

RECENT CONSISTORY COURT CASES

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Re: St. Brooke, Wadebridge

(Truro Consistory Court; Boydell Ch. April 1990)

The petitioners sought a faculty to introduce into a churchyard a polished black granite memorial stone and a wedge shaped tablet of the same material. The proposed memorial was in breach of the Diocesan Regulations; but several similar headstones had previously been set up in the vicinity of the grave without lawful authority. The area was not visible from the church. The Chancellor concluded that the arguments were finely balanced. The Court was very reluctant to permit further breaches of the churchyard rules for no better reason than that there had been extensive lawlessness in the past. Nevertheless, because of such lawlessness the petitioners might have been led to believe that their chosen stone would be permitted. In the event it was proper to authorise the polished black granite stone, but not the proposed inscription nor the additional tablet. A faculty would be granted when the inscription had been approved. By a separate direction the delegated right to grant permission for the introduction of memorial stones was withdrawn from the parish.

Re: St. Peter, Humberston

(Lincoln Consistory Court; Goodman Ch. October 1991)

The rector and churchwardens sought authority to remove the existing one-manual organ from the balcony of a "pleasing but fairly small church" which was a grade 2 starred listed building, and to replace it with a two-manual Forster and Andrews organ originally built for a large Victorian church. The petition was opposed, and the D.A.C., despite its initial support for the proposal, eventually recommended against it. The Chancellor accepted that the existing organ needed replacement, but concluded on the evidence that the Forster and Andrews organ was not suitable. It was scaled and voiced for a large building; the volume of its sound could not be reduced sufficiently without seriously impairing the intrinsic quality of its tone. Furthermore it would, by its size, alter the visual appearance of the church and reduce by half the available seating in the balcony, which was required to accommodate the congregation at well attended services. The cost of the project, including the restoration of the Forster and Andrews organ together with necessary work to the balcony, would be between £30,000 and £40,000. A smaller second hand organ might cost up to £35,000. The organ fund of the parish was £12,500. There was considerable dissent in the parish about the proposals. In these circumstances the Petitioners had not made out their case, and a faculty was accordingly refused.

Re: St. Mary, Kinnerton

(Hereford Consistory Court; Henty Ch. October 1991)

A testatrix who bequeathed the whole of her residuary estate worth £106,000 (subject to certain life interests) to the vicar and churchwardens of a parish church was a substantial benefactor who had shown "outstanding service

to the Church” within the guidelines given in *Re St. Margaret’s Eartham* [1981] 1 WLR 1129. The petition for a memorial to her and her family to be erected within the church accordingly gave rise to exceptional considerations justifying the grant of a faculty. It was appropriate to treat the monument as one to the testatrix’s family because at least some of her estate must have been derived from other members of the family, and the family had contributed financially as well as by giving practical support to the parish church. The petitioner had failed to set out in the petition, as he should have done, the exceptional circumstances relied on, which only became apparent after enquiries had been made by the Registrar. Had the appropriate information been provided at the start, much time would not have been wasted and considerable inconvenience to all would have been avoided.

Re: St. Chad, Bishop’s Tachbrook
(Coventry Consistory Court; Gage Ch. November 1991)

A faculty for the use of gilded lettering on a headstone was refused. The presence of gilded lettering was described as “inappropriate” in the Diocesan Regulations and, although there was such lettering in the churchyard, the present incumbent had successfully discouraged its use. The petitioner wished to have gilded lettering because his deceased wife, whom the headstone commemorated, had in her lifetime expressed a preference for it. The Chancellor indicated that, although he had a discretion in the matter, he would only in exceptional circumstances grant a faculty for monuments in breach of the Regulations. To make a further exception in the petitioner’s favour would serve no useful purpose; the greater good would be served by the Regulations being enforced rather than breached.

Re: The Church of the Ascension, Hulme
(Manchester Consistory Court; Spafford Ch. November 1991)

The rector and churchwardens applied for a faculty for the sale of silver from a church made redundant in 1983; the silver was displayed in Manchester Cathedral and their claim to dispose of it was based upon the amalgamation of parishes under a pastoral scheme. The Chancellor held, however, that a faculty should not be granted unless the petitioners had title to the silver. By virtue of the transitional provisions set out in schedule 8 of the Pastoral Measure 1983, and the fact that no submission to the Church Commissioners had been made by November 1983, there was no pending pastoral scheme under the Pastoral Measure 1968. Accordingly title to the silver had passed to the Diocesan Board of Finance under section 49 of the 1983 Measure. The Board did not thereby become beneficial owner. It was under a duty to transfer the Communion plate to any church or chapel within the diocese as directed by the diocesan bishop, providing such church or chapel needed the plate. The petitioners had no need for the plate, which was surplus to their requirements. Accordingly the petition was dismissed.

Re: St. Mary the Virgin, Throwleigh
(Exeter Consistory Court; Calcutt Ch. November 1991)

The incumbent and churchwardens sought a faculty to carry out various works, of which the re-positioning of a statue and the Stations of the Cross alone were opposed. The alteration of the location of the statue was reasonable, even

if its visual impact would be reduced. The bringing together of the Stations of the Cross (painted by E. M. Somerset and having artistic merit) at the west end would prevent their being used as an act of devotion in the traditional manner. The layout of the church was not, however, noticeably convenient for that form of devotion. If re-positioned, sequential devotion would not be totally prevented; movement of the eyes rather than the body would be possible. The Chancellor concluded that this proposal also was reasonable and granted a faculty.

