So, for upon the 3d Interrog: he cant depose, tho, if he was, he is a subscribing Witness, (thereby deposes to his own Act, but after2 deposeing contrary to it a Wt deserves little Credit, tho, there may be Circumstances, where such Contradiction may be credited, but then these must be such Circumstances, as he cd not know, when he signed, for very bad Consequences might ensue if Instrumentary Witnesses were suffered to contradict their own Act; yet such Wt may be supported by others— If his own positive Evidence cant avail agt his Act much less his Declarations— Pierson is not a Wt to affect Innocts Declarations— I have no doubt of an Execution— These are Contradictions objected; if they go to affect Bp M. they will have no Weight: as to the Reading over. B. says it was read 3 Times; M. speaks to a Recognition, take notice of the two Legacies of 1000£ each, but none of the 100£. this is contrary to what B. says: there must be a Mistake as was said by Dr Bever, there being 3 Codicils, the 2 may have been read over, B. might speak of all: this a material Objection: I observe all are examined in 1763 except M. who was not examd till 1765. wch will account for the 2d Inaccuracy: I suppose he gives a general Account; wch must be cotemporary with the Recognition: there is a Variation between them all as to the Time of Deds Signing: I think B. does not speak to the Signing this Paper, but that before Dinner: This right in Council to point them out, but I think the Variations shew, that Witnesses are not prepared; However they all speak to the Execution— P. admits there was a signing; it is not material wch: they were read over in the presence of the Witnesses, there is sufficient proof of the Execution; they vary as to the Circumstances wch are merely collateral; where the fact is proved such Variations are not so Material, as to the Transaction itself, for none affect the Capacity of the Deed— I think I have cleared Bp M. as to prevarication, their Declarations then must have great Weight— This a strong Circumstance, he intended to leave something to his Godson; with respect to the Instrumentary Witnesses I think there is sufficient Evidence— There is no Question of his affection to Rd B. his Bequests shew it— Incapacity is alledged from July to his death, that he talked in a rambling manner, (said he had hurt nobody, (B. agrees he was sometimes confused, the Servants are of the same Opinion, with they form from his Expressions: what the Council noticed with respect to the Custody is material; the Exors charge it on the Legatees; the Witnesses disprove it, all say, he and he only whom he set upon seeing; cd he shew an affection for Rd B. if he was incapable? the Opinions of these Servants cant be regarded— But Mr Glover speaks positively, that he administered Medicines for the Disorder of his mind; Mr L. speaks to rather more, that he mistook Rd B. a Man of 60, for his Son, a youth; these Witnesses are strong but it is a Medical Account; they speak as Physicians else consider him sensible, I must take the Evidence in their Profession its only Opinion & Collection; I own it is a strong Evidence of Opinion but cant think that shd be relied on, when there is strong Evidence of previous Declarations, subsequent Recognition, the Factum of Execution; besides, Mr Bridges & Mckenzie are as good Judges from their Opinion; it is not necessary to bring in the Papers, the Factum the Thing— I must lay Stress on Sir WS. (Mrs Batemans Evidence; the fact they depose to shew him sensible; it is said to be after the Execution, but facts done after go a great way to support the Capacity at the Time; I think the Exors had good reason to lay this Case before the Ct. but I think the Codicil a fair Transaction, where Exors give a Plea they are liable to
they have been misled by the Servants, but have in some degree proved their Plea, tho they have failed in the proof of the Custody— I decree in favor of the Codicil without Costs—

30 Sep: & 7 May 2. 1766

Bona Notabilia

Collins pr pet. Hopwood agt Luckis Dr Harris Major

Dr Harris.... Nº 64

Wm Hopwood died in Feb: 1765 at Exeter, he by Will appointed Anne Luckis Universal Legatee; the Will was proved at Exeter, notwithstanding wch she has been cited hither by Mary Hopwood as the Widow, Major appears under prokstation, alledging Wm H. did not leave goods to found the Jurisdiction; if he did, that Mary has no Interest; the Bond was in the Posession of the Dcd at Exeter, & was for 200£

Dr Hay. Judge... The Locality of the Specialty creates the Title to the Probate, the Custom of proving in the Prerogative Ct. where there are Bona Notabilia, was founded for the Ease of the Subject, not for the Sake of the Jurisdiction; you have stated, the Man died in the Archdeaconry of Exeter, took Probate in the Consistory, as ye Pty therefore can have relief in ye Ct below, I remit the Cause.

