# RECENT ECCLESIASTICAL CASES

*Re St Nicholas, Pottersbury*
(Peterborough Consistory Court: Coningsby Ch, August 2001)

*Polycarbonate window guard—reasonable expectation—suitability*

The PCC petitioned to allow a polycarbonate guard to be installed over a new stained glass window. The DAC and English Heritage had advised against the petition upon the basis that the modern material was out of keeping with the fourteenth century appearance of the exterior; it was difficult to keep clear of debris; the window could not be cleaned naturally by rainwater; polycarbonate changes colour over time and accordingly has to be replaced periodically. The chancellor added his concerns that it is a reflective material that would reflect sunlight. A polycarbonate guard had been used recently on a different and newly installed stained glass window. The DAC had not advised against that, as it was a window not seen by people entering the church for services. The chancellor ruled that granting the earlier unopposed petition to use polycarbonate on the other window had created a reasonable expectation that the current petition would be granted. With hindsight he considered that the earlier petition had been granted in error. The chancellor refused the petition but granted an alternative petition that a wire mesh guard be installed. [JG]

*Re St Michael, Newport*
(Archdiocese of Cardiff Appeal Panel, September 2001)

*Roman Catholic—appeal process—administrative act*

An application was made to the Historic Churches Committee for Wales and Herefordshire (a body operating under the ecclesiastical exemption for determining alterations to Roman Catholic church buildings) for the introduction of a lighting scheme to a Grade II listed church. Concern was raised about the scheme and particularly the intrusiveness of proposed uplighters. The committee voted against a motion to accept the entire scheme except for the uplighters. The uplighters were not voted upon, the bulk of the scheme having already been rejected. The applicant appealed. The appeal panel overturned the committee's rejection of the scheme subject to certain amendments. There was some confusion as to whether the uplighters (which formed one part of the scheme) had, in fact, been rejected by the Historic Churches Committee as it had not voted on the issue. This led to a question whether the appeal panel could overturn a decision that had never been made. The appeal panel came to the conclusion that the determination of the Historic Churches Committee was an administrative act in Roman Catholic Canon Law rather than a judicial act. The appeal was not, therefore, a judicial appeal but 'an administrative procedure put into place by the bishop to resolve a hierarchical recourse against that administrative act'. The written determination of the committee was a singular decree as defined in Canon 48 of the Roman Catholic Code of Canon Law. Further, Canon 57 §2 states that when a decree is requested (in this case for permission to install uplighters) and no reply is received from the competent authority (in this case the Historic Churches Committee) within three months then the reply is deemed to be negative. That time having passed, the appeal panel was able to assume that the proposed uplighters had been rejected. That point established, it overturned the rejection, approved the whole scheme as amended and urged the

Historic Churches Committee to 'make a determination of such proposals' in the future. [WA]

*Gerber v Ellmore*
(Diocesan Tribunal of the Diocese of Sydney, October 2001)

*Australia—ecclesiastical offence—deprivation from holy orders*

The promoter Philip Charles Gerber, who was appointed by the Archbishop of Sydney, promoted charges before the Diocesan Tribunal against the respondent the Revd Robert Ellmore, who was a priest resident in the diocese. The respondent was charged with offences under clause 3(1) of the Offences Ordinance 1962–1968 of a conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards. In December 1999 the respondent had been convicted of two counts of indecent assault against a female under the age of 16 years under s 76 of the Crimes Act 1900 (NSW). The Tribunal found that the ordinary civil standard of proof of the balance of probabilities was applicable. The Tribunal applied the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 that the seriousness of the allegations made or the gravity of the consequences flowing from a particular finding were circumstances which must affect the answer to the question of whether the issue had been proved to its reasonable satisfaction. The Tribunal found the respondent guilty of two offences. The Tribunal found that these offences were of such seriousness as to disqualify the respondent from holding the office of priest and recommended to the Archbishop that the sentence of deposition from holy orders be imposed upon the respondent. On 23 October 2001 the Archbishop gave effect to the recommendation of the Tribunal and imposed the sentence of deposition from holy orders on the respondent.

