Dr Hay Judge ....

This Ct having accepted the Letters of Request, is the proper Place to determine this Cause, if I had not, the Archdeacon of Berks, the Chancellors of Salisbury & Oxford might have taken Cognizance of it - Dr Bever as officiating Surrogate to Dr Spry was bound to complain of an Officer in his Ct neglecting his Duty, if Dr B. had omitted to make this Complaint, the Rights of the Solicitors wd have been hurt by his Silence; a Charge of neglect of Duty is certainly a criminal Cause, & shd be proceeded in with great Caution; any Objection to the Regularity of Proceeding, if proved, will be fatal, & the Defts may avail himself of it, to repell the Charge - The first Objection taken by G's Council, is to Dr B.'s Appointment by Dr S. but there is that wch effectually made him a Surrogate, the Appointment is proved to be lodged in the Registrars Hands who dont deny it; It is one of the Articles of the Charge, that he is possessed of the Appointment, & refuses to deliver it, tho repeatedly requested by Dr B. so to do - All appointments are duly registred, & the Originalls usually delivered to the Patentees; the Appointment was delivered to G. & whether he has, non constat - To be sure G. may avail himself of any Irregularity; as he has neglected to bring it in, shall he be now admitted to the Objection, when he possesses the Appointment & cd shew wh. Dr B. was legally appointed or not; he has Done Acts under Dr B. as the Officiating Surrogate, it is therefore to be presumed, & lies on the Registrar to shew he is not, I am of Opinion Dr B.'s appointment is sufficient, as Acting Surrogate, he has an equal right to come here with Dr Spry - The next Point is, wh. the Registrar is not very culpable, in refusing to deliver the Seal; non Constat how he became possessed of it: It is highly improper the Registrar shd have the Seal, as there can then be no Check on him - 124th Canon directs the Seal shall be in the Custody of the Judge or somebody for him - It is very unfit the Registrar shd have it much more retain Possession - As to the Jurisdiction, I dont understand what Canon directs the Punishment to be inflicted by the Bp excepting Canon 122. in cases of Deprivation, for there, the Bp must negatively be called in, but he has no right to interfere in the Cause wch leads to the Sentence; It was so in the Case of Sir Samuel Bickley Bt Vicar of Bapchild in Kent before Dr Simpson Official of Canterbury sentenced to be deprived for Sodomy; the Dr decreed what ought to be the Sentence, & the ABp of Canterbury went down to pronounce it - The Bp has no judicial power to interfere in his own Ct. in criminal or other Matter; the Law dont know him there, but by his legal Officer; If there cd be any doubt, as it comes to me by Letters of Request, I am authorized to judge as fully as the Judge a quo - As to the 3d Objection, I am of opinion with the Council, there is sufficient Proof of the Judges Request to G. & the Fees having been paid him; His Behavior seems to deserve Compassion rather than Punishment; I cd wish a milder Way might be taken, but I must do what is legal; I will lay him under a Monition to bring in the Seal, & to enter the Wills & Admons wch have been neglected to be entred from 1761. & to certify the Archdeacon by Dr Bever thereof under pain of excommunication, I shall do this ex Officio, for in that particular I am bound to do more than is asked; The Canon directs Suspension; & I know a Case of Bridgen prosecuted for marrying 2 Persons one a Minor without Consent of ye Parent, who prosecuted on the Canon .... wch directs expressly 3 years Suspension wch the Ct cd not vary, tho, they pitied the Case, & deliberately suspended him for 3 Years. I know Dr B. means to do Justice to the Office. I admonish G. to deliver up the Seal by June 30th. & condemn him in full Costs. ✗

Greenway } appealed - { ....

