Arches July

No 21

Gunner and Hazeler agt Pays

Gostling — Dr Harris, Calvert. — Dr Wynne, Bever — Stevens.

Lus: Wh: Ch: Wns cd make a rate contrary to ye Order of Vestry

Dr Harris — I am Council for Mess: Gunner & Hazler Church wardens of the pish of Walton, who have instituted a Suite agt Mr Pays, for not paying to the Repairs of the Church, according to an Order of Vestry, directing a rate to be made to raise 150£ to repay Mr Smith: the Assessment to be laid for the Church Rate according to the last Poors Rate: but that Rate being set aside by Appeal to the Quarter Sessions, the Ch: Wns made another Church Rate, on pretence that it was different from that directed by the Vestry — Mr Pays refused to pay, whereupon he was cited into the Consistory of Winchester, & we gave an Allon pleading the Equality of the Rate directed by the Vestry: that the Householders were more numerous than the Landholders; that the House-holders were rated at double what they wd be, if Landholders: that on account of this Inequality in the Poors Rate, it was set aside by the Justices, & moreover contradicts the Plea given by Pays, that some were under rated, & others overrated, in the Assessment made by them: this Allon was rejected in the Ct below, from wch we have appealed

Dr Wynne.. I am Council for Mr Pays cited originally into Ct of Winchester, in a Libel of Subtraction of Church rate: the Church of Walton being out of repair, there was an Order of Vestry for the Ch: Wns to borrow money: Mr Smith lent it, & the Vestry directed them to make an Assessment of 2.6 in the pound, so that the same be made & figured as the last Poors Rate was, & no otherwise, according to the ancient Custom of the Parish: Mr J. Gunner was present, when the Order was made & signed it; the others were absent: 5 April 1759 notice was given for a meeting on the 6th to sign the Church Rate: the 3 Ch: Wns, Constable, Overseers, & the other Parishrs met accordingly, to the number of 82: Gunner & Hazler then produced a rate, drawn differently from the Order of Vestry for it to be accordt to the last poors rate — It differed a Shilling in the Pound; & all the Parishrs present, except 11 declared agt it — Temple the other Ch: Wn produced such a Church rate as had been directed, wch he, the Constable, Overseers, & 65 pshrs signed — That produced by Gunner & Hazler was signed by themselves, & 11 Parishrs only: at the same time the Vestry made an Order for it to be entred

"That on 5 March 1759 it was agreed, the Ch: Wns shd make a Rate according to the last Poors Rate; that upon the meeting of the Vestry to sign the Book, Gunner & Hazler produced a Church Rate that was very unequal that Temple produced one agreable to the Order that Gunner & Hazler refused to sign it; that they (the Majority) allowed Temple, & directed the Rate to be levied according to the Book in his hand, at the same time disapproving of that made by Gunner, Hazler" notwithstanding this Order, Gth have libelled agt Pays: 10 October 1760 they gave additional Articles.

1 Nov: they were heard on the admission & rejected; they appeal'd on 28 Nov: & were assigned to libel: in April 1761 the Cause was dismissed — M. T. 1762. Nov. 22. they began again at Winchester, the Deft Proctor gave an Allon, wch, with Exhibits was admitted — 1 July 1763 Publication was decreed at ye Petion of both Parties — 29 July the Plts gave an Allon, declaring they had not seen the Depons; the Judge took time to deliberate, & rejected the Allon, the Admission of wch is now the point before you — The Objections, are, that it was given after Publication, decreed at the petion of both Proctors, & the Depons are transferred open, they may have been seen tho, it is otherwise asserted; they cd separate avoid being seen — This Cause was begun in the most arbitrary obstinate manner by the Parish Officers, before the Rate was agreed to, the Proportion was settled by the Vestry, who at the next meeting protested agt that, wch had been produced by these Officers: the whole Allon is in admissible except one Article, insisting on the right & Authority they had to lay it as they thought proper & this is contrary to what they had pleaded before "That the "Vestry had settled the Church rate, to be raised accordt to the "Poors Rate, wch was very unequal rate." In that plea they do not dispute the right of the Vestry — I know but of one Instance where a Ch: Wn may make a rate, wch is to reimburse himself on the refusal of the Pshrs to rate themselves: else he is only to collect the rate when made; he may object to it as a Pshr if he thinks himself overrated — The Poors rate has been quashed by the Justices, was no justification to them to make a Church Rate, different from that ordered by the Vestry; the Poors Rate was only to serve for a Guide in making the Assessment, & the fate of one, cd not determine the other: the Parties aggrieved by the 2 Rates, have 2 diffnt Remedies: the Church rate, if unequal, wd have been quashed by the Ordinary, the Poors rate by the Appeal: this Assessment made contrary to the Order of Vestry is illegal, wch my Client & every other Pshr has a right to object to: the litigious manner in wch these Ch: Wns have proceeded, is worthy notice, I hope therefore, Sir, you will not only reject the Allon but condemn them in Costs.

Dr Bever... The Ch: Wns have mistaken their own power; Parishes have their Vestrys to determine upon the Business, they are little Republicks: the Ch: Wns are the Officers to execute the Resolutions, & whilst they act within Legal Bounds, they will be protected: Every thing is voted in Vestry; the Majority concludes, & it is a method wch is in general beneficial; & the Confusion wd be endless if a Minority, a factious few cd counteract the Resolutions of the Majority — The Ch: Wns are ministerial, have no more right to alter an Order of Vestry, than a Judge had to alter an Act of Parlt or falsify a Record: to say this Plea is to introduce new matter, is putting it upon quite a wrong footing, for from their own shewing they disobeyed the Order of Vestry, & Publication has past they are now too late

Dr Harris.... It is not to be surmised the Proctor saw the depons, he said he had not seen them, & it is to be taken so till the Contrary appears, & then all the Articles contradictory to their Plea are to be admitted; Mr Pays has joined Issue, he does not deny our right, he has only said, such & such Persons