

## RECENT CONSISTORY COURT CASES

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### **Re: Middleton with Cropton**

(York Consistory Court; Coningsby Ch. May 1990)

In 1976 a faculty was granted for the sale of a wine cup (made in 1493) and the creation of a fund with the proceeds of sale. The petitioners were the vicar and churchwardens of the parish of Middleton with Cropton. Subsequently the parish was divided under a pastoral scheme which made no mention of the cup fund. An application was made by way of fresh petition for directions as to the destination of the fund. The Chancellor held that he had jurisdiction because (i) the fund had been brought into existence by a previous order of the Court; (ii) directions made in 1976 had given liberty to apply, which was apt to cover the application before him; and (iii) there was residual jurisdiction under Section 6(1)(e) of the Ecclesiastical Jurisdiction Measure 1963. Since the cup had been vested in the churchwardens of the undivided parish, and the 1975 faculty on its true construction referred to the whole parish and not its constituent parts, the appropriate course was to divide the fund on an equitable basis between the new parishes, having regard to their current needs and resources. On the evidence, it was appropriate that Middleton should receive four-fifths of the fund, and Cropton one-fifth.

### **Re: St. John the Baptist, Werrington**

(Peterborough Consistory Court; Coningsby Ch; November 1990)

Although a person who dies within a parish has a common law right to have his mortal remains buried in the churchyard of the parish church, this right does not carry with it a similar right for the reservation of a grave space. The grant or refusal of a reservation is a matter for the discretion of the Consistory Court. As regards reservation for non-parishioners, the discretion is that of the incumbent or priest-in-charge, but he must obtain the views of the P.C.C. and take those views into account (Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976). In the case of an application for reservation by a non-resident the Chancellor therefore has an additional duty to take into account the views of the incumbent. Where, therefore, a non-resident had applied for such a faculty and his petition was meritorious, any decision made by the Court in his favour had to be subject to the concurrence of the incumbent before a faculty could pass the seal. On the facts before him, the Chancellor held that there was no serious risk of depriving parishioners of grave spaces because (i) the reservation was in respect of the existing grave of the petitioner's relative over which parishioners had no rights of burial and (ii) the churchyard would be full within seven years, so 'deprivation' would soon become inevitable; the effect of the proposed reservation could in the circumstances only be marginal.

### **Re: Meopham Churchard**

(Rochester Consistory Court; Goodman Ch. April 1991)

A faculty was sought for the introduction, into the extension of a country churchyard, of a polished light grey granite headstone with a heart emblazoned on the front. Both the incumbent and the D.A.C. disapproved of the proposed use

of polished light grey granite. The Chancellor concluded that it would be wrong to permit the proposed headstone to be introduced into an area where it would stand out unsympathetically among the other monuments which conformed with the Churchyard Regulations. Furthermore the monument would in fact look much darker than light grey. He was, however, prepared to allow a light grey granite unornamental headstone, with just the front face smoothed for an inscription; alternatively a headstone in natural stone other than granite or marble would be permissible.

**Re: St. John the Baptist Hugglescote**  
(Leicester Consistory Court; Seed Ch. May 1991)

The rector and churchwardens petitioned for a faculty (inter alia) to provide a new entrance vestibule and a carpeted communal area in a Victorian church of architectural importance. The work was carried out before a faculty was granted, the carpeting being extended to the open parts of the nave floor. A confirmatory faculty was granted in respect of the vestibule, the work being of a high standard; but the Chancellor warned that the end could not justify the means, and that in future he would be slow to grant faculties for satisfactory works which had been carried out without due authority. The carpet was criticised by the D.A.C. as being out of tone and harmony with the rest of the building. It was of a vivid blue colour with a very prominent pattern. The Chancellor accepted the advice of the D.A.C. and declined to grant a confirmatory faculty in respect of the carpet. Since, however, it would have been oppressive to order its removal, the Chancellor permitted the carpet to remain as an unwelcome object with a view to its ultimate removal and replacement with something more suitable.

**Re: St. Boniface, Bunbury**  
(Chester Consistory Court; Lomas Ch. June 1991)

A confirmatory faculty was sought in respect of restoration of a mediaeval par-close screen, which had been removed from the church (a Grade 1 listed building) during the 19th century and the panels retrieved in recent years. After renovation the panels had been reinstalled as a display within the church, being mounted on a specially made oak framework on the wall of the south aisle. Certain monuments had been moved to accommodate the display. The Chancellor held that at the time when first restoration of the panels was desired to be put in hand, an application for a faculty should have been made. He regretted that the D.A.C., the architect and the Archdeacon should have allowed the parish to get itself into the difficulty of requiring a confirmatory faculty. The Court could not condone a procedure whereby work was done and a confirmatory faculty was sought thereafter. Where petitioners cannot give full details of the work which will ultimately be carried out, the Court will deal with the matter by issuing interim orders which authorise the work stage by stage. In the circumstances a confirmatory faculty was granted, because the Chancellor was satisfied that the work done was of a high order.

**Re: Christ Church, Ainsworth**

(Manchester Consistory Court; Spafford Ch. September 1991)

The petitioner sought to include in the inscription upon her mother's gravestone the word 'toodle', a word used in her family as a farewell. The Chancellor refused to sanction the use of this expression. In his opinion, prayer was the appropriate vehicle for such messages. The inscription on a gravestone is public, and would be an unfortunate precedent which ought not to be allowed.

**Re: Rusthall, St. Mark's Biggin Hill and St. Mary's Shortlands**

(Rochester Consistory Court; Goodman Ch. May 1991)

The incumbents and churchwardens of three parish churches (only one of which was a listed building) applied for faculties for the installation of Mercury telecommunications aerials upon the structure of the churches, with a view to receiving a fee from the owners of the aerials. The unopposed petitions were supported by the Archdeacon and the D.A.C. The Chancellor held that he had jurisdiction to grant the faculties sought. Secular user of church property might be permissible where there would be no adverse effect upon its ecclesiastical character; *Re: St. James, Bishampton* [1961] 2 All E.R.1 followed. On the facts interference with church buildings would be minimal, the proposed structure being about six feet long and up to four inches in diameter, capable of being painted in any colour, and being protected against lighting. Accordingly faculties were granted for the installations to be permitted by licences in a form to be approved by the Court. The licences were to be for fairly short periods with provision for renewal.