& properly drawn; I dont know any Absurdity in 2 Parsons of one pish but we are not of the same pish. we claim only the spiritual Offices, that for time immemorial; we did not want to contest the Jurisdiction, we have been long desirous of having it tried that it might be established

Dr Wynne.. Drew an Argument in favor of the Defts from the great doubt about the Limits, from the Laws cited; we have exhibited a Transcript wch now is objected tho they have allowed it in their answers; You can have no more Objection to these Copies than you cd to the Book itself; I know this cause can only be brought in the Ecclesiastical Ct. It is brought for Correction, even a Monition is a Degree of Punishment, as I have lately heard; the Ct can determine incidental Points: It is not incumbent on any Party to prove his right, it is sufficient, if doubtful, to justify him; the Minister as well as the Ch: Wdns shd see the Parishrs come to Church; he has no colour of right to Easter Offerings; By Stat: of Edw. 6. Easter Offerings are payable where People receive the Sacrament, do they receive it in C? they do at St O's? it is not confined to the People of the Hospital only: in the time of Henry there were Houses belonging to St Bs Hospital, in process of time those were built on the Hospital Estate, the Curate of St O. has as good an exclusive Right to his own Chapel yard as the Curate of C. to his Churchyard: the Canon Law forbids y Demand of a Fee for any of the 7 Sacraments, the Deft is unfavorably represented to have received a Fee from a Person whose Soul B. had the Care of. the Perambulation is to keep up the Bounds of the Manner; I hope you will be of Opinion they have failed in the Proof of their Articles, affirm the Decree of the Judge below with Costs.

Dr Burrell... I do not wonder, the Gentlemen are desirous of relieving themselves from Difficulties, wch they are satisfied they cannot conquer, or that they shd wish to impose that Burthen on the Deft: wch is too great for them to support: it might be remembered, quod Actori incumbit Probatio, & that every Ct will expect the Person who brings a Charge agt his Neighbour, shd make that Charge good; natural Justice points out this, as an essential, wch ought never to be departed from, & I hope this Case, will not be an Exception; the Kings Advocate surprized me, when he said, if there was any Doubt in this Case (& it is agreed on all Sides the Doubts are numerous & weighty) the Ct ought to determine in favor of the Plt: agt the Exemption claimed, on account of the Tythes being extra parochial; he surely forgot that noble Maxim of the Law, (wch every Judge shd keep constantly in view) that in every Cause, & more especially those of a criminal nature, inter dubias Sententias mitior sit eligenda: In Cases of this Sort every thing wch is charged, but not made good by the Plt must be pronounced agt, & supposed never to have existed; but Sir, as far as possible, we have yielded to this Doctrine, & entred in some measure into this Negative Proof contended for by Dr Marriot, we have shewn the Place alledged by them, to be subject to C. is in fact not so; the Inhabitants of wch have no Seats in the Church of C. are not contributeable to the Repairs thereof, have distinct pish Officers, & gain no Settlement in C. With what Degree of reason or Candor then can those be styled Pishrs of C. who are restrained from enjoying the Benefit common to Persons of that Description? or wd the rest of the Pishrs of C. thank their Minister for obtaining a Communication of their Rights to the Inhabts of wch: whilst they continue exempt from the common Burthens of that Parish? Dr Calvert was pleased to say, he wd add a fifth Sort of Chapel to my List, wch came up to the present case, & never pretended to have Parochial Rights; he instanced Chapels of Colleges in the Universities, to wch he joined, not very appositely, Hospital Chapels; I must observe, those very Chapels, he has described, are the members of Colleges obliged to go once or twice every year in their proper Habits to y Mother Church in token of their Obedience; a token never attempted to be enforced at St Oswalds Hospital. Upon the whole, I hope you will affirm the Sentence of the Judge below, & dismiss Mr Taylor with Costs.

