

SUMMARIES OF NOT SO RECENT CONSISTORY COURT CASES

The following are brief summaries of a selection of unreported cases which do not appear in the Law Reports, the Weekly Law Reports and the All England Law Reports, but which are of general interest. Diocesan Advisory Committee is abbreviated DAC.

ALTAR

Re: St Augustine of Canterbury, Highgate
(London Consistory Court; Newsom Ch. 10 April 1982)

A faculty was granted for the erection of a platform west of the high altar, and for moving an altar from a side chapel to that platform. The changes of style resulting from the use of a more nearly central altar were expected by the incumbent and the PCC to help the work of reaching out to the un-churched parish. There were no aesthetic objections. Work was not to commence without the leave of the Court, following a thorough review of the finances of the PCC.

See also: *Re-ordering* Re Plymstock Parish Church
Re All Saints Parish Church, Hessele

BELL

Re: St. Mary, West Fordington
(Salisbury Consistory Court; Ellison Ch. 1956)

A petition for a faculty (as amended) sought leave to install a bell, which the petitioner intended to use as a sanctus bell. There was no other bell in the church. The faculty was granted because the good which would result from there being a proper church bell far outweighed any danger, although its ringing on occasions at Holy Communion might strictly be a breach of good order.

BUILDING

Re: Fetcham Parish Church
(Guildford Consistory Court; Goodman Ch. 17 May 1969)

The court has jurisdiction to grant a faculty authorising the erection of a building for ecclesiastical purposes on land forming part of a consecrated churchyard in current use for burials, even if the area for future burials will thereby be reduced. A church hall primarily used for the purposes of the worshipping congregation as such fulfils the requirement that the building should be for ecclesiastical purposes.

Re: Holy Cross Church, Greenford
(London Consistory Court; Newsom Ch. 29 December 1977)

A faculty was granted for the conversion and use as a church hall of a church built in 1939 within the curtilage of an old church. The old church would continue to be used for worship. Human ashes which had been deposited in a columbarium beneath the sanctuary pavement of the new church were not to be removed, since removal would involve a breach of faith to surviving relatives, and there were no compelling reasons which justified removal. A faculty allowing disturbance of human remains is granted most sparingly and reluctantly.

Re: St. James', West End
(Winchester Consistory Court; Phillips Ch. 28 August 1981)

A faculty was granted for the construction of an annexe containing a hall, toilet and catering facilities, and store rooms, notwithstanding the opposition of a substantial minority of the congregation. There were valid reasons

behind the council's assertion of a need for accommodation of this kind, and any threat to the usual amenities of the church would not be so serious as to justify the withholding of a faculty. The prospective financial commitment, although considerable, would reasonably be undertaken by a responsible church council. Disharmony among the congregation might result from whatever decision the Court reached, and so was not a valid reason for dismissing the petition.

Re: St. Andrew, Backwell

(Bath and Wells Consistory Court; Newsom Ch. 16 December 1982)

A faculty was granted for the building of a meeting room connected to the church by means of a small corridor. The project was pastorally and practically desirable, and was not aesthetically undesirable to a degree sufficient to override these considerations. Any human remains disturbed in the course of the work were to be reburied reverently under the supervision of the incumbent but no appreciable interference with human remains was expected. Discussion of status of Royal Fine Arts Commission.

See also: *Churchyard* Re St. Peter the Great, Chichester.

CARPET

Re: St. Michael the Archangel, South Malling and St. John the Divine, Southbourne

(Chichester Consistory Court; Edwards Ch. April 1985)

Proposals for the re-ordering of two parish churches included the provision of carpets over the whole of the floor areas. The use of carpet was not recommended by the DAC. The Chancellor accepted that carpet was cheaper than a solid floor, but would have to be replaced after about 20 years, whereas a solid floor could be expected to last 100 years. The use of carpet therefore placed an economic burden on future generations and, in a proper case, a faculty might be refused on that ground alone. A carpet may give a slight thermal advantage. Extensive carpeting adversely affected the sound of music and speech. The aesthetic question was whether the austerity, bareness and simplicity of a solid floor was not an important part of the difference between a church and any other public building. This was not, however, a matter of principle, but one of degree and discernment in each case. A heavy burden rested on a PCC wishing to carpet the whole of a church. On the facts of the cases before him, the character of South Malling (a simple unassuming 17th century church) would, with the re-ordering, be unduly affected by complete carpeting. Memorials would also be obscured which ought to be visible. The petitioners were given leave to amend to seek a faculty for a solid floor. Southbourne, however, was built in 1876 and was without architectural merit. Carpet would not adversely affect the nature of the church and was expected to afford relief from the noise of traffic. A faculty was therefore granted.

CHURCHYARD

Re: St. Peter the Great, Chichester

(Chichester Consistory Court; Buckle Ch. April 1961)

A faculty was granted for the installation of an electricity sub-station in a closed churchyard. The sub-station was not a 'building' for the purposes of the Disused Burial Grounds Act 1884 (as amended). The benefit to the parish and the public generally was sufficiently established and the purpose for which the faculty was desired was not inconsistent with the effects of consecration.