*Note: The Diocesan Tribunal is the court of the Archbishop and has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial and discipline and ecclesiastical offences against persons licensed by the Archbishop or any other person in holy orders resident in the Diocese. See Constitution of the Anglican Church of Australia, Chapter IX, s.54.*[1]

*Re X, deceased*
(Liverpool Consistory Court: Hamilton Ch, October 2001)

*Exhumation—sexual abuse*

X was buried with his late wife and deceased daughter, Miss X. X's other daughter, W, sought a faculty for the exhumation of X's body for the purposes of re-interment in the place of his birth or burial at sea because X had sexually abused Miss X and another sister. The chancellor granted the faculty on the basis that X would be re-interred elsewhere with a simple headstone and gave permission to remove X's name from the existing headstone by alteration or replacement. The chancellor noted the extreme facts in this case but held that one purpose of a grave was to provide a focus for peaceful and quiet mourning and that X's presence in the grave prevented this. [RA]

[1] This case note was kindly supplied by Garth Blake of Wentworth Chambers, Sydney, Australia.

*Re All Saints, Hough on the Hill*
(Lincoln Consistory Court: Collier Ch, November 2001)

*Floodlighting—bats—'reasonable necessity'*

A petition was granted for the installation of modest floodlighting at the parish church, such floodlighting to be operated until 11pm on Saturdays, Sundays and special occasions between October and March. The principal issues related to concern for the bat population that lived in the church roof and general concerns about light pollution. An assessment was undertaken and conditions were imposed to minimise the level of lighting, to minimise the risk of disturbing the bats (to the satisfaction of English Nature) and to minimise light pollution. The chancellor referred to the Conservation (Natural Habitats, &c.) Regulations 1994, SI 1994/2716, and stated that he expected there to be consultation with English Nature in all petitions in the diocese where there was evidence of bat activity and a chance that there might be disturbance to bats. The chancellor reviewed recent authorities on the *Bishopsgate* questions, indicating that tests of 'reasonable necessity' were unnecessarily restrictive. The chancellor asked himself the following questions in determining the petition:

(i) Is what is proposed a reasonable thing to do within the curtilage of the church?
(ii) If so, will some or all of the proposals adversely affect the character of the church as a building of special architectural and historical interest or adversely affect other community interests?
(iii) If there will be an adverse effect on any of those interests then is the loss that will be occasioned proportionate to the benefit that will be gained from the proposal? [RA]

*Re Makin, deceased*
(Liverpool Consistory Court: Hamilton Ch, November 2001)

*Exhumation—Alder Hey—retained organs*

Organs of a deceased child (M) had been retained by Alder Hey hospital after his death. The organs were subsequently returned to M's mother in a casket and buried in consecrated ground in the same grave as M. Discrepancies existed in the information provided to M's mother about the contents of the casket. The petition sought the exhumation of the casket in order that the uncertainty be eliminated by the opening of the casket to determine which organs had been returned. The chancellor refused to grant the petition, observing that there was no expert evidence to show whether it would be possible to make such determination when two years had passed since the burial. He stated that, as a matter of principle, it would not be right to open the grave simply to check its contents when there was so much uncertainty whether it could provide a satisfactory answer. [RA]

*Re St Margaret's, Orford*
(Liverpool Consistory Court: Hamilton Ch, November 2001)

*Memorial—photograph—removal*

The cremated remains of a young man were interred in the parish Garden of Remembrance and marked with a flat memorial stone consistent with others in the

area of the churchyard. Without the knowledge of the incumbent or PCC and without authority of a faculty this memorial was replaced with a contrasting stone containing a raised oval roundel bearing a good quality photograph of the deceased. In ordering the removal of the stone and its replacement with a stone conforming to the general style of the Garden of Remembrance the chancellor referred to and supported the clearly stated policy of the parish that memorials must conform to the requirements of the parish, including ease of mowing. The stone bearing the photograph did not comply with this policy. Furthermore, the photographic roundel was of a more fragile material than other stones and might be damaged in the course of mowing the area. The chancellor was concerned that such damage would cause distress to the family. Speaking generally he noted that in 'the current litigious mood' some individuals might sue a parish if their stone was damaged in this way. [WA]

*Re Lucas*
(Rochester Consistory Court: Goodman Ch, December 2001)

