

## RECENT ECCLESIASTICAL CASES

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Last year has seen the reporting of two important appeals involving the faculty jurisdiction.

### **RE ST MARY'S, BANBURY (1987) 3 WLR 717; 1 ALL E.R. 247**

This case, in the Court of Arches, concerned a parish church built pursuant to an Act of Parliament in 1790. In order to raise funds for the building operation, the Act empowered the trustees appointed under it to sell pews or seats.

A faculty was sought in 1983 for the reordering of the interior, including the removal of all the pews from the nave. Chancellor Peter Boydell Q.C. held (1976) Fam. 24; (1985) 1 All E.R. 611 that the parties opponent, who still enjoyed statutory rights of access to specified pews, could not be deprived of such rights by faculty. Accordingly, the pews over which the parties opponent exercised their rights were not to be taken down and removed permanently. This vitiated the entire proposal for the removal of the pews in the nave.

In the Court of Arches, the Dean affirmed the Chancellor's decision, and took the opportunity to make more general observations concerning the exercise of discretion where it was sought to make alterations to a church of architectural and historic interest. He provided certain guidelines, which may be summarised as follows:

- (a) A church is a house of God, which does not belong to conservationists, to the State or to the congregation.
- (b) In deciding whether to permit reordering, the court should have in mind the matters usually considered in faculty cases and also these matters:
  - (i) the persons most concerned with the worship in the church are the regular worshippers, although others may also be concerned;
  - (ii) when a church is listed as a building of special architectural or historic interest, a faculty which would affect its character as such should only be granted in wholly exceptional circumstances, those circumstances clearly showing a necessity for such a change; a reordering of such a church solely to accommodate liturgical fashion is likely never to justify such a change;
  - (iii) whether a church is so listed or not, a chancellor should always have in mind not only the religious interests, but also the aesthetic, architectural and communal interests relevant to the church in question;
  - (iv) although the faculty jurisdiction must look to the present as well as to the future needs of the worshipping community, a change which is permanent and cannot be reversed is particularly to be avoided.

The Dean of Arches also expressed the hope that the Faculty Rules would be changed to enable bodies concerned with matters of conservation to give evidence in such cases. This hope has borne fruit in a slightly different way in that the Faculty Jurisdiction (Amendment) Rules 1987 now permit the local

planning authority and any other "statutory amenity society", viz. the Ancient Monuments Society, the Council of Church Archeology, the Georgian Group, the Society for the Protection of Ancient Buildings and the Victorian Society, to object to a petition and to become parties opponent in the proceedings.

**ST STEPHEN'S WALBROOK (1987) 3 WLR 726, (1987) 2 ALL E.R. 578**

The desire to give the now famous Henry Moore altar a permanent home in the Wren church, St Stephen's Walbrook, caused the Court of Ecclesiastical Causes Reserved to be concerned for the second time in its relatively short history. The appeal proceeded to that Court rather than the Court of Arches because matters of doctrine and liturgy were involved. In essence the question was whether a solid stone sculpture was a "table" within the meaning of Canon F2. On appeal, the Bishop of Chichester, with whom the other members of the Court agreed, held that it was. He adopted Dr Johnson's definition of a table as "A horizontal surface raised above the ground, used for meals and other purposes", a definition which clearly covered the stone sculpture. In the Bishop's opinion a Holy Table could lawfully and properly be called an altar, so (unlike Chancellor Newsom at first instance) he was able to conclude that the character of the artefact as an altar did not bring it outside the scope of Canon F2. The Bishop agreed, however, with the Chancellor that Canon F2 did not restore the restriction on immovability abrogated by the Holy Table Measure 1964, with the result that a Holy Table is not illegal merely because it is not movable, or because it is not made of stone.

The introduction of a twentieth century sculpture into a seventeenth century church also raised difficult aesthetic questions. Sir Ralph Gibson, after reviewing the impressive body of expert evidence directed to this issue, concluded that the Chancellor erred in his assessment of the weight of that evidence. The appellate court substituted its own view of the evidence and allowed the appeal. In arriving at this decision, the three members of the court who gave reasoned judgments disapproved of the stringent requirements of "necessity" advanced by the Dean of Arches in the second of his guidelines in *Re St Mary's Banbury*. According to Sir Ralph Gibson, the discretion was to be exercised in accordance with the established principles, "and that includes, of course, having full regard to all circumstances, including the interest of the community as a whole in the special architectural or historic attributes of the building and any features of special architectural or historic interest which it possesses."

It remains to be seen whether the divergence of opinion between the two appeal courts will have any direct effect upon the outcome of faculty cases involving churches of architectural or historic interest. Since neither court is bound by the decision of the other, and both the guidelines and the comments thereon did not form part of the *ratio decidendi* of either case, it will be for diocesan chancellors to derive such support as they wish from the seemingly conflicting approaches. The underlying message, however, is clear: due weight has to be given to matters of aesthetics and conservation.

In another pair of cases the potential liabilities of persons outside the immediate jurisdiction of the Consistory Court fell to be considered.