France v Dawkins

I find a Note of Sir Edw: Simpsons that Sir Rd Raines always pronounced for the Jurisdiction of the Prerogative Ct. when either the Bond, or the Party bound were in different Jurisdictions

14 June 1758. Dawkins made a Will, France Exr. who gave an Action pleading the Jurisdiction, that the Debtor resided in

Sr Geo Lee ordred the Nature of the Debt in the 2d Art: to be specified as the Question was started only on ye Admission of an Action, not on a final Sentence, I do not consider it, as a precedent sufficient to warrant a positive Decree, tho, my private Opinion may be the same; I have examd ye Authorities of the Common Law Books, & find, they all agree in determining, that the Locality of the Bond stops the Bona notabilia, tho I cannot discover the reason of that Determination.

30 Sep: & 7 May 2. 1766 Commissary of Surry

Wch a Legatee rcd: if Writings of a Cottage be-queath'd by D. can afterwards Collins Exr. to prove by Wt

Collins Dr Calvert. Grainger agt Stedman Dr Wynne Cricket

Dr Calvert.... Nº 68

Laurence Comet by his Will appointed Anne Grainger his Exr. he left Eliz Stedman (a Niece by the half Blood, one of his next of kin entitled to distribution) a Legacy in these words, "the Leases, all other Writings whatsoever, relating to a Cottage in Mare Street in the parish of Ockley in Surry; Collins alledges, that Mrs Grange delivered the Writings to Mrs Stedman, as Exr: that She received them from her, as such, before the Cause began, & therefore acquiesced in the Will, so prayd Probate to his Client; Cricket for Stedman confesses this, but alledges his Client to be the 1/2 Blood of Dcd, as next of kin, to have a right to Distribution Share, so entitled, to see the Will proved by Witnesses, & prays Collins may be assigned to answer wch: he will prove the Will, or not? Collins, dissents, & say Cr has no right to call for ye proof by Witnesses, unless he returns the Papers, or leaves them in the Registry of this Ct. There is no doubt, but as next of kin, Mrs St. wd be entitled to her prayer, but under the special Circumstances of this Case, had she accepted a Legacy under the Will, she has acquiesced therein, & so is barred; a Party can never be entitled under 2 Contradictory Claims, viz as a Legatee, & by virtue of a right to a distributive Share, if such a Pretension the Consequence wd be very bad; Suppose A receives a large pecuniary Legacy, she might avail herself of the payment to prosecute a Suit to set aside the Will: It may be said, the Exr has assented to the Legacy by delivering up the Writings, & is bound by her own Act: but tho, the Ct wd not hear her, if she demanded the Legacy to be refunded; it wd not suffer the Legatee to continue both Claims; if the Will is set aside, Mrs G. will be accountable for the Cottage, all the Assets she has received, to the Parties entitled in Distribution, therefore it is reasonable Mrs S. shd return the Writings before she is at liberty to prosecute the Suit.

Dr Wynne.. Supposing this a Lease for Lives, the Exr. wd have no right to retain it, & the Heir at Law wd have his Action; the Libel is not before you now, does not respect the Right of a Distributive Share as N. & K. but wch as such Mrs S. cancall on ye Exr: to prove in solemn form, having by the Receipt of the Legacy acquiesced under the Will. The Dr has not laid down the Doctrine of the Roman Law, that a Legatee