Arches MS.
2d Session.

Stevens — 137 — Driffield v Pocklington — Altham

Dr Wynne — Dr Harris & Calvert

Dr Harris...
Dr Wynne...

opened

This is an appeal from Norwich, by the Revd Jos.h Driffield, Rector of Chelsworth in Suffolk, agt Robt. Pocklington Esq of the said Parish, & was in the first Instance a Cause of Office, promoted by the said Pocklington, agt him for refusing, or neglecting to perform his ministerial Duty. 19 July 1763, a Citation was returned agt Driffield. 6 August he appeared by his Proctor thereto, Bond was given by the Promoter to answer Costs, Articles were given on his behalf, wch were admitted, Driffield by his Proctor gave a negative Issue; Witnesses were produced, examined, & a farther Allon given on behalf of the Promoter, pleading the times of the Induction of Mr Driffield, & several of his Predecessors into the Rectory of Chelsworth, & the respective times of their Continuance, to wch Driffield gave an affirmative Issue; Publication passed, & the Cause was regularly called on 9 April 1766, the Judge pronounced, Driffield shd be admonished to perform divine Service, otherwise to say or sing the Common Prayer in the pish Church of Chelsworth, in the morning & evening of every Sunday, throughout the Year accordg to the Act of Uniformity, & also to preach every morning & evening on every Sunday throughout the Year, & in such manner as his Predecessors have done, & that he shd perform divine Service on all Saints Days, & all Days appointed by the Church or State to be kept holy, & give notice on the Sunday next preceding Saints Days, & Holy days happening in the Week then next following, on pain of the Law, & condemned Driffield in Costs. Driffield appealed, & the Allon now offered pleads

Allon... 1. Ath: That the Act of Uniformity, has, since the passing, been in many points disused, & not enforced; particularly the Clause enjoining Morning & Evening Prayer, to be read on every Lords Day, & other Days therein appointed, in every Church, Chapel, &c. That it has been usual & Customary, ever since the passing the Act, in divers parts of this Kingdom, & specially the Diocess of Norwich, where are many Ecclesiastical Livings, of very small Value, for one Minister to serve 2 Churches, & to perform Divine Service, but once on a Sunday in each Church.

2. That it was impossible the said Act shd take place, in respect to the reading Morning & Evening Prayer in every Church &c, for that the yearly Income of many Livings in England, & Places mentioned in said Act, are too small to pay for a Minister's Attendance, & reading, the same not exceeding 20 £ a year.

3. That the Legislature hath in many Instances, looked on the said Clause of no force, or impracticable, & particularly in the late Act for preventing Clandestine Marriages, it is enacted that Banns shall be asked in Morning Service, or Evening Service, if no Morning Service in such Church or Chapel

4. The Rectory of Chelsworth, is not sufficient, for a Rector's maintenance, especially if married & has Children, not amounting at the most extended value at 100 £ yearly, deducting Land Tax & Parish Rates, out of wch the Rector must repair Houses.

5. That Joseph Driffield the present Rector has a wife & 9 Children.

6. That Driffield during the time mentioned, in the 3d Articles objected, by leave of the Bp of Norwich, served the Cure of

Kettlebaston in Suffolk as well as Chelsworth, performing Duty at each Church, Either Morn.g or Afternoon alternately, so that Divine Service & Sermon was performed at Chelsworth every Sunday during said Time.

7. There are 3 pish Churches within a mile of Chelsworth; Kettlebaston is not 2 Miles distant. Whilst Proponent served K. the Parish.rs of K. & C resorted to wch Church they pleased, accordg as Service was performed thereat, were satisfied therewith & neither the Promoter nor any other Parish.r of C. objected till some difference arose, between the Promoter & Driffield about a Setting Dog.

8. It never was the constant Custom of the Rector of C. to perform Divine Service, twice every Sunday, & other Days appointed to be kept holy, but all his Predecessors ever since the Act of Uniformity, have accepted a Curacy, when they could get it, & by reason thereof never performed Duty, more than once on a Sunday at C. & it never has been customary in the said pish to read Prayers on Saints Days, as a Congregation on several Trials, could not be procured to attend the Same.

Dr Harris... The Promoter is Lord of the Manor, & stands up for the Cause of the Parish; we plead that by Custom, Service was to be performed on all Saints Days; that he was requested to do the Duty as his Predecessors did. This Allon pleads contrary matter to what the Witnesses were examined to in the Court below. I shall begin with the 8th Art. of their Allon; we pleaded in the 3, 5th Art. of our Allon, that it was usual to read Prayers &c, in their, the contrary is pleaded. I wont prove first Principles, for in the Court below matter contradictory cant be pleaded, much less in the Court of Appeals, this allowd here, tho, it has been disputed in y Delegates in the first part they say there is no Custom, & to confirm that, say the Predecessors used to serve Cures, so the Confirmatory part is as contradictory as the former part of the Article.

Art: 1. 2. 3. 4 & 5. are as contradictory as the 8th. We pleaded the Act of Parl.t they contradict it, & say, it is impracticable; I am now considering them as contradictory, taking it in the Light of Impracticability. In an other light, even supposing it in time, would you suffer them to say, an Act of the Legislature is impracticable? if it is on view false, you will not suppose it true on an Allon notwithstanding the general Doctrine; shelt must be satisfied the Statute is impracticable; it is usual to do Acts in fraud of Statutes, but that will not validate the Acts done. The 2d concludes nothing. The Stat. of Geo. 2. dont conclude, the Minister might be ill, there are many reasons why morning Service might not be celebrated.

In 4 & 5. He pleads he has a Living of 100 £ a year, that he has 9 Children, therefore shd not perform divine Service; this is no reason at all, no Excuse.

6. It dont follow that because, the Bp licenced him, he dispensed with the Statute; he intended he shd have his other Parish supplied, the Bp cd not approve agt the Statute.

7. We said the Parish.rs were not satisfied, they cant now say they were; but let who would tell him they wd excuse him it can be no justification; wd it be sufficient for him to say Duty is performed two Miles off, come over there: The Setting Dog is mentioned too, for what purpose, would you go into proof of the property?