In respect to Mr Bests being the first who applied for the Admon, I am sure no regard can be paid to that, when the Court is informed, that my Client applied 2 Hours after- I hope therefore on the whole you will decree the Dekonis to Mr Whaley-

Dr Hay Judge.... I should have wished the Counsel Ed. have furnished me with Precedents to guide my Determination in so even a Point; The Rule of the Ct has been to follow the Rule observed in the Order of paying Debts, & to prefer the Superior Creditor in rank, to the Superior Creditor in right of Demand If there were not Assets to answer farther than the Bond Creditor the Poss[ession] shd follow the Interest; but if the Value of the Estate is so considerable, as to pay the Simple Contracts also, I see no reason why the Simple Contract Creditor shd not have the Admon: I think the Bond Creditor himself applying has the preference of the Simple Contract Creditor; whether their applying by his Attorney, he is entitled to the same Preference, is the Question? In point of Law, the Constituent & the Nominee are the same Person; no Stress can be laid on the Relation: ship, he having, as Uncle, no Interest in the distribution, I cant grant it jointly to the Attorney & the Creditor himself; a Person, applying himself, has the rather a Preference, the Superiority of the Debt is no great matter, as the Uncle is abroad, the Admon was before decreed to a simple Contract Creditor let it go, in the same manner, as the original Admon, i.e. to Mr Whaley; ....

Prerogative

July 5. N° 89

Bargrave — Stevens v Herringham — Adderley

Dr Marriott, Collyer — Dr Harris

2. Shall 3 Persons be presumed dead?

Dr Marriott.... This is a Question of Law on a Presumption of Law arising on Persons said to be dead: Jr: Mr, Wm Herringham went abroad, there was a Brother John, who left a Son, who will swear to his death, & to the Belief of the Deaths of the afd Persons; there is great Uncertainty in the Law Books, I can find no Precedent. 19 Car. 2. c. is confined to Leases of Copyhold Estate for Lives; if Proof is not made within 7 Years, the Reversioner enters- Holt of Holdem agt Exton was a Case of a Lease for Lives, it is not said to be of Copyhold Lands; if that shd not be the fact, you see, Six they extended the Statute; a Lease for 2 Lives of Father & Son, the Father was presumed to be dead, because he had not been heard of for 15 Years. The Pontifical Law looking on Marriage as a Sacrament allowed no

Carthew 246.. presumptive Evidence, the Civil Law allowed Simple Fame; See Mascardus on presumptive Circumstantial Evidence; in the Situation of the supposed Dead; the Parties have been cited in the Parish where we supposed they lived ....

Dr Collier..... The Qu: is wh: you think it necessary to have farther Satisfaction as to the Death of the Parties, before you decree Distribution to be made according to our Prayer? There are several forms of Citation; the Edictum wch was similar to our Viis & Modis; the Party incurrs the Contumacy ..... the former carries a Penalty; the other is calculated only to leave the Ct at Liberty; We have advertized the Parties, if 20 Years longer were laid it would be the same; the End of the Ct seems to be answered by having proper Security to refund. Narrata, de Citatione, Quam longo tempore &c. It is said Non reperitur aliquis status Terminus; you must, after the Edict, allow 60 Days for a Party to appear who lives out of the Kingdom; there are no Lands in Judgement before you 5 Geo. 2. c 25 On Foreclosures, the Ct of Chancery restrains them to 2 Years

Dr Hay Judge.... Mr Stevens might have prevented this by taking the Admon into his own Hands; the Money was ordered to be laid out in the Funds for the Benefit of the Parties interested; the Admin[x] neither consents to, nor opposes the Prayer made by Stevens; the Ct then becomes in a manner responsible; Can the Ct without some proof, that these Persons are dead order the Money to be paid to Stevens, Here are three Persons whose Deaths must be presumed; In Chancery a Cause is staid on 2 Years absence of a Party; you are not only to prove them dead now, but that they were dead before the Deceased; In the Prerogative M.L. 1738 the Principle was similar in the Case of Pendleton & Stirling. In Pendleton went to the West Indies in 1725 His father by Will bequeathed him a Legacy at 21. his Sister married

