Dr Collyer... one of the Exors is at Antigua, the other on the Coast of Africa; the Decd died on his return to England, the Brother possessed himself of a copy of the Will, on which he obtained a Limited Admon, a mere Custody for the preservation of the Effects, till the Ct was apprized of the Intention of the decd, till it was satisfied, he died testate, Mr White is a mere fideicommissarius; these Letters of Admon were to expire at a certain Period; they are temporary, like a Trust, as to substantiate Proceedings in Chancery; you see what use he made of them; he went & demanded the Effects, of the Decd, in the Merchants hands, who very properly refused to deliver them: the Resid: Leg: is the most improper Person to have the Admon; his Interest cant arise before the whole Will is compleated; he is the last in the Testators Contemplation to be benefitted; the Ct properly considers how the Purposes of the Law may be best answered; under the present Letters of Admon, he has no proper Authority to receive this Money he filed a Bill in Chancery but the Ct gave no Decree, that he was entitled; he stands now on the same footing as if no Admon was ever granted; there is no doubt, if the Exors were on the Spot, the Ct would prefer them; the Ct is merely ministerial to the Intentions of the Testator; if it is true, that the Substitute of the Substitute is the Substitute of the original Person; the Institute, lays it down as a Rule of Law Quicunque Substituitur Substituto &c I dont know it ever was controverted; It is just like the Substitution of a Proctor, or an Exor of an Exor, who is the Exor of the first Testator, the Credit of these Merchants is established, the Estate can run no risque; a Delegated Judge indeed cant delegate, but that is different in its nature being matter of Judgement; here it is a mere Execution of a Trust.

Dr Calvert... The Right of the Exor in the Goods of the Decd may be conveyd to an Attorney, & with that goes the power, of nominating another Attorney; the Attorney of an Exor gives ample Security to this Ct so that no Argument can be drawn, from the Danger of the Effects not being taken care of: Mess.rs Oswald & Mill, are favorable in the Eye of the Decd, who left them a Legacy, therefore they do not stand merely as Attornies appointed by the Exors, but as Persons entrusted by the Testator himself; Can the Gentlemen shew, that by Law & Practice of this Ct the Line is drawn at the Attorney; I am told it has been in the Case of a Person dyeing abroad, where the Attorney was likewise abroad & appointed a Substitute, wch the Ct allowd, as the Party was a Seaman. I do not note, as similar, but to shew has a discretionary power to grant it to either Party; but I submit, wh: if the Ct cant commit Admon on a Renunciation of one Exor, it can in this Case? An Exor appointing another to act, the next of kin, & Resid: Leg: has no right to stand before the Ct: he might cite the Exor & be named, on his refusal to take Probate; but here he accepts...

Dr Harris... mr White had a limited Admon, & might do as much as if he had been a simple Admor; Oswald's bad behavior obliged him to take the Admon, without which he refused to give any account, & still continued such refusal after White had taken ye Admon thereby obliging us to go into Chancery, & now to defeat that Suite bring in the Original Will, & desire a new Admon may be granted to their Substitutes, when they themselves are only the Attornies of the Exors; the Behavior of Mess.rs Oswald & Mill ought to be considered, they have treated the Ct very ill in disputing its Authority; I always thought, a deputy cd not depute; Dr Collier recurred to the Regula Juris, but the Civil Law is not received in these Points, it is no part of the Law of this Kingdom; I am sure it is very differently laid down in



Coke 9 Rep:... Combes's Case; there is a wide difference between appointing an Attorney & giving an Authority to sue; Bacons Abridgment. V. Authority. He who has an Authority to do an Act for another, must do it himself, & cannot assign it to another whose Fidelity, Integrity, & Ability, is not so much to be depended on; It would extend to 20 as well as one; the reason of the Thing points out the Impropriety. The Attorney represents the Person in whom the Original Authority resides, as the Exor of an Exor, the Substitute does not; when a Man has a Power delegated to him, he must act in the name of the Person, who delegated it, I dont doubt your refusing their Prayer; Certainly the Exor, or the Attorney wd have the preference of the Resid: Leg: I hope you will grant us a limited Admon for carrying on the Suite in Chancery, till Persons having a proper Authority from the Exors come & pray it for themselves, Mess.rs Ross & Still confess 2000£ in their hands, therefore they ought not to have it. The Exors have been cited, & not appearing, have no Claim but I do not insist on that point...

Dr Wynne... The 1 Qu. has the Ct a discretionary power of granting the Admon? 2 Qu. Who under the present Circumstances is entitled? 3. Qu. Can the Attorney come now & claim the Admon? There is no doubt if the Exors were present, they wd be entitled: but can they make a demand for the ... I do remember something dropt from the Ct as if it was doubtfull; the Appointment of an Exor is a personal Confidence; it has been held, this Trust can be conveyd from one to another; by Will the Exor of an Exor may have it; he is on the Spot to carry the whole into Execution; this is very different; No Law, no Practice has been expresly quoted; I own generally, the Attorney of the Exor has been admitted, because the Interest is chiefly in the Exor; here the Exor cant take that power upon him, he wd if present; the Common Law has granted Admon during such absence, where the Exor or (in Cases of Intestacy) next of kin are out of the Way; but the present Case is out of the Statute, at your discretion; for what is the Admor appointed, if not to receive money Due to the Decd? White has called on Oswald & Mill who refuse to pay him; the Resid: Leg: is certainly most preferable, in whom the Estate is to Center; I hope you will granted Admon, during the Absence of the Exors, to the Brother & Residuary Legatee....

Judge Dr Hay ..... The Practice of the Ct is clear, that the Attorney of an Exor has a Right, to the Admon, with the Will annexed, if he appears; in this Case it is not necessary to go into the point whether the Persons praying, as Attornies of the Attornies, have any right to the Admon? the Exors Mutter & Petrie are absent, the Admon with the Copy of ye Will annexed, granted unopposed to White the Brother, till the Original Will or an authentic Copy thereof arrived, is expired, the Original being produced; but that wd be a sufficient Authority, under which White wd be a good Admor to discharge Oswald & Mill, who wd have been obliged to have satisfied the Admor & Resid: Leg: Does it stand to reason that the Money shd remain in their Hands till the Will shd appear, suppose it had never appeared; the Original Will did not appear till 14 months after it was made; I blame no body for Caution, but I know Merchants are very averse to part with Money; I wonder the Exors or Attornies do not act; Is the Attorney of an Attorney of an Exor the Representative of the first Testator? an Exor of an Exor because ye Privity is continued, he is only ye 3d from ye Testator. the Attn. of an Attorney is the 4th. An Attorney of an Exor is permitted by Statute to take Admon, but not a Probate; the Case of ye Sailor mentioned by Dr Calvert was not opposed, it was a Case of Wages, the Attornies were abroad & cd not pray Admon, tho the Ct admitted it, but it shd not be drawn into Precedent; I think it shd now be granted absolutely, either to the Attorney of the Exors