

RECENT CONSISTORY COURT CASES

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Re: St. Barnabas, Kensington

(London Consistory Court, Newsom Ch. 22 October 1988)

A confirmatory faculty was sought for a plastic pool set into a platform at the end of the chancel and normally covered by a heavy wooden lid flush with the platform. The function of the pool was the baptism of adults by immersion or submersion. The incumbent did not discourage infant baptism, neither did he permit "re-baptism" of previously baptised persons. He wished to have an ordinary font for infant baptisms and the pool for some adult baptisms. The Chancellor held that, despite the resolution of the House of Bishops passed on 21 October 1987 (whereby there should only be one font for baptisms in a church, and a font providing for baptism by immersion or submersion should also be readily usable for baptism by affusion) there was no rule of law that there might be only one font in a church. There were considerable practical difficulties in designing a font of the kind contemplated by the House of Bishops. Since the incumbent had proper intentions with regard to the rite, and was orthodox in his teaching about the sacrament, there was no reason to disallow the proposals. The faculty was expressed to operate until further order, so as to guard against any changes of mind in the parish.

Re: St. Lawrence, Skellingthorpe

(Lincoln Consistory Court; Goodman Ch. 29 March 1988)

The Rector and Churchwardens sought a faculty for major works to the parish church, including the building of a substantial extension on the south side of the nave, the removal of a temporary roof (installed after a fire in 1916) and bulky pillars supporting it, the replacement of pine pews by chairs, and the provision of a communion table against the north wall of the nave. The extension, which would be built over existing graves, was intended as hall accommodation; it could also enlarge the worship area. The petition was opposed on the grounds that the scheme was too radical, additional accommodation was unnecessary and graves would be affected. The church was a Grade 2 listed building but of no particular architectural interest. The Chancellor stated that the onus lay upon the petitioners to satisfy him that the faculty should be granted. He had to pay special regard to the desirability of preserving the church and its setting. Regard was also to be had to the guidelines in *Re: St. Mary's Banbury* (1987), 1 All E.R. 247 as qualified in *Re: St. Stephen Walbrook* (1987) 2 All E.R. 578, the Chancellor preferring the approach adopted in the latter case. An extension to a church built on consecrated ground had to be treated differently, in relation to the activities carried on there, as compared with a church hall built on unconsecrated ground; accordingly it was appropriate to obtain from the petitioners and the P.C.C. undertakings limiting the use to which the accommodation could be put. On the evidence the needs of the worshipping community, both present and future, justified the granting of a faculty. These needs outweighed the objections to the proposals. The floor slab supported by piled foundations was unlikely to disturb graves, but directions were given concerning the re-siting of headstones and any necessary re-interment of remains in consultation with the parties opponent. There was also a direction that the drainage was to avoid known graves.

Re: St. Margaret's, Lothbury

(London Consistory Court, Newsom Ch. 29 April 1988)

The Rector and one Churchwarden presented a petition for a faculty to sell a bust of one Sir Peter le Maire made in about 1631 by Hubert le Sueur. Its value was estimated at about £250,000. There was undisputed evidence that the bust was a major work of art and that it could be fixed sufficiently safely for practical purposes without the need for special alarms. The Chancellor held himself to be bound by *Re: St. Gregory's Tredington* (1972) Fam 236 and *Re: St. Martin-in-the-Fields* 1972 (unreported), the combined effect of which was that church treasures could only be allowed to be sold for some "special reason", including any "special character of the ministry" of the church in question. Since the true value of the bust had only recently been appreciated, the loss to the parish in the event of theft or destruction would be of a treasured possession, not a loss measured in financial terms. Accordingly the cost of insurance would not have justified a sale. There were no special reasons, concerning the character of the ministry or otherwise, which could be relied on by the petitioners. The petition was dismissed.

