E. contra. Goodwin denies the Bequest of the Residue is void, or that the Constitution of Stratford is in force, or that it is usual for this Ct to regard the Practice of the Eccles.cs Cts in the Province of York. he adds that the Judge of this Ct has pronounced for the Will, & that Greene cant avail himself of his Objection now, & that the Testator having reposed such Powers in the Exors they cant now be forced to give Bond.

The Question therefore is, vid. Probate shall pass before Security is given by the Exors. This is brought at the Instance of Ld Gage whose Right must be founded, on his Title in distribution, notwithstanding the Will; the reason of its being void, is, the Incertainty of the Bequest, by which it cant be marked out, who are to take under it; who can be said to be the Poor of Gr: Brittain? if any can claim, all can; it would be injurious to the whole to give it to a part; it is then uncertain who can take under this Clause: But if the Bequest to the Poor wont ascertain, the Addition "of being really in poverty" will throw no new Light upon the Question where a Man devised his Estate to 20 of his poorest Relations, the Ct of Chancery determind, it wd be confined to those who were entitled in distribution —

Vide Setaside for Incertainty. Webb's Case Vnas. ab. Vol. 8 fo. 47.

Who would you admit to bring a Suit agt the Exor in the Ct of Arches? who could give him a discharge?

A Bequest to a man to dispose, as he thinks proper, is not good in another View; because it is dependent on another's Will: Institutio ideo vitiosa est, quia in alieno arbitrio est...

"The Exors knowing my Intention:" if there are any such Papers, they are testamentary, & should be exhibited; but you have the Affid.t of the Exors, there are no such Papers; therefore there can be nothing certain —

Prima facie, in this Ct, if the Residue is undisposed of, it goes to the Exors, vid. Foster & Muntze det. by Ld Ch.r Jeffries det. by Ld Hardwicke — Here the Exors cant take the Residue for in the Will each Exor has a Legacy for taking the trouble of the Execution; The Testator could never mean to give them the Residue, having expresly taken it away, by this Bequest to the Poor, tho, that we contend, is void: This brings on, the 2d Query, is to requiring Security from the Exors, wch we say is founded on Bp Stratfords Constitution, & is as binding, as those of other Bps, nothing has since intervened to take it away.....

Lendwood fo. 177 Lib. 3. Tit. 13. — "Postquam coram Ordinariis juxta morem probatum fuerit
" Testamentum, non committatur aliquibus in bonis hujusmodi
" Executio, seu Administratio, nisi talibus, qui debita Administra-
" tionis sua posint, & si oporteat, sufficienter caveant, ac fideliter
" promittant reddere rationem, cum superhoc, per locorum
" Ordinarios, congrue fuerint requisiti.

Fol. 451. — Swinburn, an Author of Repute mentions this Constitution, as Law — The Legislature in the Reign of Hen: 8. passd an Act, to

25 Hen. 8. c. 19. & 37

impower 32 Commiss.rs named by the King to inspect the Canons Constitutions, Ordinances Provincial, Synodal heretofore made, to continue, or alter such as they might think proper, & for want of such alterations, all, wch were not contrary, to the Laws of the Realm, or the Kings Prerogative, were to continue in force till otherwise ordered by the afd 32 Persons —

No Alteration having been made with respect to this Constitution it continues to rest on its antient Foundation, on the Act of Parl.t afd: You will observe it is only, a discretionary Constitution, (si oporteat) wch cant lose its force for want of being used; it

is material that it is in practice in the Province of York; It serves to shew it ought to be construed in force; why not as well in the Province of Canterbury, as that of York? You will consider the power as discretionary in the Judge, & that one Case may require the Exercise of that discretion, tho, another may not; It was laid down in the Case of the King v Sir Rich Raines, that the Ordinary ought not to take Security from the Exor, but if the Reasons on which that Decision was given, do not come up to the present Case, you will not be bound by that Determination; the Reasons were these, because it dont appear, that the Common Law requires any such Bond, nor that any Canon is produced to shew it is Law in the Ecclesiastical Ct; this Principle applies as well to the Cts of the Province of York, as Canterbury, & the Effect of the Bonds are equal in both — An Exor might be debarred from the Right given him by the Testator, if he refused to take the Oath of Office — We have laid before you a Case, where the Residue amounts to 150000 £, & in which Prudence requires Security shd be given; you will consider the nature of it, wch is by a Suit in Chancery, wch must be revived; the Power may be easily abused, by Collusion in the Exors, & compounding it improperly; Perhaps it may be asked why we do not apply to Chancery, I answer, if you have a right to determine, it wd be hard to send us elsewhere for Redress; the Reasons given in Sir Rd Raines' Case will operate equally agt the Ct of Chancery interfering: I hope you will think it proper to require Security before the Probate is extracted.....

Dr Burrell... The Validity of the Will being already establishd, we now apply to the Ct to require sufficient Security of the Exors before they have possession of the Probate, & our Application is founded on this Principle, that the Devise of the Residue is void in Law, by reason of Incertainty, & being void, that Ld Gage my Client as Nephew & one of the next of Kin, is entitled to his distributive Share, under the Statute; consequently deeply interested in the Proceedings of the Exors; we say also, that by a Constitution, of Bp Stratford, now in force, this Court has a Power of demanding such Security, as Occasion shall require, & that the Present Case, is of that Nature, as will sufficiently warrant us, in this Application, the Residue amounting to 140,000 £. But as our Right is founded, upon the Supposition of an Intestacy, It will be necessary for me to establish that Point, before I enter upon the other; It will scarcely be denied, that Devises may be void, for the Incertainty of the description of the Persons to take, or the Thing to be taken; as where "a Person devised his Estate to 20 of the poorest of his Kindred" or where the Testator Bequeathed his personal Estate to his Wife, & added, "I do not doubt but my Wife will make many Widows", the Ct thought, these Words gave a right to no Children in particular, or a right to any particular Part of the Estate, but that this Clause, was void for Incertainty. Webb's Case. Biggins v Yorke 2 Mod. Cases in Law & Eq. abr. 90

Style 240 — Beale v Upman. Devise of half his Lands to his Wife for Life, & after, all his Lands to be shared Male of any of his Sons or next of Kin, the Ct inclined the Will was void.

In the present Case, the Residue is bequeathed to the Poor of Gr: Brittain, generally, without any Indit. to govern or guide the