Arches
June 27

No 92

Bishop

Bate v Taylor

Drs Marriott. Clarke. Calvert

Alexander

Drs Collyer. Wynne. Burrell.

Dr Collyer... I am Council for the Revd. Mr Taylor agt whom Mr Bate has instituted a Sute, for
doing duty in the Parish of Claines, whereof he is Perpetual Curate, this Cause
was heard by the Chancellor of Worcester, who was of Opinion Mr Taylor shd
be dismissed with Costs; Mr Bate has appealed, & we are now before you on
the Merits of this Appeal, It is unnecessary for me to recapitulate the several
Proceedings &c We have alledged the Chapel of St Oswalds & that part of the
Manor of Whystones called the Tytheing of Whistones, to be extraparochial,
that Mr Taylor is chosen Chaplain of St Os. Hospital, by the Master thereof,
who has the right of Nomination, & that he has a Licence from the Bp
of the Diocese, (wch is exhibited,) this Licence is full Evidence that ye Bp inten:
:ded he shd perform Parish Offices in the Chapel; Duties have been perform
there for time immemorial by the Predecessors of Mr T. in aid of Oral Evidence
we have produced Exhibits to confirm our Assertion; viz. Register of Baptisms
Buryals & Marriages; Lib 3. wch contains an account of certain Rights
& Immunities, & also 3 other Exhibits markd A.B.C. wch prove this point
we bring an Extract from the Augmentation Office wch shews "St Oswalds
is a Parish Church of itself," we say it is immaterial whr. it is in the Circuit
of the Psh of C. or not – At Haslewood near Salisbury the Chapel of St Nicholas
founded about 1200 is exactly in the same Predicament; Mr T. being
extraparochial is subject to no Visitation, this I am aware, the Gentlemen
will use as an Argt that St O. is not a psh – T. is amenable only to ye Master
of the Hospital; By Implication, from the Exhibits, the natural Inference is
the Hospital Church was dilapidated – a Place being situate in ye District
of a Parish dont make it the less Extraparochial – It is locally visited by the
Bp. of Worcester: no Place is subject to a local Visitation, that is subject to
any Parish, witness St Catherines by the Tower, & Whitehall; no Settlement
is gained in Claines, by living in the Tytheing of Whistones; no Burthens
of C. affect Wh: & none of the Hospital affect C. wch has been so adjudged
as Mr Cooksey, & is therefore a clear proof of their Indepence on each
other; at that Time the People of C. said they did belong to St O. but now
they sing a different Song, to answer a different Purpose; if a man in-
truded into the Office of Chaplain, how cd he be entitled to the Fees for
doing Duty at St O. We can have no Connection, as to Spiritual Affairs
with the Church of Clains, having no Seats there; We rest it on the
Licence, the Record of the Immunities & immemorial Service – Mr Bixell
speaks strongly to Whs. being free from C. he says the Service of pray.
by or administring Sacraments to the Sick of Wh: is performed by the
Curate of C. or Chaplain of St O. at the Option of the Inhabts Brooks wd
not have asked Leave to do Duty at St O. if he had a right so to do – There
was a Cause of this Sort begun before, & afterwards dropt; I will agree
to the Proof of Processioning; that is no Proof of Whs. being spiritually
Parochial: It is said the Tythes of Wh: are paid to the Impropriator of
C. we dont pretend to Civil Rights, Tythes in Impropriation may be so
denominated – Easter Offerings are an antient Acknowledgement, for
Little Extra Duties performed by the Minister to the Sick &c they are
very often not demanded, being so small, they are immaterial to
make an Alteration as to Ts right of doing the whole Service –
There are 2 Manors, C. & W. the Cts are held in either according to ye
Convenience of the Steward &c if held in St Os Hospital I dont apprehend
any Parochial Rights &c thereby accrue to St O. It is said no Marriages
have been solemnized there or Banns published since the Marriage
Act: that proves nothing. Its being extraparochial will account for it.

Dr Wynne... You will observe, this is a Cause of Correction, the Qun. arise on a
Complaint brought by one Clergyman agt another for havg. invaded
his Rights; no Place is laid where the Offices were performed, except
in the Case of Lucas, it is not insinuated that T. acted with any view
of Interest. I deny a Clergyman can, by Law, be punished for burying
a Corps brought to his Church; on the contrary, if he was to refuse on
due notice, he wd. be punishable by Canon; it wd. be hurtfull to
the Minister & Parish; suppose a Traveller was to die, shall he not
have Xtian Buryal; Suppose a Woman falls in Labour, & there is
danger of the Child's Death, shall it not be baptized? As to these Circum-
:stances, I insist he has not erred; He is objected to for administring
the Sacrament out of the Church, the only Instances brought, are
2 Cases of Extremity, where he performed ye Offices of Charity gratis, he
wd have been culpable if he had deny'd: It is at most a Doubt wh:r

