

## RECENT ECCLESIASTICAL CASES

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assisted by

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and

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*Re St Lawrence, Denton*

(Manchester Consistory Court: Holden Ch, May 2001)

*Reordering—platform—second font*

A petition was brought by the incumbent and churchwardens to re-order this ancient church by constructing a small platform in the area immediately in front of the chancel screen extending into the nave, and to remove two pews at the front of the nave and make any necessary modification to the heating system. There were three objectors. The chancellor detected behind the objections a sense of unease about the style of worship in vogue at the church. The chancellor rejected the objection that the proposal would be too expensive, being satisfied that the officers of the church and the PCC had determined that it was an appropriate use of parochial funds. He was satisfied that the removal of two rows of pews would not be objectionable. He was concerned that the platform would constitute a hazard in an emergency and was mindful of the requirements of the Disability Discrimination Act 1995. He did not go into details as he was to refuse the petition on different grounds. He rejected the objection that the platform should be seen as a stage with theatrical connotations. He considered that the platform would aid visibility for those sitting at the back and sides of the nave. The petition was rejected on a basis not raised by the objectors, namely that the present arrangement was to use the area for baptism services with a portable font. The chancellor noted that the church had a baptistry in an open side chapel to the north of the chancel. He felt bound by the resolution of the House of Bishops, which states that there must be only one baptismal point in a church. See *Response by the House of Bishops to Questions Raised by Diocesan Chancellors* (June 1992). He felt that it would not be appropriate to permit the introduction of the platform until the whole pattern of liturgy and worship had been worked out in relation to the use of the building. [JG]

*Re Christ Church, Waltham Cross*

(St Albans Consistory Court: Bursell Ch, May 2001)

*Stations of the cross—legality*

Christ Church, Waltham Cross, is a Grade II listed church built in 1833. A petition by the incumbent, supported by the DAC, was made to introduce 15 stations of the cross in contemporary style. There was one objector, whose objection was in informal but impassioned tones. The chancellor took the opportunity to deliver a full judgment, as there was no decision on the legality of the stations of the cross in the diocese and no fully reported decision since 1963. *Halsbury's Laws* summarises the position that, as decorations, the stations of the cross are not intrinsically unlawful. A faculty will only be granted where there appears to be no danger of their becoming objects of 'superstitious reverence'. He stated that there was nothing intrinsically illegal in the introduction of stations of the cross, and that absent any evidence to the contrary the court ought not to assume that superstitious reverence may be paid to the stations during private devotions (adopting *Re St John the Evangelist, Chopwell* [1995] Fam 254, [1996] 1 AER275, Durham Cons Ct). Care was to be taken to emphasise that the scenes depicted as occurring in St Albans were symbolic and not historical. The chancellor granted the faculty until further order. [JG]

*Re St Nicholas, Arundel*

(Chichester Consistory Court: Hill Ch, June 2001)

*Re-ordering—legality of ornaments*

Faculties for a major re-ordering of this Grade II\* listed church had been granted in July 1999 and March 2000. In addition to the re-ordering which took place in accordance with those faculties changes were made and items introduced to the church which were not authorised by faculty. The petitioners sought a confirmatory faculty for these further alterations. There was one party opponent and the case was heard in open court. The thrust of the argument of the party opponent was that certain of the changes indicated a departure from traditional Anglican churchmanship and an adoption of Roman Catholic practice and that certain of the items concerned (eg a tabernacle) were illegal. The sensitivity of this issue in this case was magnified by the fact that the parish church includes within it the Roman Catholic Fitzalan Chapel. The chancellor found that certain items that would have been considered illegal in previous generations are now legal. He considered as 'authoritative and persuasive' the decisions of Chancellor Bursell in *Re St Thomas, Pennywell* [1995] Fam 50, [1995] 4 All ER 167, Durham Cons Ct, and *Re St John the Evangelist, Chopwell* [1995] Fam 254, [1996] 1 All ER 275, Durham Cons Ct. He stated that, 'there has been a complete sea-change in the law' and that text books and judgments which predate these judgments need to be 'read with care and applied with caution'. A confirmatory faculty was granted for a number of alterations and additions including, *inter alia*, a tabernacle, six altar candles, a sanctuary light, votive candle stand and holy water stoup. [LY]

*Re St Mary, Kirk Bramwith, Churchyard*  
(Sheffield Consistory Court: McClean Ch, August 2001)

*Memorial—kerbstone*

The petitioners sought a faculty for the erection of a headstone with full kerbs on the grave of their son. The application was opposed by the PCC although the DAC gave a neutral certificate of no objection. The priest-in-charge supported the petition. The Diocesan Churchyard Rules do not permit kerbstones except in parts of the churchyard where kerbstones are already common and their introduction would have no adverse effect on the maintenance of the churchyard. Kerbs had been refused in the churchyard in question since 1986 because they made difficult the removal of leaves in autumn. In granting the faculty the chancellor noted that some of the graves adjacent to that in question had kerbstones and that the effect on maintenance would be marginal. The matter was one that fell within his discretion and there were considerations of a pastoral nature, namely some confusion in the settling of the site for the grave that led to an exercise of this discretion in the petitioners' favour. [LY]

