

RECENT ECCLESIASTICAL CASES

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R v Dean and Chapter of St Paul's Cathedral and the Church in Wales, ex parte Williamson
(High Court of Justice, Crown Office List; Sedley J, August 1997)

Vexatious litigant—judicial review—women priests

The applicant, a vexatious litigant under the Supreme Court Act 1981, s 42, sought leave to challenge (i) a decision of the Dean and Chapter of St Paul's Cathedral to appoint a woman as a minor canon, and (ii) a decision of the Church in Wales to ordain women as priests. Sedley J regarded the first matter as unarguable since the word 'sacerdos' in the cathedral's charter of 1396 was no more gender-limited than 'mankind'. Further, since the cathedral had a Visitor to whom any question of the interpretation of its statutes could be referred, the court lacked jurisdiction. The second matter he also considered unsustainable in the light of the Welsh Church Act 1914. In any event the applicant had no *locus standi*. In judicial review terms he was a busybody with no connection with the Church in Wales. Both applications were refused.

Note: A brief report of this judgment may be found in [1998] COD 130.

Re St John the Evangelist, Hoylandswaine
(Wakefield Consistory Court; Collier Ch, December 1997)

Carpet—colour—diocesan guidelines

The PCC resolved to introduce into the church a bronze coloured carpet to be paid for by two benefactors. The DAC recommended the works, and a faculty was duly granted by the archdeacon. Some months later, but prior to the purchase of the carpet, the PCC decided that it did not like the idea of a bronze carpet and voted instead for a blue one. The DAC did not recommend the works because such colour was not in accordance with the diocesan guidelines for carpets. There were no objectors. The chancellor referred to *Re St Michael the Archangel, South Malling, and St John the Divine, Southbourne* (1991) 2 Ecc LJ 251 (Edwards Ch) and to *Re St John the Baptist, Hugglescote* (1992) 2 Ecc LJ 320 (Seed Ch). He stated that it was not for a donor to dictate precisely the form which his gift should take nor for the parishioners to exercise an unfettered choice. He considered the proposed colour too strong and too dominant. In dismissing the petition the chancellor indicated that he would be prepared to permit a variation to introduce a carpet of a more muted tone.

Re St Peter and St Paul, River

(Commissary Court of Canterbury; Walker Com Gen, December 1997)

Extension—re-ordering—partial demolition

By way of two consolidated petitions, a faculty was sought for a substantial extension to a nineteenth-century Grade II listed church and a re-ordering of the interior to include the construction of a nave platform. Planning permission was granted despite a number of local objections. The DAC recommended the works subject to conditions. Of some 24 persons who lodged particulars of objections, 8 pursued them at the hearing. The commissary took into account all objections, including the views of a group styled 'The River Conservation Society', although he placed greatest weight upon the evidence of the parties opponent. The CCC regarded the scheme as 'sensitively handled and worthy of support'. The commissary was satisfied that additional seating capacity was necessary; that all reasonable alternatives had been explored and rejected; that disturbance to human remains would be kept to a minimum; that no criticism could be made of the PCC for lack of public consultation; that the overwhelming majority of worshippers supported the scheme; that the resultant loss of symmetry and relocation of stained glass windows would not be detrimental; that adequate funding was available; that the installation of the proposed platform would enhance the interior appearance of the building; and that it was unnecessary to consider the question of car parking since the matter must have been considered by the local planning authority. Applying what he characterised as the 'Bishopsgate Questions', the commissary was satisfied (1) that the petitioners had proved necessity; (2) that the proposed works would not adversely affect the character of the church as a building of special architectural and historic interest; and, even though it was not strictly necessary in the light of his previous findings, (3) that he should exercise his discretion in favour of granting the faculty. Further, as to partial demolition, he was satisfied that the requirements of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, s 17, had been met. The facts were wholly different from those in *Re St Michael and All Angels, Tettenhall Regis* [1996] Fam 44, [1996] 1 All ER 231. A faculty therefore issued, subject to detailed conditions.

Re Sparrow deceased

(Rochester Consistory Court; Goodman Ch, December 1997)

Exhumation—identity of body

The petitioner was concerned that the body buried in a coffin in St Mary's Churchyard, Woodlands, in October 1995 might not have been that of his mother. He sought a faculty for the body to be exhumed to enable tests to be carried out. He recalled the coffin being too long and seemingly too heavy for someone of his mother's build. All inquiries of the hospital where his mother died, the undertakers, the vicar who had conducted the funeral and the coroner militated against there having been a mistake. The Home Office declined to issue a licence unless and until a faculty had been granted. At the hearing the chancellor preferred the detailed evidence of the undertakers to the less reliable—and somewhat obsessional—account of the petitioner. He was in no doubt that the body in the coffin was that of the petitioner's mother. Accordingly the petition was dismissed with costs.

