suffer; was once to be allowd to prevail, I dont know how a Minister ed be punished; if to his other great enormities he add Debt, or by Collusion he might easily contrive to get the Benefice sequestred: true, the Ct of B.R. will give a Creditor all the Benefit he can receive, but he can have no more rights than the Minister himself ed have; when the Creditors trusted him they knew the Conditions, they knew the risque they ran; a Man may forfeit even a Freehold. The power of Deprivation is in the Ordinary: In Ep. Parkers time a Clergyman was deprived for non-residence; the Proceedings were the same as in the present Case, & his Form of the Citation, Monition &c is taken from his Register mutatis, mutandis. The time is long since expired: it expired in May: Stevens objected to Fountains appearance, the Ct nevertheless indulged a month beyond the time to exhibit ye Proxy &c: if Fountains Position does not shew, he has no right to make it; he is a good Proctor, but no such Priest; I do not say possible Cases may not be devised, why a Party may not be compelled to residé, but then he must shew reasons for his being excused Residence, & there must be a legal Authority to oblige him to reside, & that Authority is the Ordinary: the pretence now for this Petition is, that he has heard nothing of the matter; it is a very lame Acct given by Hirchlandon; he has some notion of Kidgell being at Dunkirk; the Aff.t is dated June 21 in talking of a Person's being at Dunkirk as a reason for not being able to procure a Proxy all this time; you can as easily have an Answer in a fortnight from Dunkirk, as from York in due Course of the Post; there has already been ample time given; if he ed not come within 6 Months, ed he not shew the Cause before the Ct ed he not assign a reason for his not coming; it wd have been very proper, & if the Ct had judged it sufficient, it wd have cancelled the Citation; that seems not now a point open for the Consideration of the Ct: there is a Terminus Juris, you have declared in penam; a Proctor now appears, & the Term being expired, by praying time because he has no Proxy, he acknowledges in fact, that he has no Authority to appear to make such Prayer, & dont know where to have one. The Residence is what is expected from the Minister himself, & it is no Satisfaction to the Pshr. that a Sitting does the Duty, I hope therefore Sir, that rejecting the Petition you will proceed to Sentence.

Judge Dr Harris — If Deprivation shd be necessary, the Bp. must hear & determine in person, certifying is not the Practice now the Bishop himself must attend: the Papers were not left in Time, & there is also another reason why the Bp ed not have determined, wch is because Mr Clarke now appears for the Sequestrator. He cause wd not be the forwarder, wh.r I receive or reject the Petition, the whole stands now, as it did 6 months ago, & must remain as it is, whatever I determine now brought delay, cast forward, whatever new matter & Papers are to be introduced must be delivered into the Registry a week before.

Prerogative Ct — No 27 — Orts v Rowland

Collins — Dr Calvert — Dr Collier — Grene

Dr Calvert — I am Counsel for Mrs Anna Maria Orts, grandniece & only next of kin, of Wargent Nicholson, who died int.te Feb.y 1762, leaving Arne Nicholson his Widow. March 1763 Admon was granted to Arne Nicholson; she died had made a Will & appointed for her Exec.r Mary Rowland the other Party in this Cause: Caveat was entred in the Admon de Bonis of Wargent Nicholson. Mr Grene denied the Interest of my Client; an Action was given on our part & admitted, & the Interest was confessed modo & forma; I must trouble you with reading the Act of Ct & we must have Costs. The Statute directs Admon to be granted on an Intestacy, to the Widow or next of kin; here the Election has been made. The Statute gives a positive Interest to the next of kin, where there is no Widow. They plead that Mrs Orts has assigned over all her Interest, in the Goods of Mr Nicholson to one Mr Campbell: she might make over all her part in distribution, but ed not give away her right to the Admon; she still remains next of kin to Mr Nicholson, & the Direction of the Statute, is to grant the Admon to the next of kin; the Ct only considers the Cases out of the Statute & the Point was so solemnly argued & determined in the recent Case of Jacobson & Walton that I think it quite unnecessary to give the Ct any farther trouble.

Dr Collyer — I apprehend this Case to be out of the Statute, for the reason of the Alternative left by the Statute is, because of the Interest they both have under the Intestacy; we have shewn Mrs Orts has no Interest; she has hereby put it out of her own power to claim the Admon; the Majority of Interest founded the Determination in the Case of Clarke & Biddlecombe. Geo. Clark died intestate leaving a Widow, a Sister, & several Nephews: the Widow took Admon, the Sister died, & then the Widow, leaving Goods of her Husb.d unadministred; she made a Will & appointed Mrs Eliz.h Biddlecombe, her Husband's Sister's Daughter, her Exec.x Edw. Clarke a Nephew of the first d.ced entred a Caveat agt the grant of Admon de Bonis non, of Geo Clarke, in opposition to the Exec.x of the Widow; but the Ct decreed the Admon to Mrs Biddecombe, in preference of the Nephew on account of the Majority of Interest. That Case was considered out of the Statute: this seems to be so too, being left to the direction of the Ct, I hope you will decree the Admon to my Client upon the same ground of Interest, & Mr Campbell the person interested consenting to Mrs Rowlands administring.

Judge Dr Hay — If it was discretionary in me to whom I shd grant the Admon. If the Interest was to be the Rule to direct; & upon Mr Campbells consenting to its being granted to Mrs Rowland, I might perhaps have inclined to grant it to her. But the Qu.n is first wh.r this Case is within the Statute, & as I apprehend it is, I am bound absolutely: Admon de Bonis being under the same Rule as primary Admons. Whatever Mrs Orts made over, however she has divested herself of her Interest, she ed not grant away her right to the Admon, because the Statute considers who shall be the Representative, not the Interest when a dispute lies between persons in equal degree, & Ct has an Election, & the Majority of Interests is considered: it is so in Wills when they stand upon an equal footing; but in the present Case, I dm not