Dr Calvert.....

If it sh: appear after Publication, that we have made only Semiplena Probatio, we might, (before the Conclusion,) move for the Supplebory Oath; it is not now the time, but it is only an additional Reason for admitting the Allon;

ved. this Case at large in Burn.....

It was so agreed in 1y. Bridget Asbornes Case (appeald to the Delegates from the Ct of Arches,) 1717.....

Dr Harris.....

It is material to us, to shew Mrs Hervey was of no mean family, to render the match improper or unsuitable to the Plt- The proper Steps must be pursued to ascertain the fact, the Art: objected to is a meer formal Article of Courtship: it was inconvenient to Mr Hervey to marry Publickly; the Letter of 7th Augt amounts to a Declaration; 3dly the absolute Ne=cessity of proving the fact of Marriage-

Judge..... Dr Bettesworth

This is a very extraordinary Sute, brought by a Gentleman agt a Lady, with whom he has long cohabited as his Wife, for alledgeing herself to be so; the Purport of the Plea now offerd by her, is to Justify the Jactitation; the 3d & 4th Artes only, are objected to; the 3d pleads her Pedigree & Rank, wch is very proper, for every thing is admissible, wch tends to shew she was not in a rank of life, improper to be rec[illegible] into the Plts family; besides, it pleads who Mrs Goodwin is, with whom the Defts was at Bath; i.e. that She was Mrs ..... Sister- If Mrs Goodwin is living she will be a competent Witness, to prove the Courtship at her house at Pall Mall; it is capable of Proof She pleads, that from family Motives, She was oblidged to contract privately, She dont plead the mode of Contracting, I suppose it was not a written Contract, or it wd have been exhibited; it is not necessary to plead, who was present, that is captable of being proved by Answers.

The 5th Article is particularly objected to, on wch the whole rests; the Mariage is said to have been solemnized by a Person unknown; it is said to be inter Vivos, therefore there sh: be proof of a Fact of Mariage, & the best Evidence y nature of the Case will admit, viz. the Persons present at the Ceremony- It may be made out by subsequent Circumstan=ces; the Qu: Wh: such Evidence is offerd, as if proof will induce the Ct to pronounce for the Marriage? how it will turn out, I cant tell; it is extraordinary the Lady sh: have forgot the Day on which she was married, one Circumstance, which may distract from the Impression such a Transaction generally makes on the mind of a Woman, is, an Intimacy between the Parties prior to the time when the Marriage is pleaded- It is possible, the Subsequent Cir=cumstances, might have flowd meerly from the Plt having for the Defts Credit, said She was his Wife; e con. the Reverse is possible: I cannot reject any part of this Allon; which lays Declarations of the Plt, owning the Marriage to his & her Relations, & that he did every thing possible to testify his Acknowledgement of her-

Plea admitted

Ibid

Funge. v Min[rs] Ch: Wdns Pish[rs] & Inhab[ts] of y[e] Pish of St Mary Somerset in spec[l] & others in general

Dr Calvert — Tenner — Addersley — Dr Harris, Compton

Consistory Trin: T. 45.

Gosking — No 162. — Stevenson & Nunes v Muilman — Jenner

Drs Collyer & Harris — Dr Marriot & Wynne.

Dr Marriot..... I am Council for Mr Rich: Muilman, who opposes the Confirmation of a Rate made by the Parish of Allhallows, for the Repairing the Church of said Parish; he now offers an Allon, stating that the Parish[rs] have made of 3 Shillings in the Pound, for compleating the

Q. Is a Rate to raise an additional Sum to defray y expences of compleating the Church &c of Allhallows, legally made, if the Sums had y[e] expences of which they were authorized to raise by 2 Acts of Parl[t]

A. If legal, every Subscription necessary

Repairs of the Church, that Mr Muilman holded a House in the said Parish valued at 120£ pAn. That the Parish is burthend with a numerous Poor, & the Church Rate is paid by 2/3 of the Parish[rs] That in 1764 the Church being very ruinous, an Order of Vestry was made on 6th May[r] to survey the Church- The Surveyors reported on the 13th of Sept[r] it was more adviseable to rebuild, than to Repair it; upon wch a Committee was appointed at the Vestry to apply to Parl[t] who obtaind an Act to levy a sum not exceeding 4000£ upon the Landlords of Lands & Houses, that being afterwards found insufficient, a 2d Act of Parl[t] was obtaind empowering the Parish to raise a further Sum as beforesaid, not exceeding 1000£. That 2 Plans were laid before the Parish for Building y[e] said Church; one being agreed to, they have unnecessarily pulled down a Wall, & in several particu=lars departed from the Plan, by which they have exceeded the Sums granted by the 2 Acts of Parl[t] & finding a further Sum of 600£ requisite to compleat the Church, a Vestry was held without previous notice given, & the Approbation of the Rate in question obtaind, by Surprize & additional Sums expended without any Authority of Parl[t]...

Dr Collier..... The Parishioners have a discretionary Power may levy the additional Charges agreed to in Vestry; Mr Muilman entered a Caveat agt the Confirmation of this Rate; he as a Parishioner, who will bear his Part of the Burthen, had a right to object- The Facts, no doubt are true, but a man must not plead every thing, that is true; the Question to be considerd, is, wh[t] they make to his Purpose; what is the Act of Parl[t] to this Complaint; the 12th Article is the principal Objection; their laying out a great deal of Money unnecessarily; if he can prove that it is material that he sh: not be burthend without cause- In the 13th Article, he pleads, the want of Notice & Surprize; My Objection to this, is, that he pleads in this Article matter contradictory to what he pleadd in that preceding; i.e he has alledged the Vestry to be unduly called, & now pleads this as a due Order of Vestry- The Trustees were authorized by Act of Parl[t] to lay out the Money, so that their Presence made it a properer Vestry, than if double the number, who were not Trustees had been present: It was the Obvious way, that any deficiency sh: be made up by the Parish, without any farther Application to Parl[t] Mr Muilman has his Reasons for vexing the Parish. ....

Dr Harris..... To levy a Rate it is not absolutely necessary, that there should be a Confirmation of it; Repeated Judgements declare that: but we do come for that purpose, we stand therefore in a very favorable point of view; Mr Muilman seems treated; he asked a favor of the Parish, to have a Pew with a chimney in it, which was not agreed to, & therefore he is desirous of being Revengd. It will appear, there was a public Notice of a Vestry being called for the purpose of settling the mode of making good the Sum wanted: a Notice alone is necessary; but not to specify the Business they are to meet upon; the Determination of the 1st Vestry, wd not bind a subsequent Vestry, why then was not one called, to resume the Consideration of the Point in dispute: a Public Notice, is a legal Notice, without setting forth y[e] Busines: It is frequently impossible to do so; suppose other Business had arisen, would the Vestry Acts then done, have been thereby rendered null- He is not at Liberty to say, the Vestry is not legal; as to pulling down London Wall, it is true, & they have built another: the Court will not say the Parish cant meet to replace the Money laid out. i.e. to agree on a mode to defray y[e] extraord: expences incurred.