

## RECENT COURT CASES

CHANCELLOR TIMOTHY BRIDEN

*Re: All Saints' Church, Hereford*

(Hereford Consistory Court; Henty Ch. October 1994)

The priest in charge and churchwardens sought a faculty to authorise the sale of a chained library comprising 267 books bequeathed to the parish in 1715 and worth between £40,000 and £100,000. The library was subject to the provisions of the Parochial Libraries Act 1708. The Chancellor held that Section 4 of the Ecclesiastical Jurisdiction Measure 1964 gave him jurisdiction to grant a faculty; and that the urgent need for repairs to the church amounted to such a crisis in church finances as would justify the sale of the library. *Re St. Gregory's, Tredington* [1972] Fam 236 followed. The library had been very rarely used while it was in the church. It had been removed for reasons of security to the County Records Office. The hearing was adjourned on the basis that a sale would be authorised; thereafter the Hereford Mappa Mundi Trust was provided with funds to purchase the library and keep it in the Exhibition Area in Hereford. A faculty issued accordingly.

*Re: St. Paul, Drightlington*

(Wakefield Consistory Court; Collier Ch. January 1995)

Diocesan churchyard regulations, revised in 1989, prohibited the use of kerbs around graves. The new regulations were not immediately applied at the churchyard in question, because it was desired to complete a row of graves with kerbs, and to provide a line of demarcation between that and a subsequent row where kerbs were not permitted by the incumbent. The Petitioner, whose husband was interred in the new row, wished nonetheless for kerb stones to be placed around the grave. In addition to the presence of other kerbs in the churchyard, some erected as recently as 1992, she relied upon her ignorance of the regulations at the time when she ordered the gravestone and kerbs. The Chancellor dismissed the petition on the ground that the regulation was needed to ease the task of maintaining churchyards, and that the arguments advanced by the Petitioner (on whom the burden to justify a departure from the regulations rested) did not disclose any good reason for making an exception in her favour.

*Re: St. John the Evangelist, Golcar*

(Wakefield Consistory Court; Collier Ch. February 1995)

In a proposed scheme for the re-ordering of a church (built in 1830 and listed Grade 2), the removal of an oak chancel screen donated in 1911 was controversial. Two parties opponent wished the screen to be retained; they and the petitioners agreed that the issue should be determined on written representations. The Chancellor concluded that the 'pastoral well-being' of the parish necessitated the adaptation of the building. The worshipping congregation was very restricted by the existing layout and furniture. The items to be removed, the pulpit and the screen, were not of any great historical, aesthetic, architectural or commercial interest. Items of furniture may have been in a church for many years, and in the minds of longstanding worshippers they may be associated with important moments in their lives and spiritual pilgrimages. That does not, however, amount to historical value and should not hinder the implementation of a necessary re-ordering. The disposal of the screen would not discourage future gifts, because the Christian community is now a minority concerned with mission, and most gifts are now given to further the mission of the church. A faculty was granted.

*Re: St. Michael the Archangel, Newquay*  
(Truro Consistory Court; Boydell Ch. March 1995)

Where the interior of the church had sustained serious fire damage, but its proposed reconstruction was based on the original design and the principal feature, the rood screen, had survived, it was relevant to apply the tests propounded in *Re: St. Luke, Maidstone* [1994] 3 WLR 1165 when considering intended departures from the original design. The proposal that the central section of the rood screen (part of the original design of the church by Sir Ninian Comper) should be omitted would have an adverse effect upon the character of the building (listed Grade II starred) since the 'magnificent' screen was the main feature of the church. Moreover necessity for change had not been proved because it was possible to use a movable altar slightly to the west of the screen whilst retaining the central section. A faculty was granted in respect of the agreed elements of the proposals for reconstruction, and the Chancellor directed that the whole of the screen should be restored and reinstated.

*Re: St. Wilfrid, Wilford*  
(Southwell Consistory Court; Shand Ch. March 1995)

Proposals for a comparatively minor-re-ordering of the north aisle to create more carpeted open space were opposed by four members of the congregation. Space was required so that coffee could be served and people could meet and socialise after services. Although the proposed alteration was a material one, the Chancellor held that the advantages of the proposals weighed more heavily than any adverse impact upon the building. A perfectly respectable case for necessity was made out. 'If the PCC feels that an area in church is needed and appropriate as an extension of its ministry, it is very hard to say that they are wrong'. In granting a faculty, the Chancellor invited the Archdeacon to consider, in the light of the history of contested petitions in the parish, whether there was pastoral problems with which he could assist.

