&c. The Words Freehold &c look towards a Prohibition; on the whole, we reject the Allon, saving a right to both Parties to bring in Exhibits any time before the hearing on the merits.

Commissary of Surry

Jones. v. Day.

Fountain — Dr Burrell — Bishop

July 1. 1765. For Adultery clearly proved. NB Suspended

No 18

Dr Burrell.... The Articles brought by Mr Jones agt Mr Day, are as follow: That he, being a Minister in holy Orders, of St Saviors Church in Southwark had been guilty of several enormities, wch ought to be canonically punished: that in March, April &c 1763, he kept Company with & visited J. Barrington in Bow Street Covent Garden, tho, he himself was a married man. That J Barrington lodged sometime at Mr Sharps at Chelsea, that he paid 9 shillings a week for the lodging, & they went by the name of Gould, repeated Acts of Adultery are laid, &c especially, that on 11th April 1763 in the morn: Mrs Sharp carried them up some Brandy & Water, saw them in Bed together by the name of Gould, that Mrs Sharp happened to hire a Servant who knew him, & acquainted her Mistress that his name was not Gould but Day, that he was a married man & had Children by his Wife; that finding himself discovered, he quitted those Lodgings with her, sent one Mr Leech to pay for them, & to prevail on Mr & Mrs Sharp to keep their whole Affair secret; they plead the Identity, these being seen naked in Bed; that on the 12th. 13th he was very drunk, insomuch, that he could not walk, even at Home, that he was very abusive & passionate, drew a knife; that in those Fits he cursed & swore; on 15th of April having made an Appointment with that Mistress when a Corpse was brought to be buried, he said Damn the Burial &c &c. that his Behavior had so scandalized the parish, that several Persons upon that Account, no other, absented themselves from Church, his Misbehavior at y Administration of the Sacrament was also pleaded. The several Charges are fully proved by Lucy Rhodes, Mary Fawcett, Eliz Wm Sharp — Leech, and no Defence is made by Mr Day. I therefore move that you will be pleased to punish him Canonically, & condemn him in Costs.

Judge.... } Dr Harris... } In all these Accusations, when the Evidence has been read, the Canons say, the Minister shall not be deprived, till the Case is laid before the Bp, who has accordingly been acquainted with it, & has left it to me, either to suspend or deprive: the rather inclined to the latter; but in hopes that Mr Day will not abuse the Indulgence, I shall content myself with the former: accordingly he is suspended for 3 years, from the Office & Profits of Minister of the Parish of St Saviours, & at the expiration of that Period, he is to bring a Certificate of his good behavior, during those three years, else the Suspension is to continue, notwithstanding the Time being expired: he is also suspended from y exercise of any ministerial Function within the Diocese of Winchester. The Bishop has nominated y Rev. Mr Lambrooke Russell to officiate, & receive all y profits during y Suspension, Mr Day being suspended from the Duty as well as the Profits. I condemn Mr Day in Costs, taxed at 40£. the Certificate of his good behavior is to be under y Hands of three neighbouring Clergymen, & this Certificate is to be exhibited to them before y Suspension is taken off: else if y Certificate is not satisfactory, y Suspension is to continue after y expiration of y three years. Publication of y Suspension is to be certified to the Judge, the first Court day after y Suspension, to commence from the Time of Publication.

Dilapidation

Arches July. 2.

On Admission of the Libel.

See Fol. 89.

Markham v Beadon & Kirke — Goslin

Altham — Drs Harris, Wynn — Sr Marriott, Calvert

No 19

Dr Harris... This is a Libel in a Suit for Dilapidations brought by Dr Markham Dean of Rochester agt Mr Beadon & Mrs Kirke Exors of Dr Newcome y late Dean of Rochester. agt Mr Beadon & Mrs Kirke Exors of Dr Newcome y late Dean of Rochester. We plead y usual introductory matter; that the premises were very much out of repair, that they had been surveyed, & Estimates signed by the several Surveyors. We have annexed Schedules of these Estimates. That by Yardy, who is dead, makes the repairs amount to 1566. & that by Jn Harrison to 1580. 16. & that by Wright to 1700. We charge in this Libel that Mr Beadon has refused to pay, a deard. to his own Surveyors Estimate.

Dr Marriott.. I am Counsel for Mr Beadon & Mrs Kirke, & do not object to y Form of the Libel, but to y whole Estimates. The Surveys take in several Articles never allowed in Chancery: Painting & White washing are not Dilapidations. The whole seems to be estimated for rebuilding y greater part of y Deanery House, & surely Sir, you will not direct it to be rebuilt: they are in the nature of Tenants for Life, of whom no more is required by Law than Bible & Water tight.

Dr Calvert.... We humbly submit to you Sir that this is not to be received, as it is now a Libel consisting of 17 Articles, several of wch are unnecessary, & it always is usual, for what does not relate to the point to be struck out: the Article pleading y value of y Deanery does not administer to the Question: whatever it is, the Successor is equally obliged to repair, & has a right to call upon y Exors of his Predecessor for Dilapidations, so that this Article not instructing y Cause ought to be struck out. It is pleaded, there is a mansion house belonging to y Deanery, & Dr Newcome usually resided there; this Article is also very immaterial, for wch he did reside there, or no, his Exors are equally liable to y Succr of y Dr. his Successor for Dilapidations. Another Article is, that Dr. his now Dean y Libelant. The next Article is of a similar nature, liable to y same Objection: it states y Appointment in Dr Newcome's Will of Mrs Rich: Beadon & Mrs Mary Kirke to be his Exors: this we have allowed, we have been cited as such. The Demand laid in the Libel ought to be precise: they the have exhibited an Estimate for a Sum fixed: whereas he has given 3 Estimates, so that we cannot know what Tender to make: nothing appears to guide us in the manner of pleading is what I object to; for in pleading Yardy & Harrison's Estimates, they plead a Contradiction: the Sums are different, & cannot both be true: Wright's is alledged to be the true Estimate, this differ from the other two, they are exhibited also, & cannot be all true: might perhaps have been pleaded differently, but as it is, y manner seems to induce an Objection to y prayer of y Libel, wch ought to be reformed as indefinite. In Hayter v Sherlock & Gooch. the Libel was reformed, & y prayer was, y y party shd be compelled to pay y Sums in y Schedules annexed; here are 3 Schedules, so no certainty what is the Sum: the Schedules state: I shd humbly apprehend, this is y proper time to object to Items in y Estimates, wch are not Dilapidations: y Representative of an Incumbent is liable only to y repairs necessary; they are obliged to uphold decently, to resist; but surely Sir, you will never allow an Article to stand, for contracting y Chimneys in order to make them modern: nor never admonished a Dean to modernize y Deanery House: nothing wd Dr. did not exist in y Predecessors time can be considered as a Dilapidation: the making 2 Windows instead of one, cannot be looked upon as necessary: nor can Exors obliged to make new Cisterns, where there never were any before, they need not ornament, there is no necessity for painting, inside & outside. If no where appears when Dr Newcome died, yet there is a very proper Specification, for y Exors are liable only to y time of y Incumbents death: whereas if y Estimate is taken considerably after many fresh Dilapidations may have happened; three sort of Stones are generally old, a month or two may make a very material difference in Hayter & Gooch Dr Bettes work ordered y time of Bp Sherlocks death to be specified, to exercise with the Estimate was taken soon or long after.