Fathers Parish, might, most probably, never come to the Knowledge of Persons in the Wt Indies or Virginia for these 20 years; the Advertizements shd have been there, I want to know wh.r in point of Law & fact, I can pronounce for it, however hard on Mr Stevens, yet it is not for me to decree, contrary to Law, without Evidence: It seems odd, that I must presume 3 Persons, (who are not said to have gone over in the same Ship, or at the same Time, or that the Ship was lost) to be dead; & that none of them shd survive the Intestate; I wish to be informed wh.r a Person, not heard of within a certain time, shd be presumed Dead; I desire this for my own Justification; for in point of Law the Ct is Admor, & if I order the Money to be paid to Mr Stevens, I shall certainly order very sufficient Security to refund, in case of an Application, by any of those 3 Persons, or their Representatives; for it is not known wh.r they were living at the Death of the Intestate; I defer my Decree to July 5th to receive farther Information by Affidavits, or otherwise, as to y.e Death of those Persons & in point of Law. There is a Statute of 5 Jac: to exempt Persons marrying after 7 Years Absence, from the Penalty of Bigamy — of Car: 2 & Anne: to quiet Landlords in possession agt Lapses for Lives after 7 Years. See fol. 198

Consistory
June 21.

No 76

Greene — Earle v Earle — Adderley

Dr Wynne & Bever — Dr Collyer & Harris

Qu: Is there Proof of the adultery? Q. Shall Dft have Alimony

Dr Wynne... Stated the Case, wch see folio. 187.

Dr Collyer... We dropped our Cause of Reconvention, because Mr Earle was at that time inclined to come to an Accomodation, but that Treaty being gone off, we are now before you on the Merits, & take it upon their own Witnesses; We object to the Proof made as too slight & insufficient in Law: one Wt by her own Account, is under Obligations to Mr Earle; another is, or was indebted to him the rest, are his Servants & Dependants; the whole Tenor of the Evidence bears the strongest marks of a Confederacy; & I am sure if it shd appear to you, Sir in that Light, you will be of Opinion to pronounce in our favor.

Frances Nightingale says, she looked thro, a Hole in the Wainscott Partition adjoining to the Dining Room, where Mr Holland & Mrs Earle were, wch Hole Miss Gilbert had made to hear the Conversation, wch she thought wd pass between them relative to her Mother: that she saw Holland kneel down before Mrs Earle, take up her Cloaths, so as she c.d see y.e top of her Stockings, then kiss her Knee; then Holland stood up, walked about the Room, went to the Door, but beleives, did not lock it, then took off his Sword, that she saw no more, because Miss Gilbert desired to look thro, y.e Hole: She speaks to Letters had: passed, to Meetings between Sd Parties, in consequence of such Letters, & to her going with Mrs E. to H's Lodgings.

Alicia Gilbert. deposes to H. visiting Mrs E. without her Husbands Knowledge & in his absence, to her corresponding with him & appointing to meet him at Mrs Gilberts in Arundel Street, where after some time, they were left in the Room by themselves; that Peeping thro. a Hole, she had made in y.e Partition she saw H. on Mrs E. with his Breeches down & her Petticoats up, & from the Position they were in, she verily beleives, they had the Carnal use of each others Body

B. Taylor. Servant to Mr Earle, says, that about Dec.r 1764 H. dined with Mrs E. at Chelsea in her husbands Absence; that he attended her twice to H's Lodgings under the great Piazza Cov.t Garden, & used often to carry Letters to Mr H. from Mrs E. & to carry back his Answers; he is acquainted with H's hand, by seeing him write the Superscription, & he knows y.e Exhibit to be his Hand: Beleives, Leonora means Mrs E. because she & H met at Mrs Gilberts; he speaks also to other Circumstances. To Interry answers he borrowd 5 Guineas of Producent....

..... — Garlic heard Mrs E. say she expected H. such & such Days, & he accordingly came on those Days, whence she shd conclude, he came by Mrs E's Appointment; that they were often left alone together, but can't say wh.r they were locked in, at those times; One Day she went with Mrs E. to H's Lodgings to dine, but he having dined, they only staid to drink Tea; that then H. went out of the Dineing Room, into y.e Bedchamber adjoining: that on mentioning to Mrs E. what the World said of her Familiarity with H. she confessed the Crim: Con:n at Mrs Gilberts: That a Letter came by the Post wch was taken in by Taylor, who knowing the Seale suspecting y.e Contents, they were tempted to see what they were: Dep.t drew out the Ends, so that they c.d not put them in again, because

They were so folded over each other; therefore they broke the Seal, threw the Cover into the fire; that she knows Mrs E. is meant by Leonora, because she has told Dep.t she always signed the Letters so ...