*Reservation of gravespace*

The petitioners approached the rector about reserving a space in the churchyard at Farningham in January 1999, wishing to be buried next to the parents of one of the petitioners. There was, thereafter, 'appalling delay' as the PCC decided whether to support any more petitions as the graveyard had become something of a wilderness with no proper plan. Eventually the PCC declined to support the application. The argument that further reservations would prejudice the rights of parishioners who may wish to be buried in the 20–30 spaces left was rejected. Following the lodging of the petition no opposition was expressed and indeed no information at all was received from the then incumbent. The chancellor decided to view the site. There were vacant plots to the east and west of the petitioner's father's grave. The chancellor considered *R v West Pennard Churchyard* [1991] 4 All ER 124, [1992] 1 WLR 124, Bath and Wells Cons Ct, and *The Churchyards Handbook* (4th edn, p19). It was now generally accepted that re-use of graves is to be encouraged where the previous burial took place at least 75 years ago and where no relatives of the deceased were likely to be caused distress by e.g. the removal of a headstone. The matter was resolved by way of an agreement signed by the petitioners, churchwardens and the secretary of the PCC with the concurrence of the rural dean (there being no incumbent or priest-in-charge). The petitioners will be buried in a double-depth grave space when the time comes possibly in an area where there have been previous burials. In the event of the gravedigger having difficulties going down to a double depth a double width grave space would be reserved. The faculty was granted reserving the plot for 20 years with liberty to the petitioners to apply for an extension. The petitioners were to pay faculty fees and £150 to the PCC for churchyard maintenance on a double grave space. [JG]

*Re St Mary the Virgin, Essendon*
(St Albans Consistory Court: Bursell Ch, December 2001)

*Church hall—erection—outreach as 'necessity'*

A faculty was granted for the construction of a meeting room with kitchen and lavatories as a self-contained building within the churchyard of a Grade II* listed building. Planning permission had been granted by the local authority but there was a significant body of objectors. The chancellor was of the opinion that the erection of

the proposed building would adversely affect the character of the existing church building. He stressed the burden on the petitioners to shift the presumption against change in a case such as this. The law states that any such changes must be 'necessary' (as stated in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, [1995] 1 All ER 321, Ct of Arches). Whilst not being in entire agreement with the decision in *Re St John the Evangelist, Blackheath* (1998) 5 Ecc LJ 217, Southwark Cons Ct, he shared the opinion that 'necessity' is 'something less than essential, but more than merely desirable or convenient' and concluded that 'not only the pastoral well-being of the church but also ... "outreach" to the community' could count as 'necessary' and thus rebut the presumption against change. The chancellor was clear in his judgment that the church has a duty to reach out to the community. '[S]uch outreach is more than merely desirable or convenient. In my judgment it is something that is requisite'. In this case the provision of lavatories, in particular (bearing in mind the provisions of the Disability Discrimination Act 1995) a lavatory to disabled standards and the provision of a suitable meeting room for a growing Sunday School and midweek activities for the very young and very old weighed in favour of the granting of a faculty. The nature of the building itself was such that these facilities could not satisfactorily be provided by any of the several alternative schemes discussed during the hearing. [WA]

*Re St Matthew, Westminster*
(London Consistory Court: Seed Dep Ch and Acting Ch, January 2002)

*Statue—Madonna*

St Matthew's is a Grade II listed building built in 1851 but extensively rebuilt in the 1970s. By petition dated June 2001 the priest-in-charge and the churchwardens sought the installation on the north side of the church near the pulpit of a statue of the Blessed Virgin Mary holding the infant Christ. It was a gift from the artist in residence based on Revelation 12:1. The PCC unanimously resolved to petition for a faculty. The DAC recommended the works for approval to the acting chancellor. The chancellor decided to give a written judgment not in the light of press interest described by the chancellor as 'bigoted' and 'ill informed' but to clarify a fundamental misunderstanding about art in the Church, calling into question the DAC and the authorities of the church in authorising the work. The chancellor considered *Re St George with St Anne and St Mark, Brighton* (1994) 3 Ecc LJ 353, Chichester Cons Ct, where it was stated that the introduction of a work of art into a parish church should be granted provided the following conditions are satisfied:

(i) the work is aesthetically pleasing and congruous with the church as a whole;
(ii) there is nothing in the work inconsistent with the doctrines of the Church of England;
(iii) the installation of the work will not adversely affect the structure of the church or make necessary any permanent alteration of the fabric or furnishings of the church; and
(iv) the cost of the work can be met without adversely affecting the finances of the parish.

