Bennets Handwriting has not been examined to; The Prayer is not to be at Liberty to call the Widow, that we did not object to — If Bell cant be reinstated in his Credit, you will not allow him to be reexamined; If the trifling Legacy is no Objection, why should they desire to reexamine him, it may remain in its present State; the Ct is strict in all these matters; an interested W. is always considerd as incompetent, the most minute Interest is an Objection at Common Law Does not the W. remember what he deposed, he cannot go back; he may have seen the Depon; It is common for the Examiner to admonish the Witness not to disclose what he has deposed — It dont appear the W. was reexamined in Hilt & Hand fore after Publication.

Dr Wynne — The Repeating the Witness, is not a matter of form, he is Testis in re sua, the Court goes on general Principles; in their Act it is stated, he is a Legatee, but not whether he is a specific Legatee, or how. Independent of the Value of the Legacy, can a Witness who is a Legatee be reexamined; can you remove the Bias which the Law presumes was on his mind, when examind if you can, you restore him, else he cannot be produced as a good W. at any time; It is impossible to remove the Bias; for suppose his Interest released, his Reputation, his Safety is the same; he must depose the same matter, wh. you repeat him, & reexamine him; It is stronger after Publication, there is too often, a Person behind the Curtain (who is not visibly concerd in the Cause) called an Attorny, he may whisper, it w. be improper, to examine such a Witness, over again; It is impossible to obviate the Difficulty, as what ever may be the Determination, some Partyl must suffer...

Dr Harris... The Dr allows it is a misfortune to a Party to employ such a Proctor; you will consult your own Breast, what is, & what is not material Interest; the Value of ye Legacy, & the Station of the Person is to be considerd; the Ct granting the Ct c. go into general Principles, you might have thought if we had not applied, that for these Reasons he w. not be so interested, as to destroy his Competency; the Office can give the Satisfaction, that the Deptons have not been seen or copied; if he cant be supposed biased, he may retract —

Judge Dr Kay..... I am not surprized the Party has changed his Proctor, for Philips did not inquire wh. the W. was interested, or not, the Q before me, is, wh. the mistake as to Geo Bell, can in the present State of ye Cause, be rectified: he appears to be a Legatee in a trifling matter; it is said, if he had not released, he w. not be repelld, but I know Cases, where Witnesses have been rejected in this Court for very trifling Legacys, if that Doctrine holds, it w. destroy the Prayer, c con: if the Smallness of the Legacy w. make him a habile Witness, there w. be no occasion for this Application; There are great Objections to Repeating, c. to reexamining; I expected Precedents to have been produced,

matters of Practice, in the Law of the Ct, are not to be determined on general Principles; I think there was a Case in Sir Geo. Lees time, where a Witness was brought to be reexamined, who had not given a full & sufficient Release; the W. had been examined in the Country, by Commission, the Proctor made the same Application; Sir Geo. Lee said it might be done, & that it was the Duty of the Ct to support a W. where it can be done consistent with the Rules of Law, the Practice of the Court, & without danger from Consequences, but this was before Publication wch distinguishes it greatly from this Case; I remember Cases, where the Ct has rescinded the Conclusion, to let in matter, to support a Witness: I dont recollect any Case where a Witness has been reexamined or repeated after Publication: This goes a Step further than the Cases wch occurr to my Memory; I am clear he ought not to be reexamined, even if he could be repeated, & then there must be Satisfaction given, that he has not seen the Depon. — The Ct will give all the Aid it can; & therefore let it stand over to the next Ct, that Precedents may searchd for & produced.....

Sentence deferred till Proceedings are searchd for wch see fol. 375

Arches — Gatling No 157 — Dr Newcome v Dr Markham — Altham

2d Trin: T. — Dr Harris, Wynne — Dr Calvert, Bever.

Q. Is the Libel admissible as laid

Dr Harris... Dr Newcome procured Letters of Request from the Consistory of Rochester, in a State of Dilapidations of the Deanery of Rochester. The Citation was returnd the 2d Session of Easter Term, & Dr Newcome was assigned to libel by the 4th Sess. That Assignation has been continued to this Day, & we are now before upon the admission thereof; It states that Dr Markham continud Dean of R. 2 Years & 5 Months, & that Dr Newcome was installd Dean of R. 21 Novr 1767. That Dr M. received from the preceding Deans Exors £1050. with which Sum, he undertook to compleat the Building, & to add, of his own free Will, any additional Sum which might be wanting; that he obtaind a Faculty for pulling down that Part of the Building, called the old Deanery, & building on the Site thereof, a Housekeepers Room, Passage, Brewhouse & Laundry; that he has erected no Housekeepers Room at all; nor the other 3 in the Plan specified, & left them unfinished — That in carrying on his intended Plan, a particular part of the House is affected, & cracked so much, that it must be taken down & rebuilt: That it is the Opinion of a Surveyor, the Execution of Dr M's Plan will exceed the 1050 £ received, 807 £ — Our Prayer therefore is that Dr M. may be obliged to finish this Building according to the Plan given in when he applyd for the faculty; and to reimburse Dr N. the Expence of applying for a Faculty, to authorize the Alterations made by Dr M. from the original Plan, to prevent Dr N's Exors being involved in Difficulties.....

Dr Calvert... Dr N. has brought this Suit to oblige Dr M. to compleat the alterations he had begun; it seems Dr M. had obtaind 1000 Gs from his Predecessors Exors, applyd for a faculty to pull down part of the Edifice & to make Alterations, but was promoted to X Church, before he had compleated his Plan. The Q. is as to the Admissibility of the Libel?