now applies, it is necessary all Persons shd have notice; it is the foundation of all Intimations; this Objection might have been taken at the hearing, but Time & Expence is saved, by making it now.

Dr Burrell — If the Ct had in any degree, given its Opinion, upon this Point, as the Gentlemen have hinted, it shd not have presumed to enter upon it now, but I understood, the Extor, was only taken into Consideration; the Ct has determined him to be an improper Person; and I apprehend the Widow also is liable to Objection; the Application for a faculty, is an application for that, which is meer matter of discretion, in the Ordinary, to grant or refuse; in this, the peculiar Circumstances & Situation, of the Petitioner ought to be taken into Consideration, upon a due weight of which, the Opinion of the Ct will be founded; Mrs P. might be a very proper Object of your attention, considering his fortune & Situation in the Parish, & the number of Persons he employed; his Widow, with, perhaps, a small proportion of her Husbands Estate, without Trade, or Importance, will be considerd in a diff. point of View; the application from the Deed was for a personal favor, which is at an End by his Death.

Dr Harris & Judge — Tho, the Extor is an improper Person, Mrs P. is not; she is one of the Decds family; if her Situation & Circumstances are different from her Husband, the Opponents may shew it; there is no occasion for a new Intimation: She is not strictly & legally an Interbener, but she is a Representative for the purpose of praying this Faculty. We all know Abatements are not allowed in these Cts, it wd be better if they were not allowed at Common Law; When the Party himself dies, another may goon with the Suit; I have no doubt Mrs P. may in the present Case, go on, as if her Husband was alive. a Faculty may be revoked, & if they can shew she is lapsa Faculbabilis, it will be a Reason: I obiter rule Collins. Act & admit Mrs P. in the place of her Husband. . . .

As to common Law Abatements. vide B.R. Dacres, Duncomb Ventr. 235. vid. 8 Geo. 3. c. 11.

The Widow allowed to interveene.

before to C. to desire he wd come to him that day or the next. C. came. & Mr Allen asked if his new Will was ready for Execution, being informd it was, he appointed C. to attend with it at Prior Park, the next Friday 29 June; But on Sunday 24 June, the Testator was seized with a Fit of Illness, under wch he laboured till 3 or 4 on Friday morn: 29 June, when he died, wch Mr Allen gave Directions about his funeral & Tomb; he mentioned where his Will lay; that he died in perfect good Will towards Mrs Pitt concerning whom there was a Codicil added to his Will; desired that part of a Will, not yet signed, relative to his Nephew Philip Allens marriage, may stand good in the manner intended, by that writing, wch was known to Clutterbuck & Phil: Allen Senr & said he had not much enquired after his Wife, not knowing wh. she was alive, & that he cd not wish her to live long, in the Situation she was in. after West & the 3 Servants had signed said Nuncupative Codicil, West read it to ye Decd, omitting only, the Words, "And I think Mr Philip Allen Senior" not being then certain whether Philip Allen Senr had been mentioned in the Nuncupation, by the Testator, who understood & approved, what was so read to him; In the afternoon of the Day Decd died, the said Codicil so nuncupated by him, was opened & read, in the presence of Philip Allen junr & other Relations of the Decd, but his Widow was not then present, being in a very declining State of Health, & all present were of opinion, the Clause in said nuncupation, was expressd in words not proper for her to hear, considering her infirm Condition; they therefore directed West to transcribe sd writing, & in such transcript to omit sd Clause, relating to Decds Wife, or at least the reason therein given, for his not having enquired much after her; thereupon West wrote the nuncupative Codicil (D) now propounded, having compared it with the afd Writing, so wrote from the Nuncupation of the Decd, & it agreeing therewith, he burnt the afd former writing & in a day or two after carried Cod: D. to Shr Alyedr Hugh Frazer, & Mr Breedon, & read it to them, who all remembred it contained the full Substance, of what the Testator so nuncupated, & subscribed their names thereto, together with Shr West.

Trin: Term. Prerog: 2 Sess.

Longden — No. 121 — Allen v Chapman & Sparrow — Stevens

Dr Calvert & Bever — Dr Harris & Wynne

On Admission of the Allon given by Stevens.

Dr Harris — Opened, which by mistake is placed after Dr Calvert.

Dr Calvert — Ralph Allen Esq died 29 June 1764, leaving a Widow, but no Child, one Brother Philip, since dead, who had 2 Sons Philip & Ralph, & 1 Daur Mary the Decd also left a Nephew & a Niece, by a Sister, viz. Wm Tucker Esq & Mrs Warburton, Wife of the Rt Revd Dr Warburton Bp of Gloucester; Decd had also other Relations.

aug. 1764. The Will & 5 Cod: were proved in Common form.

Nov: 1765. Citation issued agt Jn Chapman Esq, & the Revd Jas Sparrow the Extors, to bring in the Probate & 5 Codicils, & to prove the 5th Cod: (D) by Witnesses, otherwise to shew cause, why it shd not be declared null, as to Codicil (D) & to accept a new Probate with sd Will & 4 Cod: annexd, without (D) at the Promotion of Philip Son of Philip Allen, Brother & one of the Extors named in Decds Will. .

Stevens Allon propounding (D) now stands for Admission . . . . .

Dr Harris — Ralph Allen is the Decd; he executed his Will 28 June 1763 in ye presence of 3 Wn he made a Codicil thereto, the same day wch is attested by 3 Wn. 29 June, he on the back of a former Codicil, of his own hand writing, date Nov. 10. 1760 (to a Will of 1 August) containing a legacy of 1000 to Mr Pitt confirms that legacy. 29 June 1763 he wrote another Codicil with his own hand, & declared it to be a 3d Codicil to his Will dated yesterday, & subscribed his Name thereto. 6 July 1763. He wrote, signed his name to another Codicil, wch he declared a 4th. Cod: to his Will. In March or April 1764, having a mind to make a new Will, he sent for Mr Lewis Clutterbuck of Bath, his Attorney, & gave him written & oral Instructions for drawing a new Will, wch he drew a draft of accordingly; Decd being to go to Richmond in Surry in May or June 64. desired Clutterbuck to bring him the Draft of the new Will, read it to him. C brought & read it to him accordingly. he approved it, & bid C. engross it agt his Return from Richmond, wch C. did. The Testator returnd to Prior Park 22 June 1764, & sent a Servant

Dr Calvert — Mr Allens Will & 4 Codicils, & also Codicil (D) now in Contest, was proved in common form by the Extors; Before a Nuncupative Will or Codicil is proved, all the next of Kin shd be cited; I shall not go thro, all the Arts of the Plea, but submit on the whole, it is irrelevant; if it cant be supported as a nuncupative Will, you will determine it at once, as was done in Mrs Medleys Case. This being a Nuncupative Codicil is reduced to a short Point by the Statute, wch is as follows, "No nuncupative Will "shall be valid, wch is not proved by 3 Wn present at the Nuncupation, & "unless it was made in the last Illness of the Decd". after 6 Months an "such Words were committed to writing, no Testimony shall be received, unless "the said Will. No Probate of a Nuncupative Will shall be granted till "14 Days after the Testators Death, & Bill Process has issued to call in the "Widow & next of Kin. No Will in writing concerning Goods or personal "Estate shall be repealed, nor shall any Clause, Devise, or Bequest therein "be altered or changed, by any Words or Will by Word of Mouth, except "the same be in the Life time of the Testator committed to writing, & "afterwards read to the Testator & allowed by him, & proved to be so done

Cod. 29 Car. 2. Stat of Frauds.