ws sufficient; I know none stronger than the Right schrup by Mr Taylor no doubt in administring the Sacrament in St J's Chapel, he has done what the Law allows. The general Law is, that no minister shd be interfered with in his Duty; as this appears in the Cause to be fully proved, on wch account Mr Taylor must be censured; I shall therefore reverse the Sentence given in the Ct below, admonish Mr Taylor not to do any Duty, out of his own Chapel & Precincts, for the future; As to Cobb, the Registrar will report them, & I will consider thereof & tax them moderately, the Christening being in some degree a case of Necessity. . . .

Prerogative
July 1. . . . .

Collins for H Stevens jun^r.

Nº 83

Hull . . . . v . . . . Pope . . . . . Fountain

Dr Wynn . . . . . Dr Harris

Dr Wynn. . . . .

Wm Hull late of Meer in Wilts, died a Batchelor, leaving Geo. Hull his Bro^r & other Relations. after his death Judith Pope, Spinster, obtained a Probate of a pretended Will, dated Sept^r 18. 1765. as sole Exec^x. Citation issued agt her to bring in the Probate, prove by Witnesses, or shew Cause why it shd not be revoked. Decd pronounced to have died intestate, Admon granted to Geo Hull, & to exhibit an Inventory on Oath. at y^e promotion of Sd Geo Hull. March 22. Fountain app^s for P.P. 2 Sess. Dr Fountain brot in Probate, exhibited Proxy & contested Collins Clients Interest. C. opposed & P. propounded y^e Will, & opened the grace an Allon. 3d Sess. P. assigned to exhibit all Scripts. 1 Sess. Dr P. when P. prayd further time to give his Allon, & new Commission for Scripts. 3d Sess. P. brot in the Commission with Affid^t of his Client & Scripts annexed. 4 Sess. C. alledged P's Affid^t of Scripts not full. The Obj^n to the Affidavit as not full, is in respect to the 2 first Wills, wch Mrs Pope mentions as cancelled, without saying how, or in what Manner, or wch they are now subsisting, wch she ought to do; if subsisting, she shd bring the same in, for as 4 Wills were made in so short a time, it may be very material to see what were the Contents of the 2 first, that, before the Allon is debated; but if you shd think the Affid^t full, it is submitted wh^r the Allon, makes out an admissible Case, for if the whole is proved it will not be sufficient to found a Sentence for the Will propounded of the 18th of Sep^r 1765. wch Mrs Pope admits in her Allon, the Testator executed a Will Sep^r 21. wch expressly revokes all former Wills, consequently that now propounded, & the only pretence of any thing done to revive it, is a Declaration made to Glover, as pleaded in the 3d Article, wch if true d^o not revive the Will of Sep^r 18. wch d^o be only done by some solemn act of Execution & Republication —

Dr Wynn. . . . .

The first matter therefore respects the fullness of the Affid^t of Scripts. Pleads in the Act. there are 4 Wills, the first is dated Aug^t 1. 1765. the 2d Aug^t 31 1765, when the first was cancelled — a third Sep^r 18. 65. wch is now propounded wch that of Aug^t 31. was cancelled; the 4th. of Sep^r 21. 65. wch is said to have been afterwards cancelled, & is annexed to the Affid^t of Script. the other 2 she says she knows of, but gives no account of them in her Affid^t & brings only the cancelled Will of Sep^r 21. 65. ×

Dr Harris. . .

The Affidavit appears full, the Dr has not read the latter part of it; Mrs says she is only informed, & believed those Wills were cancelled; but adds in the latter part, that no such Papers have ever come to her Possession or Knowledge, save the 4 Wills afd. She speaks to the 2 first merely on Information, does it follow thence, she is possessed of them or is evading whatever the Ct may think of the Affid^t you will hear our Allon, you wont delay the Cause in this State, merely because there has been some little Slip in the Affid^t These Affid^ts are to be construed favorably, it really does appear strange, a Man shd make so many Wills in so short a time if he was in his Senses

Dr Dyne ×

Collier says the 2 former do subsist, but tho, she says they are cancelled she does not say how, as she does of the last, she ought to bring them in as well as that of Sep^r 21. this is a very extraord^y Case; a Man in y^e Course of 3 Weeks, makes 4 Wills: it may be material to see who is the Exor in y former Wills; she is Ex^x in the latter, it may be essential as

the Hearing; she gives no Account in whose Possession they are, or how they were Cancelled; for any thing that appears, the 2 former are in her Possession, probably as Ex^x the Word, destroyd" thro wn ase in her Possession, probably as Ex^x the Word, destroyd" thro wn in at the end of the Affid^t must refer to the word Cancelled" to the Papers may dd exist, tho cancelled; it is not such a Paper as will entitle the Party to proceed —