**RE ST MARY'S BARTON-UPON-HUMBER (1986) 3 WLR 906**

This case involved the disposal, without authority of a faculty, of a medieval chest and a royal coat of arms. The articles were sold by one of the churchwardens. Chancellor Goodman applied the well-established rule that, without the authority of a faculty and the consent of the parochial church council, the churchwardens cannot pass a valid title to the goods which are vested in them. Accordingly, the purported disposal by the churchwardens was void, subsequent purchasers did not acquire a good title, and the property remained vested in the churchwardens for the time being. As a confirmatory faculty is not retrospective, such a faculty could not validate past transactions involving the goods. The position could only be regularised by a confirmatory faculty prospectively authorising the removal of the chest and the coat of arms from the church, coupled with a further faculty empowering the churchwardens to disclaim the title. There had, however, been repeated failures by the churchwardens to comply with the faculty jurisdiction, and the Chancellor thought it inappropriate to grant the relief sought. The result was that the coat of arms, which had been traced, would have to be returned to the church. The churchwardens, by virtue of their title to goods, have the right to sue third parties in the civil courts for their return. The Chancellor gave a general warning in the course of his judgment: "Those who acquire goods which clearly come from a church, and in particular dealers in the antique trade, who must be taken to know the existence of the faculty jurisdiction, should take steps to satisfy themselves that those responsible for selling the goods in first place have the authority to do so."

**RE ST THOMAS A BECKET FRAMFIELD (Sept 1987, now (1989) 1 All ER 170)**

In this case the warning was directed to architects. When considering the proposal to redecorate the interior of a sixteenth century church in the Diocese of Chichester, the Diocesan Advisory Committee considered the structure to be worthy of a lime wash application. The merit of using lime wash in old churches is that moisture can pass through it, whereas if emulsion or oil paint is used, moisture is trapped within the walls. Notwithstanding the recommendation of the Diocesan Advisory Committee, the petitioners proceeded, without any lawful authority, to apply emulsion to the walls. They then sought a confirmatory faculty. Although Chancellor Edwards granted such a faculty, he was critical of the parish priest, the churchwardens and the architects instructed in connection with the work. The Chancellor held that architects who undertake ecclesiastical commissions are under an obligation to comply with the requirements of the faculty jurisdiction; it was therefore no excuse for the architect to say that he was unaware that a faculty or archdeacon's certificate had not been issued. The sanction available against an architect who failed to discharge his professional duty lies in Section 10(a) of the Faculty Jurisdiction Measure 1964, whereby the court has power to make a faculty subject to a condition that works be carried out under the supervision of an architect. A chancellor could therefore state that he was not prepared to make it a condition of any faculty that offending architects should supervise any works authorised by the faculty. The effect would be to exclude such architects from a substantial degree of involvement in ecclesiastical work. In

the event, Chancellor Edwards adopted a milder course of requiring in future personal undertakings from those architects as a condition of granting faculties.

The following are short summaries of some other unreported cases decided recently.

**RE ST ANDREW OXFORD (Oxford Consistory Court; Chancellor Boydell; 25 November 1986)**

A faculty was sought for the modification and extension of the west end of the church to provide an enlarged parish room and other facilities. The petition was unopposed, and planning permission had been obtained, but the Diocesan Advisory Committee expressed reservations about the extent of glazing in the design, and the slender appearance of the vertical supports for the roof. Despite the Committee's misgivings, a faculty was granted because the design was by Mr Robert Maquire, a distinguished and experienced architect; there was no formal opposition; full planning permission had been granted on appeal to the Secretary of State; it was necessary to recognise the subjective nature of matters of aesthetics; and an alteration in the scheme would necessitate a fresh planning application with the risk of a further appeal to the Secretary of State.

**RE ST MARY, BEDDINGTON (Southwark Consistory Court; Garth Moore Ch., 1987)**

In order to meet the pastoral needs of the congregation, particularly the provision of teaching for children during part of the main Eucharist on Sunday, proposals were made to insert a floor in the north aisle of the parish church so as to create an attic. Without this accommodation use had to be made of an unsuitable hut. It was uncertain for how long the intended room would meet the needs of the parish, or how effective sound-proofing would be. The church was mediaeval in its main structure, but the North aisle had been designed by the architect Clarke and was itself of great architectural importance. Although the Diocesan Advisory Committee supported the proposals, a contrary view was expressed by the Council for the Care of Churches, the Society for the Protection of Ancient Buildings and the Victorian Society. There was a sharp conflict between pastoral requirements and conservationist needs; but the importance of the church, and in particular the North aisle, was such that no major interference with it should be tolerated. The petition was accordingly dismissed.

**WALKER v HARDAKER (Chichester Consistory Court: Quentin Edwards Ch., 10 July 1986)**

The petitioner sought a faculty authorising the erection in a churchyard of a monument to her son in the form of a Latin cross set upon a plate. The total height of the monument was 2' 9". The incumbent refused permission for a cross and was supported by the Parochial Church Council. Although there was no persuasive evidence that the deceased had wished to have a cross as a memorial, the petitioner had persuaded herself that this was so and her reasons for wanting a

cross were honest, sincere and strongly held. A faculty would nonetheless be refused because the incumbent and Parochial Church Council reasonably did not wish further free standing crosses to be erected; the design of the proposed memorial was mediocre; and wanton damage could easily be done to it. Quære, whether the Court had in any event jurisdiction to grant a faculty where the incumbent and parishioners were reasonably opposed to the erection of a construction in a churchyard.

