Instruct the Cause as to them, not as to the Merits, as they now stand: We appealed, then, in order to rectify the Mistake; it is a very different Case from what it was below. I hope you will think, we are entitled to a very different Sentence, wch will be no Reflection on that, in the first Instance. The usual Inhibition, Citation & Monition, have been decreed, issued, served, & returned, a libel of Appeal given in, & admitted. Issue joined: Bishop for the Appellant gave an Allon of 4 Articles, the first was rejected, & the other 3 admitted, they plead that till the present dispute, the Minister of C. always received Easter Offerings, from ye Inhabts of Wh: Tytheing & has frequently buryd in ye Chapel yard of St Os Chapel & received Fees for such Service: That the Tythes of W. are paid to the Impropriator of ye psh of C. that ye Parishrs of C. have for time immemorial gone processioning all thro. the Tytheing of W. to ascertain & note the same, as part of ye Boundaries of the psh of C. & that ye sd Tytheing, has been from time immemorial constantly deemed & taken as part of ye psh of C. that as such, the sd of the Manor of C. holds his Court Leet in the Tytheing of W. as being in, & belonging to the psh of C. wch the sd Lord is obliged to hold in the psh of C. That since ye Commencement of the Marriage Act March. 24. 1754. no marriage has been solemnized in ye Chapel of St Os Hospital; that before the said Act took Place no Marriage was had at St Os Chapel, unless by Licence, or where Banns had been first publishd, in the psh Church of C. On this Allon 14 Wns have been examined

Thos Hardwright. has lived 40 Years at C. always heard, understood, & believes that ever since his Residence there, the Tythes due from the Inhabts of Wh: Tytheing, have always been paid to the Impropriator of C. About 30 years ago he went processioning (with others) to ascertain the Boundaries of ye psh of C. at wch time, they went round the Out-Boundaries of Wh: Tytheing as part of the Limits of the psh of C. to the best of his Recollection, & ever since he can remember, the whole Tytheing of W. has been immemorially adjudged, part of ye psh of C. that the sd of the Manor of C. annually holds a Ct Leet for the said psh, in the Tytheing of W. & the Inhabts of sd Tytheing have been upon several Juries, at the said Court Leets. To 3 Interry. Believes the Minister of St O. for the time being, performs all Ministerial Offices & Functions to ye Inhabts of Wh: Tytheing, as Occasion requires: that several of the Inhabts within sd Tytheing, resort to sd Chapel, as ye proper Place for them to attend Divine Service at. To 3 Interry. never heard Easter Offerings have been collected, or received by the Minister of Cs Predecessors from any of ye Inhabts of Wh: Tytheing.

Wm Randall has resided in the psh of C. near 40 Years; has been twice a processioning to ascertain the Boundaries of sd psh, viz: abt 25 & 10 years ago. that they went round ye Boundaries of W. as part of the psh of C. has always heard & looked on the Tytheing of W. to be part of the psh of C. he agrees with the other Witnes, as to the Circumstances of Cts Leets Juries: about 8 years ago he served the Office of Constable for C. & served several Warrants on Persons living within the Tytheing of W. to 3 Interry. believes the Chapel yard of St O. was intended to bury the Poor men belonging to sd Hospital & if any other Person is buryed there, the Minister of sd Chapel is entitled to a Fee. for the Ground.

Wm Dyer speaks to processioning 33 Yrs ago. to Cts Leet & Juries, & that the Inhabts of Wh: Tytheing are summoned & fined for non Appearance. To 1 Interry.

He had 4 Children born, whilst he lived in Wh: Tytheing, who were all baptized by the Minister of C. who refused to suffer the Minister of St O. to baptize one of them, tho, the Resp: requested his Leave for that Purpose as a favour. he believes the greatest Part of the Inhabts of sd Tytheing during the time he lived there resorted to St Os Chapel, as being the proper Place for them to hear Divine Service

(N. Kent out of Ct & had not an Opportunity of noting the other part of Dr Marriotts Speech in the Opening.)

Dr Marriott & Calvert on ye propriety of reading the Exhibits Ad. B. C. . . . . .