he had not a right; if we could make it appear there was a usage to do this
there wd. be no Ground for Articles; if a man was to go from House to House like
a Mendicant perhaps there might be reason to complain; It must be proved
to be done with a lucrative view, officiously & intrusively to defraud a Clergyman
of his just Dues, & also frequently, or the Complaint will appear litigious &
malicious – It is necessary to enquire into the Proof of the Situation of this Place
suppose it cd. be brought to Light, that this is extraparochial, tho, it had been
forgot & overlooked till now; if the Inhabts of Wh: were threatened to be prose-
:cuted for not going to Church, they wd. say they had none to go to; they pay
no Church Rates to C. Service in Whs. Tything is said to be no Settlement in C.
They have stated some few Circumstances to shew, the Tything has some De-
:pendence on C. the Processioning is not clearly ascertained, the Witnesses differ
as to Time; there is no Evidence of it being constantly done – The Curate of C.
it is said, sometimes collects Easter Offerings in Wh. this proves no farther
than it goes. The Pshrs of Wh: have no right to Seats in Claines Church; In other
parts of C. psh the Proprietors of Lands have Seats appropriated; it must at
least be a Doubt whr the Tything of Wh: is in the psh of C. or not: in point
of Usage Mr T. is justified: I have spoken in general only; how much more
strongly wd. the Qun. operate, if considered as Coram non Judice, the Bounds
of the psh coming in Issue. It is so laid down in Rolls Abr: 291. Vicar of Boston's
Case. 13 Jac: would you consider that, when only brought incidentally in issue
wch you cd. determine, if it came directly before you – Does Bate say T.
received fees from any Persons, let him specify them – No Minister has a
right to a Fee for what he dont perform, See Burdox v Dr Lancaster. Salkeld
Bate has performed Offices in St O. & received Fees for so doing; he has no more
right in the Chapel of St O. than Taylor in the psh Church of C. which he is not
pretended to have done. B. has pleaded only 2 Acts by T. those were Acts of
Charity, for wch he received no Benefit: St O. is Peculiar, extraparochial & inde:
:pendent at least, in more Instances than one; Easter Offerings are said
to have been paid to B. but not constantly. In 1631. the Inhabts of Wh: went
to church at St Nicholas, not at C. when their own Church was down, why
was not the Rights then demanded by the minister of C. for this reason, he
was conscious he had no Claim

Dr Burrell Before I enter into a discussion of the Evidence, wch has already been so
ably argued by my Leaders, I shall consider what are the Different Chapels
known to the Law, & examine the Peculiar Circumstances of each, that I may
inform myself & the Ct. towch, that of St Oswald bears any Resemblance;
The first is such as is parcel of or x x x x x x adjoining to the psh Church;
built for the Convenience of some family of Consequence, that they might
be separated from the rest of the Congregation, & have a particular Place
of Buryal.x the next is a Chapel of Ease, founded with the Consent of the
minister, at the Expence, of that part of the Pshrs who live at a considerable
Distance from the Church, in a large psh; but this was subject to certain
Regulations; the Chaplain was named by the Rector, & was removeable at
Pleasure; he was paid by the Pshrs who frequented the Chapel. No Font was
allowd therein, Baptisms, & Buryals, & Marriages, were to be performed at
the psh Church; no Sacraments were allowed there, it being only used in Prayers & Sermons. An
Oath of Obedience was due from ye Capellane to ye Rector or Vicar. Annual Processions with Flags &c
were made to ye Mother Church, at certain festivals & Seasons, when Oblations & accustomed Dues
were paid by ye Inhabts so privileged. The 3d. a Free Chapel, wch in point of maintenance, Endow-
:ment, as also in respect of Exemption from the Ordinary's Jurisdiction differs from both the
former, & hath perpetual maintenance, towards upholding thereof, by a charitable
Indowment, without the Charge of the Rector or Parish; So that a free Chapel is
according to the Opinion of some – a Chapel founded within some parochial Precincts
for Divine Service, by the Bounty of some well disposed Person, over & above ye Mother Church
to wch it was at the Pshrs choice to repair or not, & endowed with a maintenance by ye
Founder; According to others, those are only free Chapels, wch are of ye foundation of
Kings, & by them exempted from the Ordinary's Jurisdiction – A Parochial Chapel is
defined, to be that, ubi deservitur de Ecclesiasticis, Sacramentis & Sacramentalibus, sic
quod non teneantur accedere ad ecclesiam majorem, pro divinis audiendis. vel recipi-
:endis Sacramentis, & habent ad hoc Sacerdotem specialiter limitatum. It hath rights
of Christening, Burying, & differeth nothing from a Church, but in the want of a Rectory &
Indowment, for ye privilege of administring ye Sacrament, of Baptizing, & ye Office of Buryal
are ye proper Rites, that make it a seperate Parochial Chapel – Nay if any new Oratory
hath acquired & enjoy'd this Immunity, it differeth not from a Parish Church, but may
be styled capella Parochialis – Again Lyndwood says, ye right of a Parochial Chapel may be
by Custom "Si autem in tali Capella, non sit institutus proprius Curatus, sed remotibus, ad
Libitum Prælati, majoris Ecclesiæ, potest nihilominus in casu talis Capella habere Jura
Parochialia, scil: ex consuetudine præscripta – To wch of these does St O. bear any resemblance?
in some respects to the Free, in others to the Parochial Chapel, but in no particular
does it bear analogy to the Chapel of Ease &c. being entirely free from every kind of
Parochial Dependence, & of itself a seperate & Distinct Jurisdiction from Claines,
if therefore Mr Taylors Duty has been confined to St Os Chapel, there cannot be the
least Pretence or foundation, for this Charge, if the Tything of Wh: is comprized
in St O's Jurisdiction, or if C. has a Concurrency with St O. yet T. is not culpable,
nay if Wh: is dubious wh:r in C. or no, ye Usage alone will defend T. from Censure.

x ubi ibidem familiaria Se:pulcra sibi con:stituerent.....
x 2 Burn. 216. Degge 186. Watson 336. Kennet 595.....

Godolphin Rep. Can: fol. 145

Lyndwood de celeb:ratione missarum cap: Effrænata. verb Capellis. fol. 238....

Burn – 217...
Lyndw: de clandes:tina desponsatio:ne. c. ult: v. aban:tiquo. fo 277....

Selden

cætera non desideranda