RECENT ECCLESIASTICAL CASES

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The selection of cases in this issue begins with certain judgments received since publication of the last issue of the Journal *which, though not properly described as recent, may be of general interest to readers.*

Re Dilhorne Churchyard
(Lichfield Consistory Court: Coates Dep Ch, February 1998)

Reservation of gravespace—PCC policy

The petitioner's parents had been buried in the same grave in the churchyard following their deaths in 1994 and 1996 respectively. Although there was space for a third burial in the grave, it would not accommodate both the petitioner and his wife, who were both resident in the parish. He sought a faculty to reserve the adjoining plot so that he and his wife would lie next to his parents. The PCC had a policy against the reservation of gravespaces in the churchyard and the chancellor was satisfied that this had not been adopted such as to thwart the petitioner. The chancellor considered *West Pennard Churchyard* [1992] 1 WLR 23 and the subsequent decision in *Re St Mary, Dodleston Churchyard* [1996] 1 WLR 251. In the latter, Lomas Ch cast doubt upon the statement of Newsom Ch in the former that faculties of this nature would be 'freely granted' in cases where the petitioner had a legal right of burial. He considered that that elevated the right to a greater significance than should be the case. The chancellor noted that for centuries PCCs have had the responsibility for the smooth and lawful running of churchyards. They are composed of local people, well placed to appreciate the needs and wishes of the parishioners. He considered that the consistory court cannot ignore the exercise of their discretion whether on matters of policy or in individual circumstances, unless such a discretion was exercised *mala fide* or could not in the circumstances as a whole be reasonably supported. Having heard argument, he declined on the facts as he found them to grant a faculty, and the petition failed. [MH]

Note: similar regard was given to PCC policy in Re St Andrew, Sadberge *(25th July 2000) Durham Cons Ct (unreported) in which the chancellor refused a petition for the reservation of a gravespace from two individuals not resident in the parish whose teenage son had recently been buried there. The graveyard was nearly full. See also* Re Holy Trinity, Seghill *(below) where parochial policy was given detailed consideration.*

Re St Oswald, Oswestry
(Lichfield Consistory Court: Shand Ch, December 1998)

Votive candle stand—legality—theological tradition—consensus

The petitioners sought a faculty for the introduction of a votive candle stand in the parish church. The chancellor dealt with various objections by written submissions. The issues on which the case turned were those of legality, theology, and churchmanship. On the first issue, the chancellor considered the history of the legality or otherwise of ornaments. Votive candle stands had not been subject to decisions in case law. Authoritative cases such as *Capel St Mary* [1927] P 289, *St Mary Tyne Dock* [1954] P 369 and *St Mary Tyne Dock (No 2)* [1954] P 156 suggested that the use of ceremonial lights was not lawful but the chancellor 'respectfully doubt[ed] whether the illegality of ceremonial lights would now be accepted as a valid statement of the law'. He did not hold, therefore, that votive candle stands were illegal *per se* and in all cases. He was of the view that if the matter fell to be decided in any future cases he would probably require an expert theologian to act as judge's witness. On the issues of theology and churchmanship, the chancellor found that the use of votive candles indicated a catholic theology. Such a theology was, however, 'alien to St Oswald's'. What is more the PCC was clearly divided on the issue, only thirteen out of twenty-five members having voted in favour of the proposals. The lack of a sufficient consensus of support in the parish caused the petition to be dismissed. [LY]

Re St Mary of the Angels, Canton, Cardiff
(Archdiocese of Cardiff Appeal Panel, July 1999 and March 2000)

