

## RECENT CONSISTORY COURT CASES

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### **Re: St Mary Magdalene, Lyminster**

(Chichester Consistory Court; Edwards Ch. January 1990)

A widow sought a faculty to disinter the cremated remains of her deceased husband from the churchyard at Lyminster and to reinter them at Wendover where she lived. The petitioner was unable by reason of infirmity to visit her husband's grave. All necessary consents had been obtained for the removal and fresh interment of the remains. The Chancellor declined to grant a faculty following the principles set out in *Re Church Norton Churchyard* (1989) 3WLR 272. The petitioner had not shown sufficient special and exceptional grounds for the disturbance of the two churchyards. The fact that she had moved and found it difficult or impossible to visit the grave was an insufficient ground. To grant a faculty for that reason would set a precedent which, if followed, would lead to the disturbance of many churchyards in the future. The erection of a stone to mark the grave was a relevant factor, as it tended to confirm the permanence of the resting place of the remains. *Per curiam*: an incumbent has no right to derogate from the parishioners' rights in the soil of the churchyard by burying the body or ashes of a person not a parishioner in the churchyard, unless he obtains the consent of the parishioners signified by the P.C.C.

### **Re: St. Botolph, Bishopsgate**

(London Consistory Court; Newsom Ch. 18 January 1990)

The grant of a long licence over the churchyard of St. Botolph's Church, Bishopsgate, had yielded a capital sum of £425,000 which was lodged in Court. The interested parties did not dispute the jurisdiction of the Chancellor to determine how, in his discretion, the sum was to be applied. Since St. Botolph's drew on the London Diocesan Fund to the extent of £9,500 per year (for the housing and stipend of the incumbent) it was proper to set up a trust fund yielding to the London Diocesan Fund an annual income of £10,000. The balance of the money in Court (about £300,000) was to be divided between the P.C.C.s of St. Botolph's and St. Helen's, Bishopsgate in the proportion of 52% to 48%. There was in existence a written agreement that the revenues arising from the churchyard should be divided in those proportions. Although the agreement did not, on its construction, apply to the money in Court, it recognised a substantial moral claim by St. Helen's to which the Court ought, in its discretion, to give effect. There was no reason for departing from the proportions freely agreed between the parties when the document was prepared in 1962.

### **Re: All Saints, Pocklington**

(York Consistory Court; Coningsby Ch. 8 February 1990)

A faculty was granted for the installation of a 'Bradford' computer organ in place of an existing pipe organ which had fallen into a poor state of repair. The Chancellor considered that it was desirable to retain pipe organs in the churches in the diocese, because they were part of the historic heritage of those churches and they had special characteristics which made them particularly suitable for the leading of congregational worship. On the evidence the computer organ was

found to be a most satisfactory instrument, which would cost considerably less over a period of years than a rebuilt pipe organ. A critical factor was the need to open up the window in the south transept which was blocked by the pipe organ. Furthermore, as soon as a pipe organ large enough to fill the church with sound were to be created, there would be no convenient place in the church in which to site it; accordingly it was not feasible to install a pipe organ of adequate size.

**Re: St. Peter, Redcar**

(York Consistory Court; Coningsby Ch. 14 February 1990)

A hearing in faculty proceedings had become necessary as a result of the imprudent conduct of a single party opponent in contesting the case. The Chancellor provisionally ordered the petitioners to pay three-quarters of the Court and Registry fees and expenses, and held the party opponent liable to pay one-quarter. On a review of the provisional order on the application of the party opponent the Chancellor affirmed his decision. The party opponent was fortunate in not to be required to pay a larger proportion, since the hearing had substantially been made necessary by his objection and he was the unsuccessful party. It was almost entirely because he was a man of no great financial resources that he was not being required to make a much more substantial contribution. Accordingly the party opponent was ordered to pay £400 (one quarter of the total fees and expenses) by instalments.