Gill v Davies and others

(Teesside District Registry, Queen's Bench Division; Smith J, December 1997)

Proposed ordination—injunction

The acting Bishop of Newcastle (appointed to fulfil the duties of the new diocesan bishop pending his installation) sought to restrain the holding of an ordination service in a parish church in the diocese. The parish had issued a public statement asserting that it could not accept the oversight of the new diocesan bishop following reports in the press that he held views on homosexual behaviour which the parish considered unorthodox. The candidate for admission as deacon, who had served as a licensed lay worker in the parish and had completed his training and preparation, felt unable to dissociate himself from the statement of the parish and to accept the oversight of the bishop as required by the oath of canonical obedience in Canon C 14, para 3. The acting bishop accordingly decided to postpone the ordination which he had been due to conduct in the hope that such doctrinal differences as might exist could be resolved upon the arrival of the new diocesan bishop. The parish, however, made arrangements for an alternative service of ordination to be held in the parish church. It was to be conducted by the retired Bishop of Karamoja, Uganda, two days after the hearing, which was *ex parte* on notice. Counsel for the plaintiff was unable to show the judge any precedent for an injunction being granted to restrain a breach of canon law, but the judge was satisfied, canon law being part of the law of England, that she did have power to grant one. Applying Canons C 18, para 4, and C 3, the judge concluded, 'There cannot be a lawful ordination into the Church of England without the authority of the bishop of the diocese concerned.' She rejected the defendants' submission that such authority had been forfeit by what it was maintained amounted to breaches of Canon C 18, para 1, by the new diocesan bishop. She regarded the proposed service as contrary to canon law and concluded that the discretionary criteria lay in favour of an injunction, limited in time, to maintain the *status quo*. She did not consider it appropriate to injunct either the parish priest or the candidate to save themselves from committing canonical offences. They were both 'adult and intelligent'. However, it would be most undesirable for the parishioners, who had come to know the candidate as a lay worker, to understand that he had gone through some form of ordination and yet not know what his status would then be. An injunction therefore issued preventing the use of the church for the proposed ordination for a period of three months or until further order. Costs were reserved.

Re St Luke the Evangelist, Maidstone (No 2)

(Commissary Court of Canterbury; Walker Com Gen, January 1998)

Sale of pews—success of re-ordering

Following the judgment of the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, [1995] 1 All ER 321, a major re-ordering was effected. Pews were removed in May 1995 and replaced by chairs. It was a condition of the original faculty that the pews were not to be disposed of. By a petition presented in May 1997, the parish sought permission to sell the pews, not for the raising of money, but to obviate the need to expend money (approximately £200 per month) on the storage and preservation of items which, in all likelihood, would never again be used in the church. Extensive inquiries both in the diocese and nationally failed to identify any church which could take all or even most of the pews. Objections were made by the Kent Archaeological Society and the Victorian Society. The Commissary General considered himself bound by the observations of the Court of Arches in relation to

the pews (see [1995] Fam 13D–15A). The Court of Arches did not regard the pews as being of special artistic merit, but required them to be stored until further order ‘to allow the success or otherwise of the new arrangement to be assessed and a view taken as to the future of the pews’. The Commissary General found that the re-ordering and the introduction of the chairs had been pastorally and aesthetically successful, as well as overwhelmingly popular with the worshipping community. He considered the theoretical possibility that over the next twenty to thirty years a congregation might hanker after a return to high-backed pews to be ‘negligible’, and consequently granted the faculty.

Re St Nicholas, Skirbeck

(Lincoln Consistory Court; Goodman Ch, January 1998)

Cremated remains—exhumation—difficulties in access to grave

The widow of the deceased sought a faculty for the exhumation of her late husband’s ashes from the churchyard, which she now found more or less impossible to visit due to very limited wheelchair access, and for their reinterment in consecrated ground in Boston Crematorium, where there was no such problem. This also required the relocation of a substantial monument erected in his memory. The chancellor cited *Re Church Norton Churchyard* [1989] Fam 37, *sub nom Re Atkins* [1989] 1 All ER 14, as setting out the general principles in a case regarding exhumation. He concluded that this was not a ‘portable remains’ case because the petitioner was not seeking to move to another part of the country. Whilst it was regrettable that the petitioner had been unable to visit her husband’s grave for twelve months, the churchyard did not appear to be unduly overgrown and it was foreseeable at the time of interment that the area for the interment of cremated remains would fill up with monuments, as it had done. Declining health and reduced mobility came to many in old age, and was sadly to be expected. Removal of the remains along with the monument might upset those visiting other graves and might also lead to others seeking similar exhumations. It was also seven years since the interment and the site of interment along with the monument had become part and parcel of the highly-valued place of rest. Consequently a ‘good reason’ required by *Re Atkins* had not been shown, and the faculty was refused. Following *Re Ryles deceased* (24 October 1995, unreported) it was immaterial to the exercise of the court’s discretion that a Home Office licence had been obtained before it had been realised that the land at Boston Crematorium was consecrated.