*Re St Peter, Racton*  
(Chichester Consistory Court: Hill Ch, October 2001)

*Memorial—substitution with replica—security*

The petitioners sought a faculty for the removal of a marble bust from the church and its replacement with a good quality resin replica. The DAC supported the petition. The bust was unsecured save by its own weight and rested on a casket as part of a funerary monument. The parish was concerned for the security of the bust, it having been attributed to Rysbrack and valued at £100,000. The original proposal to sell the bust was amended when Lord Dartmouth, whom the PCC conceded was the owner as descendent of the person commemorated, offered to house the bust in his London home. It was to be displayed with family portraits, and reasonable access was to be granted to interested members of the public. English Heritage, the Council for the Care of Churches and the Georgian Group were parties opponent to the petition, although the Georgian Group took no part in the hearing. They opposed the substitution of the replica, preferring the use of a stainless steel dowel as a means of fixing the original bust to the casket, thereby minimising the perceived risk of theft. Lord Dartmouth was implacably opposed to the drilling and doweling of the bust. The chancellor found that the bust was an integral part of 'a scheme of decoration' within the church and as such was a fixture rather than a mere chattel. See *Elitestone v Morris* [1997] 2 All ER 513, [1997] 1 WLR 687, HL. Having reviewed the evidence, including that of four experts, he applied the *Bishopsgate* questions and found no case of 'necessity' made out, either on the ground of finance or of security. He rejected the argument that Lord Dartmouth, as owner, could do what he wished with his monument. He declined to follow *Re St Mary and St Nicholas, Wilton* (1999) 5 Ecc LJ 211, Salisbury Cons Ct. The chancellor took the following into consideration: (i) the resin replica bust would discolour over time, unlike the marble original; (ii) there was 'virtually no risk' of damage to the bust or casket when drilling it for the purpose of doweling; (iii) an item as weighty and bulky as the bust was unlikely to be stolen; (iv) the CCC commends the practice of insuring items such as the bust for their modern replacement value as opposed to antiquarian value; (v) the disposal of the bust would do nothing to improve parish finances; (vi) risk of theft could be reduced considerably by doweling. Although this was sufficient to dispose of the petition, the chancellor nevertheless considered the remaining *Bishopsgate*

questions. He concluded that the removal of the original would adversely affect the church. He observed that the fact that the replica could not be identified as such by the naked eye from the doorway of the church did not mean that the substitution would not alter the character of the church. He noted that 'character' was not necessarily the same as 'appearance'. The petition was refused. The chancellor gave leave to the petitioners, should they wish, to amend the petition to and seek permission for the drilling of the bust or its fixture by adhesive, observing that such could take place without the consent of the owner, section 3 of the Faculty Jurisdiction Measure 1964 not applying in this instance as Lord Dartmouth was willing to remove only the bust and not the entire monument. [RA]

*Dixon v Edwards and the Vestry of St John 's Parish*

(United States District Court for the District of Maryland: Judge Messitte, October 2001)

*Rector—appointment—canonical obedience*

The Rt Revd Jane Holmes Dixon, acting Bishop of Washington in the Episcopal Church of the United States, sought summary judgment in her action against the Revd Samuel L Edwards, a priest who claimed to be entitled to be rector of St John's parish, Accokeek. In December 2000, the vestry of St John's advised the bishop that it was planning to elect Mr Edwards as its next rector. The bishop informed the vestry that the appointment could not be approved until a satisfactory background check had been made and a discussion held with the bishop of the diocese where Mr Edwards was canonically resident. Following a meeting, Bishop Dixon informed Mr Edwards and the vestry that she would not approve the appointment. She relied upon remarks made by Mr Edwards to the effect that he was encouraging congregations to sever their connection with the church and that his obedience to her, as bishop, would be limited. Despite this, Mr Edwards moved to Accokeek and began officiating at services, which was not itself unlawful as any priest may do so for up to two months. Bishop Dixon sought to preside at a meeting of the vestry and at mass. This was refused. A diocesan canon and by-law respectively provided that where the parish is without a rector, the bishop shall preside if present. The district judge referred to the standard of deference that civil courts must pay to ecclesiastical authorities as articulated in *Watson v Jones* 80 US (13 Wall) 679 (1871) and reaffirmed in many subsequent decisions. By way of example, in *The Serbian E Orthodox Diocese for the United States and Canada v Milivojevic* 406 US 696 (1976), it was held:

'decisions of religious entities about the appointment and removal of ministers ... are beyond the ken of civil courts. Rather, such courts must defer to the decisions of religious organizations on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law.'

