

RECENT COURT CASES

Edited by CHANCELLOR TIMOTHY BRIDEN
and NIGEL MASON, Esq. Barrister

Re: Malmesbury Abbey
(Bristol Consistory Court; Calcutt Ch. 15 December 1994)

A petition was brought for the installation of a Royal Air Force commemorative free-standing display including pedestal case and commemorative plaque to mark the closure of the Royal Air Force station at Hullavington and the end of a long and close association between it and the local community. The parochial church council unanimously supported the petition and approval was recommended by the DAC. Two parishioners objected to the grant of a faculty upon grounds of incompatibility and inconsistency between Christian teachings and the practice of warfare. The petitioners responded and argued that the long association and the protection given to the community by the station merited public acknowledgment. The court had to decide upon written representations as to which view prevailed. It concluded that there was a long tradition in this country of insignia, of the kind included in the petition, being displayed publicly in churches. A church was entitled to demonstrate that it wished to support "strong and consistent resistance to international aggressors" and that it was proper for the long and close association to be commemorated in the manner sought. Faculty granted.

Re: St. Peter's, Humberston
(Lincoln Consistory Court; Goodman Ch. 18 December 1994)

In 1991 a petition to replace an existing organ was dismissed by the court. The PCC appointed an organ committee who referred the matter to the DAC who in turn consulted the Council for the Care of Churches. A recommendation was made that would replace the organ with parts of the organ and an earlier existing organ. An organ builder's advice was sought and, subsequently, his quotation was accepted. A new petition was brought seeking a faculty for the proposed new design. No notices of objection were received but some of the opponents to the previous petition remained unhappy and expressed concerns. The court granted the faculty conditionally. The building of a replacement organ out of parts derived from two very different organs would naturally be viewed with some concern, but the present scheme had been recommended by a distinguished musician recommended by the CCC and had received wholehearted support.

Re: St. John the Evangelist, Hurst
(Manchester Consistory Court; Spafford Ch. 28 November 1994)

A priest, not the present incumbent, sought a faculty for a memorial in the form of a statue of St. Luke to be erected for his deceased wife on the ground of good and faithful service to the parish. The PCC opposed the petition and the DAC refused to recommend the petition on the ground that it was undesirable to introduce any more statues into the church and that the parish had commissioned a feasibility study into possible redevelopment of the church.

interior and the introduction of a new substantial item could impose an unreasonable constraint upon them. Both the petitioner and the PCC, acting by the incumbent, consented to proceed by written representation. Exceptional circumstances were needed before a statue could be justified and the chancellor concluded that, although the services of the deceased were very worthy, they were not so exceptional as to justify the erection of a statue. Further, the chancellor was unwilling to force a worshipping community to accept a statue against its wishes. Faculty refused.

Re: St. Saviour Mortomley, High Green
(Sheffield Consistory Court, McClean Ch. 22 January 1995)

A petition was brought concerning the major re-ordering of the church which involved the demolition of the existing porch and the creation of a new entrance area. Such a demolition amounted to a partial demolition within the meaning of section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. The grounds for the grant of a faculty were set out in sections 17(2) and 17(3) and the obvious cases to which those grounds applied were the replacement of an old church by a new building, the demolition of part a building, perhaps because it had become unsafe, with worship continuing in the remainder, and temporary demolition to enable part of the structure to be repaired or reconstruction of that part of the church, although the word 'reconstruction' suggested the re-instatement of that part of the building without major change. It also could be that the demolition of the porch was 'necessary for the purpose of the . . . alteration of the church' (section 17(3)(b)), although the concept of necessity was easier to understand in relation to repair than to alteration. But in any case the simpler procedures appropriate to that subsection were not available where the proposed alteration materially affected the external appearance of the church and the more elaborate procedures set out in sections 17(4) and (5) were plainly necessary. On consideration of the written material, the faculty sought was granted.

Re: St. Thomas, Pennywell
(Durham Consistory Court; Bursell Ch. 26 November 1994)

For several years the sacrament had been reserved in an ambry situated in the north wall of the Lady chapel of the parish church. The ambry had become damp and unsafe, and the incumbent and churchwardens petitioned for a faculty to replace it with what was described in the petition as a 'sacrament house.' The full support of the PCC was given and the DAC recommended the petition. No objections were received but, at the court's request, the archdeacon formally entered an objection to determine whether reservation was lawful and whether the proposed sacrament house was nevertheless an unlawful ornament. Provided it was required solely for the purpose of communion, the elements of the sacrament did not have to be immediately consumed but could be reserved. It was for the bishop to judge whether the manner in which reservation took place was reverent and whether the incumbent's and congregation's attitude towards the reserved sacrament was theologically acceptable to the tenets of the Church of England. Once reserved the sacrament was to be kept in a safe and seemly manner, such as an ambry or a sacrament house, which when so used were not unlawful ornaments but articles consistent with an subsidiary to the

ministrations of the church. The introduction of a tabernacle, once illegal, might again be legal, though any such introduced into a church without a faculty remained illegal. The only possible alternative to the damp and unsafe aumbry was the proposed sacrament house and the faculty was granted.

