

RECENT ECCLESIASTICAL CASES

CHANCELLOR TIMOTHY BRIDEN .

Re St John The Baptist, Shedfield

(Portsmouth Consistory Court; Aglionby Ch. January 1995)

The vicar and churchwardens of a church built in 1880 sought a faculty for the limited reordering of the interior (effectively the first phase of a more ambitious scheme) by moving the 'large and handsome' font from the east end of the south aisle to a position near the west door, and removing certain pews which were to be replaced by chairs. There were 14 parties opponent. In so far as their opposition was based upon the use of scarce parochial money for the cost of the project, estimated at £8,214, that matter was within the discretion of the parish itself and the Court would not interfere with the decision that had been made. On the merits of the proposals, the font (which had been moved to the aisle in 1961) would in its intended location be in a more prominent position and would be used by the incumbent, who on the grounds of convenience had been conducting baptisms at a separate receptacle. The pews were 'pleasant and homely to look at', but the case for keeping the pews for aesthetic reasons was not strong. Unlike many of the fittings and furnishings, they had no connections with parish families. The pastoral gain, in achieving flexibility in the use of part of the building, would outweigh their loss. Accordingly a faculty was granted.

Re St Mary, Tilston

(Chester Consistory Court; Lomas Ch. October 1995)

The proposal of a widow to mark her deceased husband's grave with a horizontal stone extending to the full length of the plot was opposed by the priest-in-charge, the P.C.C. and the churchwardens. The Petitioner desired the use of a horizontal stone in order to make the grave secure, and to carry out the deceased's wishes. The Chancellor concluded that, because for 35 years the parish had pursued a policy of permitting headstones alone, and the burden of churchyard maintenance would be increased if a horizontal stone moved so as to obstruct the use of a mower, he should support the PCC in its endeavour to pursue a consistent policy in the maintenance of the churchyard. The petition was therefore dismissed.

Re St Peter, Horbury

(Wakefield Consistory Court; Collier Ch. November 1995)

Proposals to install in a Grade I listed church, built in 1790 to the design of John Carr, a new lighting system was opposed by the Georgian Group. The system comprised four coronas at ceiling level, each with a metallic wheel containing eight angled spot lights. The Petitioners (the vicar and churchwardens) contended that the purpose of the lighting was to provide adequate illumination for worship, and to draw attention to the significant features of the church by the use of highlighting. There were financial constraints limiting the funds available for the lighting. The Georgian Society favoured a pendant or chandelier scheme, and criticised the coronas as being highly intrusive, thereby detracting from the historic character of

the building. The Chancellor concluded that the proposed lighting system would have so adverse an effect upon the character of the building that he could not permit its introduction. There were better ways of achieving what was required, which would not be much more expensive than the Petitioners' proposals.

Re Johnstone

(Wakefield Consistory Court; Collier Ch. 1996)

Exhumation was sought of the remains of a young man who had died in 1978 and was buried in the consecrated part of a local authority cemetery, so that reburial might take place in an unconsecrated part of the same cemetery adjacent to the plot where his father was interred in 1995. The Chancellor held that because (i) the ancient duty of the Consistory Court to exercise its authority in relation to human remains interred within its area was unaffected by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and (ii) on the authority of *In re Talbot* [1901] P1 the desire to reinter the remains in unconsecrated ground did not present any bar to the petition, he had an unfettered discretion to grant or withhold a faculty. The facts of the case were a far cry from the 'portable remains' cases. The pastoral circumstances required a faculty to issue. *In re Church Norton Churchyard* [1989] Fam 37 considered.

Re Sherborne Abbey

(Court of Arches; Sir John Owen, Dean, Cameron Ch. and McClean Ch. January 1996)

The Court of Arches dismissed an appeal by the Victorian Society against the decision of Chancellor Ellison (noted in 4 Ecc. LJ 528) that a faculty should issue for the removal of the great west window, partly designed by Pugin, and its replacement by modern glass. The Court concluded that, as the Chancellor was dealing with expert evidence from witnesses of the highest standing and came to decisions to which he was entitled to come, it could not be said that he had erroneously evaluated the evidence and the proven facts. Per curiam: (i) If prima facie there is an argument which may be presented with a reasonable chance of successfully reversing the decision at first instance, leave to appeal will usually be given by the Court of Arches. (ii) Since the issues in many cases are not confined in their importance to the parties alone, the Appellate Court will need to be satisfied that all relevant and credible evidence has been considered; accordingly if it can be shown that such evidence has not been considered application may be made for leave to adduce it. Leave is unlikely to be given if the reception of such evidence would have produced no different result. Neither will leave be given where the fresh evidence merely contradicts other evidence accepted by the Consistory Court, and there is no good reason for the witness not having been called at the hearing in the Consistory Court. (Note: this case is fully reported in [1996] 3 All ER 769).

