being undoubtedly temporal;) but wh.r if he could, as Patron in full Right, he can under the Circumstances of the present Case has granted away the next Avoidance; if the Court does determine it, you will determine on Common Law Rules, & consider it as an Incidental arising in a temporal Matter; how could he obtain Redress at Common Law? Compare it to an Action of Wasts, wch can be brought only by the immediate Remainder Man; Sr J. F. complains of a Presidice done to an Estate, to wch another has a Right in Reversion; Mr Serocold, or the Person for whom he is Trustee, are the only persons proper to have brought this Suit. The only Right must be upon the Demise of the Incumbent. They say any Interest will entitle them to bring this Suit, but I apprehend a Remote Interest will not.

Cvid. Comyns Dig. Tit. Waste

An Incumbent is bound to maintain the Houses &c of his Living but he is not to be compelled so to do, at the Instance of every one. the Parish.rs have a Right to his Residence, why dont they present these Dilap.ns at the Visitation; they might apply properly, if the Parsonage is really out of Repair;

the Ct will not suffer a poor Clergyman to be harrassd by a Person of great Fortune, at least, the Ct will see the Plt has a Right to hold Mr Horton.

Dr Calvert

Dr Wynne has not adhered to the matter mentiond in the Act wch I apprehend to be the common Rule of Proceeding; he has asserted that a Patron cant come before the Ct. that it is a temporal Right, & is saleable; whatever the Right is, the Incumbent is amenable to the Eccles.l Ct, which has a Power to deprive him. However, this is not in the Act, therefore immaterial to the present Question, wch is wh.r Sr J. F.s Right is as good, as if the next Avoidance had not been granted away; The Affidavit is very incompleat, & dont conform to the Rule of Law, that the best Evidence sh.d be offerd wch the nature of the Case will admit; for in this Affidavit, Serocold acknowledges having the Deed in his possession, yet does not bring it before the Ct. much depends on the wording; a Different Sense may be conveyd, from what is contended for; Dr Wynne compared it to a Tenant for Life, & Sr J. F. to the Reversioner; One must go deep into the Reasoning of the Common Law, to know whether the Cases are similar; perhaps a Person cant bring such an action without being seized in fee; his Ancestor's Clerk is in possession, Sr J. Fs Right can only be interrupted for a time the next Avoidance is not certainly granted; it is only an eventual Conveyance; He has a right, if any Patron can bring a Suit, for supposing he cannot, nobody can; Serocold w.d be objected to; Chandler has only a remote possible Interest; a Patron has a Trust so far as to see, that the Parsonage is fit for the Residence of the Clergyman.

Dr Burrell

Dr Wynne having hinted to the Ct that Sr J. F. wanted to oppress a Poor Clergyman, it is incumbent upon me to inform the Ct that the Bp of Winchester at Sr J. Fs request, wrote to Mr Horton to desire he w.d admit, proper Persons, send by Sr J. F. to view the Parsonage & to see if it was in good Repair; & that the Def.t refused: they have asserted that Sr Jn. F. conveyd the next Avoidance to Serocold in trust for Chandler, we denied it, how do they prove it? Why, Serocold swears, the Instrument

is in his Custody, but dont produce it; I am therefore warranted in still doubting the Existence of any such Instrument; if Serocold has it, why did he not bring it in Court, his omission is a reasonable Ground for me to suspect there is some flaw in it, or some misrepresentation; you will observe they do not pretend the next Avoidance is granted away absolutely, but that it is confined to the presentation of Chandler, if he dies, Sr J. F. is in possession of the next Avoidance – The Law, in order, the better, to preserve Parsonage Houses & other Eccles.l Buildings in repair, has not confined the Power of instituting a Suit, to the Ordinary only, but allows every Parish.r & other Person interested in the most remote degree to promote the Office of the Judge – I may compare it to the case of a Lord of a Manor, who by Custom grants out his Copyholds for 3 Lives, & yet has a Power (during any part of the Term) to compell the Copyholder to repair his Tenem.t or to rebuild it, if it is destroyd, by Accident, or otherwise. I hope you will think Sr J. F. has such an Interest, to intitle him to bring this Suit & that you will order Mr Horton to appear absolutely –

Judge — Dr Harris

I have heard the Question agitated, wh.r a Patron could bring a Suit of Dilapidation, the Opinions of the Profession were asked on that Occasion, & the general notion was, that a Patron could; & part of the Income of an Incumbent, has been laid aside, by the Ordinary for that purpose; I think any Person may bring such a Suit, by promoting the Office of the Judge; I know 2 Causes of this nature instituted by Patrons, in both of which, they proceeded by Articles; I shd have no doubt, if I was sure, they w.d proceed by Articles; I think, upon the whole, Mr Horton should appear absolutely . . . . . .

The Council for Sr J. F. observing he was a Parish.r of Hascomb, the Judge expressed his Surprize, that he had not been entitled a Parishioner, in the Citation; & asked Jenner (who app.d for Cheslyn) if he asserted, Sr J. F. to be a Psh.r of Hascomb, wch he asserted he did in Acts of Ct, wch was accordingly taken down; Major being asked if he denied Jenner's Assertion, replyd he was ignorant of the Fact, & therefore could neither affirm nor deny

Def.t ordered to appear absolutely

Sergeants Inn. Nov.r A. 1768.

Bogg N.o 170 Compton v Bearcroft Major.

Q. Did the Judge below right in dismissing Def.t
Q. Pd Def.t within the Purview of 26 Geo 2. c
Q. Shall the Marriage be set aside as null ab initio?

Attorney Gen.l Sir Fletcher Norton, Mr Wedderburne & Serj.t Leigh, Dr Harris, Wynne & Burrell } Solt Gen.l Dunning, Dr Calvert & Mr Bearcroft . . . . . .

× Mr De Grey

Dr Harris . . I am Council for Mrs Compton, who being a minor under the age of 21, subsequent to 25 March 1754 viz, about 13 March 1760, went with Mr Bearcroft the Def.t into Scotland, & was married to him at Dumfries, by Bd Jameson, in the House of Tho.s Huddlestone a Cook, without the Consent of her Parent or Guardians, & contrary to the Act of Parliam.t 26 Geo. 2. such Marriage being had without Publication of Banns or Licence; after the Ceremony was over, the Parties repaired to Penrith in Cumberland, where they consummated; I must observe that neither of them was ever resident, in any part of North Britain, the Plt being domiciled at Hartpury in