



13. ... Those who embark upon works on church property without reading and digesting the content of the relevant faculty do so at their own peril, and must live with the consequences, sometimes draconian, that can follow.'

The court accepted the contractor's contrition, and that the breach of the faculty was an accidental rather than deliberate disregard of the jurisdiction; and so did not impose a condition that the contractor not be approved for work in the diocese for a period of time. Nevertheless, the confirmatory faculty would bear the condition that the contractor be liable for compensatory planting; it was also liable for the costs of the proceedings.

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Re Unnamed Burial Ground

Chichester Consistory Court: Hill Ch, 8 December 2023
[2023] ECC Chi 2

Exhumation – exceptional circumstances – medical grounds

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The petitioner sought a faculty for the exhumation of her mother's body from a consecrated burial ground, where she had recently been buried, in order to re-inter her in another consecrated burial ground, within the same diocese. The general rule enunciated by the Court of Arches in *Re Blagdon Cemetery* is that because of the theological principle that Christian burial is final, a faculty for exhumation will only be granted in exceptional circumstances. In this case, however, the petition was brought because of the proximity of the mother's grave to those of close family members of the petitioner's ex-husband, who had been violent and abusive towards her and her children over a period of some eight years. Neither the petitioner nor her children could visit her mother's grave because it caused them flashbacks, and the petitioner's GP confirmed that she was having nightmares and panic attacks and was suffering from anxiety and depression.

The court was satisfied on the evidence that the impact upon the petitioner's mental health and well-being and the distress to other family members were overwhelming. On the balance of probabilities, therefore, there were special

circumstances justifying an exception from the principle of the finality of Christian burial and a faculty would issue.

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Re St Thomas the Apostle, Killinghall

Leeds Consistory Court: Hill Ch, 13 December 2023
[2023] ECC Lee 4

Sale of paintings – church treasures – disagreement between DAC and CBC

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The petitioners sought a faculty for the disposal by sale of two damp-affected paintings. The DAC recommended the proposal. The court, out of an abundance of caution, directed consultation with the CBC pursuant to rule 9.6 of the Faculty Jurisdiction Rules 2015 (under which consultation with the CBC is mandatory on a petition for the conservation, alteration or disposal of an article of special historic, architectural, archaeological or artistic interest). The CBC preferred to see the conservation and retention of the paintings, there being a strong presumption against the sale of church treasures. The petitioners described the CBC's position as unrealistic, and the DAC noted that the paintings were of limited significance; they would continue to deteriorate if kept in the church; and the petitioners had neither the funds nor the inclination to seek them to fund their restoration.

The court, while noting the strong presumption against the disposal of church treasures, emphasised that care must be taken to distinguish between church treasures and church property generally. The CBC regarded the paintings as church treasures, given their connection to the church and their religious subject. They may have also been influenced in their view by the fact of the rule 9.6 reference itself, and/or a typographical error in the DAC's notification of advice which made it appear that the proposal was not recommended for approval.

However, although this was not determinative, the paintings had been valued at only £120–£150 each. The court considered that on reflection, its reference of the matter to the CBC under rule 9.6 was probably unjustified and inappropriate. While the court declined to criticise the CBC for its advice, it