Administred the Sacrament to his Wife, in the pth of Claines Tytheing of Whistones:
that for so doing he ought to be canonically corrected; that Mr Taylor is a Priest
in holy Orders, of the Parish of Claines, therefore subject to the Jurisdiction of the Ct & B.
prays T. to be admonished to desist for the future, & to be condemned in Costs: The
Articles were given in 1758. 9 Witnesses have been examined on them, who prove
that T. performed, the several Divine Offices, in the Chapel & Chapelyard of St Oswald
& in the Tytheing of Whistones, But Jewkes, Dingley, & Powell say, that the sd
Chapel of St O. is in the Tytheing of Wh: Nash beleives the said Chapel is extrapa-
=rochial - Dingley to 5 Interry that there has been for 40 Years a Chapel called St O.
in the District of the Tytheing of Wh: & that a Minister has from time to time
officiated within that Chapelry, wch you will be pleased to observe Mr Taylor
is now prosecuted for - Taylor gave an Allon 9th of October 1760 pleading that
he was licenced by the Bp of Worcester to serve St Os Chapel; That the Chapel is in
the Suburbs of Worcester between the Parish & Manor of C & the Manor of Wh: a
Part whereof is commonly called the Tytheing of Wh: in wch Tytheing stands this
Chapel; that St O. is a free extraparochial Chapel, not belonging to C. That that
part of the Manor of Wh: has distinct pth Officers & is no ways connected with
the pth of C. That the Pthrs of Wh: never had Seats in ye Church of C, or served Offices in
ye pth of C. or were charged to the Rates there, but resorted to the Chapel of St O. to hear
divine Service: that the Chaplain of St O. has for time immemorial, claimed & exercised
the Right of doing all Divine Offices within ye said Chapel for ye Inhabts of ye Hospital & Tytheing
of W. exclusive of the pth of C. & all others: that Buryals, Christenings &c within ye Chapel
of St O. & Tytheing of W. have belonged from time immemorial, to the Minister of St O. &
do now belong, exclusive of the pth of C. & all others - To this Allon is annexed the
Licence from the Bp. of Worcester - Then T. gave an additional Allon with 3 Exhibits
No I. is the Register of Marriages & Christenings of St O. & Tytheing of W. from 1700 to 1762.
No 2. is a Transcript of the Buryals &c. in 1695. 96. 97. - No 3. is a Paper Book found in ye
Chest called the Evidence Chest, within ye said Hospital, being part of ye old Writings & Immu-
=nities kept therein from time to time, & remaining in ye Hands of ye Master & Steward of
the said Hospital, in wch Book is contained the Exhibit A. wch is a Certificate from ye
Augmentation Office, of the Surveyors of ye Counties of Worcester & Hereford & "Which of
" them byn Parish Churches, & how far distant they byn from the parish Church with-
" =in which Parish they stand - The said Hospital is a Parish Church of itself."
B. is a Certificate from the Inhabitants of W. without Date, but very antient, not
addressed to any Person by name, but begins "Right Worshipfull our humble Duties"
& was therefore most likely addressed to some Person of Consequence: It is signed
by the Constables & 40 others of the Tything, & contains an account of the Inhabitants
in ye sd Tytheing, amounting to 349. In this Certificate are these Words "How manie
" Poor Soules there are having no certain Church to resort unto, for the hearing
" Gods Word, since their antient Church, belonging to them, & to an Hospital in the
" said Tytheing, was pulled down, but are as it were altogether starved &
" pyned for want of the Spiritual food for their Soules &c their own Church being
" dilapidated - C. is a Letter from Richd: Somers dated Decr 15: 1631 without
Superscription, but begins "Right Worshipfull," like the last, & was probably
addressed to ye same Person; wherein is the following Clause. "I find thereby you
" desire to be satisfied of what Parish, that part of the Foregate is, in wch I had
" formerly satisfied your Worship, & to what place they pay their Dues; all wch I make
" bold, hereby, to signify to you, in as ample a manner as possible; I cannot alto-
" =gether on my own knowledge, but on Enquiry made of some of the Antientest
" Men in that Place, & I cannot find it any otherwise, but formerly all that
" Part of the Tytheing, of wch I have heretofore written did totally belong to
" the Hospital Church." & in the latter part of the Letter, is the following Clause.
" "And all the antient Men of the Country near adjoining, with whom, I ever
" had Conference, affirm, that all that part of the Tytheing have never no
" other Church, but the Hospital Church - Lib: 3: is a Book belonging to & taken
out of the Register of the Dean & Chapter of Worcester, & wch at fol 43. contains
an Indre of Lease dated Decr 10. 30 Henry 8. & made or mentioned to be made
between the Bp of Worcester & Jn Harford of the Parish of St Oswald in ye Suburbs
of ye City of Worcester - 8 Witnesses were examined on the Allon - the Revd Thos
Pixell formerly Curate of St O. says, The sd Chapel is, as he beleives, a free
extraparochial Chapel, havg: Parochial Rights & Immunities belonging to it, free
& distinct from, & no ways belonging to the said pth of C - that he executed the
office of Minister of St O. 13 Years, during wch, he performed all kinds of
holy Offices within the Chapel, for the Members & Inhabts of ye sd Hospital, &
also for the Inhabts of the Tytheing of W. free from the pth of C. & all others. but
beleives the entire parochial Duty ariseing within ye sd Tytheing, has
not been altogether been performed by the said Chaplain alone, but some
=times by the Minister of C. at the Option or Conveniency of ye Inhabts of the

said Tytheing - To 17 Interry - To ye best of his Recollection, the Promoter himself when
Curate to Mr Brooker, late Minister of C. acting in that Capacity, asked Respondents leave
as Chaplain of St Os Hospital, to perform some parochial Duty in St Os Chapel - To 18th
Interry, That Brooker when Minister of C. commenced a Prosecution agt Respondt for
doing parochial Duty in ye Tytheing of W. that he left it to ye Master of ye Hospital, to
support the Rights of ye Hospital, & soon after, ye Prosecution dropt, & he to ye best of his
memory baptized all ye Children of Mr Smith, (born at ye Brittannia in ye Tything of W.)