Re St Mark, Woodthorpe

(Southwell Consistory Court; Shand Ch, February 1998)

Re-ordering—coffee facilities

A faculty was sought by the PCC for the provision of a coffee bar area in the south-west corner of the church (which was not a listed building) so that coffee could be served in the church itself immediately after the Sunday morning family service, rather than in the church hall, which was separated from the church by a car park. The chancellor stated that his legal duty was to promote churches ‘as centres of mission and worship’, and concluded that despite an objection from a member of the church that the works would lead to the unnecessary ‘secularisation’ of a sacred building, the scheme was not aesthetically objectionable, and a faculty should be granted because of the overwhelming need for the coffee bar as an opportunity for

mission. An objection as to the allocation of funds for such a project was also raised, but the chancellor did not regard it as part of his remit to interfere with the discretion of the PCC to allocate funds, unless they were acting in a way that was manifestly unreasonable, which they were not.

Note: The legal duty under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, s 1, to 'have due regard to the role of a church as a local centre of worship and mission' has been held by the Court of Arches not to apply to chancellors since their function was not one of 'care and conservation' but of hearing and determining causes of faculty under the Ecclesiastical Jurisdiction Measure 1963, s 6: see Re St Luke the Evangelist, Maidstone [1995] Fam 1 at 7A–C, [1995] 1 All ER 321 at 326. The absence of this statutory duty, however, is immaterial since 'if [section 1 of the 1991 measure] had applied to the chancellors it would have added nothing to [their] existing duty and practice' (p 7D and p 326).

Re St Mary's, Kings Worthy
(Winchester Consistory Court; Clark Ch, March 1998)

Extension—relevance of considerations already determined by local planning authority)

A petition was sought for the construction of an extension to the south side of a Grade II* church to provide meeting rooms, a choir vestry, a kitchen, lavatory facilities, an office, a boiler room and storage space. The scheme, significantly revised since originally conceived, received planning permission in November 1995. The DAC recommended approval and a poll of those on the electoral roll revealed a substantial majority in favour. It was argued by the objectors that neighbouring properties would be affected by the extension, particularly the view from one house. Acknowledging that the court should be reluctant to grant a faculty which might cause detriment to a person's private property (*Re St Peter and St Paul, Upper Teddington* [1993] 1 WLR 852), the chancellor stated that a property owner has no right to a view.

'If he thinks a proposal may have an effect on his view, he is entitled to object to the planning authority; but, if planning permission be granted, he cannot resurrect the objection in the consistory court'.

Certain other objections were on traffic and parking grounds. The chancellor stated:

'There can be little doubt that a planning authority, with its expert advisers, is in a better position than a consistory court sensibly to decide issues such as traffic flow and parking availability. Indeed, there is a strong argument for saying that, once the planning authority has granted permission for a particular proposal, issues of this kind ought not to be raised for reconsideration by a consistory court. In the exercise of my discretion, however, I have agreed to hear evidence relating to these matters, but only on the basis that the decision whether or not to grant a faculty is unlikely to be affected by it unless the evidence is of a very strong and compelling character. In other words, I shall assume the planning authority made the correct decision in this respect, unless there is convincing evidence to the contrary'.

The chancellor resolved the Bishopsgate Questions in favour of the petitioners, and granted the petition.

Re St Luke, Goostrey

(Chester Consistory Court; Lomas Ch, March 1998)

Removal of Bodies—Home Office licence—Burial Act 1857, s 25

A faculty was sought for the removal of 25 lead coffins from the crypt where they had been placed between 1784 and 1882 and for their reinterment in a newly-consecrated part of the church's burial ground. The chancellor considered that the case came within the exception to the Burial Act 1857, s 25, and that accordingly a Home Office licence for the removal of the bodies from 'one consecrated place of burial to another' was not required. Although in a crypt, rather than in the ground, he considered that the bodies were 'buried' and that, in reality, the crypt and the burial ground were separate places of burial. He noted, and expressed surprise, that the Home Office had recently come to the conclusion that where a body is removed from one grave to another within the same churchyard it is not the case of a body being removed from one consecrated place of burial to another, and felt obliged to warn the petitioners that his judgment would not protect them should the Home Office take a contrary view on the applicability of section 25. The chancellor then addressed the factual issues and granted a faculty subject to conditions.

Note: The Home Office has now decided once more to regard reinterments in the same churchyard under faculty as not requiring a Home Office licence. It would seem that exhumation and reinterment in the same grave still requires a licence as well as a faculty.