Roman Catholic law and procedure—reordering

In every Catholic diocese in England and Wales, the bishop has established a Historic Churches Committee (HCC), some operating jointly with neighbouring dioceses, which are entrusted with the task of granting or withholding permission for all works relating to churches and certain other ecclesiastical buildings which are listed. Their function conforms with a Code of Practice issued by the Department for National Heritage on 17th December 1992, and accordingly the benefit of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 is enjoyed. In 1994 the Catholic Bishops' Conference of England and Wales issued a document entitled Provisions for Implementing the New Code of Practice setting out how the church was to meet the requirements of the code 'in a way which is also coherent with the universal system of episcopal government in the Roman Catholic Church, and with its code of canon law'. It also issued Guidelines for Introducing and Operating the New Provisions. The Bishops' Conference is not the hierarchical superior of the individual diocesan bishops and the requirement of national uniformity in procedures was attained through the voluntary agreement of the diocesan bishops, the Guidelines being adopted with the status of diocesan law. In canon law the diocesan bishop is responsible for overseeing the design and furnishing of churches, and in so doing must heed the various directives issued by the Apostolic See which has a duty 'to see that liturgical ordinances are faithfully observed everywhere' (Canon 838 para 2). Of theological necessity diocesan bishops must be seen to retain their formal role in this respect, but to comply with the Department's Code of Practice the bishops have delegated their HCCs to exercise this role on their behalf. Although each HCC is appointed by the bishop it is functionally separate and is the decision making body of first instance. When disputes arise between the local congregation or community and the decision making-body, they are referred to

an appeal panel, formally delegated by the bishop but functionally separate from him and from the HCC. The appeal is not considered by canon law to be a judicial process but, since it arises from the exercise of administrative power of governance, is resolved by an administrative process to settle a hierarchical recourse. In this instance it was effectively a rehearing, matters being considered *de novo*.

On the particular question of reordering, the panel declared that 'the task of the HCC is to balance the desirability of maintaining features of historical or architectural interest with the desirability of making alterations which enhance the celebration of the liturgy'. The panel rejected the contention as to the unlawfulness of the reordering and, following a detailed consideration of the matters raised, upheld the determination of the HCC for Wales and Herefordshire subject to certain provisions and recommendations. In a supplementary determination on a further matter, the panel decided by a majority that the proposed re-siting of a statue of Our Lady and St Anne in the sacristy could not be justified and was an objectively bad idea. The reordering of the Lady Chapel was not itself a matter of overwhelming liturgical necessity. Since the appeal was shown to have foundation, an order was made that all the costs be borne by the applicant. [MH]

Note: the written determination of the appeal panel in this matter included a discussion of the processes in the Roman Catholic Church equating to the faculty jurisdiction of the Church of England which may be of interest to readers of the Journal. *See also the determination of the appeals commission established by the Bishop of Shrewsbury in* Re St Werburgh's Roman Catholic Church, Grosvenor Park Road, Chester *(7th March 2000, unreported). In this matter an appeal against the decision of the HCC for the Dioceses of Lancaster, Liverpool, Salford and Shrewsbury, also concerning a reordering, was successful in part. The original St Mary's Determination was made under the 1994 Guidelines of the Bishops' Conference. These have since been superseded by the* Directory on the Ecclesiastical Exemption from Listed Building Control *adopted by the Bishops' Conference in 1999. This is given the force of law by means of a General Decree on the Ecclesiastical Exemption and Statutes for the HCC issued separately for each diocese by the diocesan bishop. A similar decree is issued by the ordinaries of religious orders which have opted to come under the jurisdiction of the relevant diocesan HCC.*[1]

Re St Andrew, Trent
(Salisbury Consistory Court: Wiggs Ch, January 2000)

Disposal of church property—security—financial emergency

A faculty was sought to remove permanently and sell a pair of settles. The settles had been identified in 1994 as extremely valuable and thus a possible target for thieves. No realistic, economic and secure scheme for the retention of the settles in the church could be discovered. The CCC observed that the only reason for the sale appeared to be security, which did not appear to be a good and sufficient reason to justify the granting of a faculty for sale, and recommended they be loaned to a museum. The chancellor reviewed the need for a sale. In terms of security, he concluded it would be inappropriate for the settles to be returned to the church. As to finance, he stated that, whilst the church paid its way, at least £100,000 was needed for essential and desirable repairs and improvements. The chancellor considered the principles laid

