let them make the most of it, there can be no pretence to say this Witness is perjured, for this was, from their own account no Declaration upon Oath; it was only an extrajudicial Examination by Persons, who had no right to take it, & cd have no good views in doing it: If this Allon is to be admitted, there will be no end of Pleas; Delays & Expence must necessarily arise; for we may, nay must give a corroborating Allegation, to establish the Credit of these 2 Witnesses. I hope therefore &c

Dr Wynne. This is an Allon to affect the Characters of the Witnesses out of their Depons: that Jn Gann Senr died in April 1743. being said to have subscribed a Will of the 17th Feb: 1744/5 & that the Son says he believes the said name, to be his Father's Hand writing: What effect can be obtained out of an Allon, to establish a Fact, such is in the Depon of the Son himself, who says his Father died in April 1743. there is no need of an Allon — The Article as to Skief pleads an extraordinary Transaction, of Mr John Wyche: the writing down what past over a Bottle, taking care to have the Paper witnessed, obtained too under his hand under a forced Consent; a very unfavorable Circumstances: & it to be supposed that a man who was sober, cd possibly make such a declaration, & then 16 days after make a Deposition directly contrary to that Declaration? But however I beg leave to say, that in point of Law, an extrajudicial Declaration cannot defeat a solemn Depon: In Sir Wm Wolsleys Case before Sir Geo. Lee, no regard was paid to an Affid: contrary to the Regr for Witnesses are not suffered to aver agt their own act —

Dr Collyer... We have given this Allon to defeat the Credibility of the Witnesses, not for delay, as the Kings Advocate suggested: the Declaration has the appearance of being solemnly & deliberately made: there are 2 Witnesses to it; & that one of them is the Attorney who drew it, can be no Objection: it does not appear that Skief was drunk, or that he was tampered with; & the Declaration is very material to the Competency: In the Cases of Sir Wm Wolsley & Suit v Suit the Exception was, that a man shd not bear witness to his own Turpitude

Dr Harris... What we have pleaded in this Allegation, are facts necessary to come before the Ct by Plea, & much more proper in this way, than at the hearing, on the merits; As to the Argument of the Improbability of a Person's making a Declaration so contrary to a subsequent Depon, the presumptions wd rather be, that the latter was made on being tampered with; for if he was drunk, wch nowhere appears, 16 days were more than sufficient to grow sober, but he never once in all that time contradicted the Declaration —

Judge...? Dr Hay...? The Allon now before me, is an exceptive Allon; the matter of it might not have come to Mrs Wrights knowledge before; but even had it been known to her, it was proper to plead as a Fact, that the Father of Gann died in 1743. It wd be an Observation out of the Depon, upon the Merits: The Proctor does his duty in giving an exceptive Allon, not trusting to his Evidence only, but to make out this fact, wch may very materially affect the validity of the Will: for if Gann the father's Subscription, comes out to be to a Will & Codicil, dated after his death, he cd not possibly be a subscribing Witness, & his Hand must have been forged — The Objection to the Article relating to Skief was, that a Witness shall not contradict his own act; that it shall speak for itself: but if he speaks to a Fact, verbal Declarations are to be received, to destroy his Competency: he had sworn upon the Interrog: that he never had declared the Decd: was incapable: then it becomes very proper to plead this Declaration to affect the Credit of his Oath: from the very nature of exceptive Allons, the present Allon cd not have been given sooner, it cd not be offered till after Publication; cd not except to the Depons of Witnesses, till known, what they had deposed, therefore it dont seem to be offered with a view to create unnecessary delay or Expence; & the matter being entirely relevant, I am of opinion to admit this exceptive Allon as it now stands —

Trin: Term. A Sels:

Arches — Nº 15 — Bate v Taylor.

Bishop. — Dr Clarke — Drs Wynn. Burnell — Alexander.

Dr Clarke... This was a cause of Correction in the first Instance, promoted in the Consistory of Worcester, agt the Revd: Edw. Taylor, Curate of the chapel of St Oswald, by the Revd Mr Bate Minister of the pish of Claines who exhibited Articles agt him, for exercising his Ministerial functions to his Parishioners of Claines, belonging to the Tything of Whistones Mr Taylor gave an Allon, the Cause proceeded, & in May 1764. the Judge gave Sentence for Mr Taylor with Costs: my Client has appealed, & we are now before you with an Allon contradicting the Plea given in & admitted below, on behalf of Mr Taylor wherein he alledged his nomination, to the perpetual Curacy of the Chapel of St Oswalds Hospital, & that it is a free extraparochial Chapel: we say it is not extraparochial except by sufferance; they alledge that the Tything of W. belongs to the Chaplainship of St O. We contradict this, & say, that the Tything of W. belongs to the Church & parish of C. & have pleaded that the Lord of the Manor of C. holds his Ct within the Tything of W. so that W. must be part of the pish of C. that no Marriages have ever been solemnized at St Os Chapel except by Licence —

Dr Wynn... Jam Council for Mr Edw: Taylor, who has been cited & articled agt at Worcester, for performing divine Service, to the pishs of Whystones residing in Claines; That he was Minister or perpetual Curate only of a Chapel belonging to the Hospital of St Oswalds; that notwithstanding, he did baptize several Children there, & bury, & church Persons, at a private House in the pish of C. that he ought therefore to be canonically punished &c. 4 October 1760 Mr Taylors Allon was admitted, wherein he set forth, that he was nominated by Dr Waugh Master of St Os Hospital, as Chaplain to it; that he was licenced by the Bp, to perform divine Service, & exercise all ministerial functions in the chapel of St O. That he has accordingly officiated: That St O. is free & extraparochial, not subject to C. That the pishs of the Tything of W. neither serve pish Offices, nor have Seats in the Church of C. That the Duties have belonged from time immemorial to St Os chapel: he annext several Exhibits, & Witnesses were examined, Publication passed, & the Cause was heard on 10th May 1764. when the Judge, for as much as it appeared to him, that the Suit was vexatious & not well founded, pronounced that Mr T. shd be dismissed, & condemned B. in Costs: Bishop gave a Libel for B. in Hil: Term, & 1 Sess. Trin: T. he gave an Allon, with wch we are now before you: Be pleased, Sir to observe, that this is chiefly, in Answer to an Allon given by T. in the Ct below, so long ago as 1760, 4 Yrs before the Suit came hither, & tho, a Party may plead additional matter, it never was allowed to give what he pleases, wch if admissible in the Ct below, shd be proper there; & Ct of Appeal will not admit an Allon if it is out of time, & with reason, for it wd cause infinite delays; the longest purse wd carry it, the Grievance shd be every

The Articles state