The chancellor went on to add that, having considered *Re St Mary the Virgin, Cottingham* (1994) 3 Ecc LJ 347, York Cons Ct, the introduction of the work has the support of the majority of the worshipping community. He went on to consider whether the object was a work of art in its own right, displayed solely for the purpose of appreciation or was also a visual aid to devotion or teaching vehicle. Is it a focus for contemplative prayer or meditation? In relation to aesthetics the chancellor

considered *Re St Mary, Sullington* (1991) 3 Ecc LJ 117, Chichester Cons Ct, which stated that the chancellor should follow the advice of the DAC unless he is persuaded to depart from it. He also considered 'Goring revisited: George Bell, the artist Hans Feisbuch and Art in Church' by Paul Foster 6 Ecc LJ 36, and adopted the reasoning that the Church would suffer by cutting itself off from the encouragement of creative artists. The chancellor found that all of the conditions set out in *Re St George with St Anne and St Mark, Brighton* had been made out and added that it would be a rich source for contemplative prayer and meditation and indeed a teaching vehicle which can both 'edify' or 'assist worship' as Bishop Bell put it in *Re St Mary, Goring*, see 'Goring revisited' above. [JG]

*Re Walker*
(Liverpool Consistory Court: Turner Dep Ch, January 2002)

*Exhumation—Alder Hey—body parts*

By a petition dated July 2001 the petitioner sought a faculty for permission to disinter for the purposes of pathological inspection and examination the remains of her twin sons stillborn on 15 April 1984 and buried on 24 April 1984 in the family grave having been sent to Alder Hey hospital for post-mortem examination. The petitioner had learnt from the Baby Book of the Institute of Child Health that it appeared possible that only one of the twins' bodies was in fact returned from the Institute of Child Health. The uncertainty was generated by the fact that there were a number of features of the case which the chancellor described as 'perplexing' and 'highly unusual'. The chancellor went on to consider *Re Christ Church, Alsager* [1999] Fam 142, [1999] 1 All ER 117, Ch Ct of York: was there good and proper reason for the exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large? He considered the petitioner's rights (or lack of them) under Article 6 (right to fair trial) and Article 8 (right to respect for private and family life) of the Human Rights Act 1998, Sch 1. He concluded that exhumation would identify skeletal remains but also identified the problem that the existence of only one set of remains would cause heightened anguish to the petitioner. The chancellor decided that the petitioner was transparently sincere in her expressions and intensity of feeling. He was not fully convinced that full peace of mind would be achieved but was convinced that the petitioner needed to know the circumstances of the burial. He went on to consider that the records themselves gave rise to a very real problem and raised a prima facie basis for real suspicion that all was not in order. The petition was granted with conditions and no order for costs. [JG]

*Ermogenous v Greek Orthodox Community of SA Inc*
(High Court of Australia: Gaudron, McHugh, Kirby, Hayne and Callinan JJ, March 2002)

*Australia—minister of religion—employment status*

The appellant Archbishop Spyridon Ermogenous, for more than 20 years Archbishop of the autocephalous Greek Orthodox Church in Australia, made a claim in the Industrial Relations Court of South Australia against the respondent for sums claimed to be due to him for annual leave and long service leave. An Industrial Magistrate found for the appellant, concluding that the appellant had been employed by the respondent under a contract of employment. The Full Court of the Supreme Court of South Australia by majority allowed an appeal and ordered that the appellant's claim be dismissed. The appellant by special leave appealed to the High Court of Australia.

The majority of the Full Court (Doyle CJ and Bleby J) had taken as their starting point the proposition that an intention to enter into a contractual relationship about the remuneration and maintenance and support of a minister of religion is not to be presumed. This proposition was said to find its origin or support in several decisions in the United Kingdom (*Re National Insurance Act 1911, Re Employment of Church of England Curates* [1912] 2 Ch 563; *Re Employment of Ministers of the United Methodist Church* (1912) 107 LT 143; *Scottish Insurance Commissioners v Church of Scotland* [1914] SC 16; *Rogers v Booth* [1937] 2 All ER 751; *President of The Methodist Conference v Parfitt* [1984] QB 368, CA; *Davies v Presbyterian Church of Wales* [1986] ICR 280, HL; *Santokh Singh v Guru Nanak Gurdwara* [1990] ICR 309, CA; *Birmingham Mosque Trust Ltd v Alavi* [1992] ICR 435, EAT; and *Diocese of Southwark v Coker* [1998] ICR 140, CA), New Zealand (*Mabon v Conference of the Methodist Church in New Zealand* [1998] 3 NZLR 513), Canada (*McCaw v United Church of Canada* (1988) 51 DLR (4th) 86), the United States (*Moses v Diocese of Colorado and Frey* 863 P 2d 310 (1993); *Minker v Baltimore Annual Conference of the United Methodist Church* 894 F 2d 1354 (1990)) and Australia (*Knowles v Anglican Church Property Trust, Diocese of Bathurst* (1999) 89 IR 47). They found that the parties had not intended to enter into a legally binding relationship. Fundamental to the reasoning of the majority was that a distinction should be drawn between the church and the respondent organisation.

