Prerogative....
Hil. T. Sess.

Dr Calvert.

No 39 Price agt Price Burnell & Harrison

Dr Collyer . . . . . Drs Calvert & Wynne

Q: Wh: admon de Bonis

Wm Price is the Decd. By a Will & Codicil dated 16 July. 1761. he appointed Wisker & Peter Theobald Esq his Exors, & resid: Legatees in trust for Wm & Jn Price, Minors, to be paid at their respective Ages of 24. if either dies, the other is to take by Survivorship; if both die. the Residue is devised to Wm Price Lecorn, a Nephew of the Decd. In March 1752 Theobald renounced & Probate was granted to Wisker, who dyeing in 1762. Theobald renounced again, when a Decree issued to shew Cause why Admon with the Will & Codicil annexd should not be granted to Jane Price the mother of John who had elected her, his Guardian -

The Question now before the Ct is, to wch Guardian admon de Bonis shall be granted, the Statute leaves it to the discretion of the Ct & a small Legacy will create no preference, when a moiety of the Residue amounts to £7500. Eldership creates no right; the Ct will determine whose Hands are properest for the Admon, & take the characters of the Parties into Consideration - Wm Price's bad behavior appears from the Affid: It continued till he ran away; he appeard before a Surrogate & took a false Oath, wch is a sufficient Objection to his Nominee - It may be said, what is this to Mr Higgins surely, it must reflect upon him to be chosen by such a man, as in the case of a Prodigal, but it is brought home to Mr Higgins, by his supplying him with Money for his evil Courses - The minor swore to the Licence 22 May, & chose Higgins his Guardian 24th. The Manor in wch Higgins obtained this Influence over the minor to be his Guardian, must make him stand in an unfavorable light before the Ct - besides, as a Creditor to the Estate he is very improper, but as a Debtor to an Estate is always considered unfit to get in his own debt; he is asserted to be so by Messrs Lee & Harrison, who say he promised to pay, but afterwards set up an Account, wch they & the Mother believe to be false; when asked by Lee for the money, he only desired time; if he had been a Creditor, he wd have mentioned it. the Partnership ended in June, the Accounts of course were balanced would he have paid Bonds, if the estate had been indebted to him, It is inconsistent for him to say he is ready to settle the Acct & then pray to be appointed the Person to settle it - It is a Circumstance in Harrisons favor, tho, not conclusive, that he is appointed Receiver by the Ct of Chancery; if Mr Higgins was named Admor it wd create confusion in the Accounts

Dr Wynne...

The Exors of the Exor, desired the Mother might be the Person to administer, who is as proper, as an ignorant & indigent Person cd be; they never intended to put the whole into her Hands, therefore by the advice of the Attorney, threw the fortune into Chancery by an amicable Bill - Notwithstanding her very strong Affid: she soon comes, & unsays all she had before said - the Ct need seek for no other reason, why Whiskers Exors, were desirous of taking it out of the mothers Hands - Tho, an election of a Guardian by the minor, is an Inducement, yet the Ct never reckons it self ministerial, but if it appears the minor has made an improper Choice the Ct will set aside the Election; - a Legacy is given in the Will, by the Description of Wm Higgin his late Clerk - All these Objections lie agt Wm Higgin - It is proved by Affid: that Wm Price is extremely profligate, & that Higgins contrary to his own Affid: has used many undue means, to get himself appointed Guardian to him - the mother justly observes on lending the minor Money during his Apprenticeship, Lee, Blackwell prove it - he is indebted to the Estate but never mentions such debt; he apologized for not paying, but said he would; when he cd not stave off the Actions, set up the Claim of an open Acct. Is it not absurd, to suppose him scrapeing up money, for years, to pay it gradually, without saying the Decd was indebted to him, if he was; Even if he was a Creditor, he wd be very improper to audit his own Accounts, therefore under the present Circumstances most improper; it is scarce possible to devise more Objections -

Now in what light does Mr Harrison appear? he has full as good a right as Higgins by the Appointment of the other Minor, he even seems pointed out by the Testator - the act of the Ct of Chancery is a further motive for this Ct to aid & carrying that Decree into Execution - If Higgins is the Admor, he may receive the Rents, but Harrison will say, I cant admit such Receipts, being named Receiver by Chancery, these & the other Circumstances considered will induce this Ct, I hope, to grant admon to my Client Mr Harrison

Dr Collyer...

