3d Sep: East T.
Admiralty...

Mascoll agt Scaife

Dr Wynne..Fuller.....Crespigny. Dr Harris

This Cause was in the first Instance determind at Nova Scotia on a Seizure made 1758 by his Majesty's Ship Culture, Capt: Scaife, of the Schooner Love

Certificate discontinued

Mascoll de Owners for illicit Trade: from that Sentence there was an Appeal, wch has been prosecuted, but the Certificate has been discontinued for 2 years, (the Question therefore is wh: the Appeal is not to be considerd as deserted?) by reason of a Treaty of Agreement wch was on foot between the Proctors of the contending Parties.

Desertion of the appeal.....

Treaty of Agreet..

Crespigny appeard & alledged that he knew nothing of the Cause till within these ten days, for that it had been under Treaty of Agreement wch is now at an end, & prays that Fuller may be assigned to extend his Protest. Fuller alledgd, there was no Cause before the Ct, by reason of its being deserted, for 2 years, & that he knew nothing of the Agreement. The Affidavits of Capt: Scaife & his Agent Wm Mauger, were read, stating that they knew not, or had given Orders for entring into such Treaty of Agreement. An Affidavit also of ..... was read, wch set forth that he knew there had been such a Treaty on foot

Dr Harris.

Their Affidavits do not contradict ours, for the Agreement was between the respective Proctors (Mr Crespigny Senr & Mr Farrar, who are both dead) they alledge it in the Continuation, & on this Acct Crespigny is justified in doing nothing for 2 Years, the Treaty being now broke off, he has a right to proceed in his Appeal; The Inhibition, Monition, & Certificate not being continued, is no reason for decreeing the Appeal to be deserted. If the Proctors Protest is bad, he must appear; There is no use in continuing the Certificate from Ct day to Ct day The repetition of such Assignation wd be nugatory, & no Practice can be right wch is not founded in reason; It was so determind by the Lds. even where

No Certificate...

there was no Certificate at all, in the case of Capt. Bookshanks 1757, upon an Appeal from Gibraltar, the Monition & Inhibition being returnd without a Certificate, & the Sir Geo. Lee spoke an hour, with respect to the Practice: Ld Granville asked wh: the Effect of the Process was obtaind, & being answerd in the affirmative, said, a nicety of Practice ought not to be regarded, in Cases, where there was a sufficient Constat, the purpose being answerd, was all that was requisite, & that the minutia of Practice, was not to overset Essentials.

Dr Wynne

The Love was seized in 1758. the Monition was not returnd till 1761, & the Certificate was continued for some time, but since 1763 nothing has been done in the Cause, & there being no Continuations, it must be considerd at an End. The Dr wd willingly take it up, on the Reason of the Practice at large; I may agree with him, that no practice shd be received, wch is not consonant to reason, for this of Continuations is highly reasonable as I apprehend; it put the Ct in mind, that such a Cause is before it, & the Ct has thereby an opportunity of calling it on: But for want of proper Continuations, the Ct is quite uninformd what Causes stand out; a Cause sleeps, & may rest for 7 Years, & then the Parties may take it up at pleasure: The Treaty shd have been alledgd & taken down in Acts of Ct: it is not sufficient for the Parties only to be satisfied, whilst they are in Treaty, & using the Authority of the Ct as a Bugbear to frighten each other, but it is for the Honor of the Ct, that Causes shd not appear in their Books many years, wch must be the Case, if the Continuations are not regularly made, By Clarke Praxis Curiæ Admiralitatis Tit 66 de prox. Prime Instantia, Appeals must be finished within 3 years. Besides as to the Pretence of an Agreement, affidts of the Principal persons interested have been read, saying, they are ignorant of any such Agreement. Indeed one Person swears he knew there was a Treaty on foot. But the Proctors were not authorized, & cd not of their own accord enter into such Agreet: Fuller alledges, he knew of no such Accomodation. I say however there might have been a Treaty on foot between the Parties, yet the reason subsists for continuing the Cause, that it may appear in the Book, what the Motive was, for delaying the Conclusion; it is a Justification of the Ct to the World, it is a satisfaction to the Judge: In this Case the Hardship is very great, it is 8 years since the Sentence, Mr Farrer died in 1762 & nothing has been done since. Upon the whole, I Hope you will be of opinion the Cause is deserted.

Mr Bishop Dep: Register, was asked by the Judge, how the Practice stood with respect to Certificates, who said, all Certificates were continued of Course in the Admiralty Ct.

Cause to go on

Sir Tho: Salisbury, decreed the Cause to go on, but gave no Costs of the motion

Prerog: Ct.

