

## CASE NOTES

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Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich

### **Re St Mary, Longdon**

Worcester Consistory Court: Mynors Ch, November 2010

*Public right of way over churchyard*

In granting a faculty for the erection of a sign in a churchyard marking a public right of way, the chancellor reviewed the conflicting authorities on rights of way over consecrated ground. In reliance upon the decisions in *Re Bideford* [1900] P 314 and *Re St Martin le Grand, York* [1990] Fam 63, the chancellor concluded that a public or private right of way could be granted over a churchyard, although only with the authority of a faculty. In cases where the right of way had been exercised over a very long period it might be that the grant of a faculty was to be presumed in the absence of contrary evidence. [RA]

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### **Shergill v Purewal**

High Court, Queens Bench Division: Gray J, December 2010

*Defamation – stay – non-justiciable*

In an application to stay libel proceedings, the defendants argued that the libel was non-justiciable as it required the court to deal with doctrinal and religious issues arising in the Sikh community. The alleged libel was published in articles in the *Panjab Times* stating that the claimant, a prominent member of the Sikh community, had abandoned Sikh principles and sought to foment violence and intimidation at Gurduwaras in Oldbury, Bradford and High Wycombe. The claimant's conduct was said to be in support of a Sikh leader whose legitimacy was being contested in the courts in India and within the UK Sikh community. The defendants argued that the matters raised in the articles were unavoidably doctrinal and therefore non-justiciable by a secular court. The claimant argued that the articles were libellous in relation to allegations of intimidation and

near-violence and contained no doctrinal issues. He also argued that, alternatively, the libellous allegations could be severed from any matters of doctrine and tried separately on their merits. As to the substance of the case, the defendants pleaded justification and argued that the claimant had no genuine interest but was bringing proceedings to silence criticism. Following the earlier decision of Eady J in *His Holiness Sant Baba Jeet Singh Ji Maharaj v Eastern Media Group & Singh* (2010) Ecc LJ 411 (concerning the same individual), which in turn relied on Gray J's previous ruling in *Blake v Associated Newspapers* [2003] EWHC 1960 QB, a stay was granted on the basis that the court could not adjudicate on matters of religious doctrine. The issue of justification raised by way of defence could not properly be argued without reference to the doctrinal dispute at the heart of the dispute as to the leader's legitimacy. [Catherine Shelley] *This case is reported at* [2010] EWHC 3610 QB.

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### **Re St Columba, Warcop**

Carlisle Consistory Court: Tattersall Ch, December 2010

*Sale of painting – redundancy*

The petitioners sought a faculty for the sale of a late seventeenth-century Netherlandish painting. The painting had been given to the church in the 1920s or 1930s and had hung in the vestry until 1957, when it was removed to a museum. Its estimated value was £25,000 to £35,000. The PCC, whose annual income and expenditure were each in the region of £15,000, was in debt in the sum of £20,000 as a result of recent works that included the provision of a kitchen and a disabled-access lavatory. The petitioners put their case on the basis that the painting was redundant, 'being of no practical use to the church'. The chancellor applied the principles stated by the Court of Arches in *Re St Peter, Draycott* [2009] Fam 93. In concluding that he should exercise his discretion in favour of the petitioners, the chancellor held that no useful purpose was served by the church continuing to own the painting, which should be treated as if it were redundant; it had no significant connection with the church; it had no significance in terms of the worship of the church nor any connection with the local community; the financial resources of the church were extremely limited and there was a 'significant financial need' to discharge the PCC's indebtedness. The chancellor went on to hold that, in addition, there was a 'financial emergency', given that the church's debts were 'highly unlikely to be discharged in the immediate future in the absence of the sale of the