The district judge found that the Episcopal Church was hierarchical in structure such that decisions of higher authorities in the church had binding effect on lower authorities. The Washington Diocese is organised pursuant to a law of Congress and the vestry of St John's according to the Maryland Vestry Act, under which it is incorporated and expressed to be subject to the provisions of the canon law of the Episcopal Church. The defendants maintained that Bishop Dixon was not the highest ecclesiastical authority in the diocese. They pointed to the ecclesiastical review panel, a tribunal to determine whether a bishop has violated the national canons. Various charges against Bishop Dixon had been laid before the panel alleging she

had abused her authority by attempting to disapprove of Mr Edwards. However, such charges had been rejected and it had been decided that Bishop Dixon had acted properly. In any event, it was conceded that appeal to a review panel did not have a suspensory effect on decisions of a bishop. Affidavit evidence confirmed the apostolic leadership rôle of the bishop. A letter from St Cyprian was cited: 'the Church is the people united to the bishop, the flock clinging to its shepherd. From this you should know that the bishop is in the Church and the Church in the bishop.' Thus, even if the actions of the bishop were arbitrary (which the district judge did not suggest they were), the court had no say in the matter and had to defer to her decisions. Accordingly summary judgment was granted to the bishop and an injunction was granted to secure the removal of Mr Edwards from the rectory, the cessation of his officiating at religious services and the right of Bishop Dixon, or her delegate, to perform duties in the parish. [MH]

*Re St Kenelm, Upton Snodsbury*  
(Worcester Consistory Court: Mynors Ch, November 2001)

*Trees—concurrent jurisdiction—approach of court*

The petitioners, in two separate petitions, sought a faculty sanctioning the felling of four trees growing in the churchyard of a listed church. The churchyard was within a conservation area. None of the trees was subject to a tree preservation order. There was little dispute as to the desirability of felling three of the trees. A faculty was duly granted and the trees felled. As to the fourth, a large sycamore, the DAC declined to recommend felling as it was 'a particularly fine and attractive specimen, and offers considerable local amenity value'. The local authority indicated that it did not, as a rule, place preservation orders on trees in churchyards as they were, in any event, subject to faculty jurisdiction. The chancellor considered evidence from civil and structural engineers, an arboricultural consultant, and the inspecting architect. English Heritage initially commended monitoring the position for twelve months in the light of movement to the east end of the church. It subsequently withdrew its objection. The LPA recommended crown reduction. The chancellor reviewed in some detail the law relating to trees in churchyards. The chancellor referred to the legal responsibility of the PCC under section 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Prior to that Measure coming into force, the consent of the diocesan parsonages board had to be obtained for the felling of timber growing in a churchyard: see section 20(1) of the Repair of Benefice Buildings Measure 1972, repealed by section 6(4) of the 1991 Measure with effect from 1 March 1993. He also referred to the controls under the Town and Country Planning Act 1990 in respect of trees subject to tree preservation orders, in relation to which there is no ecclesiastical exemption. Notice must generally be given to the LPA of works in relation to trees in a conservation area: see *Tree Preservation Orders. A Guide to the Law and Good Practice* (Department of the Environment, Transport and the Regions, 1999). He drew attention to the requirement for the chancellor, after consultation with the DAC, to give written guidance to all PCCs as to the planting, felling, lopping and topping of trees in churchyards: see section 6(3) of the 1991 Measure. The chancellor considered that certain minor works to trees might usefully be brought within the *de minimis* provisions under section 11(8) of the Measure. Works to trees are not within the archdeacon's jurisdiction. He also distinguished between dangerous trees, which presented an immediate threat, and others where the danger was gradual by way of encroachment or otherwise. Where there is a tree preservation order in existence (and thus concurrent jurisdiction of the LPA and the consistory court) the correct approach (by analogy with planning permission) is to

assume that the LPA has made the correct decision unless there is convincing evidence to the contrary: See *Re St Mary's, Kings Worthy* (1998) 5 Ecc LJ 133, Winchester Con Ct, and *Re St James, Stalmine* (2000) 6 Ecc LJ 81, Blackburn Cons Ct. Where, however, there is no tree preservation order or where the tree is in a conservation area and, following notification, the LPA has declined to make such an order, the consistory court will need to consider the amenity value of the tree in itself, its contribution to the amenity value of the churchyard as a whole, and any loss of amenity likely to arise from the carrying out of the works. In this instance, the loss of the tree would constitute a significant but not serious loss of amenity but would lead to some practical benefit in relation to a retaining wall. A faculty was therefore issued, conditional, among other things, on the planting within 24 months of an appropriate replacement tree. [MH]