Severe Punishment, in a different way, in a different Ct. He appears grossly negligent, nay in the highest degree dishonest to the Persons interested in the preservation of Wills - in another Instance, expresly ordred by the Canon, he has neglected to register Wills & Admons ever since 1761. he has been guilty of a gross neglect, in not attending the Ct himself, or if unable, by Deputy. I hope you will be of Opinion, that we have proved our Articles, & particularly decree a Monition agt him to deliver up the Seal -

Dr Collyer — We have given no Plea, as we apprehend; their are some fatalities in this Cause wch seems to be improper to be brought before the Ct. It is a criminal Prosecution, founded on a Penal Canon, as Actions are brought at Common Law grounded upon Penal Statutes, so he has a right to any peremptory or legal Exceptions at any time before the Sentence; he is to be bound to the very words, for wch reason we apprehend, we are not so properly before the Ct. He has refused Citations. Qu: may he not be justified in refusing? to be sure he might have been very civil, very easy in granting Citations, it is unaccountable, why he shd refuse, as he wd have had the Fees, but it seems, he did refuse, & the Qu: is wh he was justifiable in so doing? I must consider first, who is the Promoter? It is Dr Bever, as officiating Surrogate of Dr Spry; he says he was legally appointed, I believe he is, because he says so; I wd take his word: but tho I may believe it, that is not sufficient, as before you; it stands upon simple Evidence that there is such an Appointment; why is it not before the Ct or at least, why not an authentic Copy of that Instrument? it is said Dr Bever applied for ye Latter, & was refused; why then was not your Authority prayd for a Monition to this man to transmit an Instrument, so necessary to lay before the Ct the whole Cause rests on Dr Bevers Appointment: it is a criminal Cause, strict proof is required; whereas it rests on the hearsay of those, who heard it read: mere is a Belief that Dr Bever was appointed, but mere is not a judicial Belief: where an Instrument can be had, it is the Law of Evidence, that being pleaded, it must be before the Ct. it cant be supplied by Parole Evidence, (the Instrument must speak for itself; there might arise a Question in favor of my Client, on the face of the Appointment itself: it might not have been stamped, it might not have been duly signed; these wd have been legal Objections, of wch the Ct cannot judge without seeing the Appointment. My Client was excommunicated, he submitted, & under the Absolution, he saves all legal Exceptions: suppose he shd have incurred all the Penalty of the Canon; what does that Canon say? why, that the Party offending shall be suspended by the Bp of the Diocese for 1. 2. 3. Months, or more, & that during the Suspension, he shall appoint some other Notary to act: Hence will arise a Matter, wch I must submit to your Consideration, that we are not now before the proper Jurisdiction: the Bp. of the Diocese alone can punish by the express words of the Canon; if the Bp. on full proof of the facts, was to neglect to punish? they shd come properly before you on Appeal; but on the face of the Canon, the first Sentence must be pronounced by the Bp. Suppose a Penal Statute was to say, an Offence was to be punished by 2 Justices of Peace, &c they refer it to the Quarter Sessions? no certainly it wd be a good Traverse; so, I apprehend the Words of ye Canon must be construed strictly, & that you are precluded by those Words, & that no Requisition can justify, your taking Cognizance of the matter in the first Instance - the Dr might have certified to the Bp, who wd have taken Cognisance of his Complaint, he might have articled agt him, for every Bp has an Audience, & may have a Cause by Prevention, the delivery of the Seal by Dr Spry to my Client, might have been sufficient without a special Appointment; when Dr Bevers Appointment is exhibited, you may issue a Monition to deliver the Seals, if you have Jurisdiction; the Law on the Duty of Registers is laid down in Maranta Omnia actaue Dummodo &c. Pta. Tit. 6. N. 19. 47. that there are 2 limitations. i.e. there must be the Mandate of the Judge & 2dly. the Money must be paid - Does there appear to have been the Mandate of the Judge, in any of these Cases? is any thing laid before the Ct to shew, he was required by the Judge & refused to issue a Citation; a distinction is to be made between the Judge in Ct & out of Ct. If the Parties applied & the Judge ordred it verbally, the Registrar is bound to issue it, but without the Judge's Order, the Registrar is not bound: the Faculty is said to have been dearced, it was to be made out, does it appear the Dr ever ordred it to issue? Offering the Fees is not sufficient; he gave some Citations, I suppose, when paid; for others he asks money in part of payment; he makes Excuses, gives Reasons for not issuing others