**RE ST JOHN THE EVANGELIST CHURCH HIGHTER BROUGHTON (Manchester Consistory Court: Spafford Ch. 20 September 1986)**

A faculty was sought for the removal of certain fittings and ornaments from a parish church built in 1839 to another church and to a proposed chapel in a community centre. The parish church was dangerous owing to deterioration of the structure, and redundancy or demolition was under consideration. The parishioners were opposed to demolition. The Chancellor hoped that a faculty would not extinguish or lessen the chance of continuing to use the whole or part of the building for public worship; but it was necessary to take precautions against vandalism. A faculty was granted for the removal of the choir pews, altar, organ, vestry furniture and some congregational pews to the community centre (where there was a room suitable for use as a chapel), providing public worship was transferred there. The remaining congregational pews and the stained glass windows were to be removed only if the church building was finally to be closed for public worship: the glass might, however, be stored if vandalism could not otherwise reasonably be prevented.

**RE ST HELEN ABINGDON (Oxford Consistory Court: Boydell Ch., 24 October 1986)**

The Vicar and churchwardens of a 15th century church (which had undergone many changes, including work executed by the architect Woodyer in 1873) sought a faculty for the removal and re-siting of Woodyer's chancel screen, and a further faculty in relation to certain pews. The evidence in support of the first petition showed no necessity for change. Whilst the chief benefit of the proposal would be to allow some additional flexibility in the area of the entrance to the chancel, the damage would be great. The building was listed Grade A, and was of historic importance. The screen was installed as part of a general scheme and had been in place for over 115 years. Its removal would not be justified unless there was substantial objections to its remaining in place. The liturgical and acoustical disadvantages associated with its presence were outweighed by the architectural and historic loss arising from its removal. The faculty was refused, but a faculty was granted to permit the removal of some pews and to permit the removal of others for a trial period of five years. The object was to provide an area for the serving of coffee, which might be no more than a 'passing fashion', as a church centre was available for that purpose nearby.

**RE ST GERMAN'S CATHEDRAL (Sodor and Man Consistory Court: Farrant, Vicar-General, 6 February 1987)**

A faculty was granted for provision of a nave altar on a raised floor with certain consequential re-arrangement including the removal of pews. The proposals were supported by the Bishop and the Diocesan Advisory Council. The church had been made a Cathedral in 1980 (but remained subject to the faculty jurisdiction); its uses included a wide range of services, concerts and occasional dramatic performances. The proposals were in accordance with the shift which had taken place away from choral services and towards the Eucharist. They would permit flexibility in the approach to all types of service, and would constitute an improvement. The alterations would enable the service of the Eucharist to be carried out more in accordance with modern practice bringing the people closer to the celebrants. It was not possible to accede to the request of the three objectors that the status quo be retained.

**RE ST JOHN WITH ST MARK BURY (Manchester Consistory Court: Spafford Ch., 16 November 1986)**

A faculty was sought for the re-ordering of the interior of a 'very attractive' church built twenty-one years previously. It was proposed to remove the choir stalls; to reduce the pulpit and reposition the lectern; to refurbish the sanctuary; to reposition the aumbry; and to re-arrange the baptistry. The proposals were supported by the Diocesan Advisory Committee. Since the petition was in proper form, the applicants were entitled to be heard despite the fact that the incumbent had resigned and the appointment of his successor was still pending. Although a major matter of objection related to the proposed use of available funds, that was a matter for the Parochial Church Council and not for the Court. In general the opponents liked the existing layout. The proposed arrangement of the baptistry, with the congregation gathered round the font, was friendly and sensible, and that part of the petition was granted. It was appropriate to place the main altar at the west end of the chancel, where there had been a temporary altar for three years. As the leaving of the choir stalls and pulpit in place might produce a more united congregation, approval for their removal was deferred until April 1987 when a newly elected Parochial Church Council would decide whether to proceed with that part of the scheme.

**RE THE MOST HOLY TRINITY CHURCH BURY (Manchester Consistory Court: Spafford Ch. 2 May 1987)**

A faculty was granted for the installation behind the altar of the Lady Chapel of the reredos (the work of J. Harrold Gibbons), originally made for a redundant church. A majority of the Parochial Church Council supported the petition, which was also approved by the Diocesan Advisory Committee. The reredos was particularly fine, but objectors suggested that it would be aesthetically wrong for the reredos to block the window behind the altar, and that natural sunlight would be excluded. The reredos would alter the character of the chapel, affecting the simplicity of the existing attractive setting. The main east end window admitted sunlight, and from the exterior the attention of viewers would be caught by that window rather than the smaller adjacent Lady Chapel window. On balance the aesthetic gain outweighed the loss.