Re St Agnes, Moseley

(Birmingham Consistory Court; Aglionby Ch. February 1996)

Proposals for the replacement of solid and leaded glass panels in the entrance vestibule were opposed by one objector, who contended that the door and screen formed part of an important set of furnishings designed by James Swan, a promi-

ment 'Arts and Crafts' architect. English Heritage, when specially cited, indicated that the church was of special rather than outstanding historic interest and that on balance the proposals were unobjectionable. The Chancellor granted the faculty sought, on condition that the leaded lights were stored and not disposed of without leave, because alterations were needed to make the entrance more attractive, and the changes would be fully reversible.

Re St James, Birstall

(Leicester Consistory Court; Seed Ch. April 1996)

The Council for the Care of Churches, when its advice was sought concerning the suitability of the design for a stained glass window, raised a doctrinal objection that the design, by incorporating the cross and blood of Christ, appeared to depict crucifixion and resurrection rather than baptism. The Chancellor considered that the Council's views strayed into an area of doctrine, which was an area where he was not obliged to seek, nor was he bound by, any advice. In any event the tokens of Christ's death and resurrection are indeed appropriate symbols of Christian baptism. It followed that, there being no historic or artistic objections and the proposals not being doctrinally objectionable, a faculty should issue.

Re St Mary, Coxhoe

(Durham Consistory Court; Bursell Ch. June 1996)

Permission was refused for the inclusion of a plastic photographic plaque of the deceased in a stone memorial. The provision of a portrait or statue of a deceased person on a memorial purported to do no more than provide a picture of the deceased when alive for the comfort of the bereaved and the interest of posterity. As such it was saying nothing whatsoever about doctrine concerning death, burial or resurrection. Neither did the reported cases (principally *Re St Mark's, Haydock* [1981] 1 WLR 1164 and *Re St Mary's, Fawkham* [1981] 1 WLR 1171) provide for the inevitable refusal of the petition on its own particular facts. Of greater concern was the durability of the proposed plaque; the Chancellor considered that there was insufficient evidence to satisfy him that the plaque would not deteriorate within a relatively short period of time. Weathering of the plaque was likely to proceed at a different rate from the memorial as a whole. Were the Petitioner to commission a monumental mason to carve a portrait in relief of the deceased on the memorial in lieu of a portrait plaque, a faculty would in all likelihood be granted.

Re St Mary's, Hemel Hempstead

(St Alban's Consistory Court; Kaye Deputy Ch. July 1996)

The churchwardens of the civic church of Hemel Hempstead sought a faculty for the introduction of a Copeman Hart electronic organ at a cost of £32,000, which was to be used while funds of the order of £100,000 were raised for the complete refurbishment of the 'virtually unusable' Victorian pipe organ by Walker. The opponents of the project, including the Diocesan Advisory Committee, preferred the pipe organ to undergo more modest repairs and to remain in use. The Deputy Chancellor concluded that, because the long term objective of all the parties was to restore the Walker organ, the real issue was what was to happen in the medium term; and that the medium term solution was to permit the introduction of the electronic organ upon terms. He was not convinced that piecemeal cleaning and

repair was the best solution; and there was a need to continue the fine musical tradition of the church which would be met by the provision of a properly functioning organ. There were sufficient undisputed funds available to purchase the Copeman Hart instrument. The church had an extended period of commitment to major repair, and needed time to consider and assess future needs, including the restoration of the Walker organ. A faculty was accordingly granted for the introduction of the electronic organ for a period of five years, subject to conditions that there should within three years be provided a detailed report upon the restoration of the Walker organ, and that the Walker organ should not be allowed to deteriorate further.

Re Plymstock

(Exeter Consistory Court; Calcutt Ch. July 1996)

Petition by the Vicar and Churchwardens for authority to carry out the following works:

1. Repairs to Cast Iron Gates.
2. Provision of two new handrails for West entrance.
3. Repainting of Bell Frame Grillage.
4. Provision of Draught Screen in Tower Arch.
5. Provision of improved lighting in Ringing Chamber.
6. Quinquennial repairs (as set out).

The Petition had the unanimous support of the PCC, and the DAC recommended the works. Citation gave rise to one objector whose objection related simply to item 2, and to item 4.

