

RECENT ECCLESIASTICAL CASES

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Re St Peter, Ardingly

(Chichester Consistory Court: Edwards Ch, January 1999)

Reordering—removal of screen

A petition for a reordering, which was otherwise uncontentious, sought authority for the removal of a chancel screen. The work was recommended by the DAC and CCC but opposed by two parishioners and the LPA. The chancellor adopted an historical approach. The 14th century church originally had a rood loft, supported on a main beam or bressummer which was no longer in place. Below this, almost certainly, had been a screen and above it the rood or crucifix, the supporting figures of the Blessed Virgin Mary and St John and a tympanum on which was painted a representation of the last judgment. By Royal Order of Elizabeth I in 1561 rood lofts and figures above the bressummers were to be removed and painted tympana removed, whitewashed over and decorated with the royal arms. Screens might also be removed but, if removed, a new partition was to be erected. It was the 19th century restorers who swept away many chancel screens.

The reason for the retention (or introduction) of such screens had been neither aesthetic nor antiquarian but functional, adapting medieval churches for the purposes of Prayer Book services, providing a real division between the chancel (the place for the Eucharist) and the other parts of the church. See Addleshaw G & Etchells F, *The Architectural Setting of Anglican Worship* (1948). Such principle became unworkable, in many cases, as the number of communicants grew and patterns of worship changed. No longer did communicants proceed into the chancel at the offertory and have the screen doors closed behind them. Choir stalls duly filled the chancel. The main service of choral Morning Prayer, widespread fifty years ago, has given way in this generation to the Eucharist in which all present are invited to the altar rail. The present congregation considered the screen a barrier in more than physical terms, an auditory obstacle for music, an inhibition on children's events, and an unseemly interference with the handling of coffins at funerals.

Applying the guidance in *Re St Mary the Virgin, Sherborne* [1996] Fam 63 the chancellor was satisfied that removal of the screen was necessary for the pastoral well-being of St Peter's. Evidence suggested that the particular screen had been positioned in various places in the church, being removed to its present position in 1921 through a benefaction in memory of a parishioner. Though the three centre panels were of fine early 15th century perpendicular work, the two outer ones were of more recent construction. Thus the chancellor concluded that the removal of the screen would not adversely affect the character of the church as a building of special architectural and historic interest, provided a worthy setting within the church was found for the three centre bays, such a move being reversible. He was further satisfied that the petitioners had proved a necessity for moving the screen. A faculty was therefore granted subject to the centre bays being professionally re-erected near the west door.

Re St Peter and St Paul, Wantage (No 2)
(Oxford Consistory Court: Boydell Ch, June 1999)

Costs—weightiness of objection

The question of costs was determined on written representations, a faculty having previously been granted (see (1999) 5 Ecc LJ 306). The petitioners were content that each party bear its own costs. The solicitors for the party opponent submitted, 'assuming, as we do, that costs follow the event, in principle our client accepts that he must contribute to the costs of the other side and, possibly, of the chancellor'. Despite this offer, which the chancellor regarded as paradoxical, he made no order as to the parties' own costs. As to the court costs, the chancellor cited the guidelines in *Re St Mary the Virgin, Sherborne* [1996] Fam 63 at 70 and noted that the Arches Court nevertheless emphasised that 'the consistory court has a discretion in each case'. The Chancellor found that the party opponent had not acted unreasonably but that some of the six objections were less weighty than others and that consideration of the less weighty grounds had occupied the time of the court. Mindful of the mitigation on the part of the party opponent, the offer to make a contribution to the petitioners' costs (no part of which he was ordered to pay) and those of the court, the chancellor ordered that the court costs be borne as to two-thirds by the petitioners and one-third by the party opponent.

Note: This case is interesting for the gloss on the Sherborne judgment introducing a concept of 'weightiness' of objection in addition to the 'unreasonable behaviour' of the objector. It is also illustrative of the fact that the practice of the consistory court on costs is not as well known as it might be, even amongst solicitors. In another case, Re All Saints, Churchill (Oxford Consistory Court: Boydell Ch, July 1999), three parties opponent sought an order at a directions court effectively indemnifying them from any order of costs. This was refused. The Ecclesiastical Judges Association is carrying out a consultation process aimed at producing a guidance note on costs.