[1] I am grateful to Mr Paul Barber for providing copies of the determinations in these cases and for his assistance in drafting the case note.

down by the Court of Arches where it is sought to sell church property in *Re St Gregory's Tredington* [1971] 4 All ER 386 and summarised them as follows:

(1) The churchwardens have legal title to moveable church property, and may sell it subject to the consent of the PCC and the grant of a faculty;

(2) Such sale may only be authorised if some good and sufficient cause can be proved;

(3) When a faculty is presented, the chancellor must exercise his discretion upon the evidence presented to him;

(4) Financial emergency relating to the fabric of the church building can be good and sufficient cause;

(5)The fact that the items in question are too valuable for use in church is relevant.

The chancellor, having assessed the evidence, found the case for the sale was made out. He decided against allowing the permanent loan of the settles to a museum. This would only postpone the problem and would not be a good use of resources. The net proceeds of sale were to be placed in trust on terms approved by the chancellor, the income (and, if necessary, the capital) to be used for the restoration of the church, and in particular the monuments and works of architectural and historic interest. [JG]

Re St Nicholas, Stillington
(York Consistory Court: Coningsby Ch, May 2000)

Removal of organ—objections

A faculty was granted for the removal of a pipe organ in the parish church. An electronic organ had been introduced under faculty in 1993. The PCC and DAC approved of the proposal. English Heritage, the LPA and the Victorian Society offered no objection. There were written objections from two parishioners, one a former organist of the church. The chancellor did not find that their specific objections warranted refusal of the application but found that the petitioners had not consulted adequately prior to lodging the petition and that they had acted towards one of the objectors in an unreasonable and unpastoral manner which included the making of personal criticisms. The chancellor made it clear that it was the right of any church member or parishioner to make an objection in faculty proceedings. Petitioners and PCCs should expect that objections might be made and should not try to stifle or suppress potential or formal objections. Furthermore, the chancellor stated that it is not enough for petitioners merely to follow correct legal procedures. Instead, 'whenever a PCC is considering a course which will have a special effect on a particular member of the congregation or resident of the parish it should consider the feelings of that person and take proper pastoral steps to address those feelings [...] A PCC is a church body, charged with acting in a sensitive and Christian manner towards those with whom it is in a pastoral relationship.' He hoped that other PCCs and petitioners might learn from this case. [LY]

Re Durrington Cemetery
(Chichester Consistory Court: Hill Ch, June 2000)

Exhumation—reburial in Jewish cemetery—Human Rights Act 1998

The petitioners sought an order for the exhumation of the remains of their deceased relative who had been buried in consecrated ground in a part of the municipal ceme-

tery at Durrington which had been consecrated in accordance with the rites of the Church of England. The deceased was Jewish but had married outside the Jewish faith and his widow had made the arrangements for burial which was performed by a URC minister. Upon the widow's emigration to Australia, the petitioners wished to effect the exhumation of the deceased's remains and their reburial in a Jewish cemetery in accordance with Jewish law. Neither the widow nor the Borough Council objected and the Burial Society of the Federation of Synagogues had given its consent for the reinterment of the deceased's remains in Rainham Jewish Cemetery. The petitioners relied upon a submission by an ecclesiastical judge of the Beth Din. The Archdeacon of Chichester commented upon the theological issues and obtained the views of the Council of Christians and Jews. In applying the decision of the Chancery Court of York in *Re Christ Church, Alsager* [1999] Fam 142, the chancellor was of the opinion that although eighteen years had lapsed since the burial, the delay in applying for an order for exhumation was fully explained through principled deference to the wish of the widow to visit her late husband's grave. The similarity between a Christian and Jewish understanding of burial militated against the objection, in *Alsager*, to the remains being reinterred in ground which was not consecrated in accordance with the rites of the Church of England. The chancellor took account of recent decisions of other consistory courts concerning religious pluralism: *Re Lake Cemetery, Isle of Wight* (Portsmouth Consistory Court, 23rd April 1999, unreported) and *Re St Hugh, Bermondsey* (2000) 5 Ecc LJ 390. The chancellor had regard to the Human Rights Act 1998, which was not yet in force, section 6(1) of which imposes upon all courts a duty to act in a manner compatible with the European Convention on Human Rights. The chancellor considered that there would a risk of the court acting contrary to Article 9 of the Convention were it to deny the freedom of the orthodox Jewish relatives of the deceased to manifest their religion in practice and observance by securing the reinterment of his cremated remains in a Jewish cemetery in accordance with Jewish law. The chancellor addressed the question formulated in *Alsager* at 149C namely, 'Is there a good and proper reason for exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?' and answered it in the affirmative. [LY]