No 4

Whiting v Willford in the Goods of Holland Wotton, Widow, Decd...

Dr Collier.. Dr Wynne.

Grant of Admon

Holland Wotton, Widow died intestate, the 16 Feb: 1763. leaving her Son Robt Holland Wotton, an Infant aged 11 Yrs, & her Daughter Miles Pembroke Wotton, aged 10. Yrs, having no other relations: Admon was granted to Ann Whiting, who was an Acquaintance of the Decd, & had unknown to the Schoolmaster, where the Boy was educated, carried Robt H.W. to Doctors Commons, & persuade him to chuse her his Guardian, by virtue of wch she obtaind the Admon; afterwards a Caveat was entred by Ann Willford, as next Friend to the Minor, but no relation, who has persuaded the Boy to retract his Choice of Mrs Whiting, as his Gn, to nominate him, by virtue whereof, he now prays the Admon granted to Mrs Whiting may be revoked, & a new Admon granted to him. Willford appeared to have been acquainted with & entrusted by the Decd: to have got Robt: a minor into the School belonging to Greenwich Hospital & to be bound in a Bond of 50£ to indemnify the Hospital. The Decd had put 30£ into his Hands, 22£ of wch he had repaid her.

Dr Collyer for Ann Whiting, urged the Admon being already granted to her, whom the Girl had chosen her Guardian, under whose Care the Mother had left her, that it was not necessary Mrs W. shd ask the Schoolmasters leave, that the Boy desird to chuse her his Guardian, as well as his Sisters. that the whole Effects did not amount to more than 60£. that Willford was indebted to the Estate.

Dr Wynne for Willford. In cases of Admon, where it is applyd for by a man & a Woman, the Ct always favors the man, especially if the Woman is a spinster, because she may marry, & then the Ct will not have the same Controll over her, besides, her being no Housekeeper, is another Objection.

man preferred to a Woman, particr: if unmarried.....

Dr Tay. Judge

If Admon had passd the Seal without objection, it wd have stood. now the Cause is open before me. The Rule is to grant the Admon to the Man in preference of the Woman: here the Reason holds strongly for appointing Willford, because several Persons swear to his Honesty & that he was in the Confidence of the Decd, has put her Son to School & been Bound for him, before the Death of the Widow. Mrs Wh: shd not have taken the Boy without the Masters leave. As the Case is open & Willfords Character unexceptionable, I think the Admon granted to Mrs Whiting, shd be revoked, & a new Admon be granted to Willford, her being a spinster is an Objection, as she may marry.

so determind

No 5

Consistory of London. Dr Betsworth Chancellor

Terrill v Cecil

Dr Wynne.... Altham.... Major. Dr Collyer...

Sequestrator called to account.....

The Revd Chalmers Rector of Little Waltham & Vicar of Earls Colne in Essex, being indebted by Bond & Judgment 400£ to Jn. Terrill Esq his Livings were put under Sequestration, 10 Car 2 c. 26 & Mr James Cecil to save Chalmers Credit, applied for & was appointed Sequestrator, being first bound with Mr Wallace, in a Bond, to render a true & faithfull Account to the Bp of London or his Vicar General & save harmless the sd Bp & all his Officers. Mr Cecil appears to have paid into the Hands of the late Mr Wm Skelton as Reg: to the Bp. of London 2 Different Sums, viz. 16. Nov: 1763. £84. 16. 3. ½ to wch he signd a Rec: Wm Skelton Registrar, & 16 Jan: 1764. £89. 0. 0. to wch he gave a Discharge, signed Wm Skelton. Mr Skelton is since dead, insolvent, without having paid over the sd Money to Mr Terrill, who now cites Mr Cecil to bring in the account of monies received by him since he was named Sequestrator

Money paid to the Registrar out of Ct. if legally allowd where Reg: Dies insolvent.....

Major appeard for Cecil, & brought in 2 Schedules, containing the payments & Mr Skelton's Receipts for the same. The Question therefore is wh: these Pay: & Receipts are to be considerd only as a Private Transaction between S. & C. or as

Dr Wynne for Mr Terrill.

It is impossible to consider this as transacted by the Authority of the Ct, because it was not done in Ct, before the Judge, nor is suggested so to have been in the affidavits. It is contrary to the Canon that the Register shd make any Acts without the Judge being present, or any body for him. Extraordinary that a Lawyer & C. be obliged to pay the money over again, or wh: S. must be left to his remedy agt the Representatives of S. at all events he cant be charged but has notified to Bragrave Esq Attorney that he had paid the money to S. if B. had used his Diligence the money wd have been out of S. hands. to whom S. may pay it. Was made 14 Ja 2d & Cecil agt 90