*Re: Christ Church, Bromley*  
(Rochester Consistory Court; Goodman Ch. March 1995)

A proposal to build an extension to a Victorian church (dating from 1887) was the subject of a contested planning application. The Inspector appointed by the Secretary of State approved one of the alternative designs, concluding that the extension would not harm the character and appearance of the area, or the outlook and living conditions of local residents. In the subsequent faculty proceedings nine objectors became parties opponent, but subsequently withdrew because they did not want to incur the possible risk of paying costs and for other reasons. The D.A.C. was content with the scheme, subject to certain technical points, and the Victorian Society (which had been cited) raised no objection. The Chancellor dealt with the case on written representations, concluding that the parish needed the facilities which the proposals would make available. Since the estimated cost of the works was £950,000, which the parish had to raise from within the church membership and through donations from external sources, a condition was attached to the faculty that no contract should be signed without leave of the Court, and regular reports should be provided by the treasurer as to the progress made towards the target.

*Re: The Parish of St. Paul's, Bristol*  
(Bristol Consistory Court; Calcutt Ch. March 1995)

The Petitioners sought a faculty to authorise the sale by auction of three pieces of early 17th century silver, together worth an estimated £370,000 and of national

importance, in order to provide a substantial proportion of the funds needed for re-building and re-modelling of the east end of the parish church of a united benefice, and to provide community facilities at the west end. Since the parish was in an area of urban deprivation, with poor housing and poor community facilities, there was a special need for capital funds to enable the Church to continue with an effective ministry. Other relevant factors included the tenuous link between the present parish and the items of silver in question (which were no longer needed for worship); and the proposed retention of other pieces of valuable and historic silver. Following *Re: St. Gregory's, Tredington* [1972] Fam 236, the Chancellor held that a good and sufficient ground amounting to a special reason was established justifying sale; but that sale by auction should be postponed to provide an opportunity for the City of Bristol (which had a strong historic link with the plate) to purchase it. A period of 18 months was allowed for the purpose. (Terms were subsequently agreed between the Petitioners and the City Council for the purchase of the plate, and the necessary faculty was granted in January 1995).

*Re: St. Mary the Virgin, Burton Latimer*  
(Peterborough Consistory Court; Coningsby Ch. April 1995)

The incumbent and churchwardens sought a faculty to authorise the sale of an Elizabethan silver chalice and paten together with a Georgian silver flagon and matching alms dish, valued by auctioneers at approximately £10,000 in all. The items were on display in the cathedral treasury. The purpose of the intended sale was to raise initial funds for a church extension estimated to cost about £300,000 of which £100,000 was available as a loan from trust funds. The proposed sale was recommended by neither the D.A.C. nor the C.C.C. whilst several parishioners became parties opponent contending that sale was premature. The Chancellor concluded that although the proposal for the church extension was basically sound, and the plate was technically redundant, the petition was premature because the vessels ought ideally to be retained as part of the heritage and history of the church; there was no imminent financial crisis because the outcome of fundraising was uncertain; and the obtaining of planning permission for the extension was uncertain because one application had already been turned down. It would be inappropriate to grant a faculty subject to the condition that sale should not take place before the obtaining of planning permission, because conditions when imposed ought to run in the same direction as the faculty and not a contrary direction. The petition was dismissed. *Re St. Gregory's, Tredington* [1972] Fam 236 followed; *Re St. Mary of Charity, Faversham* [1986] Fam 43 considered. In August 1995 the Court of Arches dismissed an appeal against the Chancellor's judgement.

*Re: John Stocks, deceased*  
(Sheffield Consistory Court; McClean Ch. June 1995)

The petitioner sought a faculty for the exhumation of his father's cremated remains from the consecrated portion of a municipal cemetery so that they might be scattered in accordance with the father's known wishes. In giving judgment the Chancellor referred to Canon B38, and after commenting that whilst paragraph 4(b) did not render other forms of disposal unlawful it did express something of the mind of the Church, he continued:

'It is appropriate in certain cases to exercise discretion so as to permit the removal of human remains to another secure place, there to be re-interred. It is not essential that this new place of interment be consecrated ground, though that is certainly desirable. To allow disinterment in order that the ashes be scattered would, however, strike at the root of the principles of security and safe

custody. Given that the jurisdiction I am exercising is a discretionary one, I must always leave room for wholly exceptional circumstances. Unless they present themselves (and they do not in the present case), I cannot believe it right to permit, for such a purpose, the disinterment of remains once committed to consecrated ground'.

The petition was dismissed.