**Re: All Saints, Scraftoft**

(Leicester Consistory Court; Seed Ch. 27 April 1990)

A faculty was granted for the re-ordering of the interior of a 13th century church by the removal of the choir stalls, pews, pulpit, choir vestry and adjacent screen; the levelling and carpeting of the floor of the nave; the re-positioning of the altar west of the chancel screen; the introduction of a small altar in the chancel for weekday use; and the purchase of 100 chairs. There were 78 parties opponent. The Chancellor found that there was nothing unlawful about any of the proposals, nor was there anything irreversible save that identical pews might not be capable of being returned. Neither the Victorian furniture nor the Georgian pulpit were of any particular significance. The D.A.C. supported the petition. There were benefits in the proposed re-ordering for a church with such a narrow chancel, where the Eucharist was the principal act of worship celebrated in line with current Anglican thinking. Despite the large number of parties opponent, a large majority of the worshipping community supported the proposals. There had been adequate consultation beforehand, despite the misconception that the merits ought not to be discussed between the interested parties while the matter was sub judice. (Per curiam: the fact that a cause or matter is sub judice does not prevent all comment upon it; the concept of sub judice is to prevent any prejudice being brought to the proceedings or any attempt to influence the Court which has to decide the proceedings). The granting of the faculty did not extend to the floor covering, upon which further advice was needed after the pews had been removed.

**Re: St. Paul, Astley Bridge**

(Manchester Consistory Court; Spafford Ch. 2 May 1990)

A brass and wood cross (size four feet by two feet) which had been in a church declared redundant was sought to be introduced into the church at which many of the congregation of the redundant church had come to worship. The vicar

and churchwardens wished the cross to hang on the east wall of the nave above the lectern. The D.A.C. approved only of the placing of the cross over the Remembrance Table. The Chancellor found that there was an undue number of crosses in the view of the worshippers, but he was prepared to allow the hanging of the brass and wood cross because of its connection with the redundant church. As to position, the D.A.C. had correctly concluded that the crosses behind the pulpit and the lectern did not balance; equally the cross was grossly out of proportion when hung above the Remembrance Table. Neither site for the cross was ideal, but the narrow balance was to allow the worshipping community to have their way. A faculty was therefore granted.

**Re: St. Catherine, Leconfield**  
(York Consistory Court; Coningsby Ch. 14 May 1990)

In faculty proceedings involving the renovation of an organ, the Archdeacon was joined as party opponent at the invitation of the Chancellor. In the event a faculty was granted after an oral hearing at which relevant evidence was adduced on both sides. On the issue of costs the Chancellor held:

1. Consistory Courts have frequently had to consider what orders to make in respect of Court and Registry fees and expenses in cases where a hearing was necessary. A common direction was that the fees and expenses should be split between the parties.
2. The normal rule was that the petitioner had to pay the fees and expenses, because of the initial obligation laid upon him by the Faculty Jurisdiction Measure 1964.
3. An unsuccessful party opponent who had behaved unreasonably in opposing the proceedings might be ordered to pay the fees and expenses in place of the petitioner. This was probably in the nature of an indemnity for the petitioner's original obligation.
4. If the unsuccessful party opponent had put forward a reasonable case, and had acted reasonably during the proceedings, he was unlikely to have to pay the whole of the costs and expenses, and the petitioner would be left to pay a proportion since he was under the initial obligation referred to in (2) above. The petitioner was the party seeking the faculty and if the purpose of the hearing had been to put him to proof and/or to enable the Chancellor to examine his proposals with the benefit of considered argument and expert evidence, it was reasonable that the petitioner should be left with some part of his original obligation to pay.

With those considerations in mind the Chancellor made a provisional order for fees and expenses to the effect that the petitioners should pay one-third and the Board of Finance of the Diocese (on behalf of the Archdeacon) two-thirds. The provisional order was affirmed after the written representations of the parties had been considered.

