decided to inter the deceased's remains in order that she would 'have somewhere to visit him and feel close to him'. She was not made aware that the land in question was consecrated. The chancellor distinguished this case from that of a simple 'change of mind', stating that the widow's change of mind arose not from a passing fancy but rather from a serious wish to rectify what she realised to have been an error on her part. He found that special circumstances existed and issued a faculty accordingly. [RA]

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**Kings v Bultitrode and another; re Schroder**
High Court, Chancery Division: Proudman J, July 2010
*Will – charitable donation – cy-près doctrine*

The claimant was a solicitor and executor of the will of Mrs S, who had been the leading member of a small independent church, the Ancient Catholic Church. The defendants were the representative of the beneficiaries in the case of partial intestacy and the Attorney General. The court found that the church to which the deceased had bequeathed her residuary estate no longer existed, largely as a result of her death, when members went their separate ways and the building, leased to the deceased, ceased to be used by them. The court held that the gift was dependent on the continued existence of the church. The residuary estate was not therefore the subject of a valid charitable gift. The specific intention of the deceased was such that the estate could not be applied *cy-près* to other charitable purposes and was therefore to be distributed under the rules of intestacy. The court further held that the property and assets of the church (rather than those of the deceased) were to be applied *cy-près* and were to be accounted to the Attorney General. [WA]

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**Re Holy Trinity, Eccleshall**
Court of Arches: George, Dean; Briden and Box Chs, July 2010
*Appeal – recusal of chancellor – evidence – wrong evaluation*

The appellants appealed the judgment of Chancellor Coates, sitting in Lichfield Consistory Court,[5] refusing to grant a faculty for the internal reordering of the

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church comprising the introduction of a large dais in the nave, and the consequential removal of some pews. The petition had been unopposed. The appellants' case was first procedural, in that the chancellor had erred in his conduct of the case by imposing an unorthodox approach upon the determination of this petition at variance with the procedure prescribed by the Faculty Jurisdiction Rules 2000, in particular in carrying out an 'evidence gathering visit' (at one stage called a chambers hearing) during which time he heard evidence from objectors without the opportunity for cross-examination. The court held that a chancellor was entitled to engage in fact-finding visits to the church and that there was nothing improper about his asking questions of and hearing the views of the petitioners and opponents, but that such investigative site visits must not be used so as to circumvent the normal procedures for taking evidence and reaching factual conclusions, and that the chancellor should make it clear that the site visit is only one step on the way to making his decision and that he was yet to reject any particular outcome. The chancellor had made two further site visits during the process of determining the application, but subsequently dealt with the matter on written representation with the consent of the petitioners. The court held that these visits were in accordance with rule 26(6) of the Faculty Jurisdiction Rules, although the process was on the borderline of acceptability. However, the court held that the because the chancellor had come to the view that he should recuse himself from dealing with the case by way of a hearing (albeit this was not communicated to the appellants and only became apparent from an inspection of the registry file) he ought likewise to have recused himself from determining the petition on written submissions.

The appellants' primary ground of appeal, however, had been that the chancellor's decision was unsustainable on the evidence. Having reviewed all the evidence that the chancellor had before him, the court found it very difficult to understand what it was about 'the enormity of the project' that so troubled him. The court also found that the chancellor had erred in not given any reason for differing from the expert advice in favour of the scheme, particularly from English Heritage, nor did he give regard to the fact that the proposed works were entirely reversible. The court considered that it had sufficient material before it in the form of photographs and plans to substitute its own assessment for that of the chancellor and that it would have struck the balance in a very different way. It had great difficulty in understanding the chancellor's decision to reject the petition. The court was satisfied that on a proper evaluation of the evidence the chancellor should have granted a faculty. Accordingly it allowed the appeal and ordered a faculty to issue, subject to certain conditions. [WA]

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