where their Interests are mutual; the reason a Plt is not admitted to renounce in Chancery, is, because he must pay Costs, the same reason does not hold with respect to Defendants

Judge. Dr. Hay... Boaumont & Sharp. a Caveat had been entered, there were 2 Sisters one of whom Eliz: Bowmont applied for the Admon, considering an Imperfect unexecuted Paper, as no Will; she was accordingly sworn Admin: the Sister entered a Caveat against the Admon passing the Seal; the Question was who shd have the Admon pendente lite Wm the Nephew of the Decd, intervened, & propounded the afd Paper; the Sister who had been sworn Admin: desired to be dismiss'd in order to be examined as a Witness in support of the Will, in which she was also executor with her Brother, several Objections were taken to her Dismission; it was said, once a Party, & always a Party; it went by Appeal to the Delegates, who on a Special Allegation of 20 Articles, were clearly of Opinion, she was a necessary Witness, there being no other Wt but herself, & that a voluntary Party, tho sworn Admin: might be dismiss'd, where it was necessary, in order to come at Evidence to support a Will — The difficulty with me, is, whether this Person is sufficiently alledged to be a material Witness; has given one Proxy to propound the Will, & then another to renounce the Execution; the second is certainly revocatory; suppose, he did not chuse to go on, without being a Witness, he might desist & let Admon pass; he may be cited, & proceeded agt in panam; what would be the Consequence, if an Exor &c: in no case renounce; why no Body wd be concerned; the Testator frequently makes the Writer Exor; the Cases adjudged weigh greatly with me — Testators frequently give Writers Instructions & make them Exors; in such Cases, how &c: the Wills be proved unless such Exors were allowed to be dismiss'd, in order to become Witnesses I wonder the Question shd be so much agitated; the Points in Bowmont & Sharp go a great way with me in determining this Question, as it is the last Case adjudged by the Delegates who dismiss'd a voluntary Party; the Common Law Doctrine differs from that of the Sp: Ct. Whitton v Layton The Kings Bench had no doubt, the Will being established, that the Exor might retract his Renunciation & act as Exor — There are Cases where Exors cant resume, as after Admon is passed, during the lives of the Co Exors no power being reserved — But after their deaths the Privity being destroyd, such Exor shall be preferrd before any other Persons; I dont think Mr Badger has acted as Exor in the Eye of the Law, which has respect to the intermeddling with the Effects, by paying Debts or receiving Credits; & such an Exor having done &c: not afterwards decline acting — Considering the solemn Renunciation now made in Acts of Ct in order to his becoming a Witness, I think he will not be able to come & take a Probate if the Will is established; & if the Will is pronounced agt, he cannot set it up again, having in Acts of Ct declared he wd have nothing to do with it. I am pursueing the Doctrine in Heath & Pocklington which is the last determination, & think Mr Badger shd be dismiss'd for the Purpose prayd —

Dr C

No 113

Goodwin — Ly Mary Herbert & Pritchard v Ld Gage. — Grene

Drs Harris & Wynne — Drs Calvert & Burrell

Dr Calvert.... The Prayer is that the 2 Extracts referred to in the Affidavit may be brought in (See Hull v Supe. fol. 192.) The Assignation is for every Paper having the Appearance of a Testamentary Paper, to be brought in or accounted for; Mr Pritchard says he has received these from Paris, they are then in his Power; if they are alledged

Q. Shall a Copy of a Will received from abroad & alledged inaccurate be brought as a Script or Scroll if by being under an Assignation to bring in all Scripts & Scrolls.

to be immaterial, that is not now the Point in question; they are not to judge of that; As they are mentioned in the Will, tho they shd be said not to be testamentary, yet they must be so, as they refer to the Will

Dr Burrell.. The Hon: Jos: Gage is the Decd, he died at Paris, as is pretended, made his Will & thereof appointed Ly Mary Herbert & Mr Pritchard, Exors, a Caveat has been entered in behalf of Ld Gage the Nephew, who was warned by Goodwin for the Exors, who admit my Clients Interest, they stand assigned to bring in all Scripts & Scrolls on Oath, & instead of complying with this Order, an Affidavit is offerd setting forth that the Will is in the Chatelet at Paris, that Mr P. has received Copys from his Correspondent, but they differing in words & Substance from each other, he waits for an authentic Copy, & declines bringing in those already received; it appears to me a little extraordinary, that in a Transaction of such Importance the Correspondent shd be so negligent as to send inaccurate Copies, I shd naturally conclude the Inaccuracies are in the Original & not the Transcript; but however that may prove, Mr P. admitting the Copies to be in his possession, is bound to produce them, that the Court may be able to form its own Judgement;

Dr Harris... Can any thing be testamentary, which is subsequent to the death of the Testator; it must have been wrote by the Decd; an Authentic Copy is now given in, why do they ask these Copies of which no Use can be made. N.B. an Authentic Copy was brought in when the Question was going to be argued —

Judge Dr Hay..... The Meaning of Scripts & Scrolls, is, that the Party may have every light in order that he may be able to determine whether he will oppose the Will or no; All Duplicates & Cancelled Wills, every Paper of a Testamentary kind shd be brought in; Mr Pritchard says he has received Extracts from his Correspondent at Paris, whether they are authenticated or not, does not appear; the original cant be produced, the Copy therefore can only be propounded; Since P. has thought fit to give an account of these Papers, there can be no harm in bringing them in; the Use will appear hereafter —

Official of Surry 8. T. 2d. Sess.... No 114

Mapletoft & others, agt the Rector, Ch:Wns & Parishioners of Chertsey

Grene — Drs Wynn & Bever — Drs Calvert & Burrell — Collins

Q. Shall the Suit abate by the death of one of the Plts? & Is Grenes Appearance for an Exor proper?

Dr Calvert The Intimation was for A Pews, to be divided between, Mapletoft, Dundas, Pembroke, & Blake, by Lot, & numbered 1. 2. 3. 4. for them & their Familys, as long as they shd be resident in the parish: Pembroke is dead, therefore, if the Suit does not abate, we are entitled to 3 Court Days to prove our Allon: Grene Appears for Pembroke's Exors, & prays we may be assigned to prove our Allon; we allege, that the Decease of the Party obstructs the Assignation taking place, & that the Suit abates, but if not that we are entitled to 3 Ct Days to prove the Contents of the Allon & Exhibit

Judge Dr Harris My doubt is as to the Executor, from the particular nature of the Suit; How can I grant to the Exor the Intimation for A Persons.

Dr Wynne Suppose no Appearance for the Exors, would that have made any Difference?

Dr Calvert They dont shew he had any Wife, it appears he had only a Child; Can the faculty be granted to three?

Judge Grene's Party not having brought a proper Representative, I must reject his Petition, with Costs of the Motion.....