

RECENT CONSISTORY COURT CASES

Edited by CHANCELLOR TIMOTHY BRIDEN

Re: St. Mary, Berrow

(Bath and Wells Consistory Court; Bursell Ch. September 1992)

The petitioner sought to inter the ashes of her deceased husband in the grave of his father and step-mother. The husband had been estranged from his step-mother before his death, and his surviving step-brothers, whilst not objecting to the burial of the ashes, opposed the making of an additional inscription on the memorial. Whoever was the owner of the memorial, it was not the petitioner; she would be liable in damages were she to make any addition to the memorial without the specific consent of the owner or the authority of the Court. The provisions of Section 3(2)(i) of the Faculty Jurisdiction Measure 1964 did not assist the petitioner because she had not argued that the objector was an owner withholding his consent; and there was nothing to suggest that the owner could not be found. A faculty should not, however, be granted for the making of the inscription because even if the true owner could be found someone would be aggrieved by the outcome. Accordingly in the absence of the owner's consent the status quo should prevail and the faculty would be limited to the burial of the ashes.

Re: St. Ann, Manchester

(Manchester Consistory Court; Spafford Ch. July 1993)

A faculty was sought for the supply and fitting of brass brackets in the inside of each centre aisle pew end for the holding of bibles. The existing ledges were said by the incumbent not to be wide enough for books; but the representative of the Diocesan Advisory Committee feared that if a pew was crowded worshippers might dislodge the bibles from the proposed brackets or their clothing might be caught on the metalwork. The Chancellor directed that for an experimental period of six months bibles should be kept on the existing ledges. If this arrangement resulted in the bibles being knocked off the ledges, a faculty would be issued subject to the design of the brackets being approved by the Diocesan Advisory Committee or (in the event of disagreement) by the Chancellor.

Re: St. Anne, Wrenthorpe

(Wakefield Consistory Court; Collier Ch. August 1993)

In a case involving the proposed re-ordering of a Victorian church by (inter alia) removing furniture and fittings, the doctrine of reversibility was to be approached by asking whether it would be possible so to arrange furniture within the re-ordered church, that liturgical practices of the last 90 years could be followed once again if that should again be the wish of the worshipping congregation. The test was not whether it would be possible easily to replace all the items of furniture in their original positions. None of the items were of aesthetic, architectural, historic or archaeological interest. Disposal was opposed by particular donors or the families of deceased donors. Title to the objects in question, which were fixtures or moveable goods, was vested in either the incumbent or the churchwardens (it being unnecessary to determine which) who had the legal

power to dispose of them subject to the jurisdiction of the Consistory Court. The owners were not custodians or trustees. The Chancellor accepted the advice of the Diocesan Advisory Committee that suitable disposal should not be refused, and gave directions for the sale, donation or other disposal of the articles specified in the petition.

Re: St. Michael and All Angels, Thornhill

(Wakefield Consistory Court; Collier Ch. August 1993)

Where raised memorial stones and stone chippings had been placed in part of a churchyard reserved for cremated remains, and the churchwardens petitioned for their removal on the basis that they contravened Diocesan Regulations, the function of the Chancellor was to balance the desires of individuals concerned with particular graves against the longer term interests of the church and community as a whole. There being no reason to depart from the established and authorised practice in relation to memorials, a faculty was granted, with the parties opponent having leave to remove the offending items themselves. Per curiam; the duty of funeral directors to those paying for their services must include giving full advice as to what is permitted and what is not permitted to be erected in or around graves and cremation plots in churchyards.

Re: St. Mary, Bowdon

(Chester Consistory Court; Lomas Ch. September 1993)

A grave space was provided at the Petitioners' request for the burial of their daughter in a churchyard to all intents and purposes treated as closed in that no new graves had been opened for some years. The space was in a strip of land used as a path. The Petitioners sought a faculty for a monument incorporating a headstone. The Chancellor rejected their contention that the headstone was necessary to make the grave visible amongst the surrounding vegetation; the path was well kept and the presence of a headstone would render maintenance more difficult. The Petitioners' reluctance for mowing machinery to pass over the grave was outweighed by the need for the area to be tidily maintained. Experience showed that in modern conditions parishes could only hope to maintain their churchyards in a tidy state if mowing machines could be used. The clear pathway ought not to be obstructed by a vertical stone; accordingly a faculty was granted only for a horizontal stone so placed as not to impede a mowing machine.

Re: St. Mary, Hale

(Winchester Consistory Court; Clark Ch. September 1993)

The incumbent and others sought a faculty to move the memorial brass of Sir Thomas Penruddocke, who died in 1600, from a stone slab at the crossing to the south wall of the chancel. The Chancellor found as a fact that the brass marked the site of the Penruddocke grave or vault. As a matter of principle, if the brass were situated exactly or approximately over the tomb, there would have to be very strong and compelling reasons why it should be moved to another place. A good reason would be if the brass were suffering, or were liable to suffer, damage through being on the floor. The mere fact that it would be more visible when fixed to the wall was insufficient. Since the brass was well preserved, and was unlikely to suffer significant damage providing it was safely and securely fixed to the slab and a mat was placed over it on the few occasions when large numbers of persons visited the church, the petition was dismissed. Directions were given for the restoration of the slab and the secure fixing of the brass to it.