she also a liberty to purchase, & that, to be at her own disposal, as if she had remained sole— Gosling says he has nowhere barred himself of his right to a Administr. She died intestate. 1764— If every thing was not tied up, whatever was not covered, wd have been divided with his Children— Suppose she had a legacy left her, wd that have been covered? we do not desire what is Scheduled, we admit we are barred of that; who is so proper to have the Admon as her Husband— the Law has cast it on him

Dr Wynne — Sarah Holmes is the deed; the private History &c are not proper for me to enter into, but the Man shd be bound by his own solemn act. The Qu: is wh on these Articles it appears that the Deed is restrained to particular Effects? All we comprehends all she was worth; there is a very minute particular in the Schedule; she meant to include every thing: there is no reason to say it is restrained— If she has acquired afterwards, because it adds, also Lands &c, wch she may after her marriage purchase; wch seem to comprehend all she cd possibly acquire; unless he she deserve by his Behavior, that she shd make a Will in his favor; She has made no Will— Here is a vested Interest— Shall a possibility be presumed for an Admon to be granted always to the Husband, unless you are bound by Law; Tho the Law has directed it, yet it is with an allowance to this Ct to judge where the presumption is taken off, of his being the most interested Person

Judge Dr Hay — It is certain, in Law the Husband is entitled to y^e^ general Admon but he can give a Power to the Wife to dispose of her Estate by Will— If she makes no Will, if he says her Goods shall go to the next of Kin, he bars himself— If he has given away his right he wd not be entitled to y^e^ Admon, had: no Interest: his right he wd not be entitled to y^e^ Admon— The Qu: is, what this Person has allowed his Wife by y^e^ deed? The Deed confines it to all the Goods of the said Sarah Kingston If the Deed had stopp'd at the Words Should purchase or acquire after the Marriage, with the Proceeds of the 3d Trust Estate, it wd have been otherwise; but in the present Case I am of opinion Mrs Keel is entitled to admon of y^e^ Effects mentioned in the Deed, & all acquired, since her marriage, with the Proceeds— If there are any other Effects, the Husb^d^ wd be entitled to y^e^ Admon thereof—

Adl. L. 3d Sess. Commissary of Surry

Dr Collyer.... The Person who grows the Act begins

No 31 — Hewet. v Kidgell — Sequestrator — Stevens — Dr Wynne — Dr Collyer. Fountain — Grene.

Gro: 26 On Admon of Effects allowed, on Injunction for articles of Charge being by presentment

I am Council for Mr Jacob Kirkman, a Creditor of Kidgell Rector of Horne in Surry, in £480. for this debt, he sued Kidgell in B.R. & recovered Debt & Costs making together £483. after Judgement a Fieri facias issued to levy this Debt on Kidgell Effects to the Sheriff of Surry, who returned no Effects, but that he was Clericus Beneficiatus, as Rector of Horne— but that he was Clericus Beneficiatus, as Rector of Horne— Process issued in Surry: the B.R. made out a Writ of Sequestration directed to the Bp of Winchester, to aid the Judgement of the B.R, who in Obedience thereto granted a Sequestration, & appointed Kirkman to receive the Profits & take care of the Cure, & to account for the Profits, if demanded, till the Debt was paid & Sequestration relaxed— Suit has been commenced by Hewet, by Presentment to deprive Kidgell for Non Residence: Stevens for Hewit alledged that Kirkman had no Interest to entitle him to intervene in this Cause; as a bare Sequestrator perhaps he has no right, but when coupled with an Int: under the Authority of B.R. it is different: we therefore pray the B^p^ will not proceed to a Deprivation till our Sequestration is relaxed, the Debt & Costs satisfied, otherwise the Sentence

See Fol. 13.

of B.R. Writ will be nugatory— The Rev^d^ Edw. Jackson is appointed with the Priority (Approbation of the Bp, as Act plead: all the Duties are well & duly performed, & the Sequestration is not relaxed— The Writ of Sequestration is exhibited— it directs the Bp of Winchester to issue the Sequest^r^ levy £480 Debt, also 63 Shillings Costs & damages (as the Indorsement on the Original Writ, is levy £82. 10.) The Bp returns that he has sequestred the profits &c levy £82. 10. Horne & Godstone pursuant to the Writ

Dr Wynne — I am Council for Mr Hewit a pshr of Horne; the Proceedings commenced by the Presentment of the Ch: Wdn of Horne at the Visitation agt y^e^ Rev^d^ Kidgell M^r^ for non Residence & deserting y^e^ Duty from March 20th to May 1764— Stevens alledged, the Sequestrator had no right to appear in the Cause; that the Suit was promoted only agt Kidgell for Contempt, Non Residence— Hewit pray'd a Monition out of Ct, divided into 3 portions, as a peremptory Citation to come & do his Duty, or shew Cause why he shd not be proceeded agt for Deprivation; no Appearance was given till 3d Sess. Trin: T. in July Fountain has now an Authority from Kidgell to appear; the first point therefore is wh: Kirkman has a right to appear as a Party in this Cause— Fountain alledges Hewit to be a voluntary Promoter, that this is a Plenary Cause, shd proceed by proving y^e^ pray'd Articles— This is improperly styled a Suit, because no Citation is taken out; only a Monition to do a certain thing; if he had come to reside, there wd have been no Punishment, no Retrospect, an End of the Proceeding; It is in the Nature of a duplex Querela, How therefore can any Person, but the Minister be a Party—

Sequestrator cant Sue in Exch^r^ for Tythes without y^e^ Bp being named in y^e^ Bill — A Sequestrator cant sue for Tythes in the Exchequer; but the Bp must be named along with him in the Bill— indeed in y^e^ Sp: Ct he is aided, that Judge knows him, but the Common Law does not; he is there considered as a new Bailiff appointed for a particular purpose— Kirkman has been in possession of y^e^ Sequestration from June 1764 to levy £82. 10 pursuant to y^e^ Indorsement, therefore y^e^ purpose of the Writ is probably answered; on wch account I hope y^e^ Ct will think he has no Interest, & is not entitled to intervene: especially when you consider it is no Suit, & that the Proceedings are with another view: But if you indulge the Sequestrator, it is to stop the Proceedings, till the Sequestration is relaxed: Can there be a pretence, that the Sequestrator shd retain his right longer than his Principal: Kidgel had a Freehold, but defeasible, subject to be called upon, for the performance of his Duties, for omitting wch he may be deprived: Will the Doctor contend that a Benefice is different from an Annuity, he is put in only to y^e^ performance of certain Duties: Can his running in to Debt, then, change the nature of the Law? If that avails, & a Sequestration wd stop y^e^ Proceedings in case of Non Residence, it wd stop them in case of Homicide, Adultery, or any other Crime, provided he added Insolveney, or running in Debt, to his other Enormities; he might also collusively confess Judgement to a Friend, & set the Law at Defiance— It is said, indeed, if you dont stop Proceedings, the Sequestrator may lose his Debt; true; by a parity of reasoning a Bond Creditor, who wd lose his Mortgage Debt by a Superior Title, might justify agt such Title: People are liable to such Losses, they know what sort of man they trust, the Inconvenience is less, that Individuals shd suffer, than that bad Men shd escape Punishment. 13 Eliz: c. 20. Sec. 7 No Lease is to endure longer than y^e^ residence of the Lessor, who is not to be absent more than 30 days. See what the Makers of this Law thought of y^e^ Consequence of a Parsons Residence: they lay hold of this Method of punish^g^: How came the Monition ever to issue? it was then thought no Bar

13 Eliz: c. 20. Sec. 7 Leases to endure no longer than y^e^ residence of the Lessor—