Causes of Office, the Promoter has given 20t Bond to pay Costs. All Causes of this kind are Plenary Causes; the Proceedings must be secundum Allegata & Probata. Presentments are ex parte Evidence. I hope therefore you will be of Opinion, that the Judge did right in ordering Stebens to give Articles; but wrong in rejecting Kirchmans Allog. declaring he had no right to appear.

Dr Wynn.....

The Party appearing before you, is Mr Hewit, no matter wh. of his own mere motion, or by request of the Parishioners; he comes with this impudent request, Prayer; "That the Minister who has that Living, worth near 300 pds: who receives the Tythes, & who by all Law, Civil, Canon, is reasonably, equitably bound to do the Duty of the pish, shd be admonished to come & perform it, or shew a proper Excuse; & that he may have the aid of the Bp, to obtain this Justice from his Minister: By the Ecclesiastical Law, it is not sufficient for a Parson to say, I have a Curate - Tho, the Cause assigned by the Dr for his non Residence, were ever so true yet Mr Kidgell now stands in Contempt; I hope it will not be thought too strong a word for me to use, if I say that the Bp is engaged, by the Intimation to enforce his own Monition: when the Cts: Wits are asked at the Visitation, whether they have the Personal Service of their Pastor, on their saying no, the Bp then, issues a Monition to enjoin Residence within 6 Months, else, says he, come, & lay the Cause before me, why you cannot, or why you shd not be deprived! if then the Judge was warranted in issuing the Monition, I dont know wh. we have not ex debito Justitiæ a right to the Effect of that Monition. This not material as to the Bp, which Evidence he had of the non Residence for the purpose of admonishing the Parson to reside, for if he had it only by hearsay, that he did not reside, or from the Information of any Person, or extra neros motus he wd have a right to issue a Monition: This is not like a Cause of Correction; it has nothing like reforming the manners, it is a mere Admonition & Command, to do what he is bound to do; he was not even directed to certify to the Bp that he had resided; he need only have come to Home, resided, there wd have been an end of the whole, he wd not even have incurred any Costs. This is the rationale of this Cause; I shall now submit to you, that neither a Sentence of B.R. nor the Writ directing the Sequestration, cd give Kirchman more right than Kidgell himself had, it cd be only conditional, for his Interest to continue so long, as K. shd continue possessed of the Living; K's Interest is defeasible, the Sequestrator's Debt then must be defeasible, it cannot prevent K's forfeiture: Kirchman had contracted with a Clergyman, he knew what his Title was, & that if his Debtor's Title failed there must be an end of his Debt; there is no hardship imposed on him: I think this is improperly called a Suite; it wants the first Requisite; there has been no original Citation; the Party was not bound to appear; he was admonished only to do his Duty, till he made a Cause of it by his Contempt, it was none - It wants that essential foundation Stone of a Suite, the original Citation. The personal residence of a Clergyman is a Duty enjoined by the Statute & Common, as well as, the Ecclesiastical Law; Prima facie he is bound to reside: the Bp says he does not, & orders him to come & shew cause why he does not; he might have made it a Cause, for he might have come, & said, I cant do it, or, I am not bound to reside, for such reasons of whose propriety the Bp is Judge: Can Kirchman shew Cause why K. did not reside; what right has he to intervene who cannot possibly obey the Monition; when Kirchman prayd Leave to intervene, there was a legal Appearance for the Party himself, who being before the Ct, what pretence cd this Creditor have to appear, not being the Party admonished, & who cd not do every wch K. was admonished to do, he therefore cannot be a Person to appear - I must observe that the Precept of the Ct of B.R. was to sequester the Living for the Payment of this Bond debt, but the Bp was not bound to appoint Kirchman Sequestrator. You as

the Ordinary having a Power over the Ecclesiastical Fees, are to get the man his Debt, the Ct might have appointed its own Officer, it was mere matter of Favor to grant the Sequestration to the Creditor, after it was granted the Ct might have veiled it & granted it to an other: a Sequestrator is the Creature of the Ct. he is a mere Bailiff. The Sequestrator cannot maintain an Action for Tythes, in his own name, at Common Law, or in any of the Temporal Cts. but only in the Sp: Cts: or before the Justices, where they have power by Law to take Cognizance. It the Case of Berwick, Swanton 1692 It was resolved in the Ext of Exchequer, "that a Sequestrator cannot bring a Bill alone for Tythes, because he is but as a Bailiff, accountable to the Bishop, hath no Interest." And in the Case of Jones & Barnett. 1724