Re: St. Peter, Stockton

(Durham Consistory Court; Garth Moore Ch.)

A petition by a local authority to acquire rights over strips of consecrated land forming part of a disused burial ground in order to solve its traffic problems was dismissed with costs. The traffic problems were capable of solution in ways which scarcely infringed on the consecrated land. The proposal was also objectionable in that it involved the destruction of several perfectly good lime trees. *Per curiam*: consecrated land is to the Consistory Court what an infant is to the secular court, something where there are overriding interests which can be encroached upon only in exceptional circumstances.

See also: *Building* Re Fetcham Parish Church.

DEMOLITION**Re: Christ Church, Croydon**

(Canterbury Commissary Court; Judge Newey Commissary General 19 June 1982)

A petition for the demolition of a church and its replacement by a new church falls within the faculty jurisdiction and it is not necessary to deal with the case under the Pastoral Measure. Procedure by faculty application may be less satisfactory in some respects (e.g. investigation of alternative user) but it does provide for public examination of proposals before a decision is made. In the present case an order upon strict terms should be made for demolition. Although the building to be removed was of interest and quality, being work of the architect Samuel Teulon and its adaptation would impair its value as an example of his work. Were the present building to be retained and adapted, running costs would be increased. The balance, which was a fine one, was in favour of demolition and rebuilding.

FONT**Re: Holy Trinity, Knaphill**

(Guildford Consistory Court; Goodman Ch. 28 January 1979)

The Court has jurisdiction to authorise the re-siting of a font. Account had to be taken of opposition to the proposal to move the font from the west end of the church to the south side of the nave near the chancel; but where, as here, the proposed re-siting of the font would assist in the conduct of worship and result in an improvement to the building, opposition was not decisive. In the circumstances it was of benefit to the church for the font to be re-sited.

See also: *Re-ordering* Re Plymstock Parish Church

ORGAN**Re: All Saints, Breadsall**

(Derby Consistory Court; Bullimore Ch. 3 September 1985)

A faculty was granted for the removal of a pipe organ (built by Adkins of Derby in about 1920) and its replacement by an Allen Digital computer organ. The petition was opposed by the DAC. The pipe organ had no particular musical qualities requiring its retention. The Allen organ was suitable for the needs of the parish. In the short term the advantage lay with the Allen organ (the price of which was £7,800) since necessary repairs to the pipe organ would cost at least

£12,000. The working life of the Allen organ and its future reliability were, however, uncertain and in that respect the balance fell in favour of the traditional pipe organ. Some weight had to be given to the decision of the parish, which supported the Allen instrument. It was right to grant a faculty because the reasons for retaining the pipe organ did not outweigh the reasons for replacing it. Every case for the substitution of an electronic organ for a pipe organ would have to be considered on its particular merits. The DAC were correct in being cautious, their task being to advise the Court of the disadvantages of a proposed course as well as its advantages.

PICTURE

Re: All Saints, Hereford

(Hereford Consistory Court; Henty Ch. March 1983)

A faculty was granted for the sale of a large 17th century picture which, following re-ordering of the interior of the church, could no longer be hung. The proceeds of sale were to be divided between the parish and the Diocesan Board of Finance, since the latter was expecting to receive from the parish a contribution towards the building of a new church within the parish boundaries.

PLATE

Re: St. Alkelda, Giggleswick

(Bradford Consistory Court; Savill Ch. 19 September 1983)

The Petitioners wished to sell an 18th century pewter flagon valued at £400-£600, and to invest the proceeds of sale, the interest thereon to be used at the discretion of the PCC. For some years past the flagon had been redundant. The Council for the Care of Churches opposed its sale; its historic interest and aesthetic quality outweighed its modest financial value. The petition was dismissed because there was no specific purpose for which the proceeds of sale were required. The case for the sale of the flagon as being necessary to satisfy a financial need had not been made out. *Per curiam*: "If our ancestors had sold everything for which their generation had no contemporary use, there would not be much left today to sell. Our stewardship must look to the future as well as to the present".

PROCEDURE

Re: St. Mary, Andover

(Winchester Consistory Court; Phillips Ch. 30 April 1974)

A petition for a faculty authorising essential repairs to the church was opposed by the vicar. The petition was supported by a majority of the parochial church council. In granting the faculty it was held that the vicar had in law no power to forbid the presentation of the petition.

REGIMENTAL COLOURS AND BANNERS

Sinclair-Maclagan v Vicar and Churchwardens of Kendal

(Carlisle Consistory Court; Vaisey Ch 12 June 1933)

Regimental colours ceremonially laid up in a parish church become ornaments of the church and subject to the faculty jurisdiction. The Regiment by its commanding officer has *locus standi* to petition for removal of the colours; but in the exercise of the Court's discretion the petition was dismissed.

