Dr Marriott & Wynne

The Application to this Court, for confirming the Rate, is we are told mere complaisance, but that is not so, it is necessary. What we have pleaded in the 11 first Articles wd have been a Legal Bar to the Rate; It was considerd to be too large a sum to raise in the ordinary Way, the Parish therefore applied to Parlt for 4000£, who vested the Money in Trustees, & did not give the Parish a discretionary Power. The words of the Act are very express; the Parish is empowerd to lay out & borrow, not exceeding that specific Sum. They lay out more.

Neither Parishrs nor Ch: Wns, can pull down Churchyard Walls, &c without Application to this Court for a Faculty: the Wall is not pretended to be ruinous. Neither the Vestry, nor the Majority of the Parishrs can oblige an Individual, to pay any part of an Expence illegally incurred. If it was not necessary to give notice of the Business to be transacted, Room wd be left for Oppression & Surprize. Upon the whole the Proceedings appear very improper: I dont say, in general a detail of y intended Business is necessary, but in a Case of this Consequence, where all but A. or a great Majority of the Vestry are Trustees, & therefore interested, it is necessary to note the Business intended to be brought on.

Judge Bettesworth

In this Case the Churchwardens of Allhallows, apply for a Confirmation of an Order of Vestry duly called, by wch a Rate was enacted; this is objected by Mr Muilman, who owns a House of a considerable Value in the Parish; As to the Rate itself, it may be properly objected to, as unequal, made for an improper Purpose, or unnecessary, but neither of these Reasons are offerd; Mr Muilman states, the necessity of Rebuilding the Church the Agreement to apply to Parlt & the Acts first enabling them to raise 4000£ & then 1600£ by Annuities. That Sum proving insufficient, 600£ more was laid out: The Acts of Parlt say no more shall be raised, than 5000£ by virtue of those Acts. They do not prohibit further Sums to be raised, by other means: this is the principal Objection made by Muilman, which is comprized chiefly in the 13th Article, which cant be considerd as absolutely standing by itself, but connected with the 11th & 12th. Mr Muilman being a Parishioner on whom a considerable part of the Burthen will fall, has a Right to object; the present Consideration, is whr on the face of the Plea, there is any plausible Color of Objection; now Mr Muilman says the Walls were pulled down without cause & an Iron Gate has been exchanged for a very expensive Gate of Wood, to defray which the present Rate is made; the preceding Articles wch swell the Allton, are to be proved chiefly by Exhibits. At present I must suppose the Articles true & therefore admit the whole Allton, as laid; if the Articles shd not be proved, Mr Muilman will be liable to Costs. . . . . .

Plea received

Arches — Trin: I. Bye Day

Longden — No 163 — Atkinson ol. Church v Worger & others — Holman

Dr Bever — Dr Harris

Dr Bever . . . . . Mary Paine is the decd; She made her Will dated 30 July 1761 & 2 Codicils undated, She appointed Jas Worger, Edm: Bickerton Worger, & Wm Morell her 3 Exors of her Will.

In the Will, interalia is this Bequest "To Margaret Church my Servant, 300£ Stock, & all that is in the House. . . . .

Q. as to y Construction of a legacy: what is meant by y word "all that is in the House." Does it comprehend Money, Furniture, & all other things in y Testator's House at her death?



Q. is A. Atkinson entitled in right of his Wife to the Legacy as Res. Legatee, the legacies of Money, & wearing Apparel excepted . . . .

In the 2d Codicil

" 100£ Stock wch I bought in the year 1762, wch makes 5750£ Stock, I
" leave to Mrs Marg: Wethersby; my Servant knows her; & the 100£
" Stock, that I left to Wm Morell as Exor, & the 100 Stock I left to Mrs Laurence
" they being both decd, I desire they may both be given to Mrs Marg:
" Wethersby. As for all other Legatees, if they shd decease before me,
" I desire they may be given to my Servant Marg: Church, according
" in my Will. I have desird the favor of Mrs Francis Plumptree to be
" Exor in the room of the decd, & if there shd be any debts, I desire
" the legakes may not be paid, till the growing Dividends become
" due, & that, to pay them; & what remains, to be divided equally
" amongst my Exors."

The Testator decd 21 Decr 1767, & the 3 Exors proved the Will & Cods & found in the House abt 140£ in money, some Plate, China, & great Quantities of Laces, Holland, & Cambrie, not made up, besides Furniture, Linnen, Apparell: She died possesd of nothing more than the Stock, wch she has specifically devised to different Persons, named in her Will & Codicils, & what she had in the House, so that she gives every thing away, having no Residue nor Residry Legatee, save only that She gives to her Exors, what shd remain of the growing Dividend, after first paying thereout, what few debts she might owe.

Mrs Margaret Weathersby died in the Testators life time.

Marg: Church, lived as Servant with the Testatrix to her death, & is since married to Aaron Atkinson.

The Testatrix left no Kindred or Relation

Q. Is A. Atkinson entitled in right of his Wife to the ready money, Plate, China, Laces, Holland, Cambrie, & Apparel wch were in the Testatrixes House at her death, as well as to the Furniture by the Words of the Devise, of all that is in the House

Dr Bever . . . It is confessd that Marg: Church is entitled to y Legacy of 300£ the Question arises on the Construction of the Bequest; the Will is drawn by a Woman ignorant of Law, tho, it is intelligible enough therefore Allowances ought to be made; the Residue will be about 60 or 70£ this I mention to shew her exactness in the disposal of her Fortune her intention being manifestly to appropriate it all, & to leave little more than the Legacy to her Exors. In the 2d Codicil she says, "As for all other Legatees, if they shd decease before me, what I left them "I desire they may be given to my Servant Margaret Church. . . . . She makes a clear distinction between this Residuum to the Exors & the Reversionary Interest to Marg: Church; She has given largely to the Exors & family, therefore would have them contented with the Residue, if ever so small.

Dr Harris . . . It is agreed, Mrs Weathersby died before the Testatrix, but not before she wrote the Codicils; All the Legacies are Stock; by the word Stock, I contend, she meant, Money; if I am right, she could not mean to add Money to Money, she purposed only to couple Money with Stock; But under the Word Household Goods, Apparel, Jewels &c dont pass, it has been so determind in Chancery, you will then give the Money, or Goods, but not both. With respect to the 2d Query.

You find Plumtree is a legatee of 500£ in the Will, prior to the death of Morell, in whose room She is substituted an Exor, without any Legacy, in that Capacity; the Decd desires the favor of her to be one; She might intend more to fall to her & the other Exors, than she did at first; the Decd leaves Marg: Church, all the other legacies that might lapse, except Wethersbys.

Dr Bever . . . I cant define simple Ideas, the word All, must include everything of every Sort or denomination in the Decds house at her death. The Substituted Exor is a legatee in 500£: the reason of Decds desiring her to