Dr Collier.... It is notorious, that this Passion, is the last which leaves Old Women, Is it at all surprizing an old Hag shd want frequent Brushing? I dont rely on the Objection, I stated at the Outset; both the Cases cited, had corroborating Circumstances attending them, this stands unsupported; the Womans Confession depends on the Evidence of the Boy, whose Account is only hypothetical, viz. "If it was so &c then &c. The old Woman when provoked would say any thing; there was no Compunction of Conscience, it was only a Passionate Quarrel between Husband & Wife. The Confession connected with other Circumstances, might do, but she does not solemnly confess it; they have not examined to the general dewdness laid in the Article; where a Person bears Evidence agt himself, his Evidence is repelled; wh.r the Money is received or not, it is clear he has been tampered with; it is not necessary to offer 5t to a Boy to speak the Truth, he bears Testimony to his own Turpitude

Dr Harris... If the Evidence of a Particeps Criminis is admitted, he must depose to his own Turpitude, the deposes to two Facts, it is not necessary to enquire wh.r he understood the meaning of Carnal Copulation, he swears to it; he has received, & expects to receive nothing, therefore he cd not have the Reward in Contemplation

Judge.... This is a very particular Case, after a Cohabitation of more than 40 Years, the Man commences a Suite agt his Wife for Adultery committed with a Boy of 17. I must consider what Proof is brought of the Fact; if the Boy is to be credited the proof is full, there is no doubt as to the Admitting the Evidence of a Particeps Criminis, full Credit is given thereto, if it is supported by other Evidence; unless supported by Circumstances & Evidence I know of no Suite in this or any other Ct, where such a Divorce has been pronounced for; I do not think the Words deposed to can be deemed a Confession of the Party; Words spoken in such a manner & under such Circumstances, cant be a Confession of Guilt; others speak to the Declarations of the Confession, but not to such Circumstances as will support a Confession of Guilt; the Boys Confession to another will have no more weight, than his Evidence; he founds his beleif on Rupsel's Declaration, not on what he saw; Harrisons beleif arises from seeing Rupsel leaning on the Bed; he dont say, he thought Rupsel then had carnal knowledge of her; there are no Confessions, wch amount to an Acknowledgement of Guilt, of the Woman, to confirm that of the Particeps Criminis, in Short, no Circumstances to found a Sentence of Divorce . . . .

Commissary of Surry. 3d Sess

Nº 98

Maplesoft & others agt the Rector, Churchwardens & Parish.rs of Chertsey in Special & all others in General.

Grene — Dr Wynne & Bever — Dr Calvert & Burrell — Collins.

Grene petitioned to have Commissioners appointed to survey the Church, at the nomination of the Judge & to make their Report to the Ct. Collins opposed it on the Part of his Clients & produced an Affid.t of Kenton Couse, who says he has been to survey the Church, but having no Plan, is unable to form a Judgement what Damages will arise from the Alterations proposed, tho. he is well assured it will be attended with some .....

Qu: Wh.r y.e Judge shall name Com.rs to survey & report one of the Ptes objecting.

Dr Wynne.. The Opposition was on the usual Plea, of want of Room, & inconvenience to the contending Parties; Dr W. stated y Proceedings in the Cause; Nothing can be more proper, than our present Prayer, wch is, to satisfy you as Ordinary, & to enable you to form a Judgement

of the Fact, by indifferent Persons; the Opponents controvert this Prayer, & say they have a right to give a Plea to examine Witnesses on the Fact, & to induce you to come into their Opinion, have produced the Affidavit of a Man, who says, he could form no precise Opinion for want of a sufficient Plan; I dont see the Benefit that wd have accrued, if he had been furnished with the Plan he wanted, for however positive his Opinion might in such Case have been, it would have been only ex parte; as to the Allon & Proof by Witnesses, it will be mere Matter of Opinion, insufficient; they will get a number of Workmen, & those they find unfit for their Purpose, will not examine; but whatever shd be deposed will be private Opinion, no Satisfaction to the Pt. a Commission must go at last; the Opponents Prayer is litigious

Dr Bever.... It is the mutual Interest of the contending Parties, that Commiss.rs shd be appointed by authority of the Ct; the Opposition is merely for delay, they will find Persons, who are ready to favor the Opinion they are examined to support; their Affid.t is more to our Advantage than theirs; they might have applyd for the Plan, & the Ct wd have ordered it; Mr Couse does not speak positively...

Judge.. } Dr Harris.. } A Cause of this nature, is very different, from a Dilapidation Cause, in which, was a Commission ever deemed without the Consent of all Parties? Was the Canon (wch hints at such Authority) ever put in practice? there is no law to authorize the Judge to do it; as to the Delay, Mr Grene may thank himself. the Affid.t is not full, & therefore to be disregarded; Mr Collins has said he will plead; I dont sit here to preclude; I can assign a time for the Allon to be given; & shall it stand precisely for the Bye day, I understand the word strictly, & if it is not ready, shall proceed as if no Allon had been offered to be given

N.B. The 4th Allon was admitted on the Bye Day except the 4th Article . . . . .

Arches 4 Sessions...

Nº 99

Hobby Administratrix of Taylor v Duncan al Taylor

Appeal from Hereford.

Qu: Did the Judge right, in refusing to decree an Inventory & Acc.t at the Suit of y next of Kin

Grespigny & Grene — Dr Bever — Dr Wynne — Stevens

Dr Bever.... I am Council for Frances Wife of Wm Hobby, Sister & Administratrix of Priscilla Taylor, Daughter & one of the Resid.y Leg.s of Rob.t Taylor of Kington in Herefordshire. April 1760. Mr Taylor made his Will, & directed an Inventory to be made of all his Goods, such part to be sold, as was necessary to pay his Debts & funeral Expences, the Overplus to his Wife for her Life, & then to be distributed in equal portions amongst his 3 Daiters, Francis, Priscilla, & Elenor Taylor - he died in 1762. Elenor T. proved the Will & then married Alex.r Duncan; 13 April 1765 Citation issued from the Consistory of Hereford, agt her, as Exec.x at the Suite of Francis Hobby Sister & Admin.x of Priscilla Taylor Decd, to exhibit an Inventory of the Goods of Rob.t Taylor Decd - The Proctor, Johnson, appeared under Protest for Mrs Duncan, & alledged, she was not obliged to answer the Citation, because the Effects were vested in her by the Will, & her Property, therefore prayd to be dismissed, to this the Plt demurred & the Judge after taking time to deliberate, dismissed the Deft without Costs, from this Sentence, the Plt appealed; you will observe the Cause is barren of Documents to instruct the Judge; we have therefore been obliged to exhibit the Will & Admon Act, Stevens has confessed the Subscription & Identity, saving any Exception to the Admission of it as Evidence.

Dr Wynne... This a Cause of Inventory, in the first Instance, heard merely on Protest; in an Appeal from a Grievance, no Notice can be taken of these Papers.

Dr Bever... You will observe, Sir, extraordinary Irregularities in the Proceedings; I. to determine on the Credit of the Brothers Assertion