Note: this case is fully reported at [2000] 3 WLR 1322.

Re St James, Stalmine
(Blackburn Consistory Court: Bullimore Ch, June 2000)

Extension—planning considerations

In the course of determining a petition concerning a two-storey extension of the church on part of a disused burial ground (the facts of which are immaterial), the chancellor noted that issues had been raised about car parking, increased use, traffic flows, privacy of neighbours and the like. He was satisfied that these were all matters which the planning authority had to consider. It had done so and was apparently satisfied. He stated:

> 'I think there are considerable difficulties in bringing concerns to the church court which have to be, and in fact have been, addressed by the local planning authority. Car parking, access, traffic flows, the effect of proposals on a view and privacy issues are all matters the local authority considers. I think the proper approach to those points is to say that if they can be raised with the local planning authority, and permission is nonetheless granted, then they cannot be raised again in the consistory court. In that way I follow *Re St Peter and St Paul, Upper Teddington*

[1993] 1 WLR 853, London Cons Ct, and more clearly *Re St Mary's, Kingsworthy* (1998) 5 Ecc LJ 133, Winchester Cons Ct. In those cases the chancellor took a similar view.' [MH]

Re St Gregory, Offchurch
(Coventry Consistory Court: Gage Ch, June 2000)

Millennium window—installation

The petitioners sought a faculty to replace an existing Victorian window with a stained glass window designed with an abstract interpretation of the words 'When he, the spirit of truth is come, he will guide you into all truth'. The idea of a window had been canvassed throughout the village and two open meetings were held. The DAC recommended the grant of a faculty, while the CCC supported in principle millennium projects of this sort, thought the design was acceptable, but regarded the existing glass worthy of retention. There were a number of objectors. The chancellor outlined the approach he would take in relation to the law concerning listed churches, referring to *St Luke the Evangelist, Maidstone* [1995] Fam 1, which involved radical changes to the church unlike the petition in question. As there were now a large number of petitions for millennium windows the chancellor decided to give general guidance for the approach he would take in such cases:

(1) As the church was a listed building the strong presumption against change which would adversely affect its character as a building of architectural or historic interest will be adhered for this sort of petition;

(2) In cases involving a millennium window the first question the court will ask is whether the new window adversely affects the character of the building as a building of special architectural or historical interest;

(3) If the answer to (2) above is no, then the court will still need to give effect to the presumption against change to a listed building, but that presumption may be more readily rebutted;

(4) If the answer to (2) above is yes, the petitioners will need to show a necessity for change;

(5)When the court is considering whether a necessity for change has been proved, different considerations will apply where a window is involved than in cases involving reordering or more radical alterations. Each case will vary and be dealt with on its own individual facts.

The chancellor applied the tests outlined above and granted the faculty on the condition that the glass that was to be taken out should be preserved. [JG]

Note: this case is fully reported at [2000] 1 WLR 2471; [2000] 4 All ER 378.

