5 Art: it is laid that Application was made by Edw.d Towsey to issue a Process agt Mrs . . . . . at Wantage in Berks; If Wantage within the Juris diction of the Archdeacon of Berks, it ought be in the Diocess of Sarum, shd be laid definitely: the Fees of Office were tendred, otherwise wd be liable to the same Objection, as above mentiond—

6th. Art: was directed by . . . . . & Susannah Bradford to issue a Citation in a Cause of Defamation; where did they go to him, was he within, or were they, out of the Juris diction?

7th. The Application of Mary Simmonds to issue a Citation, is liable to the same Objection—

8th. pleads Dr Spry's Appointment of Dr Bever to be his Surrogate. The Instructions shd have been exhibited, the Patent pleaded, tho it need not absolutely be annexd. The Objection is, the Instrument is neither pleaded nor annexd, nor the Time of such Appointment specified — It is not said how long, where, or how the Seal was delivered to the Registrar? It might have been given by Dr Spry, with positive Orders not to part with it; & it shd be stated, that he has refused, being required by his Principal, to deliver it —

Dr Harris . . . . We took all possible Precautions, got it thro, & Cts; the Dr says how cd Letters of Request come from the Official of Berks, If he had the Seal, Why, All Letters of Request, pass under the Hand, sometimes under the Seal, but usually under the small Seal of the Judge, he can use none but what he has; this is a sufficient Answer — Where cd the Office be kept, but where the man lives, he had no Deputy, so People were forced to apply to him himself wheresoever — The Regr living out of the Diocess is a Laches — none must take Advantage of their own Laches — the Presumption is that Berkshire is in the Juris diction of the Archdeacon, if it is not, they must shew the contrary — The 8 & 9th. Art: consist of 2 Faults for not issueing the Faculty & keeping the Instrument; we have laid particulars, it is always usual to give a general Article, that the Witnesses may depose to more particulars when examined; & a late Judge thought it the best way, because the Witnesses are not led; slandering the Judge is an Offence within the Canon —

Dr Wynne — The general practice being to appoint a Registrar by Patent & he thereby having of course a power to appoint a Deputy, I hope the laying him to be a principal Registrar, will be thought definite enough — In answer to the Objection of the Jurisdiction, we have laid he neither executed by himself nor Deputy — I know no Law wch obliges a Regr to reside within the Jurisdiction; he is prima facie bound to grant the Citations &c but if he can exculpate himself so, he may, we plead a real Scandal on the Judge & Court on

Dr Hay. Judge — I take it for granted the Letters of Request are in the usual way, that is, under the Hand & private Seal of the Judge requesting; shd it be otherwise, there is a reason for the variation, because the Seal is charged to be withheld & the Deft is charged with improper Behavior in not issuing Citations &c — Causes of Correction are different from Civil Causes, in a criminal Cause you shd not be general but specific, clear & explicit, that the Party charged may be able to defend himself; if you leave it to the Witnesses & speak to Times & Places, with wch he is not acquainted, he cant exculpate himself, or prove an Alibi — The Articles in general are properly laid; for the Objection of his being applied to out of the Jurisdiction, the Answer is that it was for purposes within the Juris diction, they have laid neither by himself nor Deputy, if he had power to appoint a Deputy, he might have done it by himself — The 12th Art: contains a general Charge of his refusing Probates for 12 - 6 - or 3 months — Specify Times, Places, & Person; that he may have an Opportunity to defend himself — Saying the Places were in Berkshire, implies within the Archdeacons Jurisdiction, if they are not it will be matter of defence for him to shew, as it will also that Dr Spry ordred him not to deliver the Seal; Upon the whole, the 12th being reformed, I think the rest may be received —

Appeal from Worcester from a Grievance.

Arches — No. A1 — Cole by his Guardian agt Surman

Bishop — Dr Marriot — Dr Wynne — Alexander

Dr Marriott, Kings Advocate. — Mary Rea, is the decd devised a Specific Legacy to Chr Cole, who cited Surman the Exor to an Inventory & account; Surman gave an Allon pleading payment to the Minor himself, wch the Judge admitted & from that we have appealed

Dr Wynne . . read the Allon, wch pleads that on May 10th. 1762. Cole the Minor received a Flock of Sheep, in the Presence of 2 Witnesses, when he declared he received them in full of his Legacy —

Dr Marriott — This Allon is a peremptory Plea in Bar of the whole Suit: by my client; our Citation was for an Inventory & Account, due of right — Payment shd be made in Ct if the Minor is not benefited; Chr Cole on the 10th of May 1762. aged 16, received the Legacy left by Mary Rea the Testatrix, who left half a Flock of Sheep & Lambs, all Furniture, Brass, Pewter, Bedding & all kind thereof —

Dr Wynne . . . This comes by Appeal from Worcester; It is a Business of exhibiting an Inventory & Account, brought by Chr Cole a Minor, acting by Henry Cole his Guardian, in a Cause of Substraction of Legacy, The Proctor for the Exor appeared under Protest & gave in an Allon, Hard the Minors Proctor prayd the Allon to be rejected, on the Plea that a Payment to a Minor, is no payment unless so directed by the Will — The Allon is no more than an extended Protest, I hope you will be of Opinion the Judge did right not to preclude the Party from pleading what can aid the Cause.

Holyoak . . . . The Ct wd reject what is impertinent, but it cannot be said, that this is so, to say that the Legacy is paid — The Objection that the Minors Receipt is no payment is too early, tho, If I misapprehend not, an Exor may bona fide pay the Legacy into the hand of the Minor, & so doing, is excused notwithstanding the Quotation from the Roman Law, or arguing from Analogy of Debt, or a Loan, because he complys with the Will of the Testator. The Case of a Feme Covert quoted by the Dr out of Vernon, is not in point; she & her Husband are one; the Receipt given by her cant bind the Husband; what I insist on is, that the Objection is too early, if not, that the Payment to a Minor is good — Wentworth in his Office of an Executor, P. 219. (wrote by Judge Dodderidge) says, "What if Payment be made to an Infant"

This is the Law of England; the Reason is, the Exor performing the Will of the Testator bona fide, is not bound to secure it; if he acted improperly, took any thing from the Minor, or any Collateral Security, it wd be otherwise —

Dr Marriot . . That is only the Opinion of a single Judge & no Case determined on it —

Dr Hay — } Judge . . . . } The Exors appeared & alledged the Minor aged 16 received the Legacy, & declared he had received it in the presence of Witnesses, It is not set forth how he received it, therefore it is to be taken on the Allon, he received it properly, i.e. by his Guardian; the Allon is to be rec.d for it states a Fact; What Sort of a Receipt or what may be the Operation in Law, is for the Merits, hereafter, but the Judge did right to admit the Allon (No Costs were given against the Minor it not being usual) I admit the Allon & pronounce agt the Appeal —