RECENT ECCLESIASTICAL CASES

CHANCELLOR TIMOTHY BRIDEN

Re St Wilfrid, Kirkby-in-Ashfield
(Southwell Consistory Court; Shand Ch. February 1995)

The Petitioners sought leave to remove an oak screen from the entrance to the chancel of a Grade II listed church (rebuilt in 1907) and to move it to the west end of the building, thereby creating an enclosed area for the congregation to meet and have coffee after services. Notwithstanding the unanimous decision of the Parochial Church Council, there was a deep division of opinion in the worshipping community about the proposal. The Chancellor concluded that, although the proposed changes were probably reversible, they would on balance adversely affect the church as a building of special historical and/or architectural interest. It was a fine screen in an appropriate and dramatically powerful position which formed an integral part of the beauty of the church. Moreover the parish had not made a sufficiently compelling case for the necessity of change. The arguments about the position of the choir (said to be isolated by the screen) and the aesthetic and liturgical advantages of moving or retaining the screen were evenly balanced. The desirable use of the west end as a meeting area was not in any logical way dependent on moving the screen.

Re St Matthew, Northowram
(Wakefield Consistory Court; Collier Ch. February 1995)

A re-ordering scheme, involving the construction of a narthex screen at the west end, the creation of a new sanctuary west of the chancel arch with the conversion of the existing sanctuary to a chapel, the provision of new lighting, heating and sound systems, the construction of kitchen and storage facilities, and various other consequential works was recommended by the Diocesan Advisory Committee but opposed by one parishoner. The building, with its long chancel leading to the sanctuary, was unsuitable for current liturgical practices. The flexibility created by the proposed layout would permit almost any form of liturgy imaginable. The relevant objections were directed to the effect upon the east end and the period of closure of the church for works to be done. In granting a faculty the Chancellor held that the proposed arrangements at the east end would enhance rather than detract from it, and that a period of closure (during which other halls would be available) was a small price to pay in the long term mission of the church. There was a very real necessity for the proposed works. The church, built in 1913, was a Grade II listed building. The proposals did not involve any loss of, or significant effect upon, anything of any great historical, aesthetic, architectural or communal interest. The fact that the parish might have other financial needs was not a ground for refusing the faculty, since it was for the Parochial Church Council to weigh up the various demands upon its resources and decide what expenditure could be afforded.

Re St Michael and All Angels, Tettenhall Regis
(Court of Arches; Sir John Owen, Dean, Coningsby Ch. and Seed Ch. August 1995)

In dismissing the Petitioners' appeal from the decision of Chancellor Shand refusing permission for the construction of an extension which would involve the disturbance of human remains (noted in (1995) 3 *Ecc L J* 430) the Court held that since the Chancellor did not base his decision on an erroneous evaluation of the facts taken as a whole, it could not be reversed. The proposal for the extension would have involved the enlargement of the existing building and would have been for the purpose of providing either space for worship or some other church purpose or purposes. An enlargement for intended use as a crèche, meeting rooms, office, kitchen and toilet would not have been in breach of section 3 of the Disused Burial Grounds Act 1884. The only factor preventing the grant of a faculty was that the proposals would inevitably involve exhuming human remains. The Chancellor had not given undue weight to it. Exhumation is to be avoided if at all possible. If a proposal inevitably involves such disturbance, the Petitioners will need to express their argument in clear, convincing and comprehensive terms. They will have to ascertain and bear in mind the views of relatives, even distant relatives of those who have been, or may have been, interred in the burial ground, and also the views of the parishioners who are not necessarily churchgoers. In general in this type of case an oral hearing will be useful and necessary, so that the Chancellor will be able to gauge the extent of support and opposition, and those who support or oppose a faculty will be allowed publicly to state their views.
Per curiam: The prohibition placed on burials in closed burial grounds does not apply to the replacement of human remains already interred in the same burial ground. *Re St Mary's, Barnes* [1982] 1 All ER 456, [1982] 1 WLR 531, approved.

