out, if there had been any; It is an Argument in favor of Capacity that the Transaction was so Secret— Owen was his Attendant— was necessary, by reason of his Illness, there do not appear any attempts to impose on Dead, or improper Behavior in Owen; what Chapman says is very material, that when he was making his Will, she heard him say "I'll take care of the Poor" it was then notorious he was about his Will, & there is no room to suspect fraud; I think the written Evidence ought to have its weight with me, tho, it is irregular, yet it shews, he did attend to his Affairs, immaterial whether with so much exactness as many other Persons— The 3 Trustees named by his father will took care of every thing till he came of Age, then he enters upon the Administration, keeps his Accounts, receives & pays, gives Receipts, writes Letters from 37 to 41 I lay a stress on these Letters, tho, some of them are trifling, I see no reason to suppose they were written from Copies, am I to presume that any Body did give him Copies, especially when Mrs Wright has not interrogated Foster or Jarvis In Tinneys Case it appeard he had given Roberts Copies wch he wrote fair as his Will; If in the present, as in that Case these were shewn to be mechanical Acts, it wd support the Evidence who speak to Incapacity; I found my Judgement on the Acts in the Cause, on the written Evidence, wch supports the Witnesses who speak to Capacity, tho, it is weak; Evidence of Opinion on either Side is not relied on, because Witnesses may be mistaken; this Poor Man was weak from nature, but not so as to incapacitate him from making a Will; I cannot say this Man was incapable founding my Judgement upon the Opinions of Persons, contrary to the positive Evidence of Hougrave, Trollop, Foster, whose Characters stand unimpeached— Upon the whole I think him capable, & pronounce my Judgement in favor of the Will, Codicils proved, & yet I think it as doubtfull a Case as ever I remember— no Costs.

N.B. Appealed & afterwards compromised.....

Arches April 22. — Easter Term 2d Session

N°58 Dr Markham v Beadon & Kirk

Altham — Drs Harris, Wynn. — Drs Marriot & Calvert — Gostling

Dr Marriot..... In this Case a Suit for Dilapidations has been brought by Dr M. Successor to Dr N. in the Deanery of Rochester, agt his Exors for Estimates of the Repairs, wch the Deanery House stands in need of, have been given in; we thought them too high, but have made a Tender of a considerable Sum, wch Dr M. has refused to accept, & has made a Proposal— the Quis now before you, is wh: a distinction ought not to be taken, between the old Deanery & the New? there are 2 Fabricks, one of wch, we say, has not been the Residence of the Dean, for time immemorial, but has been let into Tenements, & therefore ought not to be considered, on the footing of the Deans Residence, (called the new Deanery) nor to be repaired as such— Mr Beadon has made an Affidavit, supported by the Attestation of a Person, well acquainted with the Premises & Dr M. has made Affidavit, that he has given notices, to the Tenants, to quit, there not being sufficient room in the new Deanery for him & his Family

Dr Calvert..... Gostling alledges, that on the part of his Client, he has made a Tender of £883. 5. 0. for Dilapidations; that Altham for his Client refused to accept it, but offered to split the difference between that Sum, & the lowest Estimate, given in by his Surveyor, to accept of £1132. 0. 6. with Costs, Gostling alledges there is an article in the Schedules of both Dr Ms Surveyors wherein the rebuilding the old Deanery, is estimated at upwards of £600, but that the Charge of putting it into tenantable repair is in Mr Bs Surveyors Estimate, valued only at 200£. that before he agrees to Altham's proposal, he desires to take the Sense of the Ct wh: the old Deanery, is to be considered as part of the Deanery House; that he apprehends he is not liable to fit it up, as if it was for the Deans Residence— Altham alledges there is a door of Communication, between the 2 Houses, a Cellar wch is in constant use by the Resident Dean in the new Deanery, running under one of the Parlors of the old Deanery; that there is not room enough for the Dean & his Family; that the Old Deanery was let out in Tenements all the time of the late Dean, but that Dr M. immediately gave Notice to the Tenants to quit, who accordingly left their Apartments last Lady Day— Gostling further alledges, there are several Persons at Rochester, who can testify to the Old Deanery having been always let out to Tenants, but they have refused to let Mr B. have the Benefit of their Testimony, therefore he prays that they may be compelled

The Affidavits of Dr Markam, Mr Beadon, & ..... Hoskins were read.

Dr Marriot..... Dr Markam has high notions, seems to expect all the Repairs shd be conformable to his Plan— When the St. laid it down as a Rule, that if any of the Premises belonging to an Ecclesiastical House, were left so dilapidated that they cd not be repaired, they must be rebuilt by the Dilapidators Exors, the Doctrine was intended, only for the use of the Successor, fit for his Degree & Reception; if rebuilding is necessary it will not extend to the present Case; tho, incapable of Repairs for the Deans Residence, it may be repaired, so as to be very tenantable for Persons at 30 pds: rent— Dr Ms affid: does not contradict ours, it is prior to ours, admits the Distinction, between the new Deanery & the Old— We think 200£ very sufficient for the Repairs of a House let out to poor Tenants— Dr M. may have a Taste for Building, he may want to rebuild it, he may want perhaps to build an Episcopal Palace— That our Plea is well founded is clearly confirmd by the Bp of London's Conduct with respect to London House, wch being let out into Tenements, never used as an Episcopal Palace, upon very respectable Opinions, he accepted a very moderate Sum, not considering his own Degree, but that of the Persons who resided in it—

Dr Calvert..... I am Council on the same Side— To the Libel given in by Dr M. 2 Estimates were annexd; we have made a Tender of near 900£ wch has been refused, he offers to accept of £1132. 0. 0. with Costs— Before we can determine wh: we shall agree to the Proposal, we must know how the old Deanery is to be repaired, wh: suitably for the Residence of the Dean, or to be let out as Tenements; Perhaps it may be said, that we come before the Time, but we wish to shorten the Suit, the Application is not improper; you can as well determine upon the Law now & the Facts if they are sufficiently before you— Mr B. says, he has been told, of its being let out so for many years, even time immemorial, specifies 2 Persons— It shews that there was a time, when a new House was built for the Dean, the old therefore was no longer considered as his Residence: Altham dont deny it's being so let, he allows it to have been so let all Dr N's time— I know very well, every Incumbent is bound to keep, all his Ecclesiastical Houses in proper Repair for the Purposes he finds them put to; they shd not be worsted but it is not necessary they shd be bettered; the Case of London House is much stronger than this, for there a House was lost to the Bp— Suppose the Incumbent had died immediately after building the new Deanery House, would the St have suffered the Successor to have called on the Exors, for Dilapidations of the Old? Because it has not been for Time immemorial, will the Court presume there was no legal Beginning? viz. that the Dean was not properly authorized to convert the Old House into Tenements upon building the new Deanery— Dr M. says the Tenants have quitted, pursuant to the Warning; but he dont even say, he intends to reside; the Purposes of this Application may be only to recover as much Money, in order to convert it to other Repairs; perhaps he may hereafter apply for a Faculty— It has been large enough for the Use of his Predecessors, if the present Deans Vicars happen to be more extensive, he must be at the Expence himself, the Money must come out of his own Pocket— must we fit up as he chuses? if he shd desire more Bedchambers or Parlors, must he have them at our Expence, it might suit him, but might be a