Re St Andrew, Banwell
(Bath and Wells Consistory Court: Briden Ch, June 1999)

Donation—works incomplete—resulting trust

A faculty had been granted in 1984 for the construction in the church of a screen containing an engraved glass panel. It was to have been paid for privately by a parishioner whose late wife was to have been commemorated in the panel. The screen was erected but not the decorated panel, the installation of which was abandoned. With the consent of interested parties an order was made in 1998 for the panel to remain blank apart from a written inscription in memory of the benefactor's late wife. The chancellor stated that if a donation was not spent in full on work for which the gift was intended, then there was a resulting trust in the donor's favour unless the court is able to infer an underlying general charitable intent. In this case the donor had made a composite donation, one part for the screen and the other for the panel. The latter was severable from the former and thus repayable. It was not the case that the total amount donated could be set off against the cost of constructing the screen alone, which overran its budget. The chancellor calculated the value of that part of the donation intended for the memorial panel (net of tax recovered from the Inland Revenue) and ordered its repayment to the donor together with interest at an average market rate from the point at which the scheme for the memorial panel was abandoned.

Re St John, Newland

(York Consistory Court: Coningsby Ch, June 1999)

Heating—suitability

Despite objections from the DAC and English Heritage, a faculty was granted for the installation of a direct-fired heating system in a typical Victorian suburban church. The DAC and English Heritage preferred a conventional wet system and cited scientific evidence that direct-fired systems caused dampness and pollution. The chancellor found that this evidence was not convincing in the present case and that direct-fired heating was suitable for this particular church which showed no existing signs of dampness. The faculty was granted subject to certain conditions which would minimise any detrimental impact which the heating system might have on the building.

Re Christ Church, Weelock

(Chester Consistory Court: Turner Ch, June 1999)

Reordering of graveyard—unlawfulness

The present incumbent and churchwardens petitioned for a confirmatory faculty which, in its amended form, sought leave for the carrying out of a scheme of reordering in the churchyard, including the removal and subsequent disposal of certain kerbstones and the sinking of others which, as was frankly admitted and for which a fulsome apology was tendered, had been carried out without legal authority. There were ten notices of objection. The end result, it was generally agreed, was a well tended, well maintained and generally attractive churchyard but that, of itself, did not condone the work nor the interference with private property, since ownership of memorials vested, pursuant to section 3(4) of the Faculty Jurisdiction Measure 1964, in the heirs at law of the persons commemorated. Since 1990, some 350 graves had been modified. Many kerbs or grave parts had been removed to support an eroding bank of a nearby river. A vast quantity of top soil from a local by-pass had been introduced. The parish accepted proposals for the repair, reinstatement or even substitution of eleven memorials on terms proposed by the objectors' stonemasons. The DAC recommended the grant of the faculty, which the chancellor duly authorised, subject to the conditions that the agreed works were undertaken to the eleven graves, that a regular programme of maintenance was carried out, and that the material deposited on the river bank (which it was noted was not human remains) was disposed of in a more seemly manner to the satisfaction of the chancellor.

Re St Mary the Virgin, Horsham

(Chichester Consistory Court: Edwards Ch, July 1999)

Memorial

A faculty was sought for the erection of a plaque commemorating the formation in March 1800 of the Experimental Corps of Riflemen of Horsham. The DAC recommended the installation of the plaque. The chancellor noted that following the cases of *Dupuis v Parishioners of Ogbourne St George* [1941] P 119, *Re St Nicholas, Brokenhurst* [1958] Fam 157 and *Re St Margaret's Eartham* [1981] 1 WLR 1129 it was now well established that faculties for the erection of memorial tablets should only be granted where exceptional grounds were shown and that there was a heavy

burden on petitioners to demonstrate that there were such grounds. In declining to grant the faculty sought he stated that this burden was even heavier when the proposal was to place a memorial in an ancient church in which there were already many memorials added over the centuries and that the criterion of recording 'some important or significant aspect of local or national history' laid down in *Re St Margaret's Eartham* had not been shown in the present case. There was no proven link between the Corps and the parish church or the Church of England in a wider context.