REMOVAL OF HUMAN REMAINS

Re: St. James' Churchyard, Hampton Hill

(London Consistory Court; Newsom Ch. 28 October 1982)

A faculty was granted for the removal of the remains of the petitioner's father from the churchyard to a Presbyterian cemetery in Canada. The deceased,

Lt. Col. J. W. Boyle, was a Canadian of some public interest. The monument over his grave was also to be removed and transported to Canada; the person who set it up was dead and title vested in the petitioner as heiress at law of the deceased under Section 3(4) of the Faculty Jurisdiction Measure 1964. A proper monument to the deceased was ordered to be erected in the church or churchyard by the petitioner.

RE-ORDERING

Re: Plymstock Parish Church

(Exeter Consistory Court; Calcutt Ch. 13 October 1980)

Proposals for the re-ordering of the church involving (*inter alia*) the removal of a screen to the west of the chancel, the setting up of a central altar surrounded by movable chairs and the re-siting of the font, were opposed by a substantial part of the congregation. A faculty was refused since it was wrong to force upon those members of the congregation a re-ordering which they positively did not want. Furthermore, in view of the extent of the opposition to the proposals there was not a reasonable prospect of raising the necessary funds.

Re: All Saints Parish Church, Hessle

(York Consistory Court; Coningsby Ch. 8 October 1982)

A faculty was granted for the provision of a nave altar and consequential re-ordering, despite the opposition of about one-quarter of the numbers of the electoral roll. A nave altar was justified as the east-end altar was not readily visible from large areas of the nave. There are liturgical advantages in having a nave altar; the Service of Holy Communion becomes more of a corporate act. It would also be possible to have choir stalls in the nave.

Re: St. Michael, Madeley

(Hereford Consistory Court; Henty Ch. 27 June 1983)

The re-ordering of the interior of a church, *inter alia* to provide lavatory and kitchen facilities, together with social and meeting areas in two aisles, was approved. Since funds were lacking to provide a suitable church hall, it was necessary and lawful to enable the church itself to be used for social purposes. The re-ordering was also consistent with the original architectural scheme of the church, which had been built in 1796 but had subsequently undergone alteration.

ROOD SCREEN

Re: St. Wilfred, Wilford

(Southwell Consistory Court; Shand Ch. November 1985)

A rood screen was unlawfully and without reference to the Archdeacon or the DAC moved to the north wall of the sanctuary for a six month experimental period. There was considerable opposition to the move. The Chancellor did not insist upon the restoration of the screen to its original position because to do so would have been a reversal of the liberal and flexible approach to the faculty jurisdiction within the diocese; the case was in itself a lesson to persons in the parish and beyond; and the initial decision arose from a genuine enthusiasm for the well-being of the parish. On the merits, although the screen (dating from 1921) was a fine one which could not be seen adequately on the north wall, it removed a barrier (inconsistent with modern liturgical practice) between celebrant and people, as well as making the choir visible, improving the interior view of the church, and giving some interest to the north wall of the chancel. The experiment should therefore continue for a further six months. Parishioners were to be given the opportunity to express their views orally or in writing, and any application for a permanent faculty should set out all submissions in favour of or against the proposal.

SEATING

Stephenson v Longstone PCC
(Derby Consistory Court; Vaisey Ch. 1933)

An exclusive right to occupy a pew or seat may be conferred by faculty, but this should only be done in special and peculiar circumstances. Such circumstances might arise if a petitioner could point to the probability of there being an existing legal right by prescription, arising out of a presumed lost faculty.

See also: *Re-Ordering Re Plymstock Parish Church*

WINDOW

Re: St. Paul's Church, Jarrow
(Chancery Court of York; Owen Auditor 15 May 1984)

An appeal was allowed against the Chancellor's refusal to grant a faculty for a stained glass window designed by John Piper to be installed in an Anglo-Saxon Church. Although the DAC and the Council for the Care of Churches advised against the window, their reservations were outweighed by other expert evidence. The Chancellor's discretion was exercised on an erroneous evaluation of the facts taken as a whole.

Re: St. Helen, Willoughby
(Lincoln Consistory Court; Goodman Ch. 30 November 1984)

A faculty was sought to insert in seven of the windows on each side of the nave, stained glass circular or diamond shaped tableaux (to be surrounded by clear antique glass) commemorating the pioneers of the Virginian Company. The cost was to be borne by the estate of an American benefactor. Some of the existing windows, which contained clear glass, were in a dilapidated condition. The petition was refused because, on the evidence of expert witnesses from the DAC and CCC, the proposed changes would alter the character of the church. With clear glass in the nave windows the effect was 'especially light, spacious and spiritual': this quality would be adversely affected by the insertion of stained glass panels, having regard to the height and simple architectural style of the nave and the large size of the windows in relation to the wall areas. It was unfortunate that the views of the DAC were not sought before the design stage, and that the glass should have been made when there was a real risk that a faculty would not be granted. A faculty was granted for the provision of armorial bearings in the south windows of the chancel.

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