Re St John the Evangelist, Killingworth
(Newcastle Consistory Court: McClean Ch, July 2000)

Restrictive covenant—detriment to neighbours

In 1990 the petitioner purchased the former vicarage of the parish subject to a restrictive covenant that it should not be used for any purpose other than a single dwellinghouse for private residential purposes. The evidence of the archdeacon was that covenants such as these were included not because the church authorities

wished to stop development but to ensure that any subsequent development was performed with their considered approval. Following an earlier refusal, planning permission was granted in 1997 for the erection of a second house or bungalow on the site. The incumbent and the PCC were agreeable to the removal of the restrictive covenant and the petitioner therefore presented a petition praying that the court give leave to the incumbent to enter into an appropriate deed of variation. Nine parishioners lodged objections of whom five pursued the matter as parties opponent. The chancellor noted the similarity between this case and that of *Re Christ Church, Chislehurst* [1973] 1 WLR 1317, Rochester Cons Ct. He also considered *Hansard v The Parishioners and Inhabitants of St Matthew Bethnal Green* (1878) 4 PD 46, London Cons Ct, and *Burial Board of St George's, Hanover Square v Hall* (1879) 5 PD 42, London Cons Ct, in the latter of which Tristram Ch commented, 'This court ought to be most reluctant to grant faculties to the detriment of private property, and I should not do so unless compelled by a sense of necessity and duty' (45–46). Reference was also made to *Re St Peter and St Paul, Upper Teddington and St George, Fulwell* [1993] 1 WLR 852, London Cons Ct, which emphasised that the objections of neighbours must be viewed objectively. As had been stated in *Christ Church, Chislehurst*, the views of parishioners must be considered, but they cannot be the sole or necessarily the primary factor in determining the petition. Applying the case law to the facts of this case, the chancellor posed two questions:

(1) Do the proposals have any adverse effect on the church and churchyard subject to the jurisdiction of the court?

(2) Despite traffic calming measures, the introduction of which were a condition of the planning permission, will there be a detrimental effect on the safety of pedestrians, especially children and those seeking access to the church or hall?

Mindful that the chancellor's role was not as an appellate body in relation to the LPA which had considered relevant planning matters, he concluded that there was no 'real and sensible' detriment, and granted a faculty accordingly. [MH]

R v The Bishop of Stafford ex parte Owen
(Court of Appeal: Schiemann, Thorpe & Rix LJJ, August 2000)

Team rector—renewal of licence—judicial review

Following a refusal by Hooper J of permission to apply for judicial review, the applicant renewed his application before Schiemann LJ who granted permission and ordered an expedited hearing of the substantive matter before the Court of Appeal. The court assumed jurisdiction without finally ruling on whether it had jurisdiction to examine the decision of a bishop. The applicant sought to quash the decision of the Bishop of Stafford not further to extend his term of office as team rector of the parish of the Holy Evangelists, Hanley. It was submitted that the consultation procedure adopted by the bishop prior to coming to his decision was likely to give rise to unfairness and, in the event, did so.

Facts
Tensions had existed in the parish for some years. In the summer of 1997, the Archdeacon of Birmingham had been asked to carry out a review of the Hanley team ministry. The applicant's term of office ran out in January 1998 but, with the bishop's consent, the applicant stayed in post. The archdeacon reported in April 1998. In June 1998, the bishop indicated that he wished to follow the procedures of the Code of Recommended Practice for Team and Group Ministries approved by the Standing

Committee of the General Synod of the Church of England. The applicant's review under paragraph 1 of the Code was not completed until January 1999. A meeting took place on 27th January 1999 which was not attended by the churchwardens. In accordance with the Code, it comprised two parts, the latter part being in the absence of the applicant. It was contended that the views of the meeting were not adequately summarised and conveyed to the bishop and copied to the applicant. The note which was sent to the bishop and copied to the applicant stated that the meeting felt that the Hanley Team Ministry would benefit from a change of leadership but this should not be seen as a negation of the applicant's many gifts and achievements. Shortly before the hearing in the Court of Appeal, a fuller note emerged which records specific criticisms made of the applicant. The bishop and the applicant met for discussion on 3rd February 1999 and on 11th February the bishop handed the applicant a letter stating that the applicant's tenure as team rector would not be renewed. In accordance with the Code, the bishop gave the applicant a further opportunity to discuss the matter which took place at a meeting on 31st March 1999. The bishop did not change his mind and the decision was duly communicated to the congregations on 18th April 1999. The Annual Parochial Church Meeting, which was held on the same day, passed a resolution dissociating itself from the recommendation made at the meeting on 27th January. The bishop consulted further but concluded that the decision reached should not be changed and this was communicated to the applicant by letter dated 16th June 1999.