Re St Nicholas, Chislehurst

(Rochester Consistory Court: Goodman Ch, July 1999)

Memorial–funeral accoutrements–loan

The helm and sword of Sir Edmund Walsingham hung above his tomb in the church from his death in 1549 until 1952 when they were stolen. The items were recovered by the Lord of the Manor and there was an attempt to sell them at auction following his death in 1988 which the PCC resisted. The Royal Armouries subsequently requested the loan of the items for display in the Tower of London for which the PCC sought a faculty. The DAC recommended approval subject to a proper photographic record being taken, but the CCC objected, preferring the items to be restored to their original place. The chancellor caused the heirs-at-law of Sir Edmund Walsingham, the presumed owners, to be cited and no objection was raised. In granting the faculty for a loan agreement the chancellor noted that in accordance with his opinion expressed in *Re St Helen's, Brant Broughton* (affirmed on appeal by the Dean of the Arches at [1974] Fam 16) strong arguments existed for not removing such treasures from churches when they could be properly protected there. In the present case, however, the items were not being permanently alienated but placed on long term loan; the heirs-at-law consented; and they would be at risk of theft should they be replaced, particularly after so long a separation.

Re Allwood (minors), deceased

(Southwark Consistory Court: George Ch, July 1999)

Exhumation

The petitioners, an unmarried couple, were the subject of widespread press publicity in 1996 following the conception and birth of octuplets, each of whom was born prematurely but alive only to die some weeks later. Following a funeral service in the cemetery chapel, the babies were buried not in a single coffin, as the petitioners had wished, but in eight separate coffins. As a result of what the petitioners regarded as a breach of confidence (which was the subject of separate litigation), the press caused a disturbing disruption to the burial. Despite several attempts, the petitioners had found it too traumatic and upsetting to revisit the grave. The chancellor, applying *Re Christ Church, Alsager* [1999] Fam 142 (noted at (1999) 5 Ecc LJ 214), was satisfied that the psychological barrier which prevented them doing so was a legitimate medical reason and that the highly unusual circumstances of the case constituted a good and proper reason for exhumation likely to be regarded as acceptable by right thinking members of the church at large. Upon a written undertaking by the petitioners not to communicate the date, time and place of exhumation and reburial to the press and others not directly concerned, a faculty was issued on condition that the exhumation and reburial (at a location not disclosed in the judgment so as to preserve privacy) take place at times when the general public were not admitted to either cemetery.

Re Parish of Salterhebble

(Wakefield Consistory Court: Collier Ch, August 1999)

Carpet—diocesan guidelines

A faculty had been granted in 1994 for the first phase of a reordering. The petitioners sought a faculty for the second phase which included in its plans the laying of a deep blue carpet decorated with gold crosses. The design of the carpet was opposed by the DAC and the CCC. Carpet of the proposed design had already been laid in part of the church without authorisation. The chancellor granted the faculty for the reordering but rejected the design of the carpet stating that the colour was against diocesan guidelines and would be far too dominant an item of furnishing for the particular church. In addition the use of the cross in the pattern of the carpet was contrary to Anglican practice leading as it did to excessive repetition of the supreme Christian symbol which in turn trivialised that symbol. He did not order the removal of the carpet which had already been laid but invited the parish to consider replacing it once a carpet had been approved for the main body of the church.

Re St Hugh, Bermondsey

(Southwark Consistory Court: George Ch, August 1999)

Paintings—other faiths—sound doctrine

The petitioners sought a faculty to commission and install five oil paintings entitled 'Spirituality in the Wilderness' within the recesses of a folding screen at the back of the church dividing it from a community hall. Certain of the paintings were illustrative of aspects of the Hindu, Buddhist and Muslim religions. The petition was unopposed and had the support of the DAC, the archdeacon, the Diocesan Inter-Faith Group and the Church of the Living God which also used the premises. The Charterhouse Trustees, of whose community centre the church formed part, supported the proposal. The Bishop of Southwark did not indicate any theological concern. Accepting the practical arguments for the introduction of the paintings, the chancellor was mindful of the court's duty to 'safeguard sound doctrine'. He considered issues of religious pluralism, noting the Board of Mission's publication *Communities and Buildings, Church of England Premises and Other Faiths* (1996). He also noted the influence of comparative theology in extending Christian horizons, quoting from K Ward *Religion and Human Nature* (1998) and *The Mystery of Salvation* (1996), the latter being a report of the Doctrine Commission of the General Synod of the Church of England, published under the authority of the House of Bishops (see chapter 7 entitled 'Christ and World Faiths'). Whilst reaffirming that the Consistory Court might properly be styled a 'guardian of orthodoxy' the chancellor was persuaded that in the particular circumstances of this case, in a building which was not a parish church, in a multi-cultural inner city area, in a diocese with a 'reputation for open-mindedness and adventure in things theological', the paintings might properly be introduced. A faculty was granted accordingly.