Re St Wilfrid, Davenham

(Chester Consistory Court; Lomas Ch, April 1998)

Exhumation—interment of cremated remains in full grave space—reservation of grave space

The petitioner, Mrs Annie Cooper, aged 82, presented two petitions. The first sought a faculty for the exhumation of the cremated remains of her late husband from a section of the churchyard of St Wilfrid, Davenham, and their reinterment in a full grave space in a separate part of the same churchyard. The other sought the reservation of a full grave space for herself so that her body could in due course be buried with the cremated remains of her late husband. The petitioner and her late husband lived in a neighbouring parish whose residents had no right of burial in Davenham churchyard, but they were treated preferentially. During a recent interregnum a practice had developed (contrary to the churchyard regulations and deprecated by the chancellor) of burying cremated remains in full grave spaces. This had since stopped. It was the evidence of the petitioner and her son that she was aware of the option of retaining her husband's ashes for future interment and that she preferred to be buried not cremated. The petitioner's applications were not supported by the rector or the PCC because of the breach of the churchyard regulations, the lack of special circumstances for reservation and the pastoral consequences of establishing a precedent. Applying the Church of England (Miscellaneous Provisions) Measure 1976, s 62, and having regard to *Re West Pennard Churchyard* [1991] 4 All ER 124, [1992] 1 WLR 32, the chancellor concluded that absent the concurrence of the incumbent he ought not to grant a faculty reserving a grave space. He was referred to *Re St Nicholas's, Baddesley Ensor* [1983] Fam 1, [1982] 2 All ER 351, and *Re St Mary, Dodeleston, Churchyard* [1996] 1 WLR 451. The exhumation application was also refused, regard being had to *Re Church Norton Churchyard* [1989] Fam 37, *sub nom*

Re Atkins [1989] 1 All ER 14, and *Re Edith Smith deceased* [1994] 1 All ER 90, *sub nom Re St Peter's Churchyard, Oughtrington* [1993] 1 WLR 1440. It was reiterated by the chancellor that each case regarding exhumation must depend on its own particular facts and that it was something which should be done sparingly and only in special circumstances. The chancellor did not accept that a mistake over the disposal of the remains in the terms envisaged in *Re John Stocks deceased* (1995) 4 Ecc LJ 527 and *Re Holy Trinity, Freckleton* (April 1995) 4 Ecc LJ 429 had been made.

Re All Saints, Eccleshall
(Sheffield Consistory Court; McClean Ch, April 1998)

Re-ordering—variations—unauthorised works

A faculty for a major re-ordering scheme was granted on 4 June 1997. As the work progressed, difficulties were encountered which necessitated a variety of changes to the original plans being canvassed. The DAC was heavily involved and issued a number of certificates for various matters, although no applications were made under the Faculty Jurisdiction Rules 1992, r 30(2), for variation of the faculty. An unsuitable sealant was used on internal plasterwork, loudspeakers were installed, an external notice board was erected, and a path comprising old gravestones was constructed. For none of these had a faculty been sought. The chancellor noted that a faculty was permissive and not mandatory, and referred to *Re St John-in-Bedwardine, Worcester* [1962] P 20, [1961] 3 All ER 216. He emphasised that it was not for those to whom a faculty had been granted for a large project to pick and choose at will those features which they wished to take forward. The chancellor described the repeated neglect of faculty procedures as 'culpable', and emphasised the special responsibility which rests on parishes, their officers and professional advisers. He granted retrospective amendments to the faculty in respect of certain of the works and accepted undertakings from the incumbent to cause a petition for a confirmatory faculty to be presented for others. Action regarding the irreversible chemical process used on the plasterwork was deferred pending a report from English Heritage. The petitioners were ordered to pay the court costs.

Re St Dunstan, Frinestead
(Canterbury Consistory Court; Walker Com Gen, May 1998)

Repainting of Victorian stencils—pastoral need

A faculty was sought for the repainting of some Victorian paintings on the south wall of the chancel of a Grade II listed church due to the fact that they had faded and become dull. The dullness of the paintings was made more apparent by the contrast of the newly-painted north wall. The paintings had already been repainted on two previous occasions, using the original stencils, and those stencils were available for the proposed repainting. A number of bodies were consulted, and the commissary had regard to the views of the Victorian Society and the CCC that the paintings were of sufficient artistic merit to warrant cleaning and restoration, even though the end result would remain dull. A faculty was granted, subject to the condition recommended by the DAC that the original painting be covered up with a protective skin in such a way that it might be possible, at a later date, to uncover the original painting, and subject to the condition that the original stencils be used. The commissary took the following into account: (a) the pastoral needs of the congregation called for a brighter and more balanced appearance in the chancel which would not be

achieved if the paintings were merely cleaned and restored; (b) the principal function of the church was as a place of worship; and (c) the view that the real merit of the paintings lay in the use of the stencils and their design rather than in the application of paint to the walls.

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