He says, when applied to for Admons, you must have a Special Commission to swear the admor: the Offer is nothing, the money must be paid, he insisted, in many Cases, on the Money down, he had a right to it by Law - On these Objections, without going into the minuter parts of the Depons, I rest the cause: all the other Exceptions will be included in our general ones, of the Instrument appointing Dr Bever, Surrogate to Dr Spry, not being exhibited that by the express words of the Canon, there is no Jurisdiction in this Ct wch cant be founded till the Cause has been before the Bp. that he is justified in his Refusals, till he shd be paid his Fees: I own, I myself cd wish he had behaved more respectfully, but being prosecuted on a penal Canon, I apprehend you are strictly bound to conform to it, & that he must be dismissed from this Suit.

Dr Harris... The Dr has been so candid to say, he will not argue up Hill upon the Evidence; Delay alone is sufficiently culpable; if then there was a Delay, tho, the Instruments did issue, & this there clearly was; his denying himself, renders a public Officer liable to your Censure: a public Person takes upon himself to be diligent, to expedite Business; it is a Duty to the Public independent of his own Benefit resulting from the neglect. It is a maxim of Law, well known "Prohibetur ne quis faciat in suo, quod nocere possit in alieno" & "Sic utere tuo, ut alienum non lædas" the abuse even of a mans own property is forbid, so that you wont suffer a man to act not only agt his own Interest, but agt that of other Persons, & also agt the Judge's: it was said, the Appointment of Dr Bever by Dr Spry does not appear; there is a sufficient constat of the Existence of such Appointment; it is in proof; Greenway has acknowledged the possession of it: a Registrar is bound to give a Copy of an Instrument, on demand without the Order of the Judge: But this man has not obeyd the Judges Judice mandante, he has not granted the faculty; & tho many Processes the Dr seems to forget, they are ex debito Justitiæ, not ex meræ Gratiâ; this man was not only offered the Money, but has actually got it, & yet has not issued the Citations, he falls therefore under both Limitations laid down by that Great Lawyer - As to the reason alledged why the Appointment shd have been exhibited, to see wh it was duly stamped: if it was not, the Act is not thereby invalidated. In Fanshaws Case wch came by Appeal from Coventry, the Appeal was not stamped; on Exception taken Sir Geo. Lee, determined it was not an Error in limine, that there is a Penalty by the Statute, but the Instrument itself, is as valid in Law, without Stamps, as with; As to the Application to the Bp, it might perhaps have been done in that way, but it was not necessary It is to the Honor of Dr Bever, that he has prayd Requisitions: the Chancellor has given up his Jurisdiction, he acts for the Bp; if it had not come hither by Requisition, he wd have given Sentence, tho the Bp wd have enforced it: there is another Canon wch says the Bp shall deprive a Clergyman, for certain Offences; Suppose a Minister in the Diocese of Worcester, had been tried on that Canon, the Chancellor wd have pronounced him to have incurred the Penalty, & the Bp wd deprive but if appealed before you on any incidental Point, before the Cause shd be ripe for Sentence, & you shd retain the Cause if you thought him deprivable, the Bp wd not deprive, you wd do it, as having larger Powers in your Patent than any Chancellor of a Diocese -

Dr Wynne... I dont understand Qs Appearance, saving his Right to except; a Party who protests, if his Protest is overruled, is ordred to extend it & appear absolutely; Q. did so, appointed a Proctor, & did not pray to be heard on his Protest, therefore church, if Q. wd benefit himself by it, he shd have produced it: the Dr objects to the Jurisdiction in the present Case, yet allows it on Appeal; but by law, where an Appeal lies, Letters of Request lay; Justice might otherwise happen to be defeated, Suppose the Bp himself interested, or the Judge a Capital Enemy; By Letters of Request the Power is delegated to you; I dont know why a Certificate might not be given to the Judge to execute the sentence, in point of Form if that was necessary -