Re St Mary Magdalene, Peckleton
(Leicester Consistory Court; Seed Ch. August 1995)

The Rector and Churchwardens petitioned for a faculty to remove the choir stalls from the chancel and to move the Holy Table forward by three feet, thus enabling the chancel to be used as a chapel by bringing in some of the chairs from the nave. There were three Parties Opponent from within the parish, others having with leave withdrawn their objections. The Chancellor was satisfied that the Petitioners had made out a case based on need, in that the chancel was more appropriate for the use of a small congregation than the whole church. The scheme would give greater flexibility for the different forms of services, concerts and other activities adopted in trying to build the congregation up and attract people into the church. The consultation process was not flawed; the period of experimental reordering gave everybody the opportunity to find out exactly what was happening and to express a view. Since the pews in the nave had already been lost, and the choir stalls were not of high quality, there were no aesthetic or conservationist grounds for their retention. The faculty was therefore granted; the Petitioners were ordered to pay the Court costs but were permitted to recover one-sixth of those costs from each of the Parties Opponent.

Re St Thomas' Church, High Lane
(Chester Consistory Court; Lomas Ch. September 1995)

In dismissing a petition for the exhumation of the ashes of the Petitioner's wife (who died in 1989) so that they might be buried in a churchyard more accessible to him, the Chancellor said:

> 'When a burial has taken place in ground consecrated in accordance with the rites of the Church of England it appears to me that the intention of all those

taking part is that the earthly remains of the deceased are finally laid at rest. It is the duty of this Court to seek to ensure that that is the case and to protect the remains of deceased persons. I have to bear in mind that if I accede to the submission that it would be proper to grant an order for exhumation where the only ground is that the deceased's spouse or other close relative has moved away from the area and is, because of advancing age, finding it increasingly difficult to tend the grave I should be sanctioning a considerable weakening and relaxation of the proposition which I have held to represent the law namely, that the exercise of my discretion to grant a faculty for this purpose is something which ought to be done sparingly and only in special circumstances.'

Re St Martin's, Hereford
(Hereford Consistory Court; Henty Ch. October 1995)

Diocesan Churchyard Regulations are merely parameters within which an incumbent or priest in charge may permit the introduction of monuments. Within those parameters the Chancellor's discretion is delegated, but that does not mean that a monument can be introduced as of right within the parameters. It is perfectly proper for the Parochial Church Council to operate its own rules within Churchyard Regulations, although it is always open to a person to seek to introduce a monument on a petition for a faculty, if the application is outside the permitted parameters or is refused by the incumbent or priest in charge in the exercise of his discretion. Accordingly where the Parochial Church Council had for some time permitted memorials only of a particular stone, and the Team Rector refused to allow the introduction of a memorial in a different stone, the Chancellor considered it wrong to interfere with the local decision supported by the Churchwardens and the Council. The petition was dismissed.

Re Awliscombe
(Exeter Consistory Court; Calcutt Ch. December 1995)

A faculty was sought to permit the sale of a seventeenth-century oak coffin stool, an alms chest of similar age, and a fifteenth-century bell cast by a local founder. The Council for the Care of Churches contended that disposal of the stool and chest was not justified by any 'special reason' within the context of *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269. Although the alienation of church property was always a matter which called for the most careful and cautious consideration, the Chancellor held that it was appropriate to authorise sale because one coffin stool had already been stolen and the only safe place to keep the two portable items of furniture was in the ringing chamber, where they would serve no useful purpose. The bell was in need of repair, and although it was no longer required at Awliscombe its retention within the diocese was appropriate. The Petitioners were accordingly required to give an undertaking that they would use their best endeavours to find a buyer within the diocese.

Re Holy Trinity, Salcombe
(Exeter Consistory Court; Calcutt Ch. December 1995)

The Vicar and Churchwardens petitioned for authority to hang six bells in the tower of the church and to re-position and automate the church clock. The peti-

tion had the unanimous support of the Parochial Church Council, but two Parties Opponent pursued objections based primarily on financial grounds. Was it appropriate for the money to be spent in the way proposed when, as it was asserted, there were so many other competing claims for funds? The Chancellor considered that it was right to pay particular attention to the views of the Parochial Church Council on such a difference of opinion. They were as well aware as anyone of the financial difficulties facing the parish, but nevertheless they supported a petition for these particular purposes. The correct course was therefore to grant the faculty sought.

