

## Re St Michael and All Angels, Isel

Carlisle Consistory Court: Tattersall Ch, October 2010

*Right of way – consecrated land – easements – interested person – standing*

The petitioners sought to block up a pedestrian gateway in the boundary wall of the churchyard, which had once served as a shortcut from the neighbouring vicarage; the vicarage had since been sold and the path to it across the graveyard turfed over. The gate itself had allowed, on several occasions, flood water from the River Derwent to enter the church grounds, flooding the vestry and church, the most recent flooding having occurred in November 2009. The current occupiers of the former vicarage objected on the ground that they claimed a private right of way from their property to the churchyard; that the continuous use of the gateway had, upon conveyance, become an easement. No authority was given in support. The chancellor rejected their objection on two grounds. First, that the objectors did not have standing to object under rule 16(1) of the Faculty Jurisdiction Rules 2000 as they did not satisfy the definition of ‘interested person’ in Rule 16(2): they resided primarily in the Isle of Man, did not appear on the parish electoral register and the freehold of the former vicarage was vested in a Manx-registered company, the objectors holding no apparent legal or beneficial interest. Second (if wrong on the issue of standing), assuming that the objectors relied upon either the rule in *Wheeldon v Burrows*<sup>1</sup> or section 62 of the Law of Property Act 1925, the chancellor held that no right of way existed. Applying *Re St Peter, Bushey Heath*,<sup>2</sup> which followed *St Mary Abbots, Kensington (Vicar and Churchwardens) v St Mary Abbots, Kensington (Inhabitants)*,<sup>3</sup> it is impossible to create a legal estate in consecrated land except under the authority of an Act of Parliament or a Measure. Further, upon conveyance of the former vicarage, the vendor (the then incumbent) was incapable of granting such a right of way to a purchaser in the absence of the express authority of a faculty: *Re St Clement, Leigh-on-Sea*<sup>4</sup> applied. As no right of way had been authorised by Act, Measure or faculty, it was held that no right of way existed; there can be no common law presumption regarding easements over the consecrated land of the Church. The chancellor accepted the reasons for the proposed works to the wall and granted a faculty accordingly. [Simon Rowbotham]

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1 (1879) 12 Ch D 31.

2 [1971] 1 WLR 357.

3 (1873) Trist 17.

4 [1988] 1 WLR 720.