Pursuance of a message he received from the Decd, who was then ill in his Couch in the fore part of the said Ship, he went to him, & Decd then desired him to make his Will to some Person, but whom he cannot recollect, tho, he thinks, it was to his Father; that he accordingly made a Will for him, which Decd approved of & sat up in his Couch & executed in the presence of himself & several others belonging to the said Ship, but whom, he cannot recollect now, Dept. then took said Will to Captain Grant & Mr Powell who signed the same, but not in ye presence of the Decd, nor did either of them see the Decd execute the said Will, that the Decd was very sensible at the time of the Execution of the said Will, & that the Will in favor of John Healey, is the Will by him predeposed of.—

Now, tho, Gudgeon is mistaken, his Errors, are not so extraordinary when we consider that most of the Wills executed, on board Men of War, are witnessed by the Captain & Officers, in the manner he has stated; & when we recollect the number of Wills made by Captains Clerks, & their Assistants, it is not at all surprizing they shd not recollect, the particular Circumstances attending each Transaction, or that the Will in question was executed differently from the rest, which Powells Evidence clearly shews it to have been — Besides Gudgeons Memory appears very defective on other Occasions; for he says, to the best of his Remembrance the Testator died in March 1764, whereas he did not die till the 26th of June following; Upon the whole we hope you will think the Execution of the last Will sufficiently proved, & decree us the Probate thereof.—

Dr Hay Judge } The first Will was made in view of an Engagement; It was a Transaction between Sailors who probably agreed to give their estates to the Survivor. In these Cases of Seamens Wills, there is always some Difficulties. The last Will was made, when the Deceased was taken ill; tho, the Witnesses differ as to the presence of the Captain, I must establish this last Will, made in 1764, in favor of the Father—

Prerogative. 1 Sess. Hil. Term. | No 105 | Stevens Junr | Ames agt Ward | Cumberlege

Dr Harris | Dr Wynne

Dr Harris.... Elizabeth Ames is the Decd; She died a Minor, at 14 Years of Age, & as is pretended, made her Will & thereof appointed Jas Ward Exor, & Resid: Legatee He died without taking Probate, having first made his Will & Catherine Ward his Exec: A Caveat was enterd by Jn Ames Grandfather of the Minor agt the Probate of her Will, & he prayd Admon might be granted to him; Mrs Ward, econ: prayd the Probate —

Thos Chapman & . . . . . are the Subscribing Witnesses, who have been examined & interrogated by Stevens; since which He has received Instructions from his Clients, to interrogate the Witnesses a 2d time, & says he is willing to be at the Sole Expence — Publication has not passed. I have known many Instances of Witnesses being reproduced, there is no reason why they should not — There is a Time appointed for the Party to interrogate Witnesses, if he does so within that Time, it is at the Expence of the Party who produces the Witnesses in chief — As Publication has not passed, there can be no Objection; The Difficulty arises by the Agent of the Party being out of Town when the Witnesses were examd on Interrogatories.

Dr Wynne..... I am Council for Catherine Ward, Exec: to Jas Ward, Exor to Elizh Ames; Mr Stevens having given notice, he was ready, the Witnesses were examined as well to the Interrogatories, as to the Allon in Chief — You will observe, there has been a long Interval between the Examination on the first Set of Interrogs & the present Application 24 Hours is ye Usual Time given for the administring Interrogs it is fully sufficient for the purpose — In this Case there was a long Interval, between the production of the Witnesses, & the administring the Interrogatories; the Motion I am told is new; for when there has been any Reexamination, it has been for want of proper notice given; the Expence is not material; it may be attended with danger; Witnesses may be talkd to, tho, they are not actually tamperd with; Courts dont approve Witnesses dropping in, one after another; the Doctor said, they dont intend to examine to the same Interrogatories over again; I suppose not, but they may lead to the same; Witnesses may enlarge — The Neglect of the Agent, must fall on the Party which is very usual; Witnesses return from whence they came, thinking all over; there would be no End of Examinations, if the Doctrine contended for, shd be received — It is not alledged in their Act, that they do not intend to plead; As to the Examination of a Witness twice over in Hill v Handford.. The Witness had not released a Legacy of 5L, it was therefore necessary to repeat him to his Deposition, otherwise that could not have been used; it was done therefore upon exhibiting the Release, but the Deposition was not altered —

Dr Harris.... If a Party Producent may amend a Deposition, the other Party surely may à fortiori examine again on fresh Interrogs — it is not material whether we plead or not —

Dr Hay Judge. I am cautious in all matters of Practice, that are said to be new; I beleive this is new; I think the Ct has a discretionary Power before Publication, on sound reasons, to order a Reexamination, as where Witnesses being examined by Commission, the Commissrs make any mistake; If a Witness refuses to be examined, the Ct will order him to be brought — Hill v Handford, a Witness omitted bringing a Release, when it was exhibited, he was reexamined; No Objection was made to it — If the Adverse Proctor does not give Notice as in the Case of Campbell v Umfreville the Proctor requested Notice might be given when the Witnesses were produced to be examined, the Opponents Proctor neglected to do so, therefore the Ct ordered a fresh Examination — In this Case there was sufficient time to send to the Agent, between the Monition & Examination; Why are fresh Interrogs desired to be administerd, to remedy the Sollicitors Neglect; the Distance of Time ought to be considered; Publication it is said, has not passed; but Witnesses

2a. Wh: Witnesses shall be examined, to a 2d Set of Interrog on the same Plea.