May be talked to; I see bad Consequences may arise, if I shd order a Reexamination on fresh Interrog.s in this Case, on the Suggestion that the Proctor had not received sufficient Directions; It may happen, that Motions of this Kind may come, with a View to delay; I dont suppose it here — As no Case is cited where the Pl.t has gone so far after a Compleat Examination, & Interrog.s given, I wont break into the Practice, especially as the Motion is new — There is a great difference between the Cases mentioned & this — Here, they dont even say, they will not plead —

Consistory

No 106

Fuller — Balderston v. Balderson — Bargrave

Dr Harris & Wynne — Dr Collyer & Calvert

Dr Harris ... Stated the Cause to be instituted by Mrs B. agt her Husband for Adultery from 1758 to 1762. & that there was no Reconciliation between them — See the Case Fol. 92.

Dr Collyer ... Observed the Correspondence wch passed between Mr & Mrs B. that they were mere prudential Letters, on her part about her not following him to Town — he insisted she was in the absolute Custody of her Brother, who has instituted this Suite without her Consent; that she is inclined to a Reconciliation — —

Evidence ... This Suite was instituted in April 1768 — Mary Pantin swears to the Deft taking Lodgings for a Lady & 2 Children, Nurse & Servt whom she thought Mrs Balderston, till her death, when she discovered her name was Letitia Smith; that they cohabited together as Man & Wife — She knows nothing of his Carnal Copulation with her, but by hearsay — Anne Sherman swears, she fetched a Child from their Bed every Morning, so saw them in Bed together Eliz: Jackson swears to Smith's passing for B's wife about Octoben 1760, & other being delivered of a Girl, so speaks to Carnal Knowledge.

Dr Harris — The Adultery is laid to have commenced in 1758, continued till 1762 — in 1758 He lay with his Maid Servant & had a Child by her, she tells the Story herself, she must know him — Dudlow speaks to a fact of Adultery with Mrs Smith (a Companion of his Wife) Nothing can be more fully proved; the Gentlemen admit it, & rest their Defence on a Reconciliation, & say, this Suite was commenced without her Knowledge; they have exhibited 8 Lrs dated in 1760 & one in 1761 — that they prove Affection can't be denied, but they do not prove her Knowledge of the Adultery, or that he was settled with Letitia Smith in London, & con: she writes, that when he is settled she will come to London — in another Letter, I hope you wont forget me tho, we are so far apart, a single man may live cheap — Down, it appears from his Lrs, that he always urged her to come to London; in one of her Lrs she says, she intends to make him a Visit; in another it is plain he had put her off; she says, she will not come, being of Opinion, as he says, it wd cause very great Grief to him; how Hypocritical! first to press her to come, & when she offers, to persuade her agt it — All her Lrs are directed to him at Charing Cross, not at Pantins or Ogleys, wch shews, she knew not where he was, or what he was doing — From 61, to the Commencement of this Suite no Letters are exhibited; from whence I infer, no Correspondence — they have produced but one Witness to the Reconciliation; She ran away from him, as soon as She found out the whole Affair, ever after Shunned him; on his Coming to Canterbury, this Woman, (who was reconciled) wks frightened; a Stranger comes to the House, she treats him with Civility soon after the Husband is admitted; she refuses to cohabit with him — He threatens to take her by Force, produces his Fire Arms,

She fell into Fits; when she came to herself, she had recourse to art to evade his power; all the Consent she testified was in consequence of the Force; she referred it to her Brother; she tried to put him off, till she had an Opportunity to run away; What Reason what Evidence have they, to suppose, The Suite commenced without her Consent; there is none, that I remember — even advised it; they shd have done so, it is immaterial, they dont pretend he shd have done so, it is immaterial, they dont pretend he used force, nothing is to be collected as to his Assent, She has signed a Proxy, there is therefore no Presumption of Force — She swore the Peace agt her Husband, after the Commencement of this Suite — no Woman can give Articles of the Peace agt her Husband, before Judges sitting on the Bench who always enquire into the Affair; He has given Security — She has given her Answers; the Gentlemen wd have read them if they dare that Omission creates a Presumption in our favour — Can there be a doubt of her resolution, to carry on this Suite? I hope you will divorce this Woman, according to her Prayer —

Dr Wynne — I hope you will think the Pl.t in this Cause entitled to a Sentence of Divorce, when you consider the Proceedings; the Circumstances in proof will warrant us to call it a Suite of Divorce for Adultery; there is the Birth & Baptism of Children in the name of Balderston; Mr & Mrs B. were married in 1753. & lived together till 1759. in 1756. He sollicited Broadridge a Maid Servant to carry on an illicit Correspondence with her, she withstood his Entreaties till 58. In 1759 she was delivered of a Bastard at Canterbury — He is proved to have cohabited with a Woman, as Husband & Wife, at different Places, from 1759. to 1762 in the name of B. & Wife prove that Womans death, one of them, says, she visited whilst ill, & saw her, when dead — It is said, that because she was not conversant at the time of living in the House with him, she cd not bring the Suite, when she did gain the Knowledge of it; the Dr mentioned the Case of the Duke & Duchess of Beaufort, wch was long before my time — The Letters exhibited were all wrote within 2 Months, the Light in wch they place the Conduct of Mrs B. is very amiable, fond of her Husband & Children, desirous to extricate him out of his Difficulties; she dont pretend to be blameless, but immaculate as to her Virtue; she seems affected with not knowing when to direct to him; Could he be serious in his Invitation to her? on the remotest view of her coming to London, he puts her off; the Cessation of the Correspondence was sudden, & never renewed; if Mr B. wd have let her be quiet she wd never have brought the Suite; she desired only to live with her Children; the Brother dont keep her in his House, she has separate Lodgings, & receives her own Company; the Pl.t wd not take notice of the Motive if true; it was her Interest not to disoblige her Brother; You distribute the Law, when the facts are laid before you, & the Adultery being proved, you will not regard her Intentions, but pronounce on the Proofs ..

They plead, that in the Night of Oct.r 28. 1768. Mr & Mrs B. laid together a great part of the night, & infer, there then was a Condonatio Criminis & that they had Commerce as Man & Wife; this is proved a fiction, Reynolds says, young Skidmore staid in the House the whole night, the Inference is, it was by the Wife's Order — Reynolds only saw her dressed — he accompanyd Mr B. they forced their way into the House, & confined a Person there. on R going in, he talked to her, she declined seeing Mr B. who soon after came in, professed repentance, promised he wd behave well for the future, if she wd live with him; she refused; he pull'd out a Pistol, said she was his Wife & shd go to London with him,