Re Hanford St Matthias
(Lichfield Consistory Court; Shand Ch. December 1995)

It had become necessary to re-roof the tower, nave and aisles of a Victorian church listed Grade II. The local authority called for the use of the original tiles on the visible roof slopes fronting the highway, with matching tiles on other slopes. The Chancellor accepted that the hard state of the highly fired existing tiles made them unsuitable for further use, and held that it would be a gross betrayal of the stewardship of the parish to future generations to compromise the safety and durability of the roof by incorporating salvaged tiles. On the question of whether to authorise concrete tiles (as preferred by the Petitioners) or new clay tiles, the Chancellor concluded that clay tiles were to be preferred because they had a depth and variation of colour lacked by the concrete equivalent. There was no reason why properly manufactured and fixed clay tiles should not give many decades of service. The additional cost involved in using clay tiles was not a conclusive consideration in a case where the variation in end result was so significant. A faculty was granted authorising the use of new clay tiles.

Re Holy Trinity, Freckleton
(Blackburn Consistory Court; Bullimore Ch. December 1995)

A memorial of a design permitted by the Diocesan Regulations but recording the name of the deceased as 'Tom' instead of 'Thomas' was without the authority of the incumbent introduced into the churchyard. On a petition by the incumbent and Parochial Church Council for the alteration of the inscription, alternatively for the removal of the monument, the Chancellor held that although the erection of an unauthorised memorial amounted to a trespass it was unreasonable to direct its removal when (apart from the wording) it was unobjectionable. Although the better practice was for the deceased's full name to appear, with a diminutive or nickname added if it was inoffensive and requested by the family, the problem with the use of the dimunitive in the present case did not justify the taking of further action. The petition was therefore dismissed. *Per curiam*: a diminutive or nickname would not be accepted in place of the actual baptismal names when the matter arose on a petition for a faculty.

Re Cosgrove
(Peterborough Consistory Court; Coningsby Ch. February 1996)

An interment had taken place in the consecrated part of a burial ground managed by a local authority, which was alleged to have been in breach of a pre-existing contractual reservation of the plot. The party having the right of burial in the plot in question sought exhumation of the remains interred there. The Chancellor

decided that since the burial ground was not a churchyard subject to the faculty jurisdication (the jurisdiction arising exclusively as a result of the act of consecration of the area) and the grave space had not been reserved by faculty, it was appropriate to adjourn the hearing of the petition until the parties had sought their remedy in the secular court. The Chancellor considered that section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 now represented the only power of the ecclesiastical court to grant an injunction or make a restoration order. The powers conferred by section 13 of the Measure were only available if the 'default' had occurred in a church or churchyard, or related to an article appertaining to a church. Default in relation to a plot for cremated remains in a non-church burial ground was outside the injunctive powers of the ecclesiastical court. (Editor's Note: for a different interpretation of the ambit of section 13, see *Re West Norwood Cemetery* [1994] Fam 210, [1995] 1 All ER 381).

Re St Mary, Dodleston
(Chester Consistory Court; Lomas Ch. January 1996)

Where a young applicant for the reservation of a grave space had retained a residence within the parish but was likely to have no more than a tenuous connection with the parish in the future (by way of residence or otherwise) there was insufficient evidence to justify the granting of the order sought. In reserving a grave space for the period of 50 years as desired, even in a churchyard having room for future burials, legal rights would be created which could in some circumstances embarrass the Church. The view expressed by Chancellor Newsom in *Re West Pennard Churchard* [1991] 4 All ER 124, [1992] 1 WLR 33, that someone having a present legal right of burial should find it relatively easy to support his application to reserve a grave space where ample space remained in the churchyard, was doubted; that approach implied a need to elevate a present right of burial into a greater significance than should be the case.