Sess. 1 Trin. Feb. 8. 1770. a Monition was decreed agt Greenway to permit Walsh to have free access to ye Registry on every day, Sundays & Holydays excepted, under pain of deprivation 15 M.T. 1769 the Mon: was returned with a Certif: on Oath that G. cd not be met with, & a new Mon: to same effect by ways & means was decreed, ret. 3 S. with a Certif: on oath, of Execution on ye Office Door, & on ye Door of G's House - The Judges for his neglecting & refusing to perform ye Duties of his Office, & his Contempt & Disobedience of ye Rules & Orders of ye Ct, deprived him of his Office of Registrar, with Costs -

✗ The Delegates affirmd ye Sentence of ye Arches in every Particular, with additional Costs in the Superior Ct. G. not complying with their Decree. Wednesday. 4 May 1768. The Certificates of ye sevl Monitions issued in ye Ct. below agt Greenway are contind as is ye Certificate of ye Monition to be brought in, ye whole of ye Matter directed by ye Judges not complied with by G. is referrd to ye Consideration of ye whole Commission. Fountain exhd Monition for Costs with Certificate of Execution, with an Excommunication embodied therein, & a Certificate of ye Publication thereof for G's Contempt in not payg ye Costs taxed in this Ct. - F. also porrected a Schedule of Excommunication agt G. for not payg ye Costs taxed in ye Ct. below, pursuant to a Monition executed on him. Bargrave exhd Attestation of Jos. Goodenough, by way of Certificate, yt ye Wills were registered to 15 March last, wch was read & objected to, as not full - F. again alledged, G. had not delivered up ye Seal as directed, & prayd he might be punished for his Contempt; the Judges signd ye Schedule porrected by F., decreed ye Excommunication to be published, & by Interlocy Decree suspended G. from the exercise of his Office for 3 Months, if he dont deliver ye Seal to Dr Bever in a Week from hence, & if he does deliver up ye Seal in a week, ye Judges do now suspend him, unless he also exhibits a fuller

Arches
Bye Day
June 23

No 78

Brown .... v Hemsworth & Arnoll als Arnott .... Petition.

Longden .... Dr Bever .... Dr Harris .... Goodwin

Dr Bever ....

Berry Duncomb of St Martins le Grand, in the psh of St Leonard Foster lane, by Will nominated Jeremiah Hemsworth & Rowland Arnoll als Arnott Exors, & inter alia bequeathed Anne Brown, one of the Parties a legacy, viz.: "And as to such of my Cloaths, or any thing else I die possessed of, I give & bequeath to Anne Brown " Spinster, now fellow Servant with me, except my Tortoishell Tobacco Box " wch I will & bequeath to Jn Trenley, Farmer, at Denham Bucks." After Testator's Death viz March 1764. both Exors took Probate, & possessed themselves of the Decds Effects. In Decr last a Citation issued under Seal of this Ct in a Cause of Legacy, at the Instance of said Anne Browne agt the Exors 1 Sess. Citation was returned - 3 Sess Arnott was decreed excommunicate for not appearing, - The Purport of Goodwin's Petition is, that his Client tho, Exor no otherwise intermeddled than by taking Probate, he endeavours

Certificate as to objected agt him in ye Articles, ... Is. porrected a Bill of Costs, wch ye Judges taxed at £27. 7s. made. Oath as usual - Monition with Excommunication embodied for payt in 15 Days, not to go out in 15. ....

The Registring ye Wills, ye he hath registred all ye Wills from ye Time mentioned into this Day by Session of next Term, & condemnd G. in Costs.

to support it by an Affidavit of his Client I.H. therefore prays to be dismissed - Longden in answer says A.B. delivered to I.H. the Day after the Decds Death 20s & upwards, & several things of value belonging to Decd; this he has supported by an Affidavit of Anne Browne & Edw. Capper, therefore prays the Effect of his Citation, & hopes it will be enforced with Costs -

Dr Harris .... stated the Case on his Side.

Dr Hay Judge .... you are proceeding on Affidavits, in a Cause of Legacy, which is not the usual method; the Exor should regularly give a Plea to shew why he is not liable. how can I hear a Cause of Legacy in this Way?

Dr Harris .... you may hear it on Affidavits where both Parties agree; Longden has answerd Goodwin, & is thereby Bound.

