in the presence of Thos. Collins, Wm. Sutton, Diana Abbes, & Susanna Pyolas: immediately after the Deed had so nuncupated his Will, it was reduced into writing & signd by the sd Tc. WS. & D. A.

26 May 1764 the sd nuncupative Will was reduced into a proper form, & sworn to by sd Tc. WS. & D. A.

4 Sess: Easter Term The Caveat was entred by Sarah Pyolas, & was warned by J. P. the Brother of the deed, when the Ct assigns Fountain to bring in the Nuncupative Will, & to answer to Majors Clients Interest the next Ct.

1 Sess. Trin: T. Fountain brought in the nuncupative Will, & confess'd Major's Client's Interest, who was assigns to declare, wh: he opposed the same next Ct.

2 Sess: Major opposd the Will. Fountain propounded the same, & asserted he gave an Allon on Admission last Session, & it was assigns to exhibit Scripts & Scrolls at the same Time – An Affid: of Scripts was afterwards brt in with the minute of the Nuncupative Will, & a draught of a Will wch the Deed never executed

1 Sess. Tr. T. Fountain brought in his Allon

2 Sess. . . . . It was admitted, WS. D. A. & S. P. were produced as Witnesses

3d Sess. — Tc. was also produced as a Witness on such Allon, & sworn. These Witnesses have been examd: Publication decreed, & the Cause assigns for Sentence –

From the Evidence the strongest proofs of Sanity will appear in the Testator, at of his hav: nuncupated the Will propounded in the presence of 3 Witnesses in his last Illness, & in his Dwelling house, & of every other requisite prescribd by the Statute.

Dr Collyer

Henry Pyolas left 3975 £. appointed no Exor in his nuncupative Will. Mr Collins appears to have been very busy about the Deed, having vizited him 5 times that day, saw there was a necessity for H. P. to have a Will, & owns he got a Will made. There is no Identity of this Nuncupative Will, when, where, & in whose presence it was made – It likewise is in some degree inofficious, as there appears no dissention between the Brothers, nothing to lead the Ct. to believe any thing had happend to induce the Deed to leave every thing to his Sister – no Stress is to be laid on the Evidence of Mrs Abbes, who says she knew Collins 9 Months, by his viziting her Master, with whom she lived only 3 Months.

Dr Wynne –

Rogatio Testium

By the Statute of Frauds, there must be a rogatio Testium: Of the 4 Witnesses only 2. say the Words, "Take notice" were used, however numerous the Witnesses present may be, their Evidence will be useless, if there is no rogatio Testium, if they are not called upon, by the Deed to take notice that he did nuncupate. N.B. The Ct. wd not give the Council on the other Side the trouble to speak, being satisfied of the Nuncupation

Dr Hay Judge

Nuncupative Wills are authorized by the Statute, under restrictions – The Witnesses shd be called on to take notice, that such Nuncupation was his Will, therefore where there is no rogatio Testium, tho. 3 Witnesses are present, the Will wd not be good under the Statute of Frauds: in short all Solemnities must be fully complyd with – here all the Witnesses to the Will, when it is reduced into writing, depose to the rogatio: If the Deed has called only on one of the Witnesses present, it is sufficient; Only 2 on their Examns speak to it – the Nurse confirms it – It is unnecessary the Witness shd speak the exact Words, the Statute says, "or to that effect" It is called inofficious, by Dr Collyer because the Brother is excluded – the Law of England allows it – I think the Evidence is sufficient to establish the Will, & the Statute is sufficiently complyd with, & therefore pronounce for this Nuncupative Will –

See Vol. A. p. 41.

On further Security

Dr Wynne . . . . Neale v Ell: Neale & Piper Dr Harris
Cumberlege . . . . . Grene . . . . . .

No 8

Dr Wynne . . . . . Neale died, leaving 6 Children, all minors, three of them at 7 Years of Age, elected, & the Judge assigns the Gr: father their Guardian for the purpose of citing Mrs Piper, (Col: Neale) to give an Inventory, wch was exhibited 7 Jan: 1764 – It appears the personal Estate amounted to 1300. the Judge ordered Grene's Securities to justify, & in failure thereof, that the Adm: shd find Sureties in 1200. The Cause has continued in that State from Aug: to the present time. Grene says his Client cant give better Security on Acct of other Coverture –

Dr Harris She is not cited to bring in the Admon, therefore it is not necessary further to bring it in – Doubtfull wh: it can be revoked, & wd be very prejudicial to do so, as all her Acts wd be vacated thereby. She may call for a distribution –

I think it wd be proper for the Husband to join with her in giving Security, she stands at present in Contempt of the Ct

