proper; as the Event has happened, I think the Children of F.O. can have no Share.

Mr Willbraham... A. I think the absolute Int.t past to her Daughter

Her death is not a Contingency, but the common fate of all mankind; a Legacy to a Child shd have a liberal Construction in its favor.

If Mr. O. behaves ever so ill in the management of the Estate, he cannot be called to account by Chancery, because the Chancellor wd say, what Interest he has an ostensible one. The deed has not expressly shewn an Affection for her Sister, but she has omitted disposing of an Estate wch she might have given away from her, & that she wd else have; there might be an Admon Pendente Lite, if there was a suit in Chancery; the Guardian ought not to be interested, the Ct might grant the Admon to a third Person; this Ct, is an English Ct & will follow the Law of England laid down in that Case.

Dr Calvert.... The Q. is who shall have the Admon for the Benefit of the Minor; not who has the Interest? The words shd have been at my Daughters death, in order to give F.O. a contingent Interest; I cd not mean to give it absolutely to F.O. wth her Daughter had Children or not. A Man is supposed to manage the Affairs best, this out of the reason, this is money, not like Land; a Woman is now the properest; the Infant, is a Girl to be educated; Mrs D. has shewn an uncommon affection, there can be no account remaining between the Deed & Mrs D. mere Suggestion of Doubt is not sufficient

Dr Wynne.... In the pupillary Substitution, according to the Roman Law, there is a Term fixd

Dr Hay, Judge.... This Case is very special; Mrs Grace Otway dies leaving a natural Child to whom she bequeathes her fortune, & in case of her death, to Mr Francis Otway to be divided amongst his Children, as he shall approve. The Operation of this Will this Ct cannot determine; the Qu now before me respects the Admon; I must decide who is the properest person to be entrusted with the Guardianship of the Infant to manage her Effects till she is 21; being an illegitimate female Child, she has no Relation who can claim, the Ct must therefore exercise its discretion, guided by Circumstances. The Distinction between natural & legal Relations. In the Order of Nature the Sister is the natural, tho, not the legal Relation. F.O. has no claim either under the Will as Guardian or 1st Cozen; he appears by the Will to be the Substituted Resid: Leg: this is the strongest Objection to his hac: the Gap or Admon, as he wd have an Interest in the death of the Child to whom he is Gn; the Gentlemen arguing thus have mistaken their way; he shd not have the Gnship because he has the substituted Int: It has been said he was not so, according to 2 respectable Opinions; but if the Child died Mr O. wd apply for a Judgement. It appears he is the Person the Deed intended to benefit; I shd think, he wd have a Claim to go to y.e Crown & say, I have such an intended Interest by the Will, am I not to be preferred? the Crown cd dispose at pleasure; as he has a right to apply to the Crown (tis a kind of Interest on the death of the Child) Care shd be taken by the Ct, that no person having an immediate or reversionary, certain, or contingent Interest, in the death of the Child, (where there are no legal Relations for where there are any the Law will take care) shd be nominated Guardian, as it might then be in his power to defeat the Childs Interest. He cant take it as a substituted Legatee; Mr O. is the Cozen, Mrs D. Sister to the deed, if she had no Interest, I shd not doubt giving it to her, but Mr O. has made it appear, that the deed thought, she had

Otway v. Douglas Bye Day Feb: 28.... The Judge decreed y.e Admon to Mr Coulthurst y.e Soll.r y.e Attorn.r (because he appeard to be in y.e Confidence of y.e Deed & he & his Wife were Legatees in y.e Will) for the Benefit of the Minor, there being no Objection to his Character, & the Securities were ordred to justify.