"On a Bill by the Vicar of West Dean in Sussex agt the Deft: whom as Sequestrator, for an account of the Profits received, during the Vacation, it was objected for the Deft: that the Bp ought to have been made a Party, since the Sequestrator is accountable to him, for what he receives; the Ct seemed to think, the Bp shd have been a Party:" It is alledged that Kirchman, is not a mere Sequestrator, but a Creditor also, & therefore has a lien on the Estate; Kidgell may have been in fault, but says the Sequestrator, I have acquired a Right, I must be satisfied my Debt & Defeasance, can hold in general, even as to an Estate in Fee, wch is an absolute Property, much less with respect to a Benefice: Would it follow, because a Person happens to have a Mortgage, a Suite brought to evict the Mortgagor out of the Estate, shall stay till the Mortgage is satisfied; is a superior Title to wait? Suppose a Person has an Estate on Condition, shall not another enter for Condition broken, because a Creditor wd lose his Debt? Tho, the Labourer is worthy of his Hire, I did not understand that a Benefice shd be held absolute Property without any Duty done: it is defeasible many ways; by Crime, by Lapse, by the act of the Party, by the Effect of the Law, by the act of God: Would not Felony void the Benefice? nd not Kidgel voluntarily resign? Tho, it would depend on the Bp whether he wd accept such Resignation or not: I dont see why it wd not be as reasonable a Request of the Sequestrator, upon the Death of the Incumbent, for the Living to be kept vacant till he shd be paid his Debt! Suppose K. was to have another Benefice incompatible, cd either the Bp or the B.R. prevent the Resignation? No: it wd be void by Operation of Law, tho it may be ever so hard on Kirchman, he has only suffered the common Accident wch all Creditors must run: would it not be strange to say, that a Demand cd not be defeated by a Judge, if it cd be defeated even fraudulently by a Party's own Act - Courts always consider the Consequences their Judgments may have, & if the Sequestrator cd tye the Hands of the Ordinary, very bad Consequences wd ensue; the Parson wd confess Judgement in the Temporal Ct, where no Enquiry wd be made wh. such Judgement was collusive or not; a Sequestration wd issue to his Friend, & he wd thus retain Possession of the Benefice, set the Ordinary at Defiance, let his subsequent Conduct be ever so scandalous: How far wd this Doctrine go, how absurd! how dangerous to the Discipline of the Church! the Dr has represented the Sequestration like an Inhibition to reside, whereas, it rather virtually implies the Contrary, by the words "if occasion require!" wch occasion must be the Rectors absence, for cd the Bp doubt whether it was necessary the Cure shd be supplied! he only meant to provide in case the Minister shd not do his Duty: if he had chosen to reside, the Sequestrator must have made the same Allowance to the Incumbent, as he has to Mr Jackson - The Dr has said Kidgell may be getting his Bread at Dunkirk; how can that be, as a Clergyman, by his Order! he cant turn to any Trade, he has no way of getting his Living but by Ecclesiastical Functions; he cant officiate at Dunkirk even if he could, where cd he exercise his Ministry as in his own parish? where he wd have an Appointment from the Ordinary for serving the Cure: People frequently lose Debts by bad Security: If a Man lends money on Change-Alley Principles, he must look to the Security, he runs the risk: The Pish. have notwithstanding a right to that Degree of Duty, wch the Minister is bound to do by Law. The Necessity of Residence is considered & enjoined by the Statute Law 13 Eliz. c. 20. Sec. 1. wch enacts "No Lease of any Benefice or Ecclesiastical Promotion with Cure, or any Part thereof, not being impropriated shall endure any longer than whilst the Lessor, shall be ordinarily resident & serving the Cure of such Benefice, without Absence above 80 Days in one year." As to Articles, it seems the most inconformable Prayer imaginable, that where a Party has 2 modes of Proceeding, the Opponent shall direct which shall be used; if he had appeared on the Monition, & prayd to be