The not proceed regularly – In Causes of Legacy, the Parties pay them into Ct into the Registrar's hands who makes the Acts in the presence of the Judge, the Sequestrator may cite the party to see the money paid, & proceed in penam to pay it into Ct: or he might have retaind the Money in his own hands till he was cited to pay it – Tho the Sequestrator was bound to pay it to the Registrar yet that Transaction was to pass in Ct, not in Mr Skeltons private Office, for there he can be considerd only as a private Person – Is not this Account to be audited by somebody, who is to take it, Mr Cecil dont pretend, he gave Mr Terrill notice, how does it appear to be the true Sum, The Account sho have been made before the Bp or his Vicar General – Mr Cecil's pretence is insufficient, tho his Affidt sho stand uncontradicted; for tho, Mr Terrill had the notice, if he wd not receive it he might come upon Cecil, at any time for the money, Mr Prograve swears positively, he did not understand till the 26 of June, that he had any right to receive the money by himself, if these were not his Sentiments, why sho he frequently solicit Cecil to go with him – It may be very hard upon Mr Cecil, but if he has paid it in his own wrong, & not taken the proper Steps to secure himself, as Reason & Caution must dictate he will be liable to pay it over again, & have his remedy agt. Skelton's Representative –

Dr Collyer for Mr Cecil – The Authority of this Ct goes no further, than to appoint a Sequestrator for the Profits of the Living, & to make him account: He has given in an Account, suppose he wd not part with the money, the Ct cannot oblige him to pay it into Ct: what he does with the money is no part of this Citation – It is said this is not done by Act of Ct, & therefore a private Transaction, The Registrar carrys his Office about with him, & is every where the Officer of the Ct – Is not money continually paid into the Registrars hands out of Ct – Mr Altham does not object to the Account –

Dr Bellsworth. Judge –

determind the Sequestrator must pay it over again

This Case is very particular: The Revd Mr Chalmers is indebted by Bond to Mr Terrill, to secure the payment whereof his 2 Livings are sequestrd – The Sequestration is not granted in the usual manner to the Churchwardens, but to Mr Cecil at his own request, who is an Acquaintance of Mr Chalmers, but not an Inhabitant of the Pish – Mr Cecil is cited to account before the Ordinary, he brings 2 Schedules, containing the Account, & 2 Receipts for money paid into the hands of Mr Skelton – The Qu.t is wh: these Schedules contain a satisfactory Account, & wh: the Ct can take Cognizance of payments not suggested to be made by its order? I think it is a private Transaction between S. & C. & a Payment made by Mr Cecil in his own wrong – The Registrar can be considerd only as a private person out of Ct, the Ct wd be the proper parties to recover the money from Skeltons Exor, if the money had been paid by their Order – Mr Cecil appears to have received money, & has given no regular account of his payments – I must order a fuller Account, & decree a monition agt Mr Cecil to bring the money into Ct within a month, but give no Costs. . . . .

Arches. 4 Sess: Past: Term: 1765.

No 6 Rees v Rowlands

Dr Collyer – – Crickett . . . . Bishop . . Dr Burrell

2. Wh: ye dis continuance of ye Certificate is to be taken by Ptg –

This Cause in the first Instance was a Cause of Substraction of Legacy brought by Mary, the Wife of John Rees, a Legatee in the last Will of Wm Crumpton late of St Andrews psh in Worcester decd, agt In Rowlands Admor, with the Will annexd of the Sd decd, unadministred by Eliz: Crumpton the Relict & sole Ex.tr – The Citation was to exhibit an Inventory, & to answer to Sd Mary Rees in a Cause of Substraction of Legacy – In Rowlands appeard by his Proctor under Protestation, to the Citation, & alledgd, he was an Inhab.t of Madely in the Diocess of Hereford, & therefore unduly served; the other Proctor alledgd, that he was found in the Diocess of Worcester, & there personally serv'd, & therefore the Service was good, & the Judge below, when he heard the Petions of both Proctors pronounced the Service to be good – Upon this Rowlands Proctor made another Protest, that the Pltfs name was Reece, & not Rees, this was also overruled 4 8ber. 1764, & the Cause ordered to be proceeded in; Hand for Rowland then declared he appealed, & Holyoake for Mary Reece had the Def.t three called, & prayd him to be decreed excommunicate; on wch the Surrogate took time to deliberate to nept Ct; And In the nept Ct viz. 8 Nov: 1764 (without assigning any reason) the Surrogate at Hands Peton dismiss the Def.t with Costs, in ye presence of Holyoake protesting of a grievance & of appealing –

Protest to the Jurisdiction . . . . overruled . . . .

