to send for any Friend; she accordingly sent for Studamore & Apothecary to take notice of what passed, not to take care of her, but to be present to shew there was no force used; Mrs B's poverty prevented our examining the two Scudamores, they might have examined them, but wd not, because they knew their Evidence wd make against them – The Law never presumes Adultery because it is a Crime, but when a man & his Wife meet, the Law will presume Coition, because it is a duty, the Ct inclines to keep them joined in matrimony – The Proxy is of no Consequence, we do not say, she is not the nominal Party in the Cause; why was not Mrs B produced before the Ct to speak for herself; she is in their Possession, why was she not examined before you openly & freely – I apprehend, tho, this is an adultery Cause, you will grant the same Monition, as in a Cause for Restitution of Conjugal Rites; I have known a Separation granted on a Suit of Restitution of Conjugal Rites.

Dr Harris. I find it still remains a doubt, who is the Plt in this Cause; Dr Calvert says Fremoult; Dr Collyer Mr Balderston; we think Mrs B. It is not expected a Person can speak to a precise month, 6 years ago – Partin proves the Identity, so does Jackson; it is then proved by 2 Wts: we want no more – Would Articles be good wch covenanted that a Mane Woman might do as they pleased? the Ct wd not regard them, & the Ct of Chancery wd not presume to grant an Injunction – Dr Collyer says, if the Wife deserts, the Husband may do as he pleases, he may keep a Seraglio, & the Wife cant sue him for adultery; this is strange Law; I have seen a Covenant agt bringing a Suit of Restitution, yet I question wh: the Ct wd take Notice of it, if pleaded; They plead a Reconciliation, let them shew it since the Suit began; Mr Fremoult did not refuse, Mrs B. an Interview with his Wife, he might refuse his Consent to an Interview – Mrs B. might have gone to see his Wife, but if he had tried to take her away by force – Fremoult might have justified obstructing him, his House being his Castle – I remember a Case, where a noble Lord kept another Lords Wife a Year & half, the Husband came to see her, but was told he shd not take her away by force, & all the great Lawyers being consulted, were of Opinion, he wd have been justified, in obstructing force in his own House, which was his Castle . . . . . .

Dr Dynne. It is said the Ct will be cautious how it dissolves the sacred Bond of Matrimony, where there is the Appearance of a Reconciliation – I dont know a Reconciliation with a Woman after Adultery committed, is less acceptable in the Eye of the Law, than of Mankind in general; nothing can be esteemd more abominable, than to entertain her at Bed & Board, after being guilty of a Violation of the Marriage Vow – As to Compensatio & Condonatio Criminis, there is not much to be said for the Purity of that Doctrine; Ly Savils Case induced me to think, the Condonatio Criminis was not as stated, the Sentence not being confirmed by the Com: of Review.

Dr Betteswort Judge . . . Here is a Suit for adultery brought by Philadephia Balderston agt her Husband; it is said not to be her voluntary Act, but spirited up by her Brother, & that she is averse to it; if this Suggestion cd be made out, it wd be a sufficient Bar to going into the Question; the only Circumstance introduced for that purpose, is the Letters, wch are very affectionate, but she did not know of her Husbands Infidelity at that Time – There is proof of a voluntary Consent, from the Proxy, Answers, & swearing the Peace by Mrs B agt her Husband; The Question then comes to the proof of adultery: 2 facts are charged with different Persons; & more than

one fact with the same Person; the first, is with Broadridge the Maid Servant, who depores to the Truth of it, & is supported by La Grope; The other, is a Series of Adultery & Birth of Children; it is said the Time when the facts were committed, shd be considered, that they lived amicably together several Years, that the Personal was her fault & therefore, she cant avail herself of the facts – the Cause does not rest on facts subsequent, but prior to the removal. He leaves Canterbury, the Wife promises to follow him, but does not, why she did not, is not in Evidence; but her Omission will not justify his Adultery; the Doctrine of Dr C. will not hold as to the Reconciliation an injured Party may remit an Offence so as to disable herself from prosecuting it after; but that is not the present Case; the Letters are foreign to this Question; all he says, if proved do not amount to a Reconciliation – If a Husband sues for Adultery & then cohabits, that may be a Bar in Law to the Suit, but his going to Bed, under the present Circumstances wd not have been a Reconciliation; I think the Adultery is sufficiently proved, & pronounce for the divorce with 80£ Costs . . . .

Prerogative 2 Sess. . . . Dr Hay Judge.

A Question of Interest.

No 107 — Forrest agt Wilson

Declarations of a Person, who is dead, is the weakest species of Evidence that can be offered; these are entirely destroyd, where they are weakend by Circumstances – Possessory Right must be defeated by Proof of a Superior Interest – The Person in possession, tho a Probate or Administration, need not set forth his own Interest – If he undertakes to do it, he may, tho, that is not the Point in Question, but whether the Deed came from the same Stock, as the Person who claims as a Sister – Where better Evidence can be had, Declarations are not received – Shand v Gardiner in the Delegates; Declarations uncontradicted were held to be Evidence; but they were fully uniform, consistent & there was no Counterproof – The Point now in question, is whether the Administration shall be revoked; This does not depend on the Admor proving his Interest – I think the Sister has not made out her Interest in such a manner, as to induce me to revoke the Admon; but I dont think the Admor has strengthened his Interest by the Proof offered in support of it.

Prerogative 3 Session. Dr Hay Judge . . . .

No 108 — Bridges agt Rhodes — Dr Dynne.

Bog — Holman

I have looked into the Evidence, & from the account given by the Witnesses, am perfectly satisfied of the fairness of the Transaction; a Difficulty arises on the Instructions; the Deed apparently intended to benefit 3 Persons; Mr Smith wrote down only 1600£ to answer their Annuities, wch Sum, he afterwards found to be insufficient, & told the Deed thereof, who replyd "very well"; from whence Mr Smith inferd the Deed left it to his discretion to make a further provision for the afd Annuities, & so tells Harrison the Writer, to note 2000£; on going away Smith asked Deed, if Jackson shd make the Will, he replyd, no, he wd not have him know any thing of the matter; Smith then named Harrison, to which the Deed answerd "yes" thus the Sanity is so far proved; Smith owns he added some parts to the Instructions, wch he carried to Harrison the Attorney, who from them & verbal Instructions also, of Smith, made the Will, but did not carry it to the Testator, till the next day, when he was in agonies, almost in extremis, & could not answer any Questions, till the Pain abated: H. asked the Deed, (before he filled up the disposition of the Residue) if he understood Smith, on that Head, who, after some time, answerd precisely, "very well" Then H. inserted the Word, "unto such Persons, as