*Re: St Andrew's Church, Bournemouth*  
(Winchester Consistory Court; Clarke Ch. July 1995)

Proposals were made for the major re-ordering of a large Victorian church, listed Grade II. The works included the creation of a nave platform and the replacement of pews by chairs. The only objection to the proposals concerned the proposed removal of a memorial chapel created in 1957 by installing a wooden screen in one of the aisles. The chapel was used for a Rite A Communion service (attended by up to 15 worshippers) on Sundays and a monthly healing service. The Chancellor determined the disputed issue upon written representations and also inspected the Church. He concluded that the effectiveness of the re-ordering scheme would be substantially reduced were the chapel to remain; that the re-ordered chancel would provide a satisfactory alternative as a peaceful and intimate setting for prayer and meditation; that the screen was not so outstanding as to merit retention; and that the proposals were supported by the large majority of active worshippers. The petitioners had proved on the evidence that there was a good and adequate reason for the removal of the memorial chapel. The proposal had no adverse effect upon the building as a structure of special architectural or historic interest. A faculty was accordingly granted.

*Re: St Mary's on the Harbour, Castleton*  
(Castletown Chapter Court, Diocese of Sodor and Man; Farrant Ch. July 1995)

The Chapter Court, before which churchwardens annually took their oaths, had jurisdiction to hear and consider presentments containing a complaint against an incumbent. This jurisdiction had not been removed by the Ecclesiastical Jurisdiction Measure 1963 as applied to the Isle of Man by Act of Tynwald. Jurisdiction also existed to dismiss the presentment if it was insufficiently proved. Moreover 200 years or more ago the Judge of the Chapter Court might well have had jurisdiction to discipline a clergyman or to direct the Registrar to take evidence to ascertain whether there were allegations of gross neglect of duty or real impropriety of life with a view to remitting the proceedings to the Consistory Court. The Chapter Court's power to discipline the clergy (but *semble* not to remove a churchwarden from office) was, however, obsolete and no attempt should now be made to exercise such power. Simple summary procedure would not be appropriate when an incumbent should be given some rights to claim compensation for loss of office in breakdown cases under the Incumbents (Vacation of Benefices) Measure 1977 as amended. The 1977 Measure had never been extended to the Diocese of Sodor and Man; urgent consideration of the question of clergy discipline and/or parish breakdown cases was required in the diocese. The Chancellor adjourned the hearing generally to enable a formal complaint to be lodged under Section 14 of the Ecclesiastical Jurisdiction Measure 1963.

*Re: Sherborne Abbey*  
(Salisbury Consistory Court; Ellison Ch. July 1995)

The vicar and churchwardens sought a faculty to replace the great west window of Sherborne Abbey, partly the design of Pugin, with a modern replacement. The

petition was supported by expert evidence adduced by the petitioners, and the Diocesan Advisory Committee recommended the proposals. The Council for the Care of Churches and the Victorian Society opposed removal of the window. The Chancellor concluded on the evidence that, although part of the window was to Pugin's design, there had been unusual trouble in its production; that it contained no inspiration or message which would advance worship; that its removal was not based on a transient wish of the parishioners; that attempts at repair would be unsatisfactory; and that the pastoral consequences of retaining the window would be disastrous. The petitioners had proved a necessity for the substitute window designed by Hayward, and since only one window (albeit a large one) was involved there would be no adverse effect upon the character of the church, this question being one of degree in every case. A faculty was therefore granted.

*Re: St. John the Evangelist, Chopwell*  
(Durham Consistory Court; Bursell Ch. July 1995)

When considering the lawfulness of church furnishings, the rigorist interpretation of the rubrics in the Book of Common Prayer had been swept aside and the modern approach, applying Canon B5 and the provisions of the Alternative Service Book, was more flexible. The use of acolytes' chairs, which arose from the processional carrying of candles, was permissible because the service book 'Lent: Holy Week: Easter' (commended by the House of Bishops subject to Canon B5) which provided for such use of candles, was not indicative of any departure from the doctrine of the Church of England. Processions, with or without lighted candles, were *prima facie* doctrinally acceptable. Votive candle stands used solely to aid private devotion were permissible as long as they did not detract from the devotions of others nor from the actual services and ministrations within the church. Since the liturgical use of incense was contemplated by the service book 'The Promise of His Glory' and in any event was a variation not of substantial importance, the introduction of a thurible and stand was lawful. The use of a sanctus bell fell within the ambit of Canon B5.1 and was also legal; and in so far as the use of the bell accompanied the elevation of the host, the lifting of the sacrament higher than was strictly necessary amounted to no more than a dramatic gesture which was permissible so long as the minister did not intend to convey or promote a doctrine contrary to the tenets of the Church of England. A holy water stoup could no longer be regarded as an unlawful ornament, particularly if it was used for private devotion. Accordingly a faculty issued in respect of all the items mentioned in the judgment. *Re St. Thomas, Pennywell* [1955] 2 WLR 154 followed.