M. 3 Sess
Commissary of Surry

(No 139)

Grene — Mapletoft v al: v Vicar. Ch. Wm &c of Chertsey — Collins

Dr Wynne, Bever — Drs Calvert & Burnell

Dr Wynne ... The Ct having, upon a former Occasion, testifyd its Opinion in favor of the Faculty prayd, by the First Intimation, & thereby overruled the Objections taken thrit by the Opponents, I shall consider that Point, as already decided; but an Omission being made, wch wd have frustrated the Intent of our Prayer, the Ct indulged us with a Rescission of the Cause, in order that we might take out a Second Intimation, to remedy the Defects of the first; we did so, & in consequence thereof, a Plea has been given in by our Opponents, stating the Order of Vestry of May 28. 1766. that No Leave shd be given, to cut a Door Way thro, the East Wall of the Recess, or to take away the Crown of the Arch at the Entrance thereof, erect a Gallery therein, or open a Dormer Window on the S Side of the said Church. It stated likewise that the Church was very much out of Repair, as well as the Recess, & that great Danger would arise to the Fabric, by carrying into Execution the Alterations proposed; We gave a Plea in answer, contradicting the whole of their Plea; They have examined 8 Ws. & we 8 Ws. The Question therefore now before the Ct respects this Point only, wh: they have proved their Assertion? I must observe to the Ct. that the Opposition to the Grant of the Faculty prayd, appears to me to be founded in Peevishness & Vexation, Frequent Offers have been made to compromise the Affair by submitting it to Arbitration, wch have been constantly rejected; we were desirous it shd be referred to the Decision of Surveyors, to be named by the Ct, as is usual in Causes of Dilapidation, You Sir approved the Proposal, but they refused to comply with it; if therefore, they shd not, after so tedious an Opposition, make out their Assertion clearly to your Satisfaction, I trust you will condemn them in exemplary Costs; I am instructed to say, there will be no Occasion for a Dormer Window, as was apprehended, so that we shall not trouble you on that Point; I do acknowledge the Witnesses on both Sides, depose strongly in favor of the Propositions laid down, by the different parties; but what they both want to establish, is little more than matter of Opinion, which from the nature of the Evidence, is a very unsatisfactory Issue to rest the determination of the Question upon; In Cases of this Sort, the Parties are at liberty to examine whom they please; it is not like Questions of Wills, Marriage &c where they are confined to particular Persons, within whose knowledge & Information, the Facts came; Parties will naturally sound those, they intend to examine, to know how far they may depend on their Evidence, & whether their Opinions coincide with those of the Principals, if they find any Variation, or material Difference from their own, Such Witnesses will never be examined; Upon the Evidence being compared, you will find the Deft Witnesses contradict one another, & that ours are uniform; So that the Balance being exactly weighd, the Scale will preponderate in our favor; Several of their Ws

say the Walls of the Recess are greatly decayd & out of Repair; but this is contradicted by Glasspel, one of their Ws. who says the walls of the Recess, are in good Condition to all Appearance; & that, that part of the Wall on wch the Nook abuts, does not hang over; we desire a liberty of taking away a small part of the Arch, & to put a Beam instead thereof, wch will operate as a Tye, & be able to support a much greater weight, than the Arch itself does, wch is a Gothic Arch & acts as a Thrust; the Witnesses who are examined on our side, agree, that a Door way may be opened, in the East Wall of the Recess, without Detriment; 2 of these Witnesses viz. White & Hart, measured the Wall, & the latter took a Section of the Nook; We are so well satisfied, that the Alterations proposed, will be attended with no Inconvenience we have offered to give Security to pay for & make good any Damage that may attend them, & this fact is not uncommon, but that Parties have usually given Security that no Damage shd accrue to the Church; it was done so in Lady Middlesexes Case, where they wanted to induce, or stop up a very large Window. I did not expect to have heard any mention made of Tye Beams they are fallacious, & foreign to the Point in Issue, & unconnected with this part of the Church. The Order of Vestry of 28 of May 1766, is very extraordinary, the Ps had no right to give or refuse Leave, that belongd to the Ordinary entirely. I hope you will be of opinion to decree the Faculty as prayd, that the Opposition has been peevish & vexatious, & that we are justly entitled to exemplary Costs.

Dr Bever — Dr Wynne having spoken so fully to the several points in Issue, renders it unnecessary for me, to trouble the Ct with many Observations, especially as the Debate is confined to the Subject matter of the last Intimation; the Witnesses examined, on this Occasion, speak merely to their Opinions, in which indeed, they oppose one another very strongly, & therefore the Ct will not gain much Information; the Witnesses on our Side speak more uniformly than the other who differ in their Sentiments, particularly Glasspell, who agrees with our Ws. & adds weight to their Sentiments; Hart, interfered merely out of good nature, & therefore greater Stress shd be laid on his Testimony; he thinks cutting a Door way in the East Wall of the Recess will strengthen that part of the East Wall, by reason that the work they will add to the Wall, in makeing good the Door way, will be much stronger than the Old work, the Wall being now composed of Materials of a rotterish Quality; Spiller, West, & Jordan agree, that cutting a Door way in the E. Wall, will not add anger, tho, it may weaken it much stress is laid, on the S Wall, being a few Inches, out of the Upright, But that is not so material, as it appears to be, it is well known Walls will stand for ages out of the Perpendicular; the Gentlemen seem to be extremely apprehensive on account of the Tye Beams being rotten; I do not believe the Church would be in Danger if they were taken away, as there are Buttresses on the Outside to