In their joint judgment, the High Court (Gaudron, McHugh, Hayne and Callinan JJ) doubted the utility of using the language of presumptions in the context of the engagement of a minister of religion. At best the use of that language invited attention to identify the party who bears the onus of proof. The use of such language had in this case led to treating one proposition (that an intention to create legal relations is not to be presumed) as equivalent to another, different, proposition (that generally, or usually, it is to be presumed that an arrangement about remuneration of a minister of religion will not give rise to legally enforceable obligations). The inference drawn by the Full Court about the absence of an intention to create legal relations was an inference that was not open on the facts that had been found at trial.

Kirby J said that he was unconvinced that the English cases warranted a conclusion that, in Australia, a contract partaking of the usual features of one of employment, necessarily loses that character because it relates to the vocation of a minister of religion. A proved agreement to provide for the necessities of life of a minister of religion would be enforced by courts as an arrangement intended to have contractual or other binding force. To the extent that English decisions, starting from a different history and legal foundation and taking a different approach, reach a different conclusion, they do not express the common law of Australia. There is no presumption that contracts between religious or associated bodies and a minister of religion, of their nature, are not intended to be legally enforceable. At least where the contracts concerned proprietary and economic entitlements there is no inhibition either of a legal or a discretionary character that would prevent enforcement of such claims when they are otherwise proved to give rise to legal rights and duties.

As the Full Court did not consider whether any enforceable contract between the appellant and the respondent was a contract of employment the High Court remitted the matter to the Full Court for further hearing.

*The judgment of the High Court is reported at [2002] HCA 8.*[2]

[2] This case note was kindly supplied by Garth Blake of Wentworth Chambers, Sydney, Australia.

*Re St Mary's, Wimbledon*
(Southwark Consistory Court: George Ch, March 2002)

*Memorial*

The petitioner was the son of Leslie and Kathleen ('Kitty') Godfree, both well-known and distinguished tennis players. Kitty Godfree's ashes were interred at St Mary's and some earth taken from Mortlake Crematorium, where Leslie's ashes had been scattered, was also scattered there. In 1992 the rector had orally agreed to the erection of a memorial plaque in the church, referring to both of the petitioner's parents. The rector had not consulted the PCC. The PCC had refused all applications for installation of plaques since the end of the First World War. The PCC did not see any reason to make an exception for the Godfrees. The PCC objected on two grounds, namely lack of space and lack of any close association with St Mary's. In addition, it would constitute an unwelcome precedent. The DAC declined to recommend the works. The chancellor considered *Re St Margaret's, Eartham* [1981] 1 WLR 1129, Ct of Arches, where the Dean of the Arches ruled that:

(i) faculties for memorials cannot be freely given out;
(ii) a faculty for a memorial should be regarded as a special privilege reserved for exceptional cases. In relation to this he considered *Re St Nicholas, Brockenhurst* [1978] Fam 157, [1977] 3 All ER 1027, Winchester Cons Ct, where the chancellor had to ask whether (*a*) this case is so exceptional that the privilege should be granted, and if so (*b*) are the circumstances such that a faculty should be granted;
(iii) factors to be considered included that character of or outstanding service to church, country or mankind, a desire to record by the memorial some important or significant aspect of local or national history and some family history or tradition of such memorials;
(iv) the burden was on the petitioner;
(v) even where exceptionality was proved such a faculty will not be granted as a matter of course. The chancellor considered Newsom's *Faculty Jurisdiction of the Church of England* (2nd edn) at p144 and the Revised Directive on Churchyards and Memorials in Churchyards and Churches.

The chancellor found that the time had not yet come to rule out further memorial plaques at St Mary's, identifying areas where they may be put. Kitty Godfree passed the exceptionality test in his view, although her husband alone might not. He considered that her achievements in the All England Tennis Club and the interment of Kitty Godfree's ashes in the churchyard was sufficient close and direct connection with St Mary's. In granting the petition, the chancellor stated that nothing in this judgment should be taken as a precedent, noting that future English successes at Wimbledon seemed unlikely. [JG]

*Re Christ Church, Harwood*
(Manchester Consistory Court: Holden, Ch, March 2002)