Decision

Schiemann LJ accepted that it was unfortunate that the churchwardens had not been present at the meeting on 27th January, but that their absence was not an irregularity so as to require a re-running of the process. He noted that the bishop had consulted each of them subsequently and prior to reaching his decision. He further concluded that there was nothing unlawful in the chairman of the meeting not formulating a resolution which set out the reasons for the recommendations. The bishop was not acting unlawfully in not asking for more detail of the reasoning. He had been in office for some time and had the benefit of the archdeacon's report following the inquiry which he had set up. It may have been that the team vicars acted unfairly in not voicing their criticisms of the rector until that part of the meeting for which he was absent and that the chairman should have recorded those criticisms in his summary. However, even if these matters were made out, they were not causative of the decision of the bishop who followed as near as may be the procedures which he had indicated he would follow. As a matter of discretion he declined to interfere with a decision taken as long ago as February 1999, the quashing of which would not have any practically useful result. Thorpe LJ, whilst concurring, was more critical of the meeting on 27th January 1999. He considered the guidance at paragraph 96 of the code 'woolly'. He stated, 'Any process that is honest must surely be open and the recently disclosed minute of the meeting of 27th January taken by the chairman satisfies me that the vital meeting of the review group convened to answer the paragraph 95(c) question was not conducted openly'. He continued, 'I do not see how the process can be described as either open or fair unless the individual whose future is at stake is given reasonable opportunity to reply to criticisms of his self-appraisal within the review group.' He criticised the review group, particularly the team vicars, for holding their fire until the rector was no longer present to defend himself. Rix LJ, also concurring, considered that the comments made at the meeting in the applicant's absence did not differ materially from or add materially to the substance of the well-known case against the renewal or extension of his team rectorship. [MH]

Note: the judgments of all three members of the Court of Appeal will be reproduced in the second edition of M. Hill, 'Ecclesiastical Law' *to be published by Oxford University Press in March 2001.*

Re South London Crematorium
(Southwark Consistory Court: George Ch, August 2000)

Exhumation—medical reasons

In an unopposed petition, a faculty was sought to remove the cremated remains of the petitioner's father for their re-interment in Dorset, to where the petitioner's mother had moved following her husband's death. Following the death of the petitioner's mother, a double plot had been purchased with the intention that her remains and those of her late husband might be buried together. The petitioner's brother had moved from London to Dorset as a result of a history of mental depression. He received regular counselling. Citing *Re Christ Church, Alsager* [1999] Fam 142, the chancellor noted that little weight attaches to the convenience or wishes of surviving relatives. Medical evidence described the petitioner's brother as suffering with 'a chronic disability'. The chancellor considered that 'right thinking members of the church at large' (to apply the *Alsager* test) would be influenced by the brother's history of serious depression, the fragility of his mental condition, and the positive impact upon this which the local co-burial of his parents would, or might, achieve. This being an exceptional case, the chancellor granted a faculty. [MH]