The parties agreed that the proceedings should be determined upon consideration of written representations instead of by hearing in Court.

The Chancellor was satisfied that a Faculty should be granted in respect of items 1, 3, 5 and 6. The objections to item 2 were that it had not in the past been found necessary, that there was alternative access for people who felt the need to have the support of a handrail, and that the handrails would be aesthetically unacceptable, particularly having regard to the prominent position involved. The Chancellor took the view that handrails would make very little difference to the overall appearance of the West end of the Church: there would be a minimum visual impact, the design was sensible, sensitive and would not interfere in any significant way with the reading of any notices exhibited on the Notice Board. The work was not irreversible in any significant way and that if a future generation took the view that the handrails were unacceptable, there would be no reason why, with appropriate authority, they should not be removed. In the circumstances the Chancellor concluded that the Faculty to be granted should include item 2.

The second disputed matter related to the provision of a Draught Screen in the Tower Arch. Photographs of the interior of the Church and drawings of what was proposed were considered by the Chancellor who was doubtful whether sufficient detailed consideration had yet been given to the work involved and its possible cost. In the Petitioners answer to the Particulars of Objection a response was made in the following terms:

'the proposed Tower Screen was one of a number of proposals approved by the PCC for inclusion in the Petition for Faculty. The recommendations from the Buildings Committee which were the subject of the PCC resolution stated 'that the proposed glazed Draught Screen in the Church Tower Arch be accepted in principle but work deferred until a later date.' The PCC did not wish to incur a further

fee in connection with a separate Petition at a later date, but it did take note of its Treasurer's concerns especially as no estimate of costs was available for consideration. A deferment of this work was indeed sensible.'

The objector made the point that for the matter to be handled in this way could prevent future regulatory scrutiny taking place at a later date. The Chancellor considered that the inclusion of this item in this Petition was premature and it would benefit from further careful and detailed consideration of all aspects involved (including costs), before any application was made (if so advised) for the grant of a Faculty in this respect. Accordingly the Faculty granted could not include item 4. The Chancellor fully understood the Petitioners wish to include as much work as possible in one Petition, and so save additional Court costs, and it may well be that this is work which could in due course be authorised; but for the moment it did appear to him that authorisation for this particular work was premature.

(Summary provided by the Diocesan Registrar).

Re Littleham-cum-Exmouth

(Exeter Consistory Court; Calcutt Ch. July 1996)

Petition by Vicar and Churchwardens for authority to re-order the Church and to carry out quinquennial repairs.

The Petition had the unanimous support of the PCC, and the DAC recommended the works provided that Mr. Martin Fletcher, the Archaeological Adviser be informed before any excavation work was carried out. Citation gave rise to three persons objecting to the re-ordering and the Chancellor directed that a Faculty should issue in respect of the quinquennial repairs so that the work should not be delayed.

The parties agreed that the proceedings should be determined upon consideration of written representations instead of by hearing in Court. The most important feature of the proposed re-ordering was the wish to create more space within the Nave of the Church. As things stood at the present time, the Font was positioned at the West end of the Nave which was pewed on either side from the West end of the Church almost to the Screen. The proposal was to make space at the West end of the Church, which would then be used for different purposes, and to move the Font from its present position at the West end, to the East end of the North aisle. The objectors contended that the proposal to move the Font was misconceived, it was well sited where it was at present and it would be inappropriate at the East end of the North aisle. It was also contended that to do away with a large number of pews would be inappropriate and that on special occasions the seating would be inadequate and the suggestion that there should be chairs, when needed, failed to satisfy the objectors. The proposed separation of the Chantry Chapel from the remainder of the Church was also in dispute. The intention was, in effect, to separate the Chantry Chapel from the remainder of the Church, so increasing the value of that Chapel for small week-day services and meetings. The objectors contended that the enclosure of the Chantry Chapel would handicap its use for the overflow of people at large services and that although the heating of a small part of the Church might appear attractive, the whole Church needed to be heated in order to prevent dampness. Although there were several other matters which had been raised—floor levels, choir stalls, communion rail and the non-provision of lavatory accommodation, it appeared to the Chancellor that the use and ordering of the Nave and the Chantry Chapel were the principal matters which had to be considered in this case. The Chancellor felt it had to be recognised that there was proba-