**Re: Ewell St. Mary**  
(Guildford Consistory Court; Goodman Ch. 29 May 1990)

The sanctuary of the church was so arranged that the altar, a Jacobean table, stood on a plinth. The altar was moved forward to assist the celebrant and the front legs (which were then beyond the plinth) were supported in wooden cups. The D.A.C. recommended the removal of the plinth rather than the use of

the wooden cups. The Chancellor granted a faculty permitting the continued use of the wooden cups, on condition that when the cups were in use they should at all times be concealed by a frontal, and that when the frontal was absent the altar should stand on the plinth. The Archdeacon was directed to exercise a general supervision in relation to the liturgical arrangements concerning the use of the altar.

**Re: St. Mary, Tenbury Wells**  
(Hereford Consistory Court; Henty Ch. June 1990)

A faculty was granted for the introduction into a parish church of modern, comfortable chairs, and for use of one side of the Lady Chapel as a Children's Area. The petition, as regards the Children's Area, was opposed; the opponents contended that there would be insufficient comfortable seating for services held in the Lady Chapel, and that the proposed location for the Children's Area was in the wrong place. The petitioners met the first objection by making available chairs in the Lady Chapel at times of divine service. On the evidence the Chancellor concluded that the Lady Chapel was the appropriate place for the Children's Area, principally because it was near the door (making children and young parents feel welcome as well as permitting entry and exit with the minimum of conspicuousness) and near the front of the congregation at Parish Communion, thus making the children feel involved in the worship to some degree.

**Re: St. Mary, Burley in Wharfedale**  
(Bradford Consistory Court; Savill Ch. 5 July 1990)

The petitioners sought authority to commission the making, in steel, of a pair of altar candlesticks and a stand for a paschal candle. The sole objector contended that the proposed altar candlesticks did not match the silver plated altar cross, and that there was a wooden stand available for the paschal candle. He also objected on the grounds of expense. Since the articles would be purchased through private donations expense was not a relevant factor. There was no liturgical reason why objects made in steel should not be introduced. The proposed articles were suitable and would add beauty and dignity to the focal point in the church. They would match the aumbry fittings, so as to achieve a unity in design. The wooden stand was unstable. The silver cross was not kept on the altar outside the times of divine service. The D.A.C. supported the petition. For these reasons a faculty was granted.

**Re: St. Michael and All Angels, South Westoe**  
(Durham Consistory Court; Bursell Ch. 13 July 1990)

In September 1989 a petition was lodged for a faculty to install a heating unit and external floodlighting at a church which was undergoing substantial restoration under the authority of a separate faculty. The installation of the heating unit and the floodlights was undertaken by the supervising architect, a member of the D.A.C., before an appropriate faculty had been granted. At the hearing the Chancellor directed that the petition be amended to seek a confirmatory faculty, and proceeded to grant such a faculty on the grounds that there was no objection to it (the installations having the approval of the D.A.C.) and that the petitioners and the architect, although they had flouted the law, were activated by their mission to restore the church. The architect was aware of the need for a faculty but then took it upon himself to permit contractors to do works which to his knowledge were illegal. Accordingly he was ordered to pay part of the costs, and question of his continued membership of the D.A.C. was referred to the Bishop.

**Re: St. Mary and St. Cuthbert, Bolton Abbey**  
(Bradford Consistory Court; Savill Ch. 24 July 1990)

The rector and churchwardens sought a faculty for the introduction of a sound reinforcement system and induction loop system; the petition (as regards the sound reinforcement system) was opposed by the organist. The system was evaluated for a trial period. The Chancellor found that in parts of the church, a large high-roofed building, sound clarity was impaired or even lost without the system. Although objection to the appearance of the loudspeakers was made on aesthetic grounds, they were slim, unobtrusive and of a colour which blended in with the stonework. On the evidence, any adverse effect which the system might have upon the quality of music was outweighed by the overwhelming support for the petition within the parish and the argument that it was essential, for larger congregations, to make voice reproduction audible.