Dr Hay Judge . In y Case of Minors it is particularly attention, to prevent embezzlement, & pro-
ceed in Contempt. case of Securities refusing to justify, & Admon to give better Security if it was in the power of the Ct to revoke an Admon, I shd be inclined to do it but I think, the Ct have granted Admon to the Widow is functus Officio. If this Objection had been made when Admon was applyd for, I might have granted to the Curator of the Minors, as next of Kin; but it is now granted, & she has given Security; she has been called upon for an Inventory, by wch the Estate appears more considerable, than it was first thought to be, & all I can do, is, at the prayer of the Proctor, to proceed on the Contempt: She has not obeyd the Order of the Ct, to justify, or give further Security – I am not authorized to revoke the Admon, but I may enforce my own Decree –

She was ordered to give further Security unless of former Ad justify

Consistory of London. Appeal

No 9

Dr Harris Stott. v Stott. Dr Wynne.
Altham . . Sleevens

Mrs Stott was sued in a Cause of Divorce by reason of Adultery with Persons unknown. The Evidence was, her being brought to Bed of a Daughter, in the Absence of her Husband, Capt: Stott. who was proved to leave England in 1758. & not to return till 1760, & that she was not out of England during that Time, therefore they cd have no Commerce together – The Question therefore was, wh: such Evidence was sufficient to prove the Adultery?

Delivery in the Husbands Absence . . . . No Adulterer named . . . . .

Dr Wynne – No Witness speaks to any particular fact, with any Person, at any time, nor to any indiscreet behavior in Mrs Stott – It is rested on Capt: Stotts Absence so long, as to render it impossible to be the Father: if this is proved, she must have had some Criminal Commerce; Crichett says Capt. Stott was appd to command a Ship at Louisburg in June 58. & that he took possession thereof in August, & that he thinks Capt. Stott could not be in England within the time specified – this Evidence is not conclusive –

Dr Harris I apprehend Capt: Stotts Absence is fully proved from Feb: 1758 to June 1759 by Kirkwood & Critchett carrys it on thence to 1760 – in Lord Mansfield Hope Lewis Cases the Birth of a Child was determind to be sufficient Evidence

Divorce pronounced for . . . . . .

Dr Bettesworth Judge

No Fact of Adultery is attempted to be proved, except by Circumstances, wch must necessarily imply it; viz. the Birth of a Child in June 1759. To shew this, the time of Capt: Stotts Sailing is stated, his Continuance abroad the whole period & when he returnd; Kirkwood says he saild 17 Feb: & arrived at Louisbourg in June 1758, Critchett confirms K. (whose Evidence otherwise wd not be sufficient) the Birth of a Child during that Time is proved clearly, therefore I think it right to pronounce for a separation by reason of Adultery Disproved he did not return till 1761, & that his Wife was never absent from England during that time

Trinity Term 1765 3 Sess. Prerog: Ct.

No 10

Dr Calvert. Griffin & Griffin Dr Wynne
Collins . . . Fuller . . . . . For Sentence

Proof of Validity of a Will

Frances Griffin of Grimsbury in Northamptonshire died suddenly December 26. 1763. intestate, without Parents, leaving the Revd James Griffin his only Brother, & several Nephews & Nieces entitled to Distribution

26 Feb: 1764. near 2 months after the death of Francis Griffin Admon issued under Seal to James Griffin the Brother, who continued in quiet possession till 5 Feb: 3d following, when he was cited to bring in the Admon & to shew Cause why it shd not be revoked, & a Probate of a pretended Will, granted to Rd Griffin the decd: Nephew & Exor therein named

1 marked A

4 Sess: Easter T. the Citation was returned

1 Sess: Trin: T. Fuller appeard for the Party cited, & both Proctors were assigns to bring in Affid: of their respective Clients, as to Scripts & Scrolls, & Fuller was assigns to bring in the Admon at the same time

3 Sess: Trin: T. (5 July) Fuller brought in the Admon, with his Clients Affid: dated 3 July

4 Sess. . . . . Collins brought in his Client's Affid: of Scripts, with a draft of a pretended Will annexd, & prayd Probate thereof to his Client

Caveat Day. 17 Aug: Fuller exhib: his Proxy & opposed the pretended Will marked A. . . .

2 Sess. M. T. Collins propounded Schedule A

1765 . . . 4 Sess: East: T. The Cause was assigned for Sentence . .

Collins has examined 7 Witnesses on his Allon given 23 Jan: 1765 . .

Benjamin Applin in his deposition says, the Deed sent for him, to make his Will, but in his Answer to the 6th Interrog: cant tell from whom he received the Message, or wh: it was verbal or written – Tho. the sending for Applin is fully pleaded in the Allon, no Witnesses are examined to the fact, nor any reason assigns why the Messenger was not examined – Applin dont swear the Instructions were read over