Denying, why shd she upbraid her with being with child, if she thought her married?

Dr Betteswortb. J.. This is a very extraordinary Cause, it is certain no Master or Mistress has a right to defame a Servant, their Characters are as essential, or more Consequence to them, than their Superiors here the Libel charges the Words whose to have been spoken wch the Witnesses dont prove; it is Observd, Whose may be by Implication, but saying a Person is with Child, dont warrant such Implication; besides, this is spoke in a private Room, by the Mistress to the Servant, not with an Intention to defame but perhaps by way of Reason assigned for discharging her; Upon the whole, I think the Suit frivolous, I dismiss the Party sued, & condemn the Plt in 52 Costs in order to discourage such Suits..

Consistory of London Feb: 76

No 56 Balderston agt Balderston

On Admission of additional Articles.

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

Dr Harris .... I object to the Letters offerd by Mr Balderston, because they dont prove Reconciliation after the Facts of Adultery charged agt him. If he can shew that Mr Fremoult confined his Wife, or laid any restraint on her Will, let him do it; Mr F. afforded her the Protection of a Brother - If Mr B. can prove he laid with his Wife in 1765, it will be material, the Suit being brought in 1762; but did not he use force, was he naked with her on the same Bed, more shd be said; Consent, Carnal Knowledge, because on the same Bed, is a weak Implication, a Man may commit a Rape on his own Wife

Dr Wynn ... The Date of the Letters are in April 1765, the Facts are laid in 1762; it is not suggested she knew them before, he cohabited with Mrs Smith from 1759 to 1762

Dr Collier ... The Charge is for Adultery at Canterbury in 1759 these Letters exculpate him; they are during his Absence; here are 3 Letters it appears, the others were intercepted; If any Affidavit to lead the Monition, it might issue agt Mr Fremoult to produce the intercepted Letters; we urge the Custody; they must prove there has been no Reconciliation, & that the Suit is voluntarily instituted -

Dr Betteswortb. J.. The Judge would not give Dr Calvert the trouble of Speaking - There is something particular in this Case; the Cause begins in 1765. the facts are stated to be committed in 1758 & 1759 & 1762. It requires some Explanation, the Husband endeavours to prove it is not her Act, that if it was, there has been a Reconciliation; whatever then, the Husband thinks material for his defence shd be admitted; I admit the Allon, with the Letters, as proper to be received to proof; as unless there is some very particular Cause shewn, the Husband must pay all the Expence ....

Prerogative Ct. Sat: March. 5. 1766

No 57 Foster ..... agt ..... Wright

Bishop — Dr Marriott & Wynn — Burnell — Dr Collier. Harris. Calvert — Mason.

Qu: As to the Testators Sanity & Capacity....

See Fol: 19. C56.

Dr Marriott... This Question respects the Sanity of Mr Burnell at the time of making his Will, Codicil dated 26 Augt 1741, his 2d Codicil 12 Feb: 1744/5 & his 3d Codicil 17 Feb: 1746 - Mr B. died 16 Decr 1763. he was found to be a Lunatic, by virtue of a Commission out of Chancery 1761 & for 3 years before, wch fixes the time about 1758, so that from the time of his last testamentary Act to his Insanity, are 12 Years; The Evidence therefore may be true in part, yet not sufficient to establish the Insanity - the Suit is brought by Mrs Wright, who is disappointed in her expected Share; but every one is presumed sane till the contrary is proved; we produce an Act wch none but a sane person cd do; If upon the face of it, the Limitations are so rational as you can suppose them made by no other.

The next Presumption is, where the Codicils are wrote by the Testator, It results from Comparison, his signing each Sheet, the Ct itself is Witness - The last is the Character of the

Subscribing Witnesses - this depends on their Situation & Character in Life; where indigent, open to Temptation, they are entitled to less Degree of Credit than Persons in higher life; Our Witnesses are Persons of the first Character & Station; a Baronet, Tenants &c who are to be credited in preference to the miserable Witnesses produced by Our Opponents, on: Persons out of Hospitals, illiterate, & those who cant write - The 2d Point of Credibility, depends on the Capacity to judge of the Act done; Unfortunate Appearance wd prejudice persons of better Judgement & Understanding; great Impediment in his Speech & Epileptic Fits from the Effects they have upon the Muscles of the Countenance, gives a Cast of Stupidity. . . . . of Persons who know very little or those Vicinity & Domesticity must make them competent Judges wh: a Person is capable of a rational Act - you will determine wh: the Evidence is conclusive or not - Mrs Wright's best Evidence form their Judgement from the Appearance merely - I will narrow the Points, was he sane & rational when he examinid the several Testamentary Papers, for if we can prove he was in a rational condition, previous to that time, the presumption will be, that he was so, at the very instant of Execution; Any subsequent Insanity cannot defeat the Act - Instrumental Evidence, subsidiary by Witnesses who speak to the several different Periods .... comes the Evidence to the Execution - We have exhibited Instruments annexd to the Depos of 2 of our Witnesses, the Drawer of the Codicils, & Letters between the Testator, Mr Saml Foster, corroborated by his Evidence; he mentions the Correspondence beginning 1727 relative to a Mortgage; they are sensible, rational, & proper Attention to his property; he observes on the nature of the Estate, being in an open or enclosed Country, altering the Value of the Security; there is a Letter dated 17 March 1741, very near the time of making his Will, relative to it - The next to be noted, is the Book of Accounts, in wch there are several Payments of Monies on account, to the Person supposed to have an Influence over the Decd; particulary one Payt of Wages agreeing with a Receipt given by Owen, the other Articles are strongly in our favor; the last Article of the Day Memm Book annexd to Jarvis's Depon is 23 June 1747 - there is another Book, wherein the Decd has entered in his own Hand, many Memda of Receipts for Rent fr: March 1741 to 1748 - They are new Memda we dont go into the exact formality - It is a regular Acct of Rents &c better framed than usual amongst Country Gentn Jarvis is a principal Tenant - Pierson says in 1748 he pd Decd, & had Receipts in his own hand; the Decd ordered Owen wd have the Barn pulled, as the best method of proceeding - Mary Hunt a Servt of Decd says it was his constant Rule to enter his Acct every monday Morng - Decd issued large Sums to Owen on Account; receives the Money of Owen wch he had levied for him as Churchwarden - pays almost all Workmen himself - Thos Hunt a Tenant has had Receipts from Decd in his own hand - You see Sir, that was the general practice of the Decd - He was not under the absolute authority of Owen, it is no wonder if an old family Servant, who had been long usefull to a sickly Master, shd take upon him a little, but this Impertinence cannot be construed into Influence; he was only too familiar - With respect to H. Clos Recd it being shewn to Wm Clos he says he thinks it better than his Brs Henry wrote, but does not say it was not his writing, if it had not been, he wd have said so, the presumption therefore is, it was wrote by H. C - 1 Witn: supported by Circumstances is sufficient to establish an Exhibit; a Witn: is not credible where he speaks agt his own Act, Witness Hudsons Case in Skinner 79, this shews what Clos deserves, he is a very mean person has a large family without any thing to maintain them, swears roundly, his behavior is very extraordinary - The Decd provides for all his Friends & Relations, the Limitations are not unusual, & very sensible - he said he wd take care his Uncle Redmond shd not spend his Estate as he had extravagantly done his own - he made his