Part is not too much for a Person of Mr Peers Rank: They
shd specify in the 3d Art: wh: he is rated only for his House
the 4th States that the Pew was not built on a vacant Place;
it is sufficient, the Pew was altered by the Approbation of the
Parish, you will not now go into an Examination of there
having been many, on the Scite of this Pew. 5 Art: The Placeing
Harris, is offered as a Sort of Answer to our Intimation; they
shd state when & by whom he was placed there; but if proved
one Instance wd not be sufficient to oust us of a Possession
we have had so long.

Dr Harris. My Clients Messrs Stradwick & Washford, must be taken on the
Plea to be Parishioners; but the Intimation is agt all
Persons whatsoever; the Parish is much obliged to Persons
who will stand forth in defence of their Right; It may be
done by an Act of Vestry, but they shd have exhibited it, they
have not laid it before the Ct in their Act; they were
ashamed to do it; the Order of Vestry appears to have been ob-
tained only by a Majority of 2. wch looks as if something
was wrong; If Simmonds himself was to apply, he would
appear unfavorably, & to have intruded on the power of
the Ordinary; for no Church warden can give leave to
make a new Erection. Peers has not even a possessory
Right, having never been placed there; he founds his Pretensi-
-ons on having married Simmonds daur, but Simmonds him-
-self, as placed by the Ch: Wns, cd only sit there, & not convey a
Right to another. You grant Faculties, & sometimes take
them away, viz. if the Grantee is lapsus facultatibus, the
Witnesses will say who quitted the Church; General pleading
which dont lead Witnesses, is the fairest way. It does not
appear we have omitted the Gallerys; we have undertaken
to shew Mr Peers has 68. it rests with them to shew he is a
Person of distinction; with respect to the Rate, P. must shew
what other Houses he has, by pleading them. A Repairing will
give a Right, where there is time immemorial; but you know
the Commencement of Mr Peers possession.

Dr Wynn. I take this to be a Res Integra, tho, the Gentlemen have
urged it, as if the Application was mere matter of form,
tho, one indeed, does acknowledge it, to be a small favor.
The meanest person has as good a Right, as the Ch: Wns
to oppose. Ch: Wns may in Subordination to the Ordinary
grant a temporary possession, but not a permanent one;
they may place a Person, till the Ordinary directs other-
-wise, but they have nothing to do with building a Pew,
their Authority is not sufficient, the Resort must be to
the Ordinary; Why did not Mrs. apply for a faculty? I may
suggest, he was conscious the Parish wd be incommo-
-ded, & therefore the Grant opposed. The Order of Vestry is
generally brought to lead the Intimation; any Individual
tho, he has a Seat, may shew the Inconvenience likely to
accrue to the Parish, on the faculty being granted, & tho, all
the rest of the Parish shd agree, his Objection will be attended
to: the Ct considers itself as obliged to Parishrs who object to
such Incroachments. If a Parish shd encrease after a
Faculty is granted, that wd be a reason for revoking it;
you will observe this is a Vicarage, & that the Chancel
belongs to the Rector & Impropriator, so that the Body only
is left for seating the Parishioners, which is certainly
very disproportionate, & many must be excluded.

Dr Hay Judge. The only Question is wh: this Allon controverting the grant
of a Faculty, shall be admitted. No Faculty can be granted
without calling all Persons interested; for others, besides

Parishioners may have an Interest; the very Process shews it is
discretionary, & that the Ct will determine on the Circumstances
of the Case. In most Cases leading to faculties, the Party praying
the faculty, sets forth the reasons & Grounds of his Application;
Mr Peers has offered his; the nature of a Faculty is to give an exclu-
-sive right to the Party praying it, & his family, & that the Ch:
Wns shall be precluded from seating any Persons in that Pew;
The Ch: Wns do not object to P's Prayer, but 2 private Persons do;
Individuals may certainly come in & object; they may state
private Injury to themselves, or general Inconveniences to the
Parish, tho, not to any other private Person who does not
complain; they state that the Church is deserted by some for
want of Room, that others are straightened, & that Peers has not
enjoyd an exclusive possession from 1722. The great Question now
is, whether any Parishrs will (if the present Application shd take
place) be prevented attending their duty at Church, to wch all
are bound by Law, & presentable for non attendance; Mr Peers
Claim in right of his Wife, is proper to be laid before the Ordinary
as a Circumstance to induce the Grant of a Faculty, tho, it is
no Right in itself; I do not agree with Dr Clark, that P. has ob-
-tained an exclusive Right by building & repairing the Pew in
question; he may have a possessory Right, to sit himself, but
not to exclude others, for then this Application wd be needless.
It might be a different Case if he had brought a Suite of Perturb-
-ation; but then the Ch: Wns might have said, he cd not place
Mr Wilkinson elsewhere, & so be justified agt the Perturbation.
There are Rights by Prescription, & Grant of Faculty, different in
Effect & Extent. I remember no Revocation, tho, that may be done
on special Circumstances. The Qr is, wh: I shall immediately
grant a Faculty, without hearing these Persons, for on the face
of the Plea, they are private Persons only; as in the Case of Mrs
Partington & the Ch: Wns of Barnes, if the Objection appears to
arise, from any other motive, than that of public Inconvenience
I shall grant the Faculty & condemn the Opponents in full
Costs, but I must wait to see if the Objections are well founded;
I think Mr Peers has an equitable Claim under the Circumstan-
-ces of this Case, if it is attended with no public Inconvenience.
Appropriations in themselves are not favorable; I do hold the
Minister & Ch: Wns, cannot separately or Jointly give a right to
repair, without applying to the Ordinary. It is materiall to shew
this Pew was erected on the Scite of other Pews, which wd hold
12 Persons, that may be a reason for rejecting his Application
his Family consisting only of 2. If People are by this kept
from Church, the Objection is good; Mr Peers has clearly a
possessory Right, wh: it is exclusive, must depend on the
Proofs; I cant say the faculty ought to be granted absolutely
in the present Instance; I think the 2d & 3d Art: shd be
rejected, as immaterial, & I admit the rest of the Allegation.

Mr Ch: Wns cant give a right to repair without applying to Ordinary

Prerogative
V. S. 3 Sep...

H. Stevens Junr — Hull v Jupe — Nº 116 — Fountain — Dr Wynn — Dr Harris

Q. Shall the exceptive Allon be admitted?

Dr Wynn. Wm Hull died a Batchelor, leaving Geo. Hull his Brother, & other Relations
Judith Jupe, obtained Probate, as sole Exec: of a Will dated Sepr 18. 1765; Citon
issued agt her to prove by Witnesses; the Probate was brought in, my Clients
Interest confessed; an Allon has been given in & Witnesses examined thereon;
Stevens now offers an exceptive Allon to H. Glover one of the Subscribing Witnesses
Mrs Jupe in her affd of Scripts mentions 4 Wills. viz. of 4 2 & 31 of Aug: & of 4 18th
& 21 of Septr 1765. She says that of Septr 21. was cancelled by H. Glover by Order of
the Decd. Our Allon consists of 2 Articles; we plead H. Glovers general bad