who finding That Anne Richardson the Widow, & Relict of the Decd (who has no benefit under the Will) was not made a Party to the Suite.

Hill v Handford

That Geo. Bell one of the subscribing Witnesses to the Will & Legatee therein had been examined without releasing his Interest.

That Sampson Bennet a subscribing Witness to the Will was dead, since the Testator, & his Handwriting was not pleaded in the Condicit.

4 S. Hil. T. 1768 exhibited for the Exors, as heretofore exhibit by Philips & prayd a Decree agt. ye Widow & Force Proceedings

5 S. E. T. The Decree was returnd with Certificate of Execution; the Widow has been three called, & not appearing ye Certificate has been continued to this day

Fountain alledges, that, tho, Publication has been decreed, neither of the Parties have seen the Depons, or been acquainted with the Contents thereof, as will appear by their Affidavit, therefore he prays, he may be allowd (in pain of the Widow not appearing) again to propound the last Will of the Decd (dated 29 Nov: 1765) that Geo. Bell may be at Liberty to release his Interest under the Will, & be again produced & examined as a Witness on the said Condicit, or together with the other Witnesses, repeated to his Deposition thereon — Longden dispensing & alledgeing, that as Publication has passed, the Cause becri called on for Sentence, on the first Assignation at Philips's Petion, by Law & Practice the Witnesses ought not to be repeated to their Depons, & prayd Fountains Peton to be rejected . . . . . .

Dr Harris

It is usual for Proctors to give the Reasons, in their act on which their Objections, this has not been done in the present Case — It would be absurd to say, we may not cite the Proper Parties now, whose might cite originally; The Question is, wh: a Legatee in a trifling Legacy, is an Incompetent Witness, & wh: his Evidence shall be rejected because he has not released his Interest? the Legacy in the present Case is only a Silver Canister; now can it be conceived that Mr Bell who is Agent for the Packet at Falmouth would be influenced by such a Trifle; the Repeating him to his Depon is mere matter of Form but if you have any doubt in that respect, we pray him to be reexamined, which will be an Advantage to them too, as they may interrogate him; You have the Affidavits of 3 ~~Proctors~~; all the Satisfaction that can be expected may be had.

Dr Burrell

The present Application of my Clients, is, that you would allow them the Liberty to rectify the Mistakes of their former Proctor, an Indulgence we hope the Ct will grant, if no Inconvenience is likely to ensue; As Mr Longden has assigned no other Reason for his Opposition, than that it is contrary to Law & Practice of this Ct, I shall consider those points only; with Respect to the Law, I know of no Rule decisive therein



1 Oughton Tit. 81 . . . . Si Pars Actrix vel Rea, produxerit Testes, eorum Dicta publicari obtinuerit, et eadem percontata fuerit, tamen si postea Publicationem & Percontationem hujusmodi (id est post publicatas Attestationes) de novo pervenerit ad ejus notitiam, quosdam alios Testes fuisse sibi admodum necessarios; poterit se integra existente (id est ante Conclusionem in Causa) si fuerint prabendes in Judicio, eos producere; et sunt recipiendi & admittendi . . . .

Ib. Tit. 97. Sq. . . Pars Adversa potest compellere Procuratorem, vel Partem Principalem, materiam contrariam proponentem, vel Utrosq, ad prestandum Juramentum, quod nec per se, nec per aliquem alium didicit vel percontatus sit Dicta Testium Adversarij . . . .

Gail Lib. 1. Obs: 105. nu. 2 . . . Effectus Publicationis est, ut super iisdem, vel directe contrariis Articulis, in eadem vel alia Inotantia, iidem vel alij Testes produci nequeant, Ratio est, Timor Subornationis. Sed talis Effectus in multis Casibus non obtinet.

Primo, fallit, si facta publicatione, Pars nondum Copiam attestationum habuerit; aut habita Copia, testificata non dicerit, quo casu, cum cesset ratio Legis prohibitiva, alij testes produci poterunt, etiamsi altera pars dicerit testificata; nam sola Publicatio, non excludit aliquem à facultate alios testes producendi, sed Scientia dictorum.

The Rule of law, then does not relate to all Cases, but is founded upon a supposition, that after Publication all the Parties concerned, are acquainted with the purport of what the Witnesses have sworn, & therefore to prevent Perjury do not in general allow Examinations to be taken after that Period, unless ample Satisfaction is given, that the Depons have not been seen, & for the greater Caution the Parties may be obliged to make Oath of their Ignorance in that Particular; Upon this Principle, the Practice of the Ct has been, to allow Witnesses to release their Interest, when Satisfaction was given that it w: be attended with no Inconvenience — Hill v Handford "Witness had not released "a Legacy of 5£. it was therefore necessary to repeat him to his "Deposition, which was done on exhibiting the Release, but "the Deposition was not altered —

If in the present Case the Ct is satisfied, we have not seen the Depons, (& in that particular, there can be no doubt,) & that consequently the Grant of our Prayer will not be attended with any bad Effects, I hope we shall be allowd to repeat Mr Bell to his Depon, after exhibiting the Release of his Legacy . .

Dr Calvert . . . This Petition comes after Publication; there is no Affidavit of the Proctor; his knowledge of the Depons is most material if any Advice can be given, it is most likely to come from that Quarter; the Change of Proctor does not render it more favorable; the Ct dont allow of such Excuses, as that the Proctor was mistaken, Can she have been taken to have applyd to a more proper Person originally; It is not sufficient to say, I have done wrong, & want to amend my Error; every Party is to clear his Case, as it goes, his Mistakes are beneficial to his Opponent; vigilantibus non dormientibus succurrit Lex; if the Ct indulges one Party, it is at the expence of the other: The Widow has not been cited; Bell has not released;