30 Jan: 1729.

Sir Geo. Lee had (in his Chambers) heard Council & Proctors declared that Cheslyn may be at liberty, to produce, examine over again, Samuel Whitehead, then Adderley consented that his Depon already taken, may be read, without his making an Objection of his being a Legatee, & condemned him in 1 G. 8. Costs.

Judge 2 Hay

The present Case differs from any that have been cited
Markham v Lee 1726. tend to shew, the smallest Legacy will repel a Witness, D. King had a Legacy of a Gold Ring; after Publication, an Allon was offerd to shew he had released before Examination; the Ct said, the Allon might be admitted to shew he had received the Legacy before Examination
Franks v Simons several Wes had received their Legacys, & given Receipts for them in a Book, wch was brought into Court, but they had not acknowledged the Subscription to their Receipts, Sir Edw: Simpson to enable them to legalize the Receipts, after being examind & repeated, permitted them to acknowledge their Subscriptions, & then to be resworn, repeated to their Depons. (D. Hay said Simpson rescended the Conclusion, but Grene who exam: the Wes says he did not the Cause not had been concluded)
These Authorities do not come up to the present Case, wch is Wh. a W. after Examn & Publication, shall be allowed to release & be repeated? To repeat a W. after Publication, is another Step in the Cause, & another instance of the neglect; & if I shd admit a W. to be repeated after Publication, why not after Conclusion? it will encourage Neglect too much, if a Proctor comes before Publication, I will admit him on the Strength of the Authorities, further, I chuse not to go, but will Stop where my Predecessors have; I am of opinion under the Circumstances of this Case, the Witness ought not to be repeated, or reexamined.....
Fountain then desired he might be allowed to repeat the W. agt the Widow in panam; the Registrars Opinion being asked, said it was not usual to repeat the Wes to their Depons, in pain of a Party called, & not appearing, & Nothing said, the Pty who does not appear is thereby prevented giving Interrog: D. Hay then said, it was strange to affect the Widow in her Absence; I declare it not only unnecessary but unjust, to bind a Party, (who is called in the middle of a Cause) by the Evidence & Cross Examns of another.

W. refusd to be repeated after Publication

After the Sentence was given D. Compton favord me with the following Cases....

Anonymous 1 Vern: 253. Oct: 1684.

If one of the Parties after Publication passed, has a W. to examine; upon the usual Affidavit of not having seen the Depons, the Lord Keeper declared, the other Side shd be at Liberty to examine at large, as well as to cross examine the Witness produced by the Party making the Motion.....

2A Oct: 168A. 1 Vern. 25A. Corporation of Sutton Colfield v Wilson.

The Q. being wh: a Bond of £500 penalty, was intended for the Benefit of the Corporation, or of the Defts & the Wes for the Plt being all Members of the Corporation, it was objected that their Depons could not be read, they swearing for their own benefit;

which Exception was not allowed as good; & the D. Keeper said that a Corporation ought to have a Town Clerk, & under Clerks who are not Freemen, that they may be competent Wes upon occasion; & he added, he thought it very hard, in the Case of the Water Bailiage of London, that no Freeman of the City, tho it was not 6d Concern to him, could be admitted as a Wt but there indeed the Fee was in question, & here being only the value Sum of 200£ in dispute, he thought that not considerable enough to take off a Mans Testimony, & said, it was usual, where a Man was a Legatee, if it was an inconsiderable Legacy, as 5s or 40s to a Man of Quality, that he Wt nevertheless be allowd to prove, & did at length it appearing, the Deft had cross examind some of the Plts Wes not only to Questions touchg wh: they were of the Corporation, but to other Questions wch tended to the Merits of the Cause, the D. Keeper declared that made them good Wes tho Members of the Corporation, & their Evidence was decreed for....

1731 2 Peere Wms 647 Griffith v Gansell..... Dubordieu a Clergyman had been examined as a W: an Application was made to the Ct for him to amend his Depon after Publication; the Motion was opposed; the Examiner & the Witness attended in Court, when the former swore he took the Depon truly from the Witness, to whom it was read over distinctly, & then the Wes subscribed the Depon, so read over, with his own name. The W being examined did not swear positively that the Examors had taken his Depon falsely, but that he was induced to believe, he did not express himself, in the manner the Depon was taken, & was positive he did not indeed, or mean, to swear as the Examors had taken it, but really intended to swear as the Amendment was desired; that the same was what he had before declard in Conversation, as also what another W in the Cause, had positively sworn:
The Ct said, when it appears, either that the Examor is mistaken in taking, or the W in making the Depon, it is for ye advancement of truth & Justice, the mistake shd be amended, & the sooner this is done, the better, for the W might be dead, or remote at the Hearing, & it wd be hard & unjust to pin down a W. to what is a mistake, by denying to let it be rectified; As to the Inconvenience of amending after Publication, it is impossible to be known till Publication; wherefore let the Depon be amended as desired, & the Wes swear it over again...

Exchequer 1733 Orlebar v Sowyd. This day the Ct made a general order, that after Publication a Depons delivered out to be copied they would in no Case enlarge Publication, or give Liberty of examining any more Witnesses....