Debtor to the Estate. Higgins stands on the Evidence of Jane Price who in her Affid.t charges him very grosly

Dr Harris — The first Step is wh.t Mr Harrison is a proper Person to be Guardian? he has appeared as a temerary Admor, punishable here, at Common Law; even if Mr Higgins did advise the Minor as to his Mother, he did right. We know a great deal is allowd to Admors by the Ct of Chancery. Perhaps this Mr Lee & Harris on did not use the Words "tear her to pieces, if she did not go on with the Suit" but words tantamount. — A Rake may not want Understanding; the Boy did refuse to chuse his Mother Guardian; Harrison, in a great passion, like a disappointed Man, kicked & abused the Boy, wch he dont contradict, but dont recollect; wh.t Higgins is a Creditor, or Debtor in £300, the Ct will inquire into the Relation this Sum bears to £15000. — Mr Harrison was a Taylor, if he did not manage his own Affairs, is he fit to manage others, an Estate of £15000 Mr Higgins is a man of Business, so most proper, he was a Servant of & under Obligations to the Ded.t wch he wd repay by taking care of the Grandchild —

Judge — Dr Hay — When the Parties came before this Ct, the Qu.re was, who was entitled to Admon de Bonis? the Exors of Francis Whisker the only acting Exor, insisted, as such, they had a Right to the de Bonis, This was a precious Point, the Ct was of Opinion they had not that right, because Theobald could retract — appears for Harrison as Guardian appointed by the Ct of Chancery, & prays to be appointed Gn by this Ct, to have the Admon; he is opposed by Higgins appointed in the Ordinary Course, the Qu.re therefore hours, to wch Nominee? when this Case came formerly before the Ct, the Appeal was immediately interposed, on the Opinion being declared; but it did not follow I std grant it, tho Mr Higgins, for there appeared such Behavior in the Mother, that I std not have been satisfied to grant it to Higgin; for the Mother had sworn him an unfit Person, retracted — This Ct is the Guardian of Minors; but I shall consider it as my Duty to enquire into the Circumstances; If there had been no Appeal, I std have ordered the Minors into Ct, to enquire into the Motives; that is over; Qu. therefore to whom? I cant think the Character of the Minor sufficient to determine on the Nominee; one of good Character may appoint a bad Nominee, vice versa; I will determine on the Character of the Nominee; the small difference of Interest has no weight — no Affid.t to shew Mr Harrison is an improper Person — I dont think there is any thing ~~appears~~ to ground ~~to prevent~~ any Opinion on what appears as to Character; the Surrogates Appointment only allows you to come before the Ct, if a proper Person — a person indebted is therefore improper; a good Objection; as good too, if he has a Demand upon the Estate; a considerable one of £300 — Then does appear an Objection on the face of y.e Proceedings: it is only by Contumacy; ought not Mr Higgins to have appeared in Chancery; if Harrison was improper; he did nothing to obstruct the Decree; tho Mr Harrison is Guardian in Chancery, I insist, he must not come into this Ct, claim here as such under the Chancery Appointment; he must account to the Admor; this Jurisdiction is totally independent of Chancery; but that Appointment std not be esteemed an Objection, it is rather a Recommendation; if a proper Person, rather in his favor; but the Preference, from what Dr Wynne said, is grounded on the Will of the first Testator; tho, not claimable by Law yet founded on Reason & Principle, whereon the Ct determines, tho, not as Exor of Exor, if elected, proper, it is an Addition, Circumstance, with the Appointment in Chancery, without Opposition; for these Reasons, I decree the Admon to Daniel Harrison —

Arches. 3d Sess. Hil. Term: — Fountain. — The Office of the Judge promoted agt Greenway Registrar to the Archdeacon of Berks — Holman

Dr Harris & Wynn — Dr Collyer.