Judge Dr Hay. . .

an Affidavit of Scripts shd account for every Testamentary Paper, that comes to, or is in the Possession or Knowledge of the Party who makes such Affidavit: Wh^r the Paper be a subsisting Paper or not, tho' may be made even of cancelled Wills; she says she believes he made 4 Wills, she brings in 2 of them, the last cancelled, but does not expressly say wh^r the others were destroyd, & wh^r by Cancellation; they may subsist tho, subsequently revoked, but if they still exist, they ought to be brought in, under the Affid^t in the latter part of wch she swears no Paper as has come to her Knowledge save the Papers brought in, the other 2 Wills, now from hence, shd suppose she was in possession of the 2 first Wills, & thinks she need not bring them in, tho the Wills may be destroyd by the subsequent acts of the Testator, yet she shd bring them in, if they are in her Possession, or shew they do not exist. The Affid^t is not full, I am clear however that shd not stop the Allon, wch dont depend on the fullness of the Affid^t all Papers shd be before the Ct. She might consider the Papers as destroyd & unnecessary to be brought in, being cancelled by the Deed. this the Tenor of other Affid^ts seems to imply, the whole Vacation shd not be lost for examining Wit^s on the Allon, wch shd not be retarded, therefore I will hear it —

Dr Harris. . .

The first Art: pleads Instructions & Execution, that Deed said to Glover, do you keep the Will till you hear from me, if I die before you shall see me again, destroy the Will of Sep^r 21. & said the Will of Sep^r 18th. shd stand: the Qu: therefore is wh^r such a Declaration can revive the Will of the 18th of Sep^r without some solemn Act of Execution & Republication? I shd think the Destruction of a latter Will, d^o revive the former to all Intents & Purposes, So speaks Swinburn, Sect. 584. Title of later Testaments; a Declaration is expressed in the Institutes to be a revocation, & in the case of Venner & Hue. a Declaration was looked on as sufficient for that Purpose.

Dr Wynne. . . .

after reading the cancelled Will annexed to the Affid^t of Scripts, Said, It appears to me that the Case stated in the Allon is inadmissible being such an one, as cannot, (if fully proved,) establish the Will of the 18th of Sep^r they try to establish a Will agt strong revocatory words; Deeds Directions to Glover are very strange, the Will last made shall not stand" now whatever the Deed or Mr Glover might think, the making the Will of Sep^r 21. entirely cancelled that of Sep^r 18. as much as if it had been torn or otherwise destroyd, & by the Act of Glover & Deed the latter Will is as much cancelled as if it had never been made, for G. says he destroyd it by Deed's Order. G. says after he had so done, Deed says to him that Will shall stand, meaning the Will of Sep^r 18th, by this Plea, they mean a Recognition; I object that Declarations alone will not operate as a Republication, will not revive a Will without some Act done by the Testator, they plead Deed had the favorite Will in his own Custody, yet never said where it was or pointed it out, wch Circumstance makes it more necessary that some Act of Revival shd be produced. See the Case of Davis & Evans. P. Prog: Dec. 3. 1753. ×

N3 See Vol. 194.

Dr Hay. Judge. . .

If I am right in point of Law this Allon ought not to be admitted . . . . & . . . . . at the time Deed makes the Will of Sep^r 21, he seems not to think it a subsisting Will; he says, if I shd die before you see me again the Will of Sep^r 18th. shall be my Will: I am very far from being convinced of the Rule of Law laid down by Dr Wynne, wh^r it will obtain so far; & therefore I think the Fact must be before the Ct, before a Point of doubtfull Law should be determined, & no Objection being made to the Allegation, I shall admit it as pleaded. . . .

× Dr Harris nothing is more common than to say with of these Wills do you intend shd stand? a Declar^n is sufficient. Swinb. 5 Sect. 24. If A presents 2 Wills to a Testator, asks him, wch shall stand, & y^e Testator takes the first, that stands: If not a declaration, an act? Judge the last. Case I remember is Stelyer. Dr Wynn say I am bound to admit a Plea, if the Law as they stand on this Plea —