Protest to a misnomer overruled

15 Dec.r 1764. Holyoake serv'd the Judge with an Inhibition –

Nothing has been said, to make me doubt, about the Jurisdiction of the Ct, ye words of ye Sequestration clearly point out, that ye Sequestrator can account no where else.

1 Sess: Hil: Term: 21 Jan: 1765. The Inhibition was returnd, when Bishop for the Appellate, appear'd under protestation, & was assigned to extend his Protest, & on the Peton of both Proctors the 3d Session, & the Certificate was continued to the same time; Collings on behalf of the Registrar of the Ct of Worcester, brought the Process

3 Sess: Hil: Term: Bishop alledged, this Cause is appealed on the part of Rees from a Grievance in dismissing Rowlands, on account of a misnomer of Rees; the party Agent, whose name was Reece, & that his Protest will appear from the proceedings in this Cause below, when duly transmitted, & when the merits of the Appeal come to be heard, & therefore reserving such Protest, until the hearing the Grievance, prayd a libel, & alledging the Process is not full, as it dont appear on what foundation Rowlands was dismiss'd; prayd a Monition for Omissa, & the Judge at Bishops Peton, reserv'd his Protest until the hearing the Grievance & assigned Crickett to Libel next Ct, & decreed a Motion for Omissa & to the Bye Day –

Bye Day after Hil Term – } Bishop gave a negative Issue to the libel; Alexander for Crickett alledgd the Cause to be appealed from a Grievance, & the Judge at his Peton concluded the Cause, & assigned the same for Informations & Sentence in the Grievance on the first Session of next Term, saving the Appeal, Protest, & entire Process –

1 Sess: East: Term 22 April. 1765. } Bishop returnd a Monition for Omissa; Collins on behalf of the Req.r of the Ct below brought in the same, Crickett exhibited his Appeal, & Bishop was assigned to answer thereto next Ct, & the Cause was assigned for Sentence & Informations in the Grievance the 3d Sess. at the Peton of Crickett saving the entire Process –

2 Sess. Bishop confessd the Subscription of the Notary public, & Witnesses to the Appeal, & the Identity of the Persons therein named to be true.

NB. By the Omissa it appears the Surrogate below dismiss'd the Cause for want of the Continuance of the Certificate

Discontinuance of certificate . . . .

Dr Burges. The Continuance of Certificate of the Original Citation however it has been adopted by Practitioners is entirely useless & nugatory, when the Ct is once in possession of the Cause by the Appearance of the Def.t In the present Case, the Appeal is from a Grievance, wch must be heard ex iis dem actis, & there is no Cause assigned in Acts of Ct for the dismission, therefore it cant be supposed to be on account of the discontinuance of the Certificate, for the Certificate of the Judge in return to the Monition for Omissa, cant be regarded;

Dr Burrell. The Question now before the Ct is whether the Appellate was not entitled to his dismission in the Ct below, on account of the misnomer, if not, wh: the Judge below did right in dismissing the Def.t with Costs on account of the Pltfs Proctor has: discontinued the Certificate of the original Citation?

Citation . . . .

With respect to the first, I apprehend the Christian & Surname of Pltf & Def.t ought to be inserted in every Citation, that their Identity may be ascertained & that Def.t may know wh: he is the Person cited, & wh: there is any material Defect in the Process, wch will direct him in the Issue he is to give – Conformable to this Doctrine we are told by Gail Lib. 3. Observ: 49. No 1. Citationis requisitum est, ut in ea, nomen, cognomen citandi, discrete exprimatur, ut certitudo aequivocationis; ut cognoscat citandus, utrum Citatio ipsum concernat, utq; fraudibus obvietur, ne actor amplius variare possit . . . Gail Lib. 3. Obs: 50. No 3. Requiritur, ut in citatione, nomen, & cognomen, citantis, exprimatur; ut Citatus decs, qui ipsum citari curavit certus sit; ad hoc deliberare secum possit, an contendere, vel cedere velit; possunt enim plures esse, eiusdem nominis, & Pluralitas nominis induceit obscuritatem, & aliter citatus expetit sumptus diis & damna –

Upon this Principle, many Causes have been dismiss'd in the Sp.l Cts

1719 Clarke & Burwood whose real name was Barwood, It was determind to be a misnomer & the Cause was dismiss'd –

1732. Peerog: Ct: Kenrick & Ayres, where the real name was Eyres, the Citation was held void, & the Cause dismiss'd with Costs

July 2. 1735. Arches. Johnson & Richardson. Johnson was decreed excommunicate for Brawling in Church, with Costs; he appeal'd, to the Arches, & the Dean observing he was styled Rector of Relford in Norfolk vice Suffolk, set aside the whole proceedings, tho, the misnomer was not appeal'd from –