Re All Saints, Elland

(Wakefield Consistory Court: Collier Ch, August 1999)

Demolition—partial

The petitioners sought a faculty to remove the flèche from the church, which comprised a partial demolition of a grade II* listed building; hence a hearing took place.

The flèche, octagonal in shape, stood 30 feet high and was constructed of timber clad in part in copper. Water ingress in a louvred bell chamber was a longstanding problem. Letters from the Victorian Society, the Ancient Monuments Society and the Society for the Protection of Ancient Buildings were against removal as was English Heritage and the CCC. The DAC did not object. Planning permission for the removal had been granted. The flèche was regarded as significant both aesthetically and doctrinally to the church designed by the architect George Halford Fellowes Prynne (1853–1927). The chancellor, having considered considerable technical evidence, was satisfied that a case had not been made out on the grounds of the impracticality of carrying out effective repairs. The parish was opposed to accepting lottery money because of the manner in which the lottery operates and its effect upon charitable giving. However a grant from English Heritage was probably available on appropriate terms. Accordingly the chancellor refused the faculty, noting that the petition could be renewed should circumstances change.

Re St Mark, Fairfield

(Worcester Consistory Court: Mynors Ch, September 1999)

Exhumation

In the course of a judgment, the facts of which are immaterial, the chancellor observed that he would wish to expand the third guideline commended by the Chancery Court of York in *Re Christ Church Alsager* [1999] Fam 142 (noted at (1999) 5 Ecc LJ 214) so as to read:

- ‘3. In other cases, it will not normally be sufficient to show:
- (a) a change of mind on the part of the relatives of the deceased;
 - (b) that some or all of those relatives are no longer able conveniently to visit the grave;
 - (c) that the spouse or another close relative of the deceased has subsequently been buried elsewhere;
 - (d) that a surviving spouse or other close relative wishes to be buried (in the future) in the same place as the deceased—but that a further burial at the same location as that which has already taken place is either for some reason now impossible or else considered to be undesirable.

Some other circumstance must usually be shown.’

Applying such expanded guideline, the chancellor refused the petition.

Re All Saints, Featherstone

(Wakefield Consistory Court: Collier Ch, November 1999)

Secular use—reordering

A major reordering was proposed which included the creation of a vestry and two community rooms, the latter to be run by the All Saints’ Centre Committee for various educational and community purposes. The chancellor reviewed various authorities concerning the use of consecrated land and buildings for secular purposes including *Re St John’s Chelsea* [1962] 1 WLR 706; *Re St Mary the Virgin, Woodkirk* [1969] 1 WLR 1867; and *Re All Saints, Market Harborough* (1991) 2 Ecc LJ 375 and extracted the following principles:

- ‘1. Consecration takes place with the signing by the bishop of the sentence of consecration, by which he separates and sets apart the building from all profane

and common uses whatsoever, dedicates the same to the service of almighty God for the performance therein of divine offices, and consecrates the same for the celebration of such offices. The sentence further pronounces, decrees and declares the building to be so separated, dedicated and consecrated and that it ought to remain so for ever. In consequence of the sentence, the building, and with it the land on which it stands, becomes consecrated land, held to sacred uses, and subject to the jurisdiction of this court.

2. Consecration permits of ancillary uses—to make the building work and serve its consecrated purpose.
3. Consecration is part of the mission of the church—it sets the building and land apart not only for sacred uses, but also as a sign of the presence of the Christian community in that place. The principal sacred uses are the worship of God and the proclaiming by words and works the gospel of Christ. It follows from this that secondary uses that are consistent with that mission and pastoral outreach should be permitted so long as they do not compromise the primary uses of the building for worship, pastoralia and mission or of the land for Christian burial.
4. The matter of consecration can also be viewed through the concept of public interest. It is clearly in the public interest that consecration should be honoured and maintained; but there is from time to time a competing public interest that requires the land or building to be used for other purposes. The latter will be exceptional cases, but in those cases the balance of public interest may require the church to give up or give away its primary use.’

The chancellor was satisfied that what was proposed was wholly consistent with the mission of the church and, applying the *Bishopsgate* questions, resolved the matter in favour of the petitioners.

Note: It may be that Chapter 11 of the Report of the Archbishops’ Commission on Rural Areas, Faith in the Countryside, which emphasises that church buildings be seen as places which can properly be used for purposes other than worship, is of more general application. See, for example, Re St Michael, Aveley (1997) 4 Ecc LJ 770.