*Headstone – portrait*

The petitioners sought a confirmatory faculty for a memorial incorporating an engraved photographic image of their daughter who had died tragically at a young age. It was held, granting the confirmatory faculty, that no one had an automatic right

to place a memorial on a grave; those memorials which were allowed should not be repugnant to Christian belief and teaching or to the law of the land, but did not have to be positively Christian in character; that there was no doctrinal objection to portraits except where the specific depiction in a portrait for some reason raised a matter of doctrine; that although porcelain portraits were not permitted, portraits engraved in stone which were essentially monochrome in character and of a subdued hue could be allowed. Furthermore the chancellor also had to be satisfied that (i) the impact of the monument on its surroundings was acceptable and that it was not in competition with other memorials; (ii) the PCC would be able to look after the memorial and that the engraved portrait was durable; (iii) the memorial did not pose a health and safety hazard; and (iv) the petitioners had shown that the presence of the engraved portrait on the gravestone was important for them to be able to grieve effectively.[3]

*Re All Saints, Crondall*
(Guildford Consistory Court: Goodman Dep Ch, April 2002)

*Millennium window—Bishopsgate questions—necessity*

The vicar and churchwardens sought to replace two plain glass windows in this Grade I listed building with stained glass of a contemporary design to mark the new millennium. The faculty was supported by the DAC. English Heritage had no objection but the CCC objected to the installation of a contemporary style of glass in an historic building and to the use of snippets of biblical texts in one window and some of the symbols used in the other. Technically, they doubted the suitability and durability of the glass and its construction within the window. The deputy chancellor dismissed these objections after lengthy evidence from a variety of expert witnesses called by both sides. In addressing the *Bishopsgate* questions the deputy chancellor followed the approach in *Re St Gregory's, Offchurch* [2000] 4 All ER 378, [2000] 1 WLR 2471, 6 Ecc LJ 82, Coventry Cons Ct, by first asking whether or not the proposed change would adversely affect the character of this ancient church. This approach differed from the original approach in *Re St Helen's, Bishopsgate* (1993, unreported) affirmed by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, [1995] 1 All ER 321, which first asks whether the proposed change is necessary, it being difficult to prove 'necessity' in the case of a stained glass window. The deputy chancellor concluded that the proposed windows (installation of which being, in any case, reversible) 'would not adversely affect [the church's] character but would make a fresh and acceptable contribution to the ongoing history of the building'. The petitioners had rebutted the presumption against change and a faculty was granted. [WA]

*Re Blagdon Cemetery*
(Court of Arches: Dean of the Arches; Clark and George Chs, April 2002)

*Exhumation—presumption against—exceptionality*

The court allowed the appellants' appeal against the decision of Briden Ch, sitting in the Bath and Wells Consistory Court, refusing a faculty for the exhumation of their son who had died in 1978 aged 21 years. The appellants had not established a permanent home until shortly before they petitioned the chancellor and they sought the exhumation in order that their son could be reburied in a plot reserved also for them-

[3] This case note was kindly supplied by Jessica Giles, solicitor, BA, LLM.

selves. Having considered a paper on the theology of burial requested by the court from the Rt Revd Christopher Hill, the court affirmed the principle that there is a presumption against exhumation and that only exceptional cases would warrant the grant of a faculty. The court made certain observations of wider application:

(i) Medical reasons relied upon by a petitioner would have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of the location of the grave;
(ii) The lapse of time will not in itself be determinative of the petition. The existence of a credible explanation for the delay is relevant;
(iii) A mistake as to the location of a grave can be a ground for the granting of a faculty for an exhumation;
(iv) A change of mind as to the location of the grave should not be a ground for the granting of a faculty for an exhumation;
(v) The views of close relatives of the deceased are very significant;
(vi) The support of the wider community, including the incumbent, the PCC and parishioners will normally be irrelevant;
(vii) It was appropriate for a chancellor to have regard to the effect of setting a precedent when determining such petitions;
(viii) Family graves are to be encouraged as an expression of family unity and as an economical use of land for burials.

In granting the appeal, the court identified the following as special factors:

(i) The sudden and unnatural death of the appellants' son at an age when he had expressed no view about where he would like to be buried;
(ii) The absence of any link between the appellants' son and the community in which he was buried;
(iii) The appellants' lack of a permanent home at the time of their son's burial;
(iv) The fact that the appellants had made enquiries shortly after their son's death about the possibility of future exhumation when they had acquired a permanent home;
(v) The appellants' purchase of a triple depth burial plot in the community of which they were now settled and permanent members. [RA]

*Note*: *In reaching its decision the court differed in certain limited respects from the reasoning of the Chancery Court of York in Re Christ Church, Alsager [1999] Fam 142, [1999] 1 All ER 117. The consequence of having conflicting precedents in the Northern and Southern Provinces will need to be worked out over time. It is discussed in the editorial.*