

Re St Bartholomew, Cresswell

Newcastle Consistory Court: Hodson Ch, April 2010

Memorial – confirmatory faculty – pastoral consequences

The incumbent had received and approved an application for a memorial in the churchyard. The application stated that the proposed memorial was to be a ‘black granite wedge’, within the permitted dimensions for memorials in churchyards in the diocese. When installed it appeared that the memorial was in the shape of an open book and exceeded the permitted dimensions. The chancellor, in refusing the faculty sought, noted that, as well as exceeding the permitted dimensions, the memorial was of a design ‘generally considered inimical to churchyard locations’ and was ‘itself badly executed’. The chancellor, recognising the pastoral consequences, refrained from making a restoration order in the hope that an appropriate compromise could be reached between the petitioners and the incumbent. He noted that the family had not been well served by the monumental masonry firm, but that his criticisms of the firm could have no legal force as the firm concerned were neither parties to, nor gave evidence in, the case. [WA]

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Re St John, Walsall Wood

Lichfield Consistory Court: Coates Ch, April 2010

Exhumation – reserved gravespace – mistake

The widow of B had reserved a gravespace by faculty next to her husband’s grave. The grant of the faculty had been noted in the burial register but the grave had not been marked. Subsequently the body of H had been buried by mistake in the space, in a service not conducted by the incumbent. The incumbent discovered the mistake straightaway. The widow of B was not content to transfer her reservation to another space, and the mother of H was not content for her son’s body to be exhumed and reburied elsewhere. H had died suddenly abroad, and his body had already been exhumed once (in Spain) and reburied. The Archdeacon of Walsall petitioned the court for a faculty for the exhumation and reburial of the body of H. The diocesan churchyard regulations state that where a mistake of this kind has been made that this is ‘likely to amount to a good and proper reason’ for exhumation, if promptly discovered. In *Re Blagdon Cemetery* [2002] Fam 299, the court stated that in such cases a faculty for exhumation may ‘readily be granted’. Counsel for the opponent mother of H submitted that ‘likely’ and ‘readily’ did not equate to ‘will always’ and ‘inevitably’ and that the chancellor retained discretion. The chancellor was unwilling to overturn the court’s previous decision to grant a faculty for the reservation of the gravespace and noted the views of the family of B and the promptness of

bringing the mistake to the attention of the court. He granted a faculty for the exhumation and reburial of H in the churchyard with the costs of this process, and the court costs, to be paid by the incumbent. [WA]

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Re St Dunstan, Cheam

Southwark Consistory Court: Petchey Ch, April 2010

Church hall – disused burial ground

In granting a faculty for the erection of a hall as a separate building falling partly within the consecrated churchyard and partly outside, the chancellor considered whether section 2 of the Disused Burial Grounds Act 1884 had the effect of preventing the construction of the hall. The section states ‘It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting house, or other place of worship.’ The chancellor found that, whilst the churchyard was no longer used for the interment of bodies, it was still used for the interment of cremated remains and had not been closed by Order in Council. The 1884 Act did not, therefore, apply. [WA]

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Re St Michael and All Angels, Sandhurst

Arches Court of Canterbury: George, Dean, May 2010

Leave to appeal – Human Rights Act – memorials – ‘Gypsy way of life’

At a hearing to determine four petitions in relation to the same churchyard, the chancellor had refused a faculty for the erection of a memorial over the grave of the applicants’ son and granted one for the reservation of the adjoining gravespaces for the applicants. He stated that the reservation and any future permission for a headstone would be conditional upon no unauthorised items or memorials being placed on the grave or reserved gravespaces. The proposed memorial was outside the diocesan churchyard regulations in a number of respects, including the size, material and shape of the headstone, the inclusion of kerbs and the use of an etched photograph and coloured paint. After the refusal the memorial was unlawfully erected in the churchyard. The chancellor adjourned the hearing of the archdeacon’s application for the removal of the memorial to enable the applicants to seek leave to appeal out of time to the Court of Arches and to seek a declaration of incompatibility under the Human Rights Act 1998 in the High Court. Upon the applicants’ application to the Court of Arches the Dean approved the chancellor’s decision to hear