Dr Wynne. I am Council for Mr Earle, who has brought a Suit for a Divorce agt his Wife; you have heard the Evidence, Sir, wch the Dr in the Opening was pleased to call vague, whereas it appears some, & I hope, will to you so very plain, that I can conceive no Argument can render the necessary Points clearer: She gets acquainted with a Player, at best, not a very reputable acquaintance, for a married Lady, in her Station of life; she writes Letters to him, goes to his Lodgeings; he comes to her at Chelsea, in her Husbands Absence, & without his knowledge; they meet at another Person's House, & are left alone together: the Letters are such, to judge from the Contents of that exhibited, as c.d not possibly be written on any other Occasion, c.d refer to nothing but such a Criminal Correspondence; the strongest Recommendations of Secrecy &c. wch in a licit Intercourse wd be unnecessary; these are all such proximate Acts, as wd amount together to a Proof, even if the Fact itself was not so clearly proved as it is. Nightingale & Gilbert are not interested Persons; Miss Gilbert, says, she dont consider herself now to be obliged, the money is paid: the other 2 are Servants, it is true, but their Testimony is not therefore to be rejected, for Cases of this kind are of such a Nature, that the proof wd be impossible, unless such Evidence was received; it must be, unless a Confederacy was clearly proved, then the Ct wd reject them; Persons guilty of such Acts are reduced to such a Situation, that they must trust People of this kind; they put themselves in their power, they make them Confidants, & it shd seem that with their Innocence, their prudence forsakes them; they talk freely of their Shame, to those, who at last betray them, either thro, a Love of Justice, Repentance or Pique; Garlic's Account, is credible & consistent, that by the Canon, a Divorce cannot be pronounced for upon Confession of the Parties, & it is true, that Confession alone, is not sufficient, but added to other Circumstances, it will weigh greatly: I won't trouble you with repeating all the Circumstances, but rest the Cause here ...

Dr Bever We have indeed stated, but one single Act of Adultery, but if that is proved, it will entitle us to a Sentence of Divorce, & there is as Dr Wynne has well observed, very full Evidence of it. I shd be sorry to depreciate the most amiable part of the Creation, but I beleive, it is certain, when once the Veil of modesty is removed, they are more unbounded, more unguarded in their Passions, than even the Bolder Sex: I wd not aggravate y.e Expressions made use of in the Letter, yet tho, the words are not criminal in themselves, by comparing the Letter with the other Circumstances, they amount to what we want to prove; And tho, we have indeed but one Witness, Miss Gilbert, to the Act, yet the Prelude is fully spoken to by Mrs Nightingale; we are obliged to female Curiosity for the whole Discovery, wch we hope you will be of Opinion is sufficient to entitle us to a Divorce.

Dr Collier. There was no Imputation on y.e Character of my Client, till this present Charge; as every one is presumed innocent till the Contrary is proved, she is still innocent, there is no Sentence agt her, Alimony is justly her Due; she brought Mr E. a very great fortune, & Alimony being her right by the Law of Nature, we hope that previous to the hearing, your Lordship will allot her a proper one, to enable her to defend herself, in case the Cause shd go to another Ct. There are 2 Objections to the Witnesses, of the Facts; viz.t the Matter of Combination; & 2dly, that they are all interested; Nightingale says, she & Miss G. went to H's Lodgings, to carry him to Chelsea these 2 Chaste Ladies then, if there was any harm done, are the Procuresses; it dont appear but that Mrs E. became acquainted with H. thro, their means. G. says, the first time they saw each other was at her House, in consequence of a Letter from Mrs E. to H. for that purpose; is not this quite incredible, that Mrs E. shd write a Letter to a Person she had never seen; wd she at once have commenced a Crim.l Conversation; besides is it to be supposed, the chaste Miss G. wd have suffered a meeting at her House, if she