Note: The Alsager *judgment has done little to stem the flow of petitions seeking exhumation. This decision can usefully be contrasted with* Re Murray (deceased) *(3rd July 2000) Southwark Cons Ct (unreported) in which a faculty was refused in circumstances where the medical evidence fell short of revealing a continuing psychological or psychiatric condition. A faculty was similarly refused in* Re Kingston Cemetery *(3rd July 2000) Southwark Cons Ct (unreported) and* Re Hertford Town Cemetery *(7th October 2000) St Albans Cons Ct (unreported). A faculty was granted in* Re Wisley with Pyrford *(7th September 2000) Guildford Cons Ct (unreported) where a misapprehension as to a policy regarding a book and a garden of remembrance had caused the parents of the deceased to develop 'an invincible repugnance to the arrangements made for interment which are akin to a form of psychiatric illness'; and in* Re Beckenham Crematorium and Cemetery *(26th October 2000) Rochester Cons Ct (unreported). In the latter, Goodman Ch emphasised, 'exhumation will only be granted in rare cases and it is important that undertakers and others in the diocese do not encourage relatives to petition or build up their hopes when the prospects of success are negligible'. A faculty was also granted in* Re St Giles, Goodrich *(20th June 2000) Hereford Cons Ct (unreported). One reason advanced for the grant of the faculty despite the passage of more than twenty years was that the deceased was cremated rather than buried and his ashes contained in a solid casket.*

Re Holy Trinity, Seghill
(Newcastle Consistory Court: McClean Ch, August 2000)

Headstone—inscription—parish policy

The widow and children of a parishioner petitioned for the erection of a headstone. The proposed inscription included the words 'Forever in our hearts'. Permission for this had been refused by the late vicar, the sequestrators, the churchwardens and the rural dean. The chancellor identified two main, not wholly separable, issues—one 'of principle' as to the appropriateness of the phrase (phrases similar to the offending one were found in other churchyards in the diocese), and one of 'consistency' (in that the petition challenged a well settled parish policy), Since 1966 the church council had adopted a set of Churchyard Rules based on *The Churchyards Handbook* first

published in 1962. The late vicar had adopted a consistent and unchanging policy as to the language of inscriptions. In relation to the current petition he had formed the view that the words were objectionable since the Rules recommended that inscriptions should record details of the deceased rather than the personal feelings of the bereaved, and that the words were not 'actually true' of those who grieved. The churchwardens objected on the basis that the unchanging policy for twenty-five years had been to refuse applications made in identical terms, one very recently to the present application. They were concerned that there should be no appearance of arbitrariness or bias. They were further concerned that granting the petition would make future administration of the churchyard even more difficult. The chancellor, in investigating the parish Rules for consistency, identified one particular anomaly where there had clearly been a change in policy to take account of changes in public taste. He noted that the diocesan guidelines were silent in relation to the content of inscriptions. The *Churchyards Handbook* relied on in drafting the parish Rules had been through three editions, the most recent in 1988. The current edition offered advice which was directly contrary to the parish Rules. He concluded the documents relied on did not provide a secure basis for the parish policy. In turning to the change in policy and the effect on the running of the churchyard, the chancellor considered *Re Holy Trinity Churchyard, Freckleton* [1994] 1 WLR 1588. Accepting that the decision was not binding, he noted that the policy identified in *Freckleton* was only a few years old and was that of a recent incumbent. The chancellor was persuaded by the arguments in a letter from the widow petitioner, that identified her own feelings of grief and quoted phrases used in memorials that had the same meaning although expressed in different terms (described by the chancellor as differences of 'taste rather than essential meaning'). In relation to the concern expressed by the churchwardens, the chancellor clarified that the Rules of the parish were subject to his decision, particular or general. He emphasised that decisions taken on previous applications were properly and conscientiously taken, and it was the consideration of the issue by this court that had precipitated the change. He reaffirmed the rule that a churchyard is governed by different considerations from those applying in a municipal cemetery and concluded that wording that was seemly and consonant with Christian faith would be allowed on memorials, and that those factors did not require a ban on expressions of grief. [JG]

Re Holy Cross, Pershore
(Worcester Consistory Court: Mynors Ch, September 2000)