Re: St. Mary and St. Nicholas, Spalding

(Lincoln Consistory Court; Goodman Ch. 21 December 1994)

A petition was brought to fill in a space above the screen that separated the vestry from the chancel with engraved glazed hardboard and to fill in an open stone traceried window with stained glass. Although no opposition to the scheme was made and despite the view expressed by the DAC that the works would not materially alter the internal appearance of the church, the chancellor under 14(1) of the Faculty Jurisdiction Rules 1992 directed that the proposal should be considered by the Council for the Care of Churches. The Council arranged for a delegation to visit the church and it reported dissatisfaction with the proposals and in particular with the quality of the glass selected. The chancellor requested further advice from the DAC and from the designer of both the glass and the engraving and concluded that a decision could be made upon the evidence provided the abstract design in stained glass for the internal window could not be regarded as being in competition with the Victorian glass elsewhere in the church. Taste was a subjective matter and what appealed to one might not appeal to another. But there were no grounds for refusing the faculty sought.

Re: All Saints, South Cove

(York Consistory Court; Coningsby Ch. 28 November 1994)

Advice was given to the chancellor that he should allow the sale of two chairs, the subject matter of a petition. But advice was also received from the Council for the Care of Churches that he should not do so but that the chairs should remain in the church. The PCC considered that the chairs were of a style and appearance out of keeping with the remaining furniture of the church and no support for their retention came from any of the congregation. On the facts and despite the existence of advice from the Council for the Care of Churches, the chancellor concluded that no hearing of the petition was necessary and that the sale of the two chairs should be permitted. The church did not contain any item of historic or artistic interest with which the two chairs could be associated and it was not a case of severe financial constraint which might affect such a decision. Such factors as the determination of the congregation not to repair or reinstate the chairs, their relative lack of importance and the lack of any long-term solution for the chairs were the faculty to be refused made the present case unusual and were to be taken into account. It was not only in a case of financial necessity that approval could be given for disposal.

Re: St. Edmunds Chapel, Gateshead

(Durham Consistory Court; Bursell Ch. 6 March 1995)

A petition was brought by the incumbent and churchwardens for a commemorative plaque for John Ingram, executed at Gateshead in 1594. The plaque described the execution as a martyrdom. The petitioners accepted that

John Ingram was not recognised as a martyr in the Church of England. The Bishop, exercising his powers under section 16(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 appointed the Archdeacon of Auckland to enter an appearance as an objector, whose objections by written representation included the fact that John Ingram had been executed as a traitor under the statute 27 Elizabeth I, c. 2, entitled 'An Act against Jesuits, Seminary Priests, and other such disobedient Persons'. The granting of a faculty for the erection of a tablet in a church was never a matter of right but was one of privilege. Monuments could possibly be erected after such consideration as to the character of or outstanding service to the church, country or to mankind by the person to be commemorated, or of a desire to record by the memorial some important or significant aspect of local or national history. The death of John Ingram could possibly fall into that latter category but, as the word 'martyr' meant a person who by his death bore witness to his religious belief, it was inappropriate so to describe a person in an Anglican church when that person was not so regarded within the Church of England. As no question had been raised as to the legal propriety of either the conviction for treason or execution, no court of the realm could properly sanction the commemoration of anyone so executed as a traitor unless and until a posthumous pardon had been granted by the Queen. Faculty refused.

Re: Johnson's Petition, Parish of Offchurch
(Coventry Consistory Court; Gage Ch. 25 February 1995)

