D. Wynne

The Objection is a peremptory legal Bar; for if we plead, the alterations were made without a Faculty, they cant go into Plea wh: the Alterations were right or wrong; you will not enquire into that Particular; there was such a Suit agt the Ch: Wns of Chelsea for erecting an Organ; the Organ was taken down by Decree of the Ct; when the Ch: Wns applied for a faculty, & it was decreed — they have given no Issue; We desire to know wh: you did, or did not, this, without a faculty? if there was not something in the Allon, which the Gentlemen thought tantamount to a faculty, they w: not have sigad the Allon which induces me to take notice of the Contents of it; from the account they give it was high time to instruct the Ch: Wns in their duty, of which this Ct is the proper Judge; the Ch: Wns ought to continue only one year; the 25 H 8. c. 4. expresly prohibits it; the Canon says, if the Ch: Wn Sh: happen to be rechosen, he Sh: be resworn, wch supposes it an improbable thing to happen; but this Practice has been allowd, for want of Persons to serve the Office; the Objection to the Reelection operates in its full force in this Parish — The Minister, Curate were proper Persons to advise with, but not to direct; 'tis not merely the Judgement of the Ordinary which is requisite but his Judgement exercised in a discreet & legal manner; the Course of Proceeding is well known, Application Sh: be first made by Petition, then a Citation with Intimation Sh: be taken out; & upon examon of the Case the Ct may decree agt the Consent of the Majority of the Parish:rs if improper in itself or unduly obtained, but then the Ct speaks by its Seal & its Registrar; the Qu: Was the Instrument legally executed? the Parish:rs had not the legal warning given, wch was necessary to validate the Act. The 7 Art: wch mentions chalking out the Plan, is rather Burlesque; Where the Law has prescribed a mode of notifying, a different notification will not avail. If all the Psh:rs had paid, they w: not have been the first who have paid in their own wrong; they might think Dr Tanner was the sole Person to judge; he has however in reality, done nothing, as Ordinary, or Dean of B. The NB under the Letters of Request shews he knew very little of his Judicial Office — It is of very little consequence, who promotes the Office of the Judge, or when; a Party seeing an illegal Act done, is not bound to object at a particular time; he may make his Objection after it is compleated. Goddard tho poor, has an Interest, as a Parish:r to see things properly carried on, & is highly commendable for what he has done . . . .

Q as to the Multa & Pœna Quotation

Judge & Proctor

I do not think Dr Tanners NB at the bottom of the Letters of Request impertinent to me — This is a Criminal Prosecution & the Promoter must give Security, or bring into y:r Registry 30£ to answer Costs, which I find has been done in this Case, therefore Goddards Poverty is of no import; I conceive the Allegation to be an Issue, because it alledges a Justification of what the Churchwardens have done; Ch: Wns are temporal Officers, & are bound by the 85 Canon to put

the Church into proper Order; they may do many things without any Application at all; there are others wch they cant do without the Consent of the Parishioners, & some not without the Consent of the Ordinary; viz. an Organ which may entail a Burthen on the Psh — This Plea is of a mixd nature; the Pews are stated to be out of Repair; if the Ch: Wns had gone no farther, no Application to the Ordinary was requisite; but it seems they wanted more accommodations for the Psh:r who are very numerous, & for that purpose stopp'd a door & Passage, this required the Ordinarys Assent; Supposing it an original Q. wh:r a Faculty wd go, so far as the Allon shews the Convenience it w: be granted. The next Q. is wh:r it Sh: be a criminal Suit? to be sure the strict Rules of Acting have not been adhered to, but are there not many Cases, where Archdeacons & other Ordinarys, on Visitations order alterations, with the Consent of the Parish:r this I conceive to be of that nature; as the Psh:rs here sufficiently apprized, B. & H. objected that Dr S. had not been consulted, the Vestry was therefore broke up; at the 2d Vestry Dr S. notified his Approbation of w:t but was done, & his directions to the Ch: Wns in writing, upon which the Persons present unanimously agreed to the Rate, wh:r few or many is immaterial; the present bind the Absent; Dr S. confirms the Order of Vestry as Ordinary & Rector; if this comes out in proof, the Q. must be, wh:r these Acts are proper, or render the Ch: Wns liable to Censure, & wh:r a faculty is not necessary accord:g to the strict forms of law — I admit the whole Allegation as laid.

The Allon admitted as laid — — — —

Prerogative
25. Trin. I

Fountain — Battier & others v Robinson — Longden

Dr:s Harris, Burrell — Dr Calvert & Wynne

Firth v Finch 1 S. M. S. 1753. before Sir Geo. Lee.

Collins under a Commission for examon of Witnesses, had, among others produced In Nicholl a Legatee in the Will litigated, in 1001, for which Legacy, before his Production, he exhibited a Release, & was then examined; & the Commission being returnd; Collins before Publication, discovered Nicholl had a Silver Tankard, & some other Things left him by the Will, wch were not mentioned in his said Release; Collins therefore prayd, that he might produce Nicholl again, on his exhibiting a further Release, as to such particular things, & be resworn, the Commission to be opend, & then Nicholl to be repeated to his Depons before taken under the Common, wch the Judge granted after hearing Council on both Sides . . . . .

Q. Shall a Wn be allowd to release his Int: after exon & Publication, & then be repeated to his Depon, or reexamined? . . . .

Judges & Judges v Munn

Cheslyn alledged Sam:l Whitehead, a Witness to the Will, to be a Legatee in a gold Ring; that he had been produced, sworn, & examined, & had not released; alledged the Term Probatory not expired, nor Publication past; prayd his Depon to be suppressed, & that he may be examined again (after he had released, or accepted his Legacy) & be repeated, & offerd to pay Costs for Delay; Adderley dissenting & alledging, he had been repeated & cross examined, & therefore submits he cannot be produced, sworn, & examined, or repeated again to his former Deposition.