came to his House, & he knows Lycett was there, some part of the Races, & that Decd was then ill; this surely proves the Continuance of the Decd's friendship for Lycett to this time. Abyhn Stokes, swears that sometime in the Summer preceding Decd's death, Lovegrove & Decd were drinking in his House, & Lo: jokeingly said to him, "The World says you are going to die, & that you'll make your Will & leave me your House", on wch Decd said "What the Devil shd I see in your face, " to leave you my House, or any thing else, I'll see you damned first"; or words to that Effect. Dr Battie says. Lo: told him, "unless he made use of his name, he wd not gain Admittance", wch he found to be true, for on Octr: 17th Goodchild refused to admit him, tho, he told him he was a Physician, till he said, he came from Lo: about the Sunday Sevennight or fortnight after, he found Decd worse, both in Body & Mind, than he did on his first Visit to him; It is remarkable, & Dr has deposed, that ye first time Decd was quite delirious, inconsistent in his Discourse, & unfit for any one rational Act, & in a very weak, emaciated miserable way, & in the last Stage of a decayd liver. Jas Sampson proves Decd's friendship for Ly: even on Sepr 13th, that he & Ly: went to Maidenhead Bridge that very day in Decd's Chaise, wch he had ordered Goodchild to get ready; It is remarkable, on that very Day at 10 o'clock, Goodchild who drove the Chaise, delivers ye Message to Lo: from Decd, mentioned in Rose's Depon on ye Condidit for preparing the Will. Thos Lawrence says on Sepr 28. 1763. he was refused Admittance by Goodchild, who said Decd was very bad, & in a raving Condition, so that he cd not be seen, the next Day he was again refused; it is to be observed, this Witness dont appear to be, nor was any ways connected with Ly: but says he went down, hearing Decd was dyeing, or dead, in order to be paid for a Post Chaise, Decd had of him, so there cd be no pretence for refuseing him Admittance. Susan Bayntun totally unconnected with Ly: says, that in the Autumn of 1763. She was refused admittance by Goodchild, on wch she supposeing the Refusal was oweing to Lo: went & talked to him about it; he said, he supposed she cd be admitted next Day; whereupon she said, she imagined he wd give Orders accordingly, he replied, he shd not see Decd; that she was admitted, & from ye Order every thing was in supposed, she had been expected, so she, or Mrs Powell who accompanied her, asked Decd's Maid if Lo: had been there that morning, she replied yes. Sarah Robinson, a Legatee in Lovegrove's Will who has released says, after Decd had made the first Will, he was very uneasy about it, & that she well knew him to be so, being with him Night & Day, & she several times after he had made the first Will, (the particular time when, as to ye Month or Day of ye Month cant set forth) heard Decd express great Dislike & Disregard for Ly: & call him Roque & Rascall, & say, he did not think he wd be just to his Will, & that he wd cheat them all, but he wd put it out of his power, & make a new Will & make another Extor, for he had harboured a Snake in his Bosom. to 2 Art: says, just after Decd had made his 2d Will (but when that was she cant say) he came out of ye Parlour & she heard him say, "Thank God he had settled his Affairs & now he hoped he shd be easy. No Credit can be given to this Witness, for Besides her being a Legatee, she has lived Servant with Goodchild & his Wife ever since ye Testator's Death, & tho, we have proved Decd's friendship for Ly: continued continued to 13th Sepr 1763 by the two Piles, yet she says that between ye making ye 2 Wills (the particular time she cant recollect) she several times heard Decd abuse Ly: that after he had made his 2d Will, Decd came out of ye Parlour &c. Now all ye Subscribing Wns say, the Will was executed up stairs in a Bedchamber, & to shew how ready she is to swear any thing she is taught, she says to 3d Interry, "that from the Sunday preceding the Races wch began Sepr 26. 1763. Decd was not seized with any Delirium, but to ye time of his Death was in a good condition of Mind, whereas Dr Battie swears expressly to ye Contrary, on Octr 17th, & that he was still worse on his 2d Visitt a fortnight after. to ye Interry says Lo: Wife is 1st Cozen to Rd Goodchild. John Hall confirms that Relationship subsisting, & adds that his fellow Witness Susan Yous is Mrs Goodchilds Aunt. Jn: Fred: Salusbury says he went to see Decd 8ber 13th, & staid 2 Hours; Decd then told him, he had made Lo: his Extor, on wch he said to Decd, what right had Ly: to make a disturbance, he replyed, I trusted Ly: as a Friend, but I find I have harboured a Snake in my Bosom; & Decd for said 2 Hours was sensible, & well knew what he said & did, & several times afterwards he heard Decd express his satisfaction, at hav: made his said Will, whereof Lo: is Extor. It is to be observed this Witness is Partner with Lo: & therefore if any Reflections shd fall on Lo: from this transaction, ultimately this Wn must be prejudiced, for it is to be supposed their Business must be hurt by such a Transaction: But it is apprehended this Evidence cannot receive much Credit, for he says the Decd was in his Senses for 2 Hours when he visited him Oct: 14. whereas Pile Senior says, he was delirious on the 13th & on 17th Dr Battie says he was very much so & unfit for any rational Act, therefore it is not probable, he shd have this one Days Interval of Sense, much less that he shd be able to know any thing of a disturbance Ly: had made: for ye Affair alluded to by this Witness happened ye preceding Day, during Decd's Insanity as Pile Senr says to 5 Art: of ye 2d Allon, on wch Pltfs we have examined besides Barnard Anderson, Dr Hd Russell, Jn Pile junr before examd Jn Hall, Apothecary, Jn Lucas M. B. Abyhn & Eliz. Stokes both examd before, Jn Ford, Susan Pile Wife of Jas Pile Senr Mary Wife of Basil Woodhouse, Basil Woodhouse, Jas Sampson Eliz. Powell, all 3 before examined, Dr Battie, Andr. Ross. Thos Lawrence & Susan Bayntun Wife of Edw Bayntun Esq. - We have examd 2 of the Subscribing Wns to our Will of Augt 26 viz. Jn Clark & Basil Woodhouse, the 3d Henry Lovegrove himself you were of Opinion, Sir, we cd not examine as a Witness, having had his Answers, upon the whole we hope, you will think, when you have heard ye Evidence, we are founded in our Pleas.