The petitioners sought a faculty for a memorial to the first petitioner's husband and to her sister-in-law, to be in as nearly as was possible the same form and materials as an earlier memorial to another relative buried in the churchyard in 1938. The DAC did not recommend such a memorial for it did not conform to the guidelines and rules for the care and management of churchyards, and in particular to those rules which sought to ensure the successful integration of the proposed memorial with the established character of the churchyard, using materials which matched the local building tradition. The DAC took the view that the proposed material, Cornish stone, did not conform with the rule and that, in any event, kerbs, chippings, railings and chains were prohibited by the rules. The grant of a faculty for a monument was a matter for the chancellor's discretion, exercised in accordance with certain guidelines. No one could be commemorated by a monument as of right and the incumbent's power to grant permission, delegated to him by a chancellor, was restricted to monuments conforming to diocesan graveyard regulations whose underlying principle was the Church's general duty to preserve churchyards for posterity. When a faculty was sought for a monument which was not in accordance with the regulations, the court has to look for exceptional reasons before granting permission. Such reasons were impossible to define for much depended upon the nature of the graveyard and on any pastoral reason which might exist. However as much uniformity as possible was important and fairer to past, present and future generations. Although inscriptions would be dealt with on a case-by-case basis and in accordance with the principle of requiring exceptional circumstances, the court should be astute to changing views of society as a whole and balancing the two competing interests of conformity with the regulations against strong pastoral reasons. A faculty for the monument with kerbs proposed would be granted, though only to an extent, for the material was undesirable and had to be approved by the DAC before being permitted.

Re: St. Paul, Burton on Trent

(Lichfield Consistory Court; Shand Ch. March 1995)

The Petitioners wished to replace a decayed asbestos storm-water disposal system in a Victorian Grade II (starred) listed church with pipework and guttering of glass reinforced polyester. A cast iron installation would cost £30,000, and the proposed substitute £9,500. English Heritage contended that cast iron should be used, because buildings ought to be preserved as found. The Chancellor concluded that, although the use of glass reinforced polyester was to be regarded as an experiment, it should be allowed. The cost of installing cast iron would require the work to be phased, exposing the fabric to the risk of damage while completion was delayed. Although English Heritage was quite right to urge robust scepticism towards manufacturer's claims, possible practical problems (such as mechanical failure because of thermal movements, and an expected life of only 25 years) were not of sufficient weight for the experimental use of the material to be prohibited. Aesthetically glass-reinforced polyester was visually indistinguishable from cast iron. The conservation argument advanced by English Heritage was not applicable to the facts, because asbestos rather than cast iron was being replaced.

Re: St. Jude, Wolverhampton

(Lichfield Consistory Court; Shand Ch. March 1995)

A proposal to remove 71 pew doors from the 'decent but undistinguished' pews of a Victorian Church (listed Grade II) was opposed by a parishioner. The principal contention of the Petitioners was that the removal of the doors would promote fellowship within the congregation; in substance they wished to achieve flexibility for the exchange of the Peace. The Chancellor recognised that this aspect of the liturgy could be controversial and divisive; but directed himself that the Church of England was a pluralistic body that tried to meet as many spiritual needs as possible, and that irreversible change should not be permitted to accommodate what might be a passing liturgical fashion. The exchange of the Peace could not justify the removal of artefacts of major aesthetic merit or historical interest, but the pew doors probably fell short of that category. The suggestion of English Heritage that sample doors might be preserved provided a sensible solution to the problem. The faculty was therefore granted on condition that at least 15 doors were retained.

Re: Shrewsbury Holy Cross

(Lichfield Consistory Court; Shand Ch. March 1995)

In April 1993 a faculty was granted for the display within a wrought iron framework of certain stones traditionally believed to be from the shrine of St. Winifrede. The craftsman responsible for the frame installed a structure which bore no relation to the design authorised by the faculty. When complaint was made about his departure from the permitted design, the craftsman replaced the upper part of ironwork with a substitute of such ugliness in its execution as to border on a deliberate contempt of court. The Chancellor held that the whole of the work done by the craftsman was unlawful. With considerable reluctance he permitted the base to remain, because its removal was liable to cause damage. The superstructure was ordered to be removed at the craftsman's expense, and replaced by a frame in accordance with the original drawings. Each party was directed to bear its own costs, because the parish ought through its architect to have supervised the original work.

Re: The Church of the Holy Rood, Holybourne
(Winchester Consistory Court; Clarke Ch. March 1995)

The incumbent and churchwardens sought a faculty for a scheme involving the extension of the vestry in order to provide a meeting room for Sunday school and other purposes; the disposal of the 19th century pipe organ (built by Henry Speechley & Company) situated between the chancel and the vestry; and the introduction of an Allen electronic organ in the chancel with the resultant loss of two choir pews. The Chancellor concluded that there was a pastoral need for a meeting room, but held that the difference in cost between renovating the 'good and historic' pipe organ, even if it were to be moved at further expense to the north aisle, and purchasing a new electronic organ was insufficient to justify the Petitioners' argument that there was no reasonable alternative to their proposals. At moderate additional expense (estimated at £5,500) the existing organ could be renovated and moved, enabling the instrument to remain in the church and the church room to be built without the acoustic problem posed by the existing position of the organ. In its new location the organ would produce a better sound giving a stronger lead to congregational singing. The petition was accordingly dismissed but the Petitioners were invited to reconsider their proposals for a church room and to present a fresh petition.

