great: Cts of Appeal, wch are intended to remedy Evils, wd then be productive of much greater: Parties wd be vexd, & forced into Compromises, to the manifest perversion of Justice; this Case carries with it, the most evident mark of intended delay, for Bate must have seen it was necessary, to plead, in contradiction to the Allon in the ft below, & why he did not, I cannot conceive; there is another very extraordinary Circumstance, he now undertakes to prove a fact, & pleads a direct contradiction to what he has sworn in his personal Answers to Ts Allon; for in the plea now offered, he alledges, "That the Inhabts of the "Tytheing of W. have served, & do serve, & are liable to serve "Parish Offices & Duties for the said psh of C. & have been, are "charged, with Church & other parochial Rates, & Taxes, with "the Parishrs of C." Whereas in his Answer he says "That he "believes the Inhabts of the Tytheing of W. were never charged "with any parochial Rates, or Taxes in the psh of C." If this is suffered; if a Person may ever agt his own Oath, Justice wd be defeated, & very dangerous Consequences will ensue; there is another Objection; viz. the Intent is, to prove that he has performed divine Service in his own chapel, to the pshrs of another psh, for he dont deny St B. to be a place consecrated for divine Service, & it is not pretended, that he ever performed Service in the psh Church of C. it is merely the Parish, not the Persons who are included in the Canon Law, he wd not therefore be punishable if the whole is proved: Besides, the Doctrine that a Clergyman is not to bury a Person, who is not one of his own Parishioners, wd amount to an Interdict for half the Kingdom: he is subject to no Correction; they have mistaken their way; for by Canon, the Churchwardens have a right, nay are enjoined to present those who do not come to the psh Church, & the Minister can libel for his dues; the Articles are liable to this Objection, if no other, that the Allon is impertinent; for by what Law can Bate prevent Taylor, from administring the Sacraments, or exercising other ministerial Functions in St B. Chapel he may admit the Inhabts of another parish to hear the word of God there, without being liable to Censure, tho, the pshrs themselves may be presented by Canon XC for not resorting to their own psh Church as they are enjoined to do under pain of the Censures ecclesiastical by 5 & 6 Edw: 6 & by 1 Eliz: c.2. wch inflicts a Fine of 12d for every Absence; nor does it appear that he ever did any thing out of his own psh; & because impertinent matter has been pleaded on one side, you wd not surely allow more on the other: I hope therefore for these reasons, you will be pleased to reject the Allon.

Dr Burnell... After the Question has been so fully spoken to by Dr Wynn, I intend to take up very little of the time of the Court: I always understood that in Appeals from Definitive Sentences, the Parties might offer new matter, but it must be such as they had no opportunity of alledging in the ft below: they are not allowed to harrass the opponent: No Cause is assigned, why this Contradictory Allon, was not given in the ft below, I must therefore presume, they have no reason to offer: Besides this Allon is directly contrary to what B. has deposed in his Answers, wch to me appears an insurmountable Objection: It is highly absurd to institute a Suit of Correction agt a Clergyman for doing his Duty in his own free Chapel: there seems no ground for Complaint agt Mr Taylor, & the Plea now offered, being, I humbly apprehend, out of Time, wd, I hope, be rejected.

Dr Clarke... As to the Objection wch has been made, of its being out of Time, I agree that the matter of this Allon wd have been well pleaded, in the ft below, it wd very probably have given a different Issue to the Cause: As to the reason why it was not pleaded, there is none, but that the matter was lately come to his knowledge: Causes open upon Appeal, in order to let Parties into new matter, to instruct the Cause further, it is one of the principal uses of an Appeal: for if you cd not receive fresh matter, a slip in the first Instance wd be fatal to a Party, he wd then have no way to cure the defect, but by instituting the Cause de novo, it is rather to be done by Appeal, wch is more a Cause de novo: As to the difference between the Allon & his former Answer, he only answerd to his Belief, he might know more afterwards; In Scott & Roberts 2 Hil: Arches, a special Plea of Sanity was admitted, tho, it might have been given in the ft below, & tho, Sanity was pleaded of course in the common Condidit...

Dr Wynn... The special Plea in that Case was only of the Capacity of the Dec: before & after the Execution, not of it, at the time of the Execution, wch is all that is pleaded, in a Common Condidit, therefore the Case is not similar...

Judge... } Dr Hay... } The Question now before me, is, whether the party agent, has suffered the Def: to examine his Witnesses upon his Allon, & Publication to pass in the Inferior Ct: is at liberty to give a contradictory Plea in a Court of Appeal: An Appeal opens the Cause, it is true, but not so as to let parties in to plead what has been pleaded before, or contrary to it: you may do every thing, you cd have done in time in the first Instance; Licet non Allegata, allegare, non probata, probare, generally. Mr T. had pleaded that the Tytheing of W. is not in the psh of C. the first Article of the present Allon being to contradict this is in contradiction to what the Witnesses have already been examd to. Qu: then cd Mr Bate have given a Plea of this kind in the ft below, in this State of the Cause? where the Parties have examined Witnesses, where Publication has passed, & the Depons have been seen? the Rule of non allegata, allegare, & non probata, probare, will not hold, this Article therefore must be rejected: the other Articles plead new matter, that B. has received the Easter Offerings, & the Impropriator the Tythes in the Tytheing of W. B. promotes a Cause of Correction agt T. for officiating ye to the Inhabts of W. The Qn will be, whr the place where he performed parochial Duty, is subject only to the Minister of C. for the Tytheing of W. may be in the psh of C. without T. being affected by it - It is not necessary to give a reason, why the matter of this Allon was not pleaded before; B. might think the Cause not sufficiently instructed, so may give it now - I wish the Promoter wd consider how it can avail him; we cannot examine the Bounds of the Parish here, & even tho, the Ct shd be of Opinion that W. is in the psh of C. yet if Mr Bate does not shew that Mr Taylor did Duty in the psh of C. he will fail in his Suit; for T. by doing Duty in his own Chapel will be subject to no ecclesiastical Censure. However rejecting the first Article, I admit the rest.

Ought: Tit: 318. In Causa Appellationis a Sententia Definitiva, licet tam appellanti quam parti appellatæ non allegata (coram Judice à quo) allegari & non probata, probari, dummodo non obstet publicatio Testium productorum in prima Instantia...