We Object to Exhibit A. That no Copy can be exhibited unless it clearly appears the Original cannot be produced; & that the Book itself out of wch A. is an Extract not being transmitted, no Extract out of it, can with Propriety be used. We object to A. that it does not answer the common Rule of Evidence to be the best, that the Case admits of; & no Copy of any Original can be admitted, when there is nothing to shew, it is a true Copy: this Paper is not attested; there is no Proof that it is the Copy, of what it professes to be; & the Presumption will be, that it is not the Copy of any Record in a public Office, for it is the Custom in all Offices, for the Clerks to attest what they extract so that, had this been a Copy from the Augmentation Office, the Paper

would have been vouched; the Original Design never was to establish this as matter of Evidence, under this Circumstance of its not being vouched; Why dont they plead the Original & get a fresh Copy from the Augmentation Office properly attested; it wd be begging the Question, to say it is lost, they shd assign the Accident by wch it has ceased to exist: we cant be told this is a true Copy, because the Original did exist, & is lost, & that because it is lost, this Copy is produced; it Wd be arqueing in Circulo. There lies the same Objection of Incertainty to B. that it does not appear to whom, or from whom it was. It was not Evidence, at the time when it was written, because the Evidence of the Persons signing, &c. have been had: they shd be living Witnesses: the Credibility of the Paper, must arise from itself; no Place of Custody can give a Paper, a Degree of Credit wch it has not in itself. . . .

Judge . . . Dr Harris for Dr Hays. You have admitted the Authenticity of these Exhibits by your Answers, & as you have allowed the Book, I shall admit the Paper out of it, to be read & shall consider on the Hearing, what weight they ought to have . . . .

NB. The further Hearing was adjorned to Friday June 27th. . . . . .

Prerogative June 19. . . .

Lovegrove . . . . v . . . . . Lycett.

Altham — Dr Clarke & Calvert — Dr Harris & Wynne — Jenner.

Dr Clarke. Stated the Case, (wch see Fol: 157 Book B) & the several Proceedings, with ye Substance of Mr Lycetts Allon (q. vid: Fol. 51. & 72. . .) shewing how different the Pleas were from the Proofs; especially its being pleaded, that on Sept: 19. 1763 Decd declared to Mr Powell he had made his Will, & Lycett his Exor, &c. whereas on her Examon, she says, he declared to her, he had settled his Affairs to his Satisfaction. And declarations of Dr Hayes & Dr Battie are pleaded, expressive of Custody, the Decd being in bad hands, declineing to visit, because he had reason to believe the Medicines were not duly (administred as prescribed; & that Dr Battie said the Decd might recover, if taken out of the Hands he was in; whereas in their Examons, they absolutely depose the Contrary; Dr Battie expresly saying, he never was of such Opinion: their other Apertions are as weakly proved, nay are contradicted by their own Witnesses; to all these Pleas, we gave in Answer only a very short Allon, being willing to have heard the Point, on the Subscribing Witnesses only: I hope you will think, when the Evidence shall have been read, that our Proof is as full, as theirs is defective. We examined on our Condidit the 3 Subscribing Witnesses to our Will of Sept: 13: 1763: viz: Wm Keene & Ja: Payne, who was also the Writer of it; & on our Allon we examined Steph: Remnant Esq. M. Tucker. Aspin Taylor. Sarah Smith, Jn Hall, Susan Yous, Jn. Ford. Ja: Salwafer. Hus: Mespiker. Jos: Carell: Jn Andrews. Sarah Robinson. . .

Dr Harris. Restated the Case.

This observable, the Will of Sept: 13th, consists of 2 Sheets of Paper, very close written, yet Payne says he took Instructions for it, drew a Draft, & copied it fair in less than 2 Hours. he says Goodchild came to him with the Message, at 10 o'clock, & then he went to Lovegrove, who ordred him, to get ready in half an Hour, wch he did accordingly, & then went to Bray, near a Mile from Maidenhead, where he walked about the Gardens for some time, & then was called in by Lovegrove: He then took Instructions, drew a Draft of the Will, & engrossed the same; & Keene says, that at one o'clock, some Person came to him, & told him every thing was ready, so that the whole must have been transacted, in less than 2 Hours, wch is in itself incredible, considering the length of the Will & Draft, a Copy whereof is annexed. We prove by Ja: Pile pur: exam: on our 1st Allon, that he has heard the Decd say, Lycett was better than a father to him & he proves that Lycett was with Decd Sept: 12. 1763. when he appeared to behave very friendly to him; that Lycett was with Decd at Maidenhead Race time, beginning Sept: 26. 1763. Eliz. Stokes says she has heard Decd say, Lycett was the only friend he had in the World; & that he told her he wd send to Lycett to settle his Affairs. Pile Jun: to 16 Art: of ye Allon says he knows neither Decd nor his Father were ever admitted to ye Copyhold Estate devised by Decd to Lovegrove, so by the Custom of ye Manor he cd not devise it. Pile Jun: adds Decd knew he cd not give away the sd Copyhold Estate, as he had a good deal of Talk with him about it, & that he said, his Father cd not give it away, therefore it came to him; he says, he knew too, that the £100 said, in Lovegroves Will to have been lent by Decd to Jn Ford on a Mortgage, was lent many years since by Decds Father, as Decd himself very well knew. That Decd told him, as he did not think he shd be well enough to be at the Races, he had invited Lycett & his Wife, to come to his House a few Days, & welcome People who