Pews—objectors—Bishopsgate questions

A faculty was granted for a limited reordering of a Grade I listed church (known as Pershore Abbey) involving *inter alia* the permanent removal of pews in the side aisles and the modification and stabilising of the pews that were to remain in the central part of the nave. In considering the case the chancellor had before him three other options: first the retention of pews throughout, second the removal of pews and provision of chairs throughout and third a further compromise similar to the faculty granted. A number of objectors to the petition demanded that a hearing be held. In considering the evidence of the objectors the chancellor referred to the judgment of the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1 wherein the Dean of the Arches stated that 'the persons most concerned with worship in a church are those who worship there regularly, although other members of the Church who are not such regular worshippers may also be concerned'. In the present case objectors came forward from within the congregation and without. Objection was widespread in the local community and the chancellor considered that any

scheme would have profound pastoral implications for both the worshipping congregation and the wider community, neither of which should be overlooked. In considering the 'Bishopsgate' questions the chancellor stated that 'there is a fourth question that should always be asked, alongside the three posed in *Bishopsgate*—namely, what are likely to be the pastoral consequences, both short-term and looking further ahead, of making a proposed change?'. The chancellor also considered the matter of aesthetics, architectural and historical matters, the flexibility of the building for worship and other uses and issues regarding access for the disabled. In the last point he was particularly mindful of the terms of the Disability Discrimination Act 1995 which generally comes into force in 2004 and therefore should be taken notice of when considering any building schemes from now on. The chancellor found that the necessity of the removal of the pews in the side aisles outweighed the possible pastoral damage but that there was no necessity for the removal of the pews in the nave. [LY]

Note: in the course of his judgment, the chancellor commented that minutes of DAC meetings should be made public. 'It is of the essence of such a committee that its work should command widespread public support, both within the church and more widely; and this is much more likely when its operations are seen to be open to public scrutiny'.

Re St Michael, Orchard Portman
(Bath and Wells Consistory Court: Briden Ch, September 2000)

Rights of access—memorial window

In July 1988 a faculty was granted for the installation of a stained glass window to commemorate Orchard Portman School, an independent co-educational school existing in the village between 1920 and 1977. In March 2000 the Old Portmanian Association and School Memorial Trust offered to supply flowers on a monthly basis to be displayed inside the church at the window. The PCC accepted the offer but suggested, due to limited manpower, that a flower display should be delivered three times a year to an agreed venue to be picked up by one of the churchwardens. The secretary of the Old Portmanian Association declined the offer and asserted the Association had a right of access to the church for the purpose of displaying floral tributes and demanded keys for the purpose. The chancellor, on perusing the papers, decided that to save time and costs he should invite the secretary of the society to apply for a further order under the original faculty. The chancellor dealt with the matter as a preliminary issue, determining on an *ex parte* basis whether the secretary had any prospect of obtaining the relief which he sought. The issue was the subsistence (if any) of the rights asserted in persons other than the minister and those (such as churchwardens) who require access to the church to discharge their legal duties. In the absence of such rights it would be inappropriate for the consistory court to compel churches to be opened on demand for the pleasure or convenience of individuals or groups. The PCC, acting under the provisions of the Parochial Church Councils (Powers) Measure 1956, must decide when (save at times of divine worship) the church may be left unlocked, having regard to risks of vandalism and theft. The secretary sought to contend that there was a private right enjoyed by himself and the association members in relation to the window. The chancellor reviewed the decision of *Leigh v Taylor* [1902] AC 157 concluding that, upon installation, the window became annexed to the freehold of the church. He considered the submission that the principles of Roman Law assisted the secretary unsustainable and rejected the submission that the special common law rule concerning monuments to deceased persons set out in *St Andrew's Thornhaugh* [1976] Fam 230 applied since the window in

question commemorates the school. The assertion that the window remained in some way owned by the association, on legal analysis, did not bear scrutiny. Whilst it doubtless serves as a focus for recollection and prayer, this cannot in itself be translated into any form of right recognised by law. The application was therefore dismissed. [JG]

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