determine agt his Evidence, on Suggestion or Surmeze, it would be too much to discredit a Ws. because he appears unwillingly; but I own, I think there is room to suspect he knew more of this Affair than he is willing to declare — there are 4 Ws who swear directly contrary to 4 others, I am not authorized, to weigh the Evidence, without Circumstances to lead me, if I was, I shd think Drover & Hill were most likely to know the Decd's handwriting — By Law a Scriptum ad quod must be proved, before it is compared with another Writing; the Letter of Attorney is not proved, if it had been proved by one Ws. it wd. have been sufficient to have founded me in decreeing a Comparison of Hands; the Subscription to the Will & the Lre of Attorney, are very unlike each other — Tho, it is very improbable, yet the Sister may be concerned in fabricating the Will — I think, there is no auxiliary Circumstance to induce me to pronounce that there is sufficient proof, of the Will propounded; I do not give any Sentence, but content myself with saying, Deficit Probatio, non Ius.

Scriptum ad Quod....

The Will not sufficiently proved

appealed

Qu: is not this a Sentence by Implication agt the Will, & are not the Plt thereby entitled to his Costs? The Deft. appealed in order to introduce new Evidence, & the Plt adhered to the Appeal, on account of the Judge not giving him, his Costs —

M. T. Bye Day Arches

Stevens (No 141) Thomas & Maddox v Williams Fountain

Dr Wynne Dr Calvert

Dr Wynne

This is an Appeal from the Consistory of Hereford from a Grievance in rejecting an Allon

In the first Instance, this was a Cause of Substraction of Church Rate, brought by Thomas & Maddox, Churchwardens of Bredwardine in Herefordshire, agt Jas. Williams

17 April. 1763. Johnson Proctor returned the Citation, Holland appeared for Williams & prayd a Libel; the Judge assigned Johnson to libel by next Ct — Johnson allowd to the next Court to Libel — Johnson gave his Libel, wch was admitted & H. answerd negatively.

9 June ....
1 Septr. ....

4 Art. pleads "That notice was given in the psh Church (according to the Usage, & Custom of the said psh,) to the Inhabts & Pshrs that they & every of them shd meet at a certain time to make a Church Levy" —

5 Art. "That pursuant to such Notice, the said Ch: Wns, with several of the Pshrs & Inhabts of the said psh, met in the said Church at the time appointed —

11 April. 1765. I. prayd Publication, & all Acts to be propounded next Ct wch was decreed

9 May .... H. gave an Allon, wch was admitted; I. answered negatively, & a Decree for Answers, & also to exhibit the Original Rate was decreed —

5 Art. recites the 4th Article of the Libel, & in contradiction thereto, pleads That no Notice &c was at any time given for the purposes specified in the 4th Art: by the Minister, or psh Clerk, of said psh, or by any other persons, having a legal Authority thereto —

2 Art: recites the 5 & 6 Art. of the Libel, & in contradiction thereto pleads, that, no psh meeting was held in the psh Church agreable to any notice, previously given in the parish Church —

31. Octr. 1765.. H: gave an additional Allon, wch was admitted, & J. answd negatively

It is therein pleaded also, that no psh meeting was held in the psh Church, within the time libellate, in pursuance of any notice previously given in the psh Church, for the purpose libellate, & that no Church Levy, was agreed to at a public Vestry held on 22 Octr. 1762 —

On both Allons H. examined divers Witnesses.

Jan: 16. 1766... H. prayd Publication, & all Acts to be propounded next Ct.

Feb. 17 ..... When, I. gave the present Allon, wch he prayd to be admitted H. dissenting, & alledgeing it impertinent, irrelevant, & inconclusive; for that the purport has been already pleaded & proved (as presumed) in the proceedings before had, to wch he refers, & prayd the Allon to be rejected;

The Judge havg heard Informations, deliberated to next Ct. ....

3 April ..... The Judge at the Peton of H. wholly rejected the said Allon, from wch Decree J. appealed to the Ct of Arches

NB. The Publication was decreed below; no Copies of the Depons were ever taken, & J. on the 30th of Novr. last, made an Affidavit that he had never seen the Depons, & knows nothing thereof —

Dr Calvert... This is a Cause of Substraction of Church Rate, brought agt my Client by Thomas & Maddox, a Libel was admitted the 4th Art: of wch, pleads that Notice was duly & as usual given to the Pshrs 5 Art: that pursuant to such notice, a Vestry was held, & a Rate agreed to; My Client gave an Allon, in answer to this Libel, pleading that no such Notice was duly given, during the Time libellate, & that the Rate is partially & unequally charged; that it was not duly signed at the Vestry, but that several Persons signed at a Style in a field — The Appellant gave an Allon wch the Judge rejected, & I hope you will think, it was properly rejected; it is a Rule that a Party shall not be allowd to repeat his Case, if it has been directly or indirectly laid before the Ct, before, & can come out thereon in 1763. they pleaded the notice was duly given in the psh the Witnesses might have been examined to that Custom, we considered it as in Issue, for in our Allon we said, no such notice was given, as had been customary in the parish; Now they give an Allon & lay a special Custom in the Parish; it is laid in a very vague manner viz: "that it has been so ever since Mr. . . . was Minister, & that the Parish Clerk cant speak to be understood; ..." who knows how long they have been so; the reason is very strange, that the Minister wd. not give the Notice, & the Clerk could not by reason of an Impediment in his speech; he was then a very unfit person to be Clerk; it may be said it is customary first to plead generally, & then specially; it might be so in an original Plea, but they said the