Re: Holy Trinity, Colton

(Carlisle Consistory Court; Stinson Ch. 2 July 1988)

An Archdeacon's Certificate was granted for the re-wiring of the church, lit by pendant lights. The lighting had been given in 1944 in memory of a deceased parishioner. A plaque recorded that the lighting had been given as a memorial. In the course of the work the pendant lights were taken down and a demonstration given of the advantages of tungsten halogen lighting for the 16th century roof. A faculty was thereupon sought to remove the pendant lights (save one in the north transept) and to install tungsten halogen floodlights. The Diocesan Advisory Committee recommended the change. The petition was opposed by the surviving members of the deceased's family and by a churchwarden. No cases were cited to the Court. The Chancellor held that artefacts such as pendant lights given as a memorial could not prevent advantage being taken of advances in technology. On the Petitioners' undertaking to erect a plaque below that existing to record that between 1944 and 1988 the church had been lit by the pendant lights and that in 1988 a faculty was granted for their removal and replacement by floodlights (the wording on such plaque to be approved by the Court) a faculty was granted.

Re: St. Martin's, Looe

(Truro Consistory Court; Boydell Ch. 12 July 1988)

A faculty was sought for the erection of a headstone of grey slate 42 inches high and 20 inches wide. The petition was opposed by the Rector and the P.C.C. on the grounds that no headstone higher than 34 inches should be erected in the relevant part of the graveyard. Although in recent years an overall height of 34 inches had been maintained for monuments placed in the graveyard, the standard of design had declined badly, with one stone of polished red granite being manifestly in breach of the diocesan regulations. The Chancellor granted a

faculty for what the Diocesan Advisory Committee considered was a “decent headstone of commendable design”, because the incongruity arising from its height would be minor by comparison with the red granite stone nearby. Although it was unnecessary for him to decide the issue, the Chancellor also indicated that he was not persuaded that the adoption by a particular parish of churchyard rules which were more restrictive than the diocesan rules, would necessarily be *ultra vires* the P.C.C. There might be, in a particular parish, good reasons for seeking to impose more restrictive rules.

Re: Cheddar Churchyard

(Bath & Wells Consistory Court, Newsom Ch. 11 August 1988)

A petition by the son of A.J.D. deceased, and the person in whom the coffin and memorial stone were vested, for the removal of the deceased’s remains from Cheddar Churchyard was opposed by the deceased’s parents. The purpose of the petition was to enable the deceased’s remains to be re-buried with those of her husband in Epsom. Although the husband during his lifetime had wished that this should be done, on the evidence the deceased had expected to be buried in Cheddar and was content that that should be so. There was no evidence that the deceased ever expressed a wish covering what was being proposed. The decided cases of *Re: Dixon* (1892) ‘P.386 and *Re: Matheson* (1958) 1WLR246 were not directly in point because neither was an opposed petition. There was no general rule of law or practice that husband and wife should be buried together. The primary purpose of interment in consecrated ground was to protect the remains of the deceased; that would be completely effected by leaving the deceased’s remains where they were. The grave was well tended. In any event, if the husband’s main desire had been to be buried with his wife, he could have directed his executrix to have his remains interred at Cheddar. The Chancellor dismissed the petition.

Re: Shepton Mallet Cemetery

(Bath & Wells Consistory Court, Newsom Ch. 26 September 1988)

The local housing authority sought a faculty for the use of 600 square metres of a consecrated burial ground (which for the purposes of the case was indistinguishable from a consecrated churchyard) for the provision of a play area for children from a nearby housing development. The Chancellor held following *Re: St. John’s Chelsea* (1962) 1WLR706, and *Re: St. Mary Woodkirk* (1969) 1WLR1867, that he had jurisdiction to grant a faculty. He was satisfied that there was no reasonable alternative to the petitioner’s proposals, and that the peace of the cemetery would be very little affected, providing adequate regulations were made and enforced. A faculty was therefore granted conferring on the housing authority licence to use or allow to be used the area in question for a period of 50 years, with liberty to the housing authority and the local authority (in its capacity as owner of the burial ground) to apply to extend or curtail the time. The licence was to be subject to such terms and conditions as the Court should order. The petitioners were directed to produce a draft scheme embodying regulations for the use of the area.