Delegates unanimously
1 July 1748 & Sit nomine expensarum given to Kindleside. This Judgment
precludes me from entering into the Question; as I must always pay
great Regard to the determination of the Supreme Cts, I decree the Admon
de Bonis of Esther, to her next of kin, in preference to the Representative of
the Husband, who is a Stranger. Where a Privity is continued, as in the case
of a Residuary Legatee, or an Exor, or an Admon with the Will annexed, it
is different &c.

to the Representative of the Husband . . . . NB

There is another reason why at least a general Admon shd not be granted; for we say
there are Effects wch will not go to the Husband, as such; This was an uncertain
Interest, a contingent eventual Interest only, for during Lady Morgan's life, she might
have children; the Husband, as such, dont acquire a property in an eventual
Interest; it is not like a Chose en Action, therein he has a present right, tho
not a present possession; here he has no right till after possibility of Issue
extinct of Lady Morgan, if therefore you are of Opinion, notwithstanding, to grant
Admon to Exor, of the dec: Husb: I hope, you will decree only a limited one.