

practice, custom or tradition and that the courts will often, but not always, abstain from questions concerning validity and status.

Mummery LJ held that the principle of non-justiciability was concerned with drawing the line between what can and cannot properly be decided by a secular municipal court in disputes relating to religious doctrine and practice, including internal governance. He noted that the drawing of the line between justiciable and non-justiciable actions must be done with caution, especially in cases where the civil rights of the parties, such as property and contract rights, may be affected. The principle of non-justiciability does not apply where it is possible for the court to adjudicate on aspects of religious disputes concerning civil rights and obligations capable of being determined by legal methodology. The non-justiciability doctrine would only apply when the court is asked to answer questions that are neither questions of law nor factual issues capable of proof in court by admissible evidence. The principle of non-justiciability would therefore not apply where the court can answer the question by applying the standards of the group. Mummery LJ noted that the action would not have been stayed if it was possible to identify the successor by reference to judicial or manageable standards that were objectively ascertainable from a bond of union between the adherents of a religion. He confirmed that whether or not there are judicial or manageable standards that are objectively ascertainable from a bond of union, against which the contentions of the parties can be judged, will depend on the precise nature of the pleaded issues for the decision of the court. [Russell Sandberg]

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Re St Martin, Chipping Ongar

Chelmsford Consistory Court: Pulman Ch, 18 July 2012

Chancel pews – historic significance

A faculty was sought to re-order the chancel of a Grade I listed Norman church. Objections were raised about the change of use of the chancel through the introduction of a nave altar and about the removal of high-quality chancel pews introduced in 1931 in memory of Emmeline Pankhurst, who had worshipped in the church as a visitor on a few occasions.

The chancellor observed that the use of the chancel was in the discretion of the incumbent. The chancellor's authority was limited to whether a faculty should issue to enable work on the fabric of the church. Although installed relatively recently within the church's history, the Pankhurst pews had become a part of its history, aesthetics and fabric and were no ordinary pews. Their

removal from their current location would enhance mission and worship by enabling reception of Communion from the intended nave altar that was to replace the inaccessible and poorly visible high altar. Nevertheless, the significance of the pews meant that a faculty would be granted only on condition that they be retained within the church and proposals for their relocation be submitted to the chancellor within 56 days of the judgment for consideration. [Catherine Shelley]

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Re Southern Cemetery, Manchester

Manchester Consistory Court: Tattersall Ch, 27 July 2012

Exhumation

The petitioner, who was the foster daughter of the deceased, sought a faculty to authorise the exhumation of his remains from a grave in Southern Cemetery where they had been interred in 1993. Her intention was that they should be re-interred in another cemetery, in the grave where the deceased's wife had been buried following her death in 2011. The grounds advanced in support of the petition were that when the deceased's wife was alive she was unhappy with the maintenance of Southern Cemetery and that prior to her own death she had expressed the wish that she should be buried in the other cemetery and that her husband's remains should be removed to her grave. She had made some enquiries about the possibility of such removal in the year prior to her own death but had not taken any steps in that regard. The chancellor held that there was no case for granting a faculty on the grounds of a mistake in relation to the burial on the narrow basis established by *Re Blagdon Cemetery* [2002] Fam 299. As to other applicable principles, almost 19 years had elapsed since the deceased had been buried; there was no evidence that family members had been dissuaded from visiting his grave in Southern Cemetery; his wife could, had she wished, have been buried with him; no consideration had been given to exhumation for over 17 years after the deceased had been buried; and it could not be said that his wife had been buried in the other cemetery in any real expectation that he would be exhumed and re-interred with her. Accordingly, the facts did not justify an exception to the presumption of the permanence of Christian burial and the petition was dismissed. [Alexander McGregor]

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