NB. The Evidence was then read, & the Argument deferred to the Bye-Day wch See. Fol. 180.

Prerogative
June 19

No 75

Bargrave — Stevens v Herringham — Adderley

Drs Marriott & Collyer — Dr Harris

Dr Marriott. The Decd Mr Herringham died in 1760 intestate, leaving Eliz. his Widow & Jn Stevens Cozen German by the Mothers Side; Admon was granted to the Widow, who in 1762 was cited by Jn Stevens to an Inventory & Account & to see Portions allotted, she appeared by her Proctor, gave an Inventory, Account, with a Declaration, that she has always heard, & believes Decd had Cozens German by the Father's Side, viz. Wm Mary & Frances Herringham, who all went to the West Indies, & she has heard Wm afterwards went to Virginia: that she considers them as entitled to 3/4 of the moiety & Jn Stevens to the other 1/4 of ye moiety of the Decds personal Estate: that she has advertised several times & enquired after them, that she might pay them their distributive Shares, but having had no Account of them, & as not knowing of their deaths she prayd she might retain their 3 Shares of the moiety in her Hands till she can be informed wh: the Parties are living or dead? to be enabled to distribute properly & justly. Jn Stevens says; he believes Decd had such Relations, but they went to the West Indies above 20 years ago, & none being heard of since, except Wm who went to Virginia, they are generally believed to be dead. Feb. 18th. the Cause was heard, & the Ct ordered both Proctors to be paid out of the Estate, & reserved to hear farther on any thing hereafter arising: On . . . . . the Registrar made his Report, wch was confirmed, & the Ct decreed the Widow to retain 1/2 of Decds personal Estate as her Share & to pay the other 1/2 to Jn Stevens, Wm, Mary & Francis Herringham, or such of them, as shd be found to have survived ye Decd, in equal Proportions, directing 3/4 of that Moiety to be laid out in the Funds, in ye Names of ye Widow, Stevens, the remaining Cozen German & the Registrar of this Ct: a Decree has been hung on the Royal Exchange, to call in the other next of Kin, Notice has also been left at the Place of Abode of the Father of Wm Mary, & Fr. M. no Discovery having been made. the present Petition is for the Money to be delivered out to Jn Stevens as the only next of Kin.

Judge — Dr Hay. Mr Jn Stevens who now applies to ye Ct. for ye whole moiety, admits there were such Relations, but wants ye Ct to presume them all dead; I cannot, on ye Evidence laid before me; there must be some legal Evidence, that they died before the Intestate; you must shew me these People did not survive the Decd, by some kind of Evidence, or by some very strong Presumption indeed, for the Widow will consent to nothing, but submits to ye Direction of ye Ct. They are said to have gone to ye West Indies above 20 years before ye Decds death, it is a wide Field, but one is said to have gone to Virginia, wch is rather more definite; you shd make Enquiry there; any Information about Him, might lead to a Discovery of the others; I must be guided by Law; Can you say what has been done in any similar Case? Dr Collier said, the Rule has been to give Security, but that is subsequent. As to him who went to Virginia, there is a Specification of a Place wch may afford some Lights: you must shew that in point of Law, the Length of Absence will stand in Lieu of Proof of the Death of the Parties: I have very great Doubts: I shd be glad to know wh: I cd be justified, in making the Decree prayd, the Administratrix not consenting, tho, she does not oppose. I dont think they cd be found by the Means used: Advertisements here, a Decree on the Exchange; Enquiry at

2: Wh: 3 Mess of Kin whose Deaths are not proved shall be presumed after an Absence of 20 years & their Shares be paid to ye Survivors Pltf