Dr Harris — This is a Cause of Office promoted by Dr Bever, officiating Surrogate of Dr Spry Official of the Archdeaconry of Berks, now beyond Sea; agt John Greenway a Parishioner of St Peter in the Bailey, in the City & Diocese of Oxford, & Principal Registrar of the Archdeaconry Ct of Berks, to answer to certain Articles concerning his Souls health, Correction of his manners & Excesses, but more especially for his refusal, or at least neglecting to perform the Duty of his Office of Registrar —

Doubt of Jurisdiction — as Doubts might have arisen of the Domicil of the said J.G. in Diocess of Oxford, wh.r he was subject to the Jurisdiction of the Consistorial & Episcopal Ct of Oxford, by reason of his Residence in the s.d Diocess, or wh.r he was subject to the Jurisdiction of the Consistory of Salisbury by reason of its Concurrency with the Archidiaconal Ct of Berks or wh.r he was subject to the Jurisdiction of the Archidiaconal Ct of Berks only by reason of his being principal Registrar thereof; or wh.r he was subject to the Archidiaconal Ct of Oxford, by reason of its Concurrency in point of Jurisdiction with the Consistorial & Episcopal Ct of Oxford —

Letters of Request to the Dean of the Arches.. — Dr Taylor Chancellor of Salisbury, Dr Dodwell Archdeacon of Berks, Dr Burton Chancellor of Oxford, Dr Bever Official of Oxford — have granted Letters of Request at the desire of Dr Bever to commence such Suit in this Court, & Dr Bever as Official of Berks hath also signed the same.

23 Oct: 1768. The Letters of Request were presented & accepted, & Citation was decreed & issued agt Jn Green way —

1 Sess. Mich: Term. A Decree with a Certificate & Affidavit of personal Service was returned, & Certificate continued to next Ct. in pain of J.G. called &c.

2d Sess. Certificate continued

3d Sess. the same — No Appearance being given for J.G. he was thrice called &c. not appearing, he was decreed excommunicate, & a Schedule pronounced, read, signed, & the Judge at Fountains peton, decreed s.d J.G. to be cited to appear singulis Sessionibus to see Proceedings, with Intimation &c.

1768. Nov: 24. J.G. was publickly denounced excommunicate in St Peters Church in the Bailey, in the City of Oxford —

4th Sess. (2 Dec.r 1768) Decree to see Proceedings, with Certificate & Affid.t of personal Service on J.G. was returned & Certif. continued to the Bye Day —

Fountain on behalf of the Promoter ~~will~~ gives in Articles agt J.G. in pain &c.

Dr Collyer... — Objected to the Admission of the Articles

On a Admission of the Articles.

One of the Charges, is, that the Registrar keeps the Seal of Office & wont part with it, so that the Officiating Surrogate cant come at it; if so, how came the Requisition hither? how is it authenticated? I know not, if it dont come from the Officiating Surrogate to the Chancellor of Salisbury & from him to you; it is an Error in the first Outset, wch cant be cured by a subsequent Transaction. If it dont appear that the Registrar is possess'd of the Seal, now, & refuses to deliver it, the Charge is nugatory — The Official & Registrar live both out of the Jurisdiction, the transaction is out of the Jurisdiction, the Dr is domiciled at Oxford; I wd admit an Article, charging that he has made no Deputy — This is a Clause of Correction, therefore stricti Juris — They std say he is a Registrar by Patent, has a right to appoint a Deputy; — They lay the 13 4th Canon, when they compare it with the Article, might as well have laid the Lords Prayer & 10 Commandments; the Canon supposes the Registrar shall be in the Execution of his Office; he cd not execute it in Yorkshire; the Neglect must arise within the Registry & y.e Jurisdiction: the Charge of not appointing a Deputy is proper — In the Article wch speaks of Mr Gl. Monell, they dont say the Fees of Office were tendred, when the Application for a Faculty was made, nor where made; if such Application for a Probate was made in Oxford, it was irregular, the Reg.r not being bound out of the Jurisdiction; it std have been held in Berks —

a Clause of Correction & all stricti Juris.