Dr Hay .... The Consent of Parties cant alter the Mode of Proceeding, it is not usual or legal to give Affidavits in the material points of the Cause; you cant make a Plenary Cause, summary; Petition rejected

Arches
Bye Day
June 23.

No 79

Bogg .... Compton .... v .... Bearcroft .... Major

Drs Harris, Wynn, Burrell .... Dr Calvert .... On Admission of Majors Allegation

Dr Calvert .... This is a Cause of Jactitation, brought by Mary Catherine Bearcroft als Compton agt Edw: Bearcroft Esq. Major for Mrs B. confessed the Jactitation, & otherwise contested Sute negatively; We are now before you with an Allon offered by us, pleads the Ctship, & Marriage - Art 3. pleads the Marriage in the English Chapel at Dumfries according to the Rites of the Church of England -

Dr Harris .... It is not allowable to bring in a Certificate of a Clandestine Marriage, in such Case you will not allow the Register to be proof in England - See Institutes of the Law of Scotland p. 112. Edinb: 1751. See Stat: 1 Car. 2. Scots Acts 1661. agt Clandestine marriages. Persons married in a Clandestine way, in Scotland are to be imprisoned 3 months -

Dr Wynne .... no Person by Law is authorized to give a Certificate; here is no Proof of it by ye minister of the Parish; Even in Fleet Marriages, when they pretended to produce a Register the Ct rejected it, because it was kept by Infamous Persons; on the face of this Certificate it is no Evidence

Dr Burrell .... The Ct will not I am sure depart, in this Case from the constant & uninterrupted Practice, or receive that for Evidence now wch has been always hitherto rejected. In the Case of Small by his Guardian v Spence. in ye Consistory The Certificate was not allowed to be pleaded tho, signed by the Party married as well as the Parson -

Dr Calvert .... As to the Case of Spence & Small, it was a Clandestine Marriage, laid to be solemnized at a Public House at Edinburgh, therefore clandestine on the face of it - As to the Law of Scotland, it must be specially pleaded, it is foreign Law, not like the Law of England; We have pleaded this Marriage in the usual manner this dont appear to have been a Clandestine marriage in Scotland: I know no Paper can be received without Oath; we dont produce it, as in itself authentic, we shall establish it by Witnesses: you will take what can be produced; this is very different from the Fleet Certificate, wch cd not be received the Register itself not being allowd as Proof; this is laid to be in a Chapel at Dumfries.

Dr Hay Judge .... I remember many Cases of Certificates from Clergymen, of clandestine Marriages have been refused, but they have been differently pleaded, in Supply of Proof Here it is laid to have been regularly solemnized at Dumfries; The Paper is exhibited not as a Certificate, but as a Paper signed by R. Jameson the minister & attested by 2 Witnesses, at the time of the Marriage; Suppose R.J. shd deny the Paper, or be tampered with; this shd lay before the Ct, it might then be of Use: I shall be particularly carefull in shutting out any Proof for a Scotch Marriage, the validity of wch has not yet been determined; the Episcopal Church, is in some degree tolerated there by Law; this is not a Clandestine Marriage by the Plea, wch states it to have been solemnized in an Episcopal Chapel; this Exhibit is not offered in Supply of Proof of the Marriage but of the Collateral fact that such a Paper was signed at the afd Time Westcomb & Dobbes they were married in a Public House, it was pronounced for on slight Proof, the Parties having lain together 2 or 3 Nights, & that by the Law of Scotland such Cohabitation is sufficient; if the Parson & Witnesses were dead it wd be clear beyond a doubt; if this Exhibit cant be received to any purpose it shd be rejected - In a Fleet Marriage the Extract from the Register is not received, because it was made by a Person who is not credible, & the Book was not Evidence; as the Course of the Ct has been, not to admit Certificates in supply of the Proof of Marriage, I wd have it uniform, therefore I admit that part of the Article wch pleads the Marriage. I reserve the latter part of ye 2d all ye 3d Article & Exhibit therein pleaded, & wd have the Blanks supplied in the 4th Article. ....