**Re: St. Mary's Churchyard, Speldhurst**  
(Rochester Consistory Court; Goodman Ch. 25 July 1990)

A widow obtained permission for her deceased husband (neither of them parishioners) to be buried in a double depth grave in the churchyard. Her intention was eventually to be buried in the same grave. The incumbent mistakenly gave permission for the remains of two other relatives of the husband to be buried in the grave, thereby interfering with the widow's intention. The widow sought a faculty for the removal of the relatives' remains from the grave and their reburial elsewhere in the churchyard. Her petition was dismissed because:

1. She had not reserved a grave space by faculty.
2. The time during which the remains had been buried (more than four years) and the circumstances generally, including the fact that an innocent mistake had been made, called for the dead to be left to rest where they were. *Re Atkins* (1989) 1 All E.R. 14 followed. *Re St Luke's Holbeach Hurn* (1990) 2 All E.R. 749 distinguished.

**Re: Hopton Cangeford**  
(Hereford Consistory Court; Henty Ch. 3 August 1990)

A redundant parish church was appropriated for use as a residence and craft workshop. Neither the Order in Council made under the Pastoral Measure 1983 nor the conveyance by the Church Commissioners to the purchasers (the petitioners) granted rights of drainage through the churchyard, which was not sold and remained subject to the faculty jurisdiction. The petitioners sought a faculty for the installation of (i) a septic tank and associated facilities and (ii) a water supply pipe in the churchyard. In granting a faculty the Chancellor found as follows:

1. There were to be no more burials (other than three in reserved spaces); accordingly it was possible to adopt a more liberal attitude than had the churchyard been a burial ground for a thriving parish.
2. The petitioners were under the impression, encouraged by the Diocesan Office and to some extent by the Church Commissioners, that there were to be rights of drainage and a right to install a septic tank. The duty of the Church was to honour the intention of the parties that there should be such facilities.
3. The water pipe and the drainage pipe presented no difficulty in law. The septic tank, which could not reasonably be regarded as a building was to be treated

as within the second category of justified exceptions, set out in *Re St. John's, Chelsea* (1962) 1WLR 706, to the general rule that a faculty could not be granted over a churchyard other than relating to the purpose for which it was consecrated. (The second category exception permitted the throwing of small parts of a churchyard into a highway or the granting of other rights of use in the nature of way-leaves).

4. The appropriate course was to permit the incumbent to grant a licence for a term of 125 years at an annual fee of £1.

**Re: St. Peter, Shipley**

(Bradford Consistory Court; Savill Ch. 8 August 1990)

A faculty was granted for the removal of an oak screen superbly designed and crafted, which had stood for sixty years at the chancel arch of a church eighty years old. There was a heavy onus upon the petitioners to justify the taking down of the screen; but their case was overwhelming in that its absence would be a help to worship. The need for corporateness in the service of Holy Communion was a powerful argument in favour of the granting of the petition. Directions were given that the screen should be dismantled and stored within the church. The P.C.C. were to take reasonable steps to find a new location for it; a further faculty was required for its disposal.

**Re: St. Mary, Aldridge**

(Lichfield Consistory Court; Shand Ch. 1990)

In a case involving proposals for the major re-ordering of a church which was a Grade II (starred) listed building, the Chancellor referred to the disapproval by the Court of Ecclesiastical Causes Reserved in *St. Stephen's, Walbrook* (1987) 2 All E.R. 578 of the guidelines of the Dean of Arches in *St. Mary's Banbury* (1987) 1 All E.R. 247 at 255. He continued, "The Dean of Arches in the case of *All Saints, Melbourn* (1990) 1 WLR 833 goes a long way to reconcile the apparent differences between the authorities . . . His embargo on faculties in *St. Mary's* referred to those which adversely affect the church as a building of special architectural interest. In such cases there is a strong presumption against change. The concept of "necessity" however, includes development proposed for the pastoral well being of the Church. I find that, although *St. Stephen's* is of great persuasive authority, it is the emphasis of approach in *All Saints, Melbourn* that is binding on me." In the event a faculty was granted covering part of the petitioners' proposals.