bolder – Jn Gann believes his Father died a year before
The Qu is wh^r the deed had an understanding adequate to
this Will, tho, he cd do all common Acts? Shewas High Sheriff
Churwarden, or a Common Councilman if prompted; it will
appear heavs in those Undertakings, under ye direction of his
Servant Owen, who told him what to do, whom to drink
to – We have examined, Mullners, Manbuamakers & various
people at Stamford to the general Opinion of the deed; they
are very good Witnesses to ye Common Fame, tho, they never
saw him or spoke to him – The Evidence being read, a doubt
1 Qu: wh^r Certain Letters & Books of Accounts, generally pleaded
in an Allon admitted on the behalf of Mr Foster, ought to be read
on the Merits (without being specially pleaded) where they are made
part of the Depon? If they can.
2 Qu: wh^r they ought to be read being only proved by one Witness, supported
by Circumstances & wh^r that is sufficient to identify them?
3 Qu: wh^r Monition shall issue agt Mr Foster to bring in ye Instructions
said to be given by the Deceased?

Judge Dr Hay. I have often seen in Causes (when Proctors want ye Instructions
before the Ct) the Examiner directed to tell the Witness to leave
them, if he refuse the Examiner would have wrote his
Refusal down, in wch Case Monition might have issued for bring
them in – Mr Major, seeing the Examiner had omitted it, might after
Publication have moved the Ct to order them to be brought in before
the Conclusion, but Mr Major took no Exception thereto –
If the Exhibits pleaded, were not brought in, he might have
given an exceptive Allon, after Publication, but cannot
before – When a Party pleads any Paper he sho annex it
to his Depon – 2 Witnesses, viz. Mr Forster, Jn Jarvis: one
brings in Accounts, the other Letters & Receipts – A doubt
arose with respect to the Sufficiency of the Oath of one
Witness One Witness is sufficient for an incidental
point in a Cause; he has seen the deed write, & referring
to these Papers, wch is a part of their Depon, they say he
did write, here are some papers wrote by him; can the
Ct shut its Eyes agt them, because it might have been
pleaded on the other Side; Can it hear the Cause without examine
the Deed's own Acts, only because the Proctor mistook, & did
not call for them on the Allon? shall a Mistake of that
kind reject the Evidence? it must be read as part of the
Depon. The Case of Walton & Ryder before Sir Geo. Lee
Feb. 28. 1752. in the Arches. It was a Cause of Jactitation
Ryder justified a Marriage in 1742 There was weak
Proof of a Fleet Marriage in 1727, only the Evidence of the
Parson who married them – a Witness for Ryder brought a
Letter under Walton's Hand wrote to Ryder, but not pleaded
in the Cause – It was not objected to, & we insisted on ye force
of the Letter, on this Letter the Judgement was grounded
& the former Marriag decreed for – The present Case is diff.
D a Witness may bring in Papers at his Examon, an-
nex them to his Depon, & the Ct must take Notice of
it; the Party may not know of an Exhibit a Witness has
who brings it in – On the other hand, it wd be hard to say
this Evidence shall stand uncontradicted, without giving
the Opponent an Opportunity to dispute it; there is a
medium; J must therefore resume the Conclusion of the
Cause (wch is often done) to introduce Exhibits, tho, this is
dangerous where you examine to what has appeared in
the Cause, yet in the present Case, there is no reason to ap-
prehend Perjury; permitting Major to examine Foster &
Jarvis touching the Exhibits introduced by them, but

generally on the Interrogatories; It is to cure the defect, I ought
to have the whole Evidence before me; what might have
been done before the Conclusion of the Cause, may be done
now; I don't mean to confine Major to any part of the
Books, & allow him, if advised, an exceptive Plea to
what those Witnesses have said touching those Exhibits;
under these Limitations & Restrictions, there is no more
danger now, than if timeously applied for – It is Justice,
it instructs the Cause; I wonder more attention has not
been paid to it – The Instructions for the Will & Codicils
ought to be brought in, J therefore grant a Monition
agt Mr Foster, unless he brings them in voluntarily –
tho Ct wd hear the Cause without this Light, particu-
larly as these are said to be Alterations in his hand
writing –
A Witness deposing extra Articulum shd be read to shew the
Depon cand be received –

Steven Registrar motions have been made for examining Parties to Interrog^s
concerning the Destruction of Testamentary Papers –

Arches. Bye Day
M. T.

Dec: 9. 1765

Qu: On ye Grant of a new Commission of Inspection of ye Deanery House of Rochester by Clergymen.

No 37 **Markham v Beadon & Kirk.**

Altham Dr Harris, Wynn Dr Marriot, Calvert. Gosling

Dr Marriot opened & then Dr Calvert read the Act
Altham prays a Commission to be directed to 3 Commissioners named
by the Ct, annexing thereto the present Estimate: Gosling opposed the
annexing the Estimates, as containing many Articles, not Dilapidations
but prayed the Commission to be directed to three Prebends of Rochester

Mr Beadon's Affidavit was to the following Purport, "that the Lock &c were ye deans
" own property, not belonging to the Deanery House – that ye rebuilding
" is unnecessary, that annexing the Estimates already taken wd mislead
" the Commissioners
NB The Party moving is to support the motion, the Opponents
to reply –

Dr Marriot – Ruinous as the Deanery House is pretended to be, Dr Markham has
resided there all the Summer – the Estimate brought in, is only to found
the Prayer – the Prebends knew the Condition of the Premises

Dr Calvert – Dr Newcombe the late Dean of Rochester, at his Decease left ye Deanery
House something out of Repair – Dr Markham had a right to call on
the Exors – It has been the Plan on one side to give a Libel, annex
an Estimate, on the other Side, to give an Allon with another
Estimate, in order to found an Application to the Ct for Commissioners
But it is nugatory for us to give an Estimate, as no Judgement
cd be founded on it – Clergymen are most conversant in these
Affairs; mere Workmen are not Judges of Dilapidations; they
know what the Repairs will come to, when the Commiss^rs have
instructed them, what are Dilapidations; This is a Question of
Law as well as fact
1328 Mepham Constit – Nulla &c
Register of Bp Reynolds, Commission to ye Canons of Litchfield &
Hereford
In the Case of altering Palaces or Parsonage Houses, Commission to
Clergymen – Dr Calvert instanced the Faculty to the present Bp
of London to alter his Palace – founded in Law & Precedents
grounded thereon – provided Clergymen are chosen we sho not
object to the nomination of the Court – Our Objection to the
Estimate is, that it might biass the Surveyors – Hayter & Cooch
Both Sides had pleaded an Estimate, therefore the Ct annexed the
said Estimate to the Commission; there is a Claim only on one
Side, there it was to liquidate the 2 Estimates –

Dr Harris. 2 Schedules are annexed: Mr Vardys on the part of Dr Markham
is £1380 – Wrights £1200. Vardy dyeing, we gave another Estimate