Re: Holy Trinity Church, Exmouth
(Exeter Consistory Court; Calcutt Ch. December 1991)

A faculty was granted for the re-ordering of an “impressive” parish church to provide a more suitable worshipping area at the east end and ancillary facilities at the west end. The Victorian Society objected to the proposals. Despite the aesthetic effects of the alterations at the west end, including foreshortening of the nave, the proposed solution would meet the needs of the worshipping congregation. Changes to the fabric could be reversed, if appropriate, by a future generation. As the opposition to the petition was reasonable, the Chancellor took the view that there should be no order as to costs, other than that the Petitioners would have to bear the Court costs.

Re: The Holy Angels, Claremont
(Manchester Consistory Court, Spafford Ch. December 1991)

It was appropriate for an oak chair to be retained under the authority of a faculty as a seat for the President at the Eucharist. The chair was in itself suitable, and its intended position would not constitute a fire danger providing the south porch outer door was unbolted during services to provide an emergency exit. Other objections to the position of the chair gave rise to a potential clash between the Chancellor’s jurisdiction (covering fabric, ornaments and furniture) and the right of the incumbent and the P.C.C. to control their own services of worship. How the chair was to be used fell within the sphere of the incumbent and the P.C.C., not within the faculty jurisdiction.

Re: Stoke St. Michael’s, Caludon
(Coventry Consistory Court; Gage Ch. January 1992)

The petitioners sought a faculty for the removal of an oak screen, without intrinsic merit, which had in 1922 been placed at the entrance to the chancel of a 19th century grade “A” listed church. The Chancellor considered *Re St. Mary’s, Banbury* [1987] Fam 136, *Re St. Stephen’s, Walbrook* [1987] Fam 146, and *Re All Saints, Melbourn* [1990] 1 WLR 833, and concluded that, while taking into account the guidelines give by the Dean of Arches, his discretion remained unfettered; and that as the character of the building would not on the evidence be adversely affected by the removal of the screen there was no requirement of a proved necessity for change. Since the Chancellor was satisfied that the screen hindered worship, and had the effect of dividing the church into two separate buildings, he ordered its removal but not its disposal. It was preferable that the screen should be retained in storage, or put elsewhere in the church, so that it could at some future time be restored to its original position.

Re: St. Nicholas, Hereford

(Hereford Consistory Court; Henty Ch. February 1992)

A faculty was granted for the conversion of part of a churchyard, which was a disused burial ground, into a car park for not more than three cars. The project, for which planning permission had been granted, involved the laying of hardcore some six inches deep which was to be covered in part by a flagged path and in part by gravel. The Chancellor held that he had jurisdiction to grant a faculty because the car park would not be a building within section 3 of the Disused Burial Grounds Act 1884. On the merits of the proposal, the Chancellor was satisfied that the car park was needed to permit elderly or infirm parishioners to attend the church, and to accommodate the vehicles of certain persons who used the church hall. No order for costs was made against the party opponent as her opposition was not entirely unreasonable, the matter had usefully been given an open airing, and some form of hearing in Chambers would in any event have been necessary.

Re: St. Clement, Urmston

(Manchester Consistory Court; Spafford Ch. March 1992)

A faculty was sought to replace an existing temporary altar with a new altar of better quality at a cost of some £400. The D.A.C. considered the design to be mediocre and indicated that a functional table with bold frontals would be much better. Whilst accepting the opinion of the D.A.C., the Chancellor concluded that as the congregation liked it, and it was probably the best that the P.C.C. could afford, a compromise solution was appropriate. The P.C.C. were to consider the proposal for a portable table with bold frontals. In the event of this proposal being discussed and expressly rejected, a faculty for the new altar would issue.

Re: St. Mary, Sheviok

(Truro Consistory Court; Boydell Ch. April 1992)

The inscription proposed to be placed on a tombstone included reference to the brother of the deceased in addition to his parents. Regulation 20 of the diocesan churchyard regulations restricted references to parent/child or spouse relationships; the inclusion of siblings' or other relatives' names was not normally permitted. The Chancellor held that the language of the regulation permitted him to depart from the normal practice where special circumstances arose. There were special circumstances in that the deceased lost his life in a road accident in which his brother (his only sibling) was grievously injured. Although the cases justifying exceptional treatment would probably be very rare, it was proper to allow the inscription.

Re: Lanteglos-By-Camelford

(Truro Consistory Court; Boydell Ch. April 1992)

A faculty was granted for the introduction of a framed tapestry of the Last Supper into a church built in 1938. The D.A.C. did not support the application, on the grounds that it was seeking to establish much higher standards for church furnishings and the work was not of sufficient standard. Whilst supporting the policy of the D.A.C., the Chancellor concluded that there were particular factors which favoured the proposal.

- (i) The church was without wall decoration.
- (ii) The position proposed for the tapestry was not prominent.
- (iii) There were pastoral considerations, namely that the tapestry had been made by a member of the congregation who had supported the church for many years.
- (iv) The tapestry might be regarded as an interesting example of local art.

The faculty was granted in the first instance for five years; thereafter the petitioners were to report upon any changes which had been made to the decoration or embellishment of the church.

Re: St. Bredward

(Truro Consistory Court; Boydell Ch. April 1992)

The introduction of a granite memorial into a churchyard, recording the planting of a tree in memory of a deceased father interred there and his son lost at sea, was opposed by the incumbent. He argued that the intended memorial did not mark the site of the grave, and the reference in the inscription to the tree and the dead son was misleading. The Chancellor, after inspecting the churchyard, concluded that the proper course was to grant a faculty for a stone to mark the position of the grave, and a separate stone to record the planting of the tree.