

the PCC would seek to reintroduce the stalls at a later date so ordered the PCC to send a plan for their disposal to the DAC within three months with a reference to the court should the DAC reject their proposal. [WA]

doi:10.1017/S0956618X10000554

Bentley v Anglican Synod of the Diocese of New Westminster

Supreme Court of British Columbia: Kelleher J, November 2009

Canada – same-sex unions – doctrine – property dispute

The action was brought in two combined suits, the plaintiffs being 22 clergy and lay members of four parishes, the defendants being the diocesan synod and Bishop of New Westminster in Canada. The parishes concerned had sought to leave the diocese after the decision of the diocesan synod and bishop to approve a rite for the blessing of same-sex unions. The parishes concerned voted in congregational meetings to ally themselves with the Anglican Network in Canada (ANiC), a grouping of conservative parishes, and to accept episcopal oversight from the Archbishop of the Province of the Southern Cone in South America. The bishop started a canonical process to depose the clergy (who had voluntarily resigned their licences) and invoked a canonical provision to remove lay officers from two of the parishes. The dispute centred on property issues. The bishop held that as the clergy had ceased to be ministers of the Anglican Church of Canada their continued use of the buildings was not lawful. The plaintiffs argued that ‘first, the parish properties are held on trust; second, the terms of the trust require that parish ministry and liturgy be consistent with historic, orthodox Anglican doctrine and practice in full communion with the worldwide Church; third, the bishop’s actions had made performance of the trust impracticable; and fourth, the court should therefore order a *cy-près* scheme directing modification of the terms of the trust.’ The judge concluded that it was not necessary to analyse the purposes of the trust in which the buildings were held as the claim failed on legal principles. The diocese and parish corporations are incorporated under the terms of the Act to Incorporate the Anglican Synod of the Diocese of New Westminster 1893. This makes major decisions within a parish corporation subject to the consent of the diocese’s executive committee and bishop. A parish does not have the right unilaterally to leave the diocese. Consent not forthcoming, the property remains in the hands of the diocese. The judge dismissed the larger part of the claims of the plaintiffs but ruled that the bishop’s removal of parish trustees and appointment of others was illegal. In a separate part of the judgment, the judge ruled that a *cy-près* scheme be established to fulfil the

charitable intent of one significant recent bequest made to help build up the church that served the Chinese community, which was now part of ANiC. Thus the charitable intent of the bequest would be best met by its application to the ANiC congregation. Reference was made in the judgment to the *Principles of Canon Law Common to the Churches of the Anglican Communion* published by the Anglican Communion Office in 2008. [WA]

doi:10.1017/S0956618X10000566

Re St Margaret, Mapledurham

Oxford Consistory Court: Bursell Ch, December 2009

Reservation of gravespace

In June 2009 the petitioner sought the reservation of a double depth gravespace for the interment of the mortal remains of himself and his wife, both of whom were in their eighties. The PCC and incumbent did not support the petition as the churchyard had only two remaining spaces, enough for approximately two more years of burials. In 2005 the previous incumbent had signed a document purporting to give the petitioner and his wife the right ‘in perpetuity’ to be buried in the churchyard whilst it remained an open churchyard. The petitioner and his wife had believed that the document gave them the right to burial in the churchyard. In refusing the petition the chancellor noted that the letter did no more than record the right that the petitioner and his wife (as parishioners) had to burial in the churchyard whilst it remained open. He balanced the very real disappointment of the petitioner and his wife against the rights of other parishioners to burial in the churchyard, rejecting as irrelevant the petitioner’s submission that the reservation of a gravespace would expedite the closure of the churchyard, as desired by the PCC. [RA]

doi:10.1017/S0956618X10000578

Re Worby, deceased

Bradford Consistory Court: Walford Ch, January 2010

Exhumation – special circumstances

The chancellor granted a faculty for the exhumation of the cremated remains of the deceased for the purposes of their reinterment with the cremated remains of his two sons. The sons had been tragically killed, at the respective ages of 25 and 21, six years after the death of the deceased. The chancellor found that there were