bly a fundamental difference of approach to the way in which the Church should now be ordered. The Petitioners wished to see the Church adapted in such a way as to meet more nearly, as they saw it, the needs of today's congregations. The objectors, for perfectly understandable reasons, preferred the Church to remain as it was. The Chancellor bore in mind that the Petition had the support of the PCC and those opposing the proposals were limited in number. It was also noted that the proposals were not irreversible and that a future generation could restore (with lawful authority) the Church with minimal damage to the fabric of the building. There were items however which were to be removed from the Church under the proposed re-ordering and the Chancellor was given to understand that these would be stored and therefore would remain in the custody and subject to the control of the Churchwardens. These included in particular the existing pews and front panels together with the threshold timber in the Rood Screen between the Nave and the Chancel. Provided these items remained under the care of the Churchwardens then again there was no reason why, subject to lawful authority, a future generation should not restore those items to the Church itself if minded to do so. The Chancellor directed that a Faculty might issue subject to undertakings to retain the items referred to above and also to the Petitioners informing Mr Martin Fletcher the Archaeological Adviser before any excavation was carried out.

(Summary provided by the Diocesan Registrar).

Re Pamela Violet Eaton, deceased

(Guildford Consistory Court; Goodman Ch. July 1996)

The Petitioner, aged 72, sought to exhume the ashes of his wife (who had died in 1983) from Chiddingfold churchyard and to re-inter them in Newton Abbot churchyard. The petition was unopposed. The grounds advanced by the Petitioner were that he had moved to Newton Abbot and failing eyesight made it difficult for him to visit the grave in Chiddingfold as regularly as he wished. The Chancellor, applying the principles set out in *In re Church Norton Churchyard* [1989] Fam 37, *In re Ryles* (unreported, Sheffield Consistory Court, October 1995) and *In re St Thomas' Church, High Lane* (4 Ecc LJ 605) dismissed the petition. The comfort which would be afforded to the Petitioner to be able to visit a plot near his home was not a good reason for the Court to grant a faculty thirteen years after the first interment of the ashes, which at the time was assumed by the Petitioner to be a permanent burial. Per curiam: difficulty in visiting a grave or place where cremated remains are interred is not in itself sufficient reason for departing from established customs of the Church. A precedent would be set which would make it difficult if not impossible to refuse other applications on such grounds.

Re St Peter's Churchyard, Humberston

(Lincoln Consistory Court; Goodman Ch. October 1996)

An area in a churchyard set aside for the interment of cremated remains was the subject of an unauthorised practice whereby individual plots were marked out and planted with miniature conifers, roses and the like. In the knowledge of this practice the Petitioner arranged for the ashes of his deceased wife to be interred in this area, and decorated the plot with flowers. Thereafter the church authorities decided to tidy up the area and restore it to the open, grassed state originally envisaged. A dispute arose between the Petitioner and the vicar and churchwardens, culminating in the presentation of a petition to exhume the casket containing the ashes

and to reinter them in the consecrated part of the local cemetery. A faculty was granted because the Petitioner was unaware of the regulations affecting the area when the interment was arranged; the Petitioner assumed that he was following a recognised practice by placing flowers on the grave; there had been misunderstandings between the Petitioner and the church authorities; and the casket had been interred for less than two years. The case was an exceptional one, in which further conflict should be avoided and peace of mind given to the Petitioner and his family.

Note

Members have asked for the references to ecclesiastical cases reported in the Weekly Law Reports and All England Law Reports during the last two years. They are as follows:

Re St Luke, Maidstone [1994] 3 WLR 1165; [1995] 1 AER 321 (Arches) Reordering of listed church.

Re West Norwood Cemetery [1994] 2 WLR 820; [1995] 1 AER 387 (Con. Ct) Unauthorised works in cemetery; restoration order.

Re St Thomas, Pennywell [1995] 2 WLR 154; [1995] 4 AER 167 (Con. Ct) Sacrament House.

Re St Edmund, Gateshead [1995] 3 WLR 253; [1995] 4 AER 103 (Con. Ct) Plaque for Roman Catholic 'Martyr'.

Re St John the Evangelist, Chopwell [1995] 3 WLR 606; [1996] 1 AER 275 (Con. Ct) Legality of Ornaments.

Re St John's with Holy Trinity, Deptford [1995] 1 WLR 721 (Con. Ct) Sale of Communion Plate without faculty.

Re St Michael and All Angels, Tettenhall Regis [1995] 3 WLR 299 and [1996] 2 WLR 385; [1996] 1 AER 231 (Con. Ct and Arches). Extension of church over disused burial ground.

Re St Mary's Dodleston Churchyard [1996] 1 WLR 451 (Con. Ct). Reservation of grave space.

Re St Mary the Virgin, Sherborne [1996] 3 WLR 434; [1996] 3 AER 769 (Arches) Replacement of Pugin window.