Sterling, & 1735 called on her Mother to take Admon to J.P. as dying intestate; the Mother was willing to administer if she was dead, but she not know he was dead; the Ct said it was incumbent on the Sister to prove his Death, wch ought not to be presumed; the Sister undertook so to do, & advertized a Reward of 20£ to any who cd ascertain that fact, Two Sailors appeared & deposed that he died aboard their Ship; the Witnesses were rejected as incredible, the Proof adjudged to be insufficient, the Mother dismissed with Costs. I find the Gentlemen cannot fix on any time, when the Presumption is to be founded: if the Law has named a time in a particular Case, the Application must be the Reverse of what is now contended for, I cant extend it in the present case; I am of Opinion, I cant go, on the Presumption of the Death of these 3 Persons, I must let it rest, till I have legal Proof thereof; I cant give Stevens the Money safely; the Money being laid out in the Funds, finally no one will suffer; I can make no Order about the Distribution. I will let it go to the first Day of Mich: Term. ....

2. Shall a joint Admon be granted to Mr H. or Mr L. or a joint Admon to both?

Prerogative

July 5 N° 90

Shurt v Beckford & Hervey

Bishop. — Altham — Adderley

Dr Harris — Dr Calvert

Dr Calvert. .... Alexander Pitfield Esq is the Decd; he left his Daughter Winifred Ashley Sole Exor & Resid: Leg: for Life, after her Death, su substituted her Sons, if she shd have any & in default thereof, her Daughters; Mrs Ashley died intestate, leaving Goods of A.P. unadministered, having no Issue Male, but 2 Daurs, Eliz: & Dorothy; Oct. 4. 1752 Admon de Bonis, was granted to Eliz: Wife of Julines Beckford Esq & to Dorothy Wife of the Honble Felton Hervey, both of whom are dead, leaving Goods unadministered of A.P. 10 Dec. 1763. admon de Bonis was granted to Mr Hervey, but never taken out, there being a Suit in Chancery- Mrs Mary Shurt the Grand daughter of the first Testator A.P. has taken out a Citation agt Mesrs Beckford, Hervey to accept or refuse Admon de Bonis; Mr Hervey declares his Acceptance; Appearance has been given for Peter Beckfords Esq, Son XXXX of Julines Beckford who prays a Joint Admon (as Admor to his Father & Mother) with Mr Hervey the Qu: is, wh: a Joint Admon shall be granted to Mr Hervey, Mr Beckford or a single Admon to either? to which of them?

Dr Harris..... I am Council for Peter Beckford Esq Son & Admor of Eliz. Beckford Grand Daur of Alex[r] Pitfield Decd; Dorothy was first married to Ch: Pitfield Esq & after his Death to the Hon[ble] Felton Hervey. Oct. 1728. A.P. died, his Daur Winifred took Probate as Exec:- 1753 Winifred Ashley died, a joint admon de Bonis of A.P. was then granted to E.B. & D.H.- D.H. died in 63. & the Admon survived to E.B. her Son Peter at her Death, took Admon to his Mother, Felton Hervey took Admon to his Wife; Mrs Shurt has taken out a Process agt them as the Legal Representatives of A.P. to accept or refuse the Admon de Bonis; Dorothy married Ch: Pitfield by whom she had Mrs Shurt; who has an Interest in ½ of her Fathers Moiety & Mr Hervey to the other ½. Mr Peter Beckford is in right of his Mother entitled to a Moiety of the whole. ....

Dr Calvert..... My Client is nearer to the Testator A.P. by one Degree than Mr B. Joint Admons are always looked upon with an unfavorable Eye by the Ct. as they are often attended with great Inconveniences; where Parties agree, the Ct will not interfere, but if they are adverse, a joint admon is always refused, because those who differ at the Outset, are not likely to conduct the Admon with Harmony; one of the Persons who applys, for the Admon, is on the Spot the other abroad, the Dr said that J.K. was entitled only to ¼ & P.B. to ½. the Act states them in equal Degree of Interest; Mrs Shurt dont desire it may be granted to P.B. she does not object to the Grant of it to J.K.

Dr Harris.... Mrs Shurt has an Interest in ½ of Mr Herveys Moiety; there is no Degree in Mr Herveys Case, we have a Degree being the Son of Eliz. & Resid: Leg: they derive their Right under a Will; it is not like an Intestacy; you are not at Liberty to chuse, the Representatives are, as if here in by the Act of the Testator; a Commission might be sent to Rome to swear Mr B. in a Month's Time, Mrs Shurt does not insist it shd be transacted immediately; as my Client is the Great Grand Son of the Testator A.P. I hope you will decree him the single Admon. ....