there are small livings in the Diocese of Norwich, the Justification must not be that the Livings there are inconsiderable but that the Deft's Maintenance is so small, that on Consideration of his Circumstances the Act ought not to be put in Execution agt him; what relates to other Livings, is immaterial, & merely argumentative; How can Witnesses be examined to prove the Law shd not be enforced; there may be Cases where Parties shd be considered; the Question is wh? your Living is so small: The Marriage Act is proper to be considered on the Merits, it is then proper for Argument, tho not conclusive. Reject the 3 first Articles.

4 & 5 Arts: states the Deft's Living to be an 100 a year, I dd think a Living of that value not inconsiderable, it would not of itself be a sufficient Excuse for the Deft: tho, comparatively it may, when the Circumstances of the Man are taken into Consideration; the Law allows a Clergyman to marry it will therefore consider the Increase of Family.

6 Art: This is new matter; it will come out wh? he had a Licence or only a verbal Permission from the Bp, his having his Diocesans leave, will tend to excuse, if not to Justify, how far it will go, I dont say now; It will be proved he c: not serve that Curacy consistent with the Act of Uniformity: it is alledged him, he did Duty alternately morning & Evening at C. ork. In Earl. & Holland, Shrewsbury laid on the Minister not being idle: the Clergy are not to be harrassed. The Vicinity of the Churches is not laid as an absolute Excuse, but to account for the Bp's Leave.

his Assertion — that his Parishioners were satisfied, shd be struck out. I dont think it right to admit that part wch states the Prosecutors Motive, wch is not my Business to enquire into, & therefore must be struck out: I am only to enquire wh? the Minister did his proper Duty.

8 Art: I have some difficulty about the Rule agt pleading contradictory matter to what has been pleaded in the Ct below, is strong agt this Article — If you can alter this, so as to shew his Predecessors took a Curacy & tried to bring Congregations on Saints Days, so as to save the Practice by varying the Allon, I will allow you to reform the Articles — Reject the three first Articles Strike out part of the 7th & reform the 8th Articles.

Allon directed to be reformed

The Promoter Mr Pocklington died soon after, this Allon was directed, to be reformed, & then the Prosecution dropped.

Q. Shall the Plea be admitted . . .

Prerogative — Lushington — 158 — Nye v Piercy & Gregory — Fuller

P. M. S.

Dr Wynne & Burrell — Dr Harris

Case xabl: April 19.

See Vol. 133. Hopwood v Lucas . . . .

John Pope is the Decd; he died in April 1767. intestate, a Batchelor, without Parent, Brother or Sister, Uncle or Aunt, leaving John Nye, Thomas Linton & John Roberts his Nephews, Anne Wife of Geo. Piercy, & Martha Wife of Geo. Gregory, his Nieces & only next of Kin, the persons only entitled in distribution.

28 May Admon was granted, in the Bp. of Chichesters Court to John Nye, Ann Piercy & Martha Gregory

On the same Day a Caveat was entered in the Prerogative for the sd Anne & Martha.

John Nye has reason to think the Decd left Bona notabilia applied for an Admon to the Prerog: Ct in common form but finding the above Caveat, the Same was warned on his behalf

9 July. & Sep. Term: Dr Fuller appeared for the Nieces, & alledged that John Nye, had taken Admon jointly with his Clients, in the Bp of Chichesters Ct, that the Decd had not left Bona notabilia, & prayd time to exhibit a Proxy to oppose the Jurisdiction, wch he was assigned to do by the Bye Day, when the Assignation was continued to 31 July

31 July. Fuller exhibd Proxy, & denied the Jurisdiction, & Lushington was assigned to declare, wh? he w: propound the Jurisdiction by the 6th of Octr when the Assignation was continued to the Term.

1 Sep. M. T. 6 Nov? Lushington propounded the Jurisdiction & asserted he gave an Allon, wch is as follows

1 Art . . . That John Pope Decd, resided at Horsham in Sussex in the Diocese of Chichester, had at his death, Goods, Chattels, & Credits in divers Dioceses to the value of 5l & upwards, & more than sufficient to found the Jurisdiction of this Ct.

2 Art . . . That soon after Decds death, Anne Piercy & Martha Gregory took possession of the Goods, Chattels, & Effects of the Decd, particularly his Books, Papers, & Writings, wch now remain in their Custody, & they refuse to shew & shew them to the Party Proponent, tho frequently by him requested so to do, the Party Propt doth allege, that it doth & will fully appear by said Books, Papers & Writings, that Decd had at his death, Goods, Chattels, & Credits in divers Dioceses of 5l & upwards, & more than sufficient to found the Jurisdiction of this Court

3 Art . . . That Walter Nye of Ockley in the County of Surry, Diocese of Winchester, Carpenter, was indebted to the Decd at his Death, 65l by Bond dated 16 Novr 1758, wch Bond is now in the Custody of Anne Piercy & Martha Gregory . . . . .

Dr Harris . . . . The Admons first agreed & then quarrelled. Nye tried here to get the Admon singly — The 5th Art. is a general one, & must stand, or fall by the others — By the 2d he confesses he has no Evidence of Bona notabilia, he allows he can have none, but from the Papers; How is this Article capable of Proof, it will be said from the Answers of Piercy & Gregory; How can you issue a Mandamus for Answers without having a Jurisdiction, you cannot get one; perhaps they will want a Commission of Inspection, that would be, in other words granting a Search