This is certainly a criminal Prosecution; I wish the Parties had agreed as the Dean of the Arches recommended; but that not being the Case, as he appointed me his Delegate, I cd not decline, I must therefore give my Judgement; I am sensible what I shall say, is only incidental

Judge Dr Harris for Dr Gray. with good Sentence in ye Court below, this Cause declined hearing of Causes

as to Whitstones; & cant affect the Bounds of the Parish, if hereafter contested in the Temporal Ct; I know the Spiritual Cts have no Jurisdiction of Bounds ries, tho they may come in incidentally, as they do in the present Case, & without determining wch? Wch is in C. it wd be impossible to determine this Suit. The Charge agt T. is for doing Duty in the pish of C. T. justifies by pleads that Wh: is free & extra parochial: the facts indeed on the Articles are fully proved, but if they were not. T. by his Justification has alledged his right to do all Duties, except marrying, therefore he has virtually confessed them- every Clergyman has an exclusive right to do Duty in his own Parish; to interfere with this, even on particular Occasions, with the Business of the Minister, either in or out of the Church, is a Canonical Offence, contrary to the general Law. the Questions are these. 1Q. is Whitstones Tything in the pish of Claines. 2Q. is St Oswalds Hospital in the pish of Whitstones? If on that Supposition, Does it enjoy such Rights, as to christen & bury in the Chapel yard, perform Offices in Whitstones, without Offence? the first 2. the Defts Council have given up. Exhibit B. proves a Presentment of the Inhabts for not going to some Church; Claines is not mentioned, but I think it probable C. is meant, as the Hospital Church is said to be dilapidated, they cd not be presented for not going there; they dont say they have no Parish Church, but that it is dilapidated. Exhibit C. is introduced to shew Wh: is not in C. This is not the strongest Evidence having neither Date, nor address; Oral Evidence has also been offered to shew Wh: is not in C. Witnesses on their cross Examon prove every thing Bate can want (to 16 Interry) in respect to Wh: being in C. Clarke the Dep. Regr to 16 Art. says he has many Leases in wch Wh: is described to be within the pish of C. There is as little doubt about the Ct Lect Jurisdiction; they call the Bp 2d of the Manor of C. not of Wh: & C. yet all the Cs are cited in Wh: There is full proof from Ds Witnesses (to 13 Interry) as to Easter Offerings Chapeau. Cowcher & Thomas speak to having paid Easter Offerings to B. the 4th Proof on this point is not very full, yet it is strong, when I consider it comes from Ds Witnesses. As to Seats, Cowcher to 13 Interry, says, the Inhabts of Wh: go to Claines Church when they please, & tho, they have no particular Seats there appropriated to them, it is clear, they have no Seats in St O. Chapel B. has pleaded this again, & added fresh Witnesses, who prove Easter Offerings very fully, tho, the least of all the facts. Processions are proved as often as is necessary, wch B. strengthens by adding, that the Tythes of Wh: are paid to the Impropriator of C. or his Steward. Hadwright Severn, Smith prove this. I have no doubt but wh: is in C. a Qu may arise wh: St O. is in wch: Written Evidence is produced to shew St O. is a pish of itself: many Wits agree it is in Wh: some contradict it, viz. Sarah Owen. Smith. Webb. & the Augmentation Office, & Lib 3. mentions the Lease. wch describes it so, I cant think there cd be such a Lease, if St O. had not a District belonging to it: the Oral Evidence makes it in Wh: the written Evidence says it is not. If St O. is a free Chapel, it is immaterial, wh: it is in, or out of Wh: if out of Wh: T. is not criminal for christening in that Chapel; the Law is clear, that a Person of one pish may christen, bury, or church, those of another pish. T. is not therefore guilty of any fault. In doing Duty at St O's Chapel to the Pishrs of C. But supposing it in wh: there is Evidence to shew St O. is a free Chapel tho, a private one, with a District: It is in Evidence the Curate of St O. has performed all Offices, except marrying, as long as the Wdns can remember; they are greatly strengthened by (the Registers) to the Inhabts of Wh: C. & other Places. Base dont object to T. burying Persons of other Parishes, it wd be equally wrong in T. to bury the Inhabts of another pish, as that of C. it wd be equally an Intrusion; B. has not proved either he, or his Predecessors have had any right to officiate at St O. nor do any Repairs appear to have been done by the Inhabts of Wh. at St O. wch is governed by local Statutes, & repaired out of the Estate wch belongs to it: I look on St O. to be a free Chapel, wch by Usage, has gained a right to bury the pishrs of C & the neighbouring pishes; It was a private foundation, originally intended for poor People, & it became usual for the neighbours to be buryd there, the Right is from time immemorial; B. contends St O. is a general Burying Place, that is not proved; no one can bury there without having first obtained the Leave of the Chaplain of St O. or the Master, this must be presumed; B. buryd them by Permission rather than of strict right. It is strongly in Evidence T. has exercised this function in Wh: by administring the Sacrament to Wm Lucas, & christening Everell's Child: there is only 1 Wd to prove the former: wch aided by corroborating Circumstances