The Sentence of this Ct was, that Burnell & Harrison had no Interest, there being an Exor living, who might resume; from this Sentence, Grene appeal'd But Burnell & Harrison being since advised to drop it, the Inhibition from the Delegates has been relaxd & the Cause remitted, upon wch the Ct decreed to proceed upon former Acts; during the delay Harrison gets himself appointed Receiver by the Ct of Chancery, & comes, as if in another Shape; Grene exhibits a special Proxy, (with Office Copies of 2 Orders of Chancery annexd) under the hand of Jn Price the Mnor, whereby he retracted his former election of his Mother as Guardian, & elects Daniel Harrison, already appointed by Chancery, to be his Guardian for the purpose of taking admon & Grene also exhibited a special Proxy under the hand & Seal of sd Dd. Harrison whereby he accepts sd Guardianship, wch he prayd to be admitted & sd Dd. to be appointed Guardian to said minor & admon to be granted him as such - In Answer to this, we set forth that Wm Price is 19. that he chose Mr Higgin, who is a proper Person - that Jane Price the mother renounced in his favor, that he is recommended by Mr Theobald himself & we deny his being a debtor to the Estate, as alledged by Grene

Jane Price Depon

Wm Price the Testator died in March 1762 - there appeard 2 promissory Notes for £268 to Higgins - Wm Price the minor ran away from his Master Reeves, a Coachmaker in the Borough, & at the Instigation of Wm Higgins refused to appoint his Mother his Guardian, for wch Mr Harrison reproved him - Higgins often importuned this Deponent to consent to his having the admon & offered to take her a house - that Lee & Harrison never offered her any thing to consent - that Wm Price led a profligate loose life, that Higgins encouraged him therein, by advancing him money, tho, an apprentice, & has talked with Reeves about buying out the time; asked leave for Wm Price to go to Drs Commons, (who never returned) tried to draw him in to marry Eliz: Nelson, a Woman of bad Character - that Wm Price went before Dr Calvert to swear to a licence, but was rejected, Dr C. recollecting he had appeard before him, a few days prior thereto, to chuse a Guardian as a minor - She believes Higgins a very improper person to administer, that he wd embezzle the Effects, or suffer them to be embezzled - that he unduly & falsely sets up a claim to Debt as a pretended Partner - There was an Affid: to lead the licence, wherein Wm must swear himself of age -

Xtopher Reeves Depon ....

Was asked by Higgins to permit Wm Price, to go to Drs Commons, that he gave him leave - he had a letter from Higgins, wherein he speaks of Wm Price's bad Behavior, says "Get the Business compleated, he will make you amends"

Blackwell's Depon....

That Wm Higgins advised Wm Price to refuse appointing his mother his Guardian & intimated, the Minor was indebted to him, & must do, as he wd have him -

17 July 1765. Danl Harrison was appointed Guardian, Receiver by the Master of the Rolls, & then Jn. Price revoked his Appointment of his Mother & chose Danl Harrison his Guardian -

Dr Collyer....

The Reason why this Cause was appealed, is plain, a delay was necessary, the purpose now appears; to ask in another Character - Mr Harrisons is a negative Character, he only solicits, has not been appointed Guardian by the Ct - The elder Brother is entitled to a moiety, he has the clear & sev: other Bequests; is at the Age of Puberty being 18 - the Civil law is the Rule of this Ct, unless there is very good Reason, the Ct cant refuse the Election of the Minor. Monhanus 2 Q. Curator non datur invito sed petenti - a Patre detur, non confirmetur, nisi petenti - he may give a Tutor for his Education - Mr Theobald the Surviving Exor, says, he has known Wm Higgin for many years, that he is a proper person, he might resume his Function, his Recommendation will have due Weight - Mr Harrisons Character is unsupported - it is clear Higgins was in partnership with the Decd - It is suggested he was indebted to the Estate; the Persons who depose to that fact, render the truth suspected, the mother & Lee - nothing uncommon for a Person to be owed money & yet borrow - Mr Harrison took the Management & proved a