Re St. Mary's Lancaster [1980] 1 WLR 657 and **re St. Martin's Ashton-upon-Mersey** [1981] 1 WLR considered.

Re: Holy Trinity, Freckleton
(Blackburn Consistory Court; Spafford Ch. April 1995)

The Petitioner's first petition, concerning the inscription proposed to be placed on the monument upon the grave of the male Petitioner's father, was dismissed (see [1994] 3 ELJ 350). Thereafter the Petitioners sought leave to exhume the father's remains from the churchyard where they were buried, and to transfer them to a municipal cemetery where the designed inscription was acceptable. The Chancellor held that when:

- (a) a Petitioner had been inadvertently misled as a result of action (or inaction) by the Church of England or by one or more of its members, as had happened over the permitted wording on the gravestone; and
- (b) such misleading had caused the Petitioner to act (or not to act) to his or her detriment, as had happened over the choice of place of burial; and
- (c) there was not likely to be adverse "pastoral damage" if a petition were allowed in whole or in part, as was the position if exhumation were allowed in the instant case;

he was strongly of the opinion that a Consistory Court should attempt to correct or to mitigate the results of such inadvertent misleading. Accordingly a faculty for exhumation was granted.

Re: St. Mary's Church, Orlingbury
(Peterborough Consistory Court; Coningsby Ch. April 1995)

A petition for the installation of floodlighting around a parish church was opposed by a number of local residents. The Chancellor held that the floodlighting scheme was sound and directed that a faculty should issue.

Considerable costs had been incurred as a result of the proceedings remaining unnecessarily contested after the proposed floodlighting had been demonstrated. The Chancellor held that there were some in the PCC and among the Petitioners who wanted to get a hearing in order to see the objectors defeated in court; likewise there were some objectors who did not want to give up the opportunity of arguing the case at the hearing. This was a classic situation in which each side should contribute to the costs brought about by the need for a hearing in open court. The Parties Opponent were ordered collectively to pay half the costs of the proceedings, the balance being payable by the Petitioners. The result was that each of the seven Parties Opponent was directed to pay one-fourteenth of the total costs.

Re: Emmanuel Loughborough

(Leicester Consistory Court; Seed Ch. March 1995)

In granting a faculty for the reordering of the interior of a church, which involved the introduction of a new font fashioned out of local stone and providing for both infant and adult baptism, the Chancellor commended the idea of one permanent and visible font for both types of baptism. He preferred the reasoning of Bishop Stancliffe in 'Baptism and Fonts' (1994) 3 Ecc LJ 141 and the judgment in **Re St. Nicholas Gosforth** (unreported) to the line taken by Chancellor Newsom in **Re St. Barnabas, Kensington** [1991] Fam 1 and Commissary-General Newey in **Re St. George's, Deal** [1991] Fam 6. The installation of the font was permitted on the strict understanding that only adults who had not received a Trinitarian baptism before, would be so baptised.

Re: St. Michael and All Angels, Tettenhall Regis

(Lichfield Consistory Court; Shand Ch., 28 April 1995)

A two-storied extension adjoining the church was proposed for a meeting room, kitchen and toilets. It affected part of the churchyard that had previously been closed by an Order in Council and new pathways were planned which would disturb existing graves and require those human remains to be exhumed and reburied. The local planning authority had initially refused consent but, following an archaeological survey upon the granting of an earlier faculty of the area of the churchyard affected by the proposals, consent was subsequently given. Although the Parochial Church Council unanimously approved the proposals, which further received the support of the archdeacon and the Diocesan Advisory Committee's approval, opposition was strong and upon both general and, at the chancellor's direction, special citation of a petition containing the proposals, a number of parties opponent expressed their opposition to the grant of a faculty, though they agreed, with the consent of the petitioners, for the matter to be decided upon written representations and not upon a full hearing of the Consistory Court. A faculty would not be granted where the need for the proposed change had not been made out. Although the proposed extension satisfied the test of necessity, in that it would enhance the worship of the congregation and did not adversely affect the architectural or historic character of the church, the wholesale disruption of human remains caused by the building works could not justify the granting of the faculty sought. Any possible exhumation of human remains from consecrated ground, protected by the Consistory Court, should be kept to a minimum and ought to be avoided if at all possible. Removal and reburial of human remains in the same consecrated ground was lawful and was not prohibited by the Burial Act of 1853, but in the present case such wholesale disturbance was a material factor in the balancing exercise of the court's discretion and the petition was accordingly dismissed.