in St Os Chapel - Holland Cooksey Esq has known ye sd Tything from his earliest Youth
& tho, he thinks it is within ye pth of C. yet St O. is a free Chapel with extraparochial
Rites & Immunities belonging to it, free & distinct from, & noways appertaining to the
pth of C. That ye Inhabts of W. have usually from time immemorial resorted to St Os Chapel,
that ye Minister of that Chapel, has from ye time of Deponents memory, performed all
holy & religious Rites & Ceremonies within sd Chapel & Tytheing, for ye Master, members
& Inhabts thereof, free & exclusive from ye pth Church of C. the Minister thereof & all
others: that Christenings, Buryals, & other Church Ceremonies, within ye Chapel & Tytheing
of W. (marriages from 1754 excepted) have been constantly performed there, & of right
belonged & appertained to the Curate of St O. - To 14 Interry, Beleives St Os Chapel is the
proper place of Worship, for the People of Wh: that he & his father generally paid
Easter Offerings to C. & St O. as havg: Property in ye Tything of W. & also in ye pth of
C. Richd Clarke Dep: Regr proves the Exhibits; Oliver proves the Book Lib. 3. to be
part of the antient Records, of the Dean & Chapter - The Merits will rest on two
Points only. 1. Whr the Chapel of St O. & the Tytheing of Wh: are in the parish of
C. or not? 2. If they are, Whr Taylor had, or had not a right to do what he did
as Curate of St O? We hope, tho the Exhibits A. B. C. are not strictly authenticated
Records, great Credit will be paid to them on account of their Antiquity & the
Place where they were found, viz. in the Evidence Chest of the said Hospital, where
no doubt they were deposited, to clear any doubt that might arise, as to St Os
Chapel & Hospital being Parochial, or not - Lib. 3. plainly Shews St O. was esteemed
a Parish, more than 200 Years ago, & a Contemporary Construction or Interpre-
=tation, of any Act or Deed, is always esteemed the best, by reason, the Contemporaries
are supposed to have the best Opportunities, of being informed of the Propriety of
it, & the same Argument may be urged in favor of the Letter dated Decr 1631. As
to the 2d Point, supposeing the Chapel & Tytheing of Wh: are in ye pth of C. an antient
church or Chapel, within the pth of another Church, may gain by Prescription a
right to exercise Spiritual Functions, within a certain District of the pth; & if we
have shewn, that the Curate of St O. for the time being, has had such an Exercise
of Spiritual Functions, within the Chapel & Tytheing of W. he has certainly acted
rightly & legally, as it is a Principle in Law, that in antient Prescriptions, a due &
legal Commencement is always to be supposed: Several of the Witnesses on both
sides prove, that ye Chapel of St O. & Tytheing of W. have parochial Rites, & that the
Curate thereof hath had such an Exercise of Spiritual Functions within ye said
Chapel & Tytheing. One Wt: swears, no Service or Commorancy in the Tytheing of
W. gains a Settlement in the pth of C. Another Wt: says, he was elected Ch: Wn: of C. — Cooksey
in virtue of a House he had in ye pth of C. not as Proprietor of the Brittannia
in the Tytheing of W. It is established Law, that the Parson of a Parish, if he does
not the Duty of burying the Dead, is not entitled to any Fee; so that Bate, even
supposeing it in his parish, can have no Cause of Complaint, especially as
a right of Buryal at St O. is plainly & fully proved, & upon the whole, the Instances
of Duty done by Taylor, are within the Chapel of St O. or Tytheing of W. & are such
only as his Predecessors used to do, & as it wd: have been shocking in a Clergyman
to have refused the Performance of some of them, when called upon, viz. to
baptize a dyeing Child, (Evans's Son) & to administer the Sacrament to an expiring
christian (Mrs Lucas) in neither of wch Cases any Fee is due, therefore Profit cd:
not be Taylor's Motive; & as to their having been no Banns published, or
Marriage solemnized in St Os Chapel since 1754, we hope that will not be
considered as any Proof, of its being in the pth of C. Banns have never
been published in Cathedral or Collegiate Churches, yet nobody doubts their
being independent Churches, I am therefore to move for the Respt: Taylor
that he may be dismissed with Costs....

Dr Marriott. I am Council for the Appellant & must observe that Mr Taylor was cited
under the Description, of belonging to the Parish of C. he appeared under no
Protestation, he admits therefore by appearing absolutely, under such Des-
=cription, that St O. as well as the Tytheing of W. is in the pth of C. tho, this
is an Appeal from a Sentence pronounced on the 10th of May 1764 whereby
the Judge dismissed Taylor with Costs, I dont say he did wrong, as ye matter
was laid before him; the Cause was heard ex parte below; we gave Articles
Taylor gave an Allon, we gave none, so, by some mistake, the Cause was not
fully instructed; for we examined only on the Articles, wch cd: serve only to