Peculiars
L. T. 3 Sess.

No 115

Peers agt the Vicar, Church Wardens & Parishioners of Croydon

Jenner — Drs Clark & Calvert — Drs Harris & Wynne — Adderley

. . . . . Jenner appeared & prayd a Citation agt the Vicar Churchwardens, & Parishioners of Croydon, in special, & all others in general, to shew cause why a faculty shd not be decreed to Mr Peers of a Pew in Croydon Church, as long as he & his family shd continue Inhabitants of the said parish?

Mr Peers married the daughter of Mr Wm Simmonds, who had built a Pew with the Consent of the Churchwardens in 1722 (7 feet 6 Inches long — 5 Feet, 11 Inches Broad) for himself, his Wife & Family: Jenner alledged, he enjoyd it till his death in 1753, exclusive of all others; that the Pew came to Mr Peers in right of his Wife, & had ever since been quietly enjoyd by him, exclusive of others — Mr Adderley appeard for the 2 Parishioners, Strudwick & Washford, & declared he opposed the Faculty; The Allon sets forth, that the Parish is large, that many have quitted the Church for want of room, & that others were greatly straitened; that the number of Square superficial feet in the Church were, 3015; that the Area of the Pew was 44 feet which is 1/68 part of the whole number afd; that Mr Peers Mansion House & Garden are rated only at 20£ pr An: & that if every Person who paid that Sum shd ask a faculty, it would exclude the major part of the Parishioners; we contradict Mr Symmonds Enjoying this Pew till his death, exclusive of others, & we say others sat therein; — That the Pew was not built on a Vacant Space, but where other Pews had been built, sufficient to contain 12 Persons; that Mr Peers has only 1 Son, 1 daughter, who do not live with him — That Walter Harris Esq was placed by the Churchwardens, & sat in the Pew with Mr Simmonds; That Thos Wilkinson was also placed & sat there; therefore the facts alledged in the Citation & Intimation are not true;

Dr May. Judge — If you had alledged an Order of Vestry, to ground your Application for a faculty, you might introduce it, but it must be pleaded; it is not Evidence to be admitted agt the Admissibility of this Plea.

Dr Clarke — I am Council for Richd Peers Esq Alderman of London, who married the Dr of Mr Simmonds, who was possessed of a Mansion House, Gardens, & Estate in the pish of Croydon; he erected ye Pew in question at his own Charge, & died in 1753, leaving the Estate to his daughter; in whose right, Mr Peers has ever since enjoyd & repaired the same; If I may mention the Order of Vestry, tho, it is not read, I wd observe that on Jan: 18. 1767, a Notice was published in the Church for the Vestry to meet, to consider about applying for a Faculty to be granted to Mr Peers, for the Pew in question, so long as he & his family shd reside in the parish; the Vicar Ch: Wns, & Majority of Parishrs assembled in Vestry, subscribed their Assents Mr Peers immediately applied for ye faculty, & on the Return of the Citation an Appearance was given for Strudwick & Washford, who now offer an Allon, which we oppose, not only on its general irrelevancy, but on it being so particularly, under the Circumstances of this Case; Our Application is not to obtain a new Right, but a Faculty to confirm an old one; if we have any, it must be an entire right, or none at all; if the Church wardens could introduce one, they might as well introduce a dozen, if they

a shall ye order of Vestry be read not being pleaded

say the Right is not entire, they must shew the Limitation. the Facts stated shew a long possession in the Family, obtained in the best manner originally by erecting & repairing; every Circumstance is favorable; the possession was acquired by a proper Authority; that of the Churchwardens; the frequent Sanction the Court has given to their placeing, is a strong Argument of the propriety; whether that Consent is sufficient to give a prescriptive right, or not, it is sufficient to obtain a faculty; if Mr Simmonds had applied in 1722 he wd have had one of course; the Presumption is always in favor of the Ch: Wns, at such a distance of time the Ct will presume they did right at first in giving leave; It is not merely ex gratia, but ex debito Justitiæ, from the Presumption that the Ch: Wns are the proper Persons to consent; If no Objection arises on the Citation, the Licence will be granted of course; they should have specified whether
Art 2 there were Galleries or not, otherwise the Article of the Area is fallacious; I am informd there are 3 Galleries — They shd
Arts. have named the Persons who left the Church for want of
Art. 3 Room — That Mr Peers is rated only at 20£ pr An: for his Mansion House & Garden, is fallacious, for he may pay more for other Lands or Houses; nor wd the Consequence follow, if it did, all Persons paying 20£ wd be entitled to a Pew of the same dimension; the Alehousekeeper & the Alderman of London wd be on the same Level, than which nothing can be more
4 absurd — It is said the Pew will hold 12 Persons, & Mr Peers Family consist only of two; tho, that may be true now, it
5 may increase; — Mr Harris is said to have been placed therein, but it is not said, he was a Parishioner; he in truth sat there at Mr Simmonds' Invitation; it is alledged, many other Persons applyd for Seats, who? were they Parishioners? that shd be ascertained —

Dr Calvert — If the Application, on our part, appears reasonable, & the Opposition frivolous & vexatious, the Ct will stop the Suite by rejecting the Allon; the only Indulgence we ask, is to continue Mr Peers where he is already seated, his Predecessor built the Pew in 1722, since which there has been an uninterrupted possession for 45 Years, which is beyond the time allowd by the Canon Law to establish a Prescription tho, that is not an absolute Bar to the Suite, if it was, this Application wd be unnecessary — the Ct will consider how the possession was obtained; I know the disposition of Seats by Churchwardens is not final, it is under the direction of the Ordinary, who will suppose the Ch: Wns right, & not interpose, unlys strong reasons are offered to induce it; there is no doubt but that every Parishioner may oppose; the Ch: Wns may oppose in the name of the whole Parish; Strudwick & Washinton are 2 Private Persons, they do not appear to be of any rank; if they are seated, they have no right to oppose, as this is not a faculty for an Alteration of Structure; after so long a Possession, legally obtained, thro' the proper Officers, you surely will not admit trifling facts. Croydon is in Art 5. styled a large, extensive & populous Parish, so it has been 45 Years, yet Simmonds & Peers have enjoyed their Pew the whole time; but the Church is said, not to be large enough to hold all the Parishioners & Inhabitants, I believe no Church is large enough for all the Parishioners; they should have added "all who usually come"; Art: 2. states the superficial Feet in the Church, & that Peers enjoys 1/68 part of the whole; are the Galleries & Chancel included in this admeasurement? 1/68