are underrated, & he overrated: New matter, if relevant may be pleaded: the Contest is not betwixt these parties merely it is intended, to try a right, & the Qu.n is wh.r the Householders or Landholders shall prevail; the Ct cd lay down Rules; shall the Householders be rated only at 1/4 & the Landholders at 1/2 of the Rent? we plead that what the Vestry ordered was illegal, because the Poors Rate was quashed: the Article exhibiting the Poor's Rate is relevant to shew that they cd not comply with the Order of Vestry —

Dr Calvert — The Proceedings of the Ch: Wns have been called arbitrary; this Charge is more applicable to the Psh.rs who composed the Vestry; for what cd be more arbitrary than for the Householders to rate themselves, at only 1/2 as much as they rated the Landholders: The reason why new matter may not be given after Publication (as said Downby Clerk) is, that Parties from knowing what has been deposed, may not have an Opportunity to suborn Witnesses, when they see where the cause pinches: our declaring that we have not seen the Depons, takes off the Objection to our offering new matter: the presumption that we had seen them is removed, by our positive Assertion that we have not so that we are equally at liberty, to offer a fresh Plea as if Publication had not passed — It has been said, the 6th Article contradicts the 5th, it does not; it is only making out our Case: we endeavour to shew, we cd not have been authorized to collect the rate, ordered by the Vestry; it was material for us to allledge the Poors Rate being unequal; & that rate being rejected by the Justices, notwithstanding the Order of Vestry to make the Church rate according to that Poor Rate we were thereby justifyd in disobeying the Order of Vestry

Judge Dr Hay — Churchwardens have certainly a right to sue, psh.rs for Rates legally due; but they have not of themselves any right to tax the Parish. The Law requires a Vestry first to be called on legal notice: if the psh.rs attend, the Majority of them bind the whole psh: if the psh.rs do not attend, then the Ch: Wns may make a rate, wch will be conclusive; but the Equality & Legality of the Rate may either way come before the Ct: the Ch: Wns are however bound by the Vestry, & great Confusion wd issue, if the Vestry ordered one rate, & the Ch: Wns took upon them to make another — The Order of Vestry binds the psh, the Ch: Wns, but yet Individuals are not precluded from complaining of the Rate made, if they think themselves aggrieved: but then the Ch: Wns take upon them to make a Rate contrary to the Resolution & Order of the Vestry; if this was to be suffered, the Vestry meeting wd be useless; this cannot be legal, proper; if they disapproved, they might have objected in Vestry; but the Order being made by the Majority the Ch: Wns are only Ministerial, & the psh.rs may com-

plain if they are unequally taxed — These Ch: Wns appear the Sense of the whole psh, except 11 Persons, & come with an Allon pleading, that as they cd not collect the Rate planned upon the Poors Rate, on account of the Inequality they were at Liberty to make a rate themselves. that making the Rate whereon this Church rate was planned, as unequal, is a Presumption, that the Church Rate, too, was unequal, is a Presumption, that the Church Rate, too, was unequal landholder might have contested the Rate made in consequence of the Order of Vestry; but it was the Duty of the Ch: Wns to obey; they were to collect it, & not to take upon them to make a different Rate: it appearing then to the Vestry, that this Rate was made in opposition to the Order of Vestry, I cannot go into the Equality & Justness of it, without allowing the Ch: Wns right to tax the psh of their own authority, wch if laid as a Custom in the psh, is such a Custom, as can never be defended, nor can the Rate be supported on that Footing — If the Rate directed by the Vestry is unequal, the Ch: Wn or any other of the Psh.rs may by Complaint set it aside — I respect the Allon, because the Ch: Wns were not at Liberty to act contrary to the Order of Vestry, & I decree Costs to Pays; for the Costs cannot be given agt a public Officer yet Gunner & Hagler not being at present Churchwardens, tho' acted improperly, are, I think to be condemned in Costs —

Because the Quarter Sessions had set aside that Poors Rate —

Prerogative — No 22 — Whittington & Francis — July 14

Altham — Dr Wynne — Dr Harris — Fuller.

Dr Harris — Mary Randall is the decd, she left a Will dated 14 Oct: 1762 & therein appointed my Client Mr Geo. Francis sole Exor, but made no disposition of the Residue. Wm Rich.d Whittington Cousen German once removed, has cited him to give an Inventry & Account: There are two Persons of the name of Geo. Francis, one of them, the Exor, the other his Nephew The Qu: is wh.r the Legatee in the Will, is the Exor, or his Nephew? the decd had lived 25 years with the Exor, had always expressd a very high regard for him, & had frequently declard she, shd never have it in her power to make him amends, for the trouble she had given him, in the management of her Affairs, hav.g paid & received all moneys upon her account; it appears too, she had a great regard for his Nephew; we say, that Geo Francis the Exor has no Legacy under the Will & is entitled to the Residue, therefore Fuller has appeared under protest; for if G. F. the Exor has the Legacy, he is under no necessity to give an Account to a person who has no Benefit or Interest under the Will. Sess: Trin: T. Fuller brought in the Commission with Affidavits, wherein it is deposed, "that the decd declard there was no body she cd confide in like Mr Geo. Francis the Exor, & that they cant believe the Legacy of 20£ was meant for him, being by no means a Satisfaction for the Trouble & Expence she had been at, in y management of her Affairs: that they knew Geo. Francis Junr & y decd were intimately acquainted, that he lived with her for 12 months before her Death & used frequently to go on Messages for her

Qu: there being 2 persons of y same name one of them Exor, a small Legacy being given to y Exor & the Residue being not disposed of. Qu: Is y Legacy left to y Exor or no?