a Claim upon her Sister in wch the Child may be interested, & Mr Coulthard in his Affidt swears she ordred him to file a Bill in Chancery agt her Sister to shew the Deeds. If there is a possible Interest in Mrs D. as natural Aunt, in the Effects, either certain or consequential, I think, I ought not to grant the Guardianship to a person in any possible way interested. Suppose Mr O. had only come as a Friend & objected to Mrs D. I shd have heard him & thought it on their Evidence improper to grant it to the natural Aunt. I cd wish some totally indifferent Person cd be chosen to be Gn to the Child by agreement; if the Parties dont agree, my direction will be that each name one, & I will determine to wch it shall be granted; it will be my duty to use my discretion, so, that no one who has a Benefit in the Effects shall be named. I repeat it, neither have any right in the Eye of the Law, both being Strangers; I see Objections to both, I wish an Indifferent Person might have the Guardianship & Admon; I decree the Parties to name within a week & to be heard on the Grant by the Bye Day.

Consistory of London Hil: Term: 3d Sess: — Nota — Balderston agt Balderston. — On Admission of an Allon.

Fuller — Dr Collyer & Calvert — Dr Harris & Wynn — Bargrave

Dr Calvert read..... 1st Art. pleads the marriage & A Children by such marriage & that Mr B. was bred an Attorney, but not meeting with the Success he expected at Canterbury, he removed to London with his Wife.

2d... B. was a removing, behaving affectionately, & that he sent up her Cloathes.

3d... He expected her for 4 months in vain, wrote to her, & received an answer, that her Brother the Revd Saml Fremoult, wd never do any thing for her & her Children if she went with her Husband & she had refused at the Instance of her Brother.

4th... finding all Intercourse stopped thro his Means

5th... finding all Intercourse stopped thro his Means

Dr Harris for Mrs Balderston. Mrs Balderston has sued her Husband not for one Act but a Series of Adultery, that he ran away & left her destitute. They were loath to give an Issue, then desired to be heard on their Petition, brought in none, but instead thereof gave this Allon; I cd wish Dr Collyer had not signed this Allon; the Intent is to shew there was a Reconciliation subsequent to the Facts & that the Suit was commenced without her Consent or Knowledge.

5th Art: contains Mr Bs History & Mrs Bs Consent to go with him, but that she was withheld by her Brother; no date is mentioned, when he went up to Town, she sent her Cloaths, letters are mentioned, without the dates, nor are they Exhibited. Mr Fremoults persuasion is nothing; his Sister is a free Agent, there is no restraint on her Person; Every Mind is actuated by some means or other; the Dates of the Letters must be pleaded; if they are not subsequent to 1762 & the Citation, they are absolutely nothing to the purpose. In Art: 6 & 7 Times are specified; if she was so willing, why did he write to her on his coming to Canterbury; It is said, she ran away, wch is very natural after his Usage; the Suggestion that this Suit is brought without her Consent; a Proxy is signed by her & 2 Witnesses wch was exhibited in April 1765 when the Citation issued;

8 & 10 Arts. sug he took Mr Reynolds to persuade Mrs B to be reconciled, this contradicts what is said of her readiness to live with him; she falls into a Fit, the Apothecary & Son come & are happy to think there is a prospect of Reconciliation; his thoughts wh.r true or not, are not fit to be pleaded here; her desiring him to stay a few days, implies she wanted to gain time, was afraid of him; if she was so willing, she might have gone with him. The Transaction of Mr B. being committed to Prison for his Behavior to Mrs Bowes, Mr Fremoults Sister, you have nothing to do with Mrs B. has Friends who protect her, as they ought, there is not one Article wch tends to shew force.

Dr Wynne... I am likewise Counsel for Mrs B who charges Mr B. with marrying her in Jan.y 1753, & deserting her in Feb.y 1759, & with a general Scene of Adultery prior & subsequent to the last Period; to excuse only 2 Causes can be assigned, 1st Shewing what we plead did not happen, or

2dly That the Suit was not voluntarily instituted by her, because she wd not suffer a Suit to be brought agt the Consent of the Plt, this he does plead, not in Contradiction; but the Proxy under her hand & Seal refutes that Plea, he must therefore shew she desires to be reconciled. He might have instituted a Libel of Restitution, she then might have