I might observe upon the Article, wch pleads the Jurisdiction, that it is inaccurate, pleading his being in the Province of Canterbury & therefore liable to the Jurisdiction, wch is not a Consequence, since the Statute of Citations — We say no Dilapidations happend in Dr M's time, who never lived in the House. You are not tied down to the nice forms of Common Law Cs unless it appears, Dilapidations of some Consequence happend in Dr M's time, you will deem it sufficient if he delivers to his Successor, the Sum he received from his Predecessor. The money recovered in Bp Gooch's Case was paid over to the succeeding Bps; It has been a Question indeed, wh: the Exors could lay out the money — The present Dean cant expect to come into a new House; it wd be an unreasonable Restraint, & discouragement to ye Improvement of Ecclesiastical Houses, if a Person was tied down to a strict compliance with the Faculty — Gibson wishes, the Party improveing, might have a certain proportion of the money advanced, returned to him; This libel wd be irrelevant if you sh: think no more due than the 1050L but if you conceive he is liable to pay the surplus pursuant to his original Plan, the Libel must be admitted, & we must plead a different Estimate

Dr Bever — All Compositions are to be intended fair Agreements for the Dilapidations libellate; Can they say, what was sufficient for Dr M. is not for his Successor; we may conclude the Sum a fair equivalent —

Dr Harris — We have been entertaind with an ingenious Declamation about Dr M's Exemption from this Suit; we are told the 17th Article is not full, I think it is, but will make it fuller, if you are of a different Opinion; I will say Dr M. is generous; he has undertaken in the faculty to do it for himself & his Successors; does he now want to recede? the Ct will not let him, & will have great Satisfaction from an Article in our Libel, that Dr M. is able to make good his solemn Promise out of the extraord: Profits of the Deanery which are 700L more than communibus annis Dr M. himself makes Dilapidations, he leaves the Building unfinish'd ...

Dr Dyne — Is it reasonable that an Incumbent, the moment he enters on his Benefice, sh: be obliged to expend many hundred Pounds; I dont say he may not be obliged to paint & white wash; but if floors are wanting he may make his demand on his Predecessor, who being insolvent, unless he can shew he used the most proper & expeditious methods to recover the money, his Exors will be liable to the Demand of the next Incumbent ....

Judge — Dr Markham having appeard to the Jurisdiction, there can be doubt on that head; the Libel makes it an extraord: case: Dr M. was Dean of R. a short time, during which he did his Duty, in receiving the money due for dila-



Dr Hay — pidations from the Exors of his Predecessor; then he applied for a faculty to the Bp, wch was granted after proper steps were taken. the material Articles are the 12 & 13th — which say, Dr M. has deviated from the Plan he gave in to the Bp & made alterations less expensive than he proposed — When a faculty is granted, it is expected, the Plan agreed to sh: be pursued; but in Deaneries small variations are overlooked; the 13th Article states that in pursuing the Plan, some Dilapidations have happend, that the Front of the Building is become cracked, dangerous & that 830L will be wanting to compleat them; here is a charge of Dilapidations arisen in Dr M's time. Unquestionably, if nothing had been done by Dr M. who had only applied for the Faculty, without beginning to carry his Plan into Execution, he wd have paid over the Money received from his Predecessors Exors, to his Successor; the Difference stated is, that Dr M. hav: begun to execute the Plan, a consequential Dilapidation accrued, & the Query is, how far Dr M. is responsible; it has been argued, as if he wd be liable for the whole charge, as this has been thrown out, I am ready to give my Opinion on the facts supposed; the time Dr M. was Dean of R. is to be considered; he is liable only to pay, as a Passenger for passing thro, the Turnpike, i.e. the Deanery of R. in his way to Christ Church; he may be chargeable with something for this consequential Dilapidations; but it wd be unreasonable to make him responsible for the whole, when another is to enjoy the Benefit; the Law says where Dilapidations arise from the fault or Neglect of the Incumbent, he must make them good; but where they happen by the Act of God, a part of the Benefice is allotted for that purpose, viz Ts. Take it, an accidental Dilapidation must be answered for by Dr M — I dont think he is bound to build & make good the whole of the Plan according to the Faculty, for when he undertook it, it was an implied Condition, if he remained Dean of R. If the Plan is too expensive, Dr M. must apply to the Bp, for his Licence to contract it — If Dr M. had made a Tender of any certain proportion, for the Dilapidations accrued during the small time of his being Dean, Jos: have judged of the sufficiency of it; I do not think by admitting the Libel, I am bound to give the whole Sum charged —

Let it stand over to the 4th Session of this Term, for admission, that the Parties may consult about a Tender —