



Gospel and Law

The newsletter of the
Ecclesiastical Law Society



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Candlemas Edition: Editorial:

Welcome to the Candlemas edition of the ELS newsletter with some reflections on recent Consistory Court decisions considering issues of resources and costs. The agenda for Synod suggests that this will be a busy session with several of the simplification proposals making further progress. A brief report of Chancellor Petchey's London Lecture on the Church's silver plate is a mere taster for the full talk but hopefully provides an interesting insight. Responses to the Christmas Quiz provide some entertainment and as usual there are dates for your diary, however, please note that remaining places for the Conference are now limited.

Some Consistory Court decisions and money...

Following on from the decision of Peter Collier QC Ch in 2015 permitting the removal of the wall around Holy Trinity Hull (reported ELJ September 2016 Vol.18, No.3 p.378) and the decision to designate the church as a Minster, effective from May 2017 as part of Hull's Year as the City of Culture, a faculty has now also been granted for internal re-ordering. Reported as **Re Holy Trinity Hull [2017] ECC Yor 1** Ray Hemingray writes:

"The proposals were for a major reordering, for most of which there were no objections. Amongst the amenity societies consulted, only the Victorian Society became a party opponent, objecting principally to the proposed removal from the nave of "one of the most magnificent and extensive suites of Victorian church seating in the country". In weighing the benefits which the proposals would bring against any loss to the historical and architectural importance of the church, the Chancellor had to consider the evidence of the petitioners as to the financial viability of the church, if the works were not carried out. On balance he determined in favour of the petitioners and granted a faculty."

It is interesting to see the issue of financial viability of the church being considered as part of the issue of need outweighing the harm to significance occasioned by the re-ordering.

Another relatively recent decision in which a Consistory Court considered financial issues was **[2016] ECC Bir 2 In Re Christ Church, Summerfield**, a decision in October 2016 by Powell QC Ch. Although granting the faculty on the basis that the benefits promised by the work outweighed the minimal harm to the Grade II listed church, the Chancellor stated that he wanted further information about the order in which the work was to be carried out and assurances that funding was in place.

In the case of **Re St James Kidbrooke [2016] ECC Swk 13** the Petitioners for a faculty to license a telecommunications mast sought security for costs against the sole party opponent on that party's failure to file details of experts to be relied on at the hearing. The Petitioners argued that the party opponent was dependent for income on social security benefits and sought to fund her case through crowd funding. Philip Petchey Ch declined to make the order for security for costs on the



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basis that such an order would effectively debar the party opponent from making her case. However, he did warn that this would not prevent him making a costs order following the hearing should that be what the justice of the case required.

Synod Agenda: February Group of Sessions 2017

Monday 13th February 2017

- [GS 2043](#) - Report by the Business Committee
- [GS 2044](#) - Anniversary of the Reformation (see too the Archbishops' statement [GS Misc 1156](#))

Tuesday 14th February 2017

- [GS 2045A](#) & [GS 2045B](#) - **Preliminaries to Marriage** – ecclesiastical preliminaries (including bans) to be replaced by universal civil preliminaries
- [GS 2014B](#) & [GS 2014Z](#) - **Draft Mission and Pastoral etc. (Amendment) Measure** giving effect to Phase I of the work of the Simplification Task Group includes provisions for consultation for Pastoral Schemes, creation of Bishops Pastoral Orders and compensation for loss of office on pastoral re-organisation - for final approval
- [GS 2031A](#) & [GS 2031Y](#) - **Draft Ecclesiastical Jurisdiction and Care of Churches Measure** – consolidation Measure - for final approval
- [GS 2027A](#) & [GS 2027Y](#) - **Draft Legislative Reform Measure** – Provision for a simplified legislative process to amend legislation to remove burdens – for revision
- [GS 2030](#) & [GS 2030x](#) - **Draft Statute Law (Repeals) Measure** – Measure to repeal obsolete ecclesiastical legislation – for revision
- [GS 2032A](#) & [GS 2032Y](#) - **Draft Pensions (Pre-consolidation) Measure** – preliminaries to the consolidation of pensions legislation – for revision
- [GS 2046](#) & [GS 2046x](#) - **Draft Church Representation, Ecumenical Relations and Ministers Measure** and [GS 2047](#) & [GS 2047x](#) - **Draft Amending Canon No. 38** – giving effect to Phase II of the work of the Simplification Task Group, including revised church representation rules and simplification of provisions re ecumenical relations
- [GS 2048](#) & [GS 2048x](#) - **The Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2017** – permits terms of office of bishops, deans, archdeacons and residentiary canons to be extended beyond 70
- [GS 2049](#) & [GS 2049x](#) - **The Church of England Pensions (Amendment) Regulations 2017** – changes to the arrangements for the appointment of some of the members of the Pensions Board
- [GS 2050](#) & [GS 2050x](#) - **The Safeguarding (Clergy Risk Assessment) Regulations 2016** – provision for the conduct of clergy risk assessments in cases of safeguarding concerns
- [GS 2051](#) & [GS 2051x](#) - **Legal Officers (Annual Fees) Order 2016** – as described
- [GS 2029A](#), [GS 2029AA](#) & [GS 2029Y](#) - **Draft Amending Canon No. 36 & Draft Amending**



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Canon No. 37 – (i) provisions of canon on vesture to be relaxed if the minister determines after consultation with the PCC that adopting some other form of dress is acceptable and will benefit the mission of the Church in the parish (ii) usual form of burial service may be used for unbaptized and suicides

Wednesday 15th February 2017

- [GS 2052](#) - Creation of Suffragan See for the Diocese of Leicester
- [GS 2053](#) - Appointment to the Archbishops' Council
- [GS 2054A](#) & [GS 2054B](#) - Fixed Odds Betting Terminals: Reduction of Maximum Stake
- [GS 2055](#) - Marriage and Same Sex Relationships after the Shared Conversations: A Report from the House of Bishops

Thursday 16th February 2017

- [GS 2056](#) - Setting God's People Free: Report from the Archbishops' Council

Hidden Treasure: the Church of England's stewardship of its silver plate – London Lecture by Philip Petchey, Wednesday 25th January 2017.

The lecture began with a consideration of the simple argument for disposal of church plate advanced in the case of *In re St James, Welland* [2-13] *PTSR 91* that it was redundant, no use to anyone in a bank vault and as a charity the church should realize assets that were not being used. The argument was accepted in the Worcester Consistory Court by Mynors Ch but disapproved by the Court of Arches in *Re Lawrence Wootton* [2015] *Fam 27*. Decisions concerning the church's silver plate must also take into account the fact that the church is a steward of valuable and sacred treasures. The talk considered in detail the development of the jurisdiction to permit sale from the days when wine was consecrated in flagons, not mere chalices.

The first case that actually permitted the sale of church silver did not arrive until 1913 when the a faculty was granted for the sale of the Studley bowl, a child's porringer that had been used as an alms dish. The chancellor authorized the sale, overriding the vicar's objection that the bowl was sacred. However, the sale was restricted in that it was to the South Kensington Museum not on the open market. In 1919 Chancellor Bray Kempe decided the cases of St Mary Northolt and St George in the East; sale in the former case was refused but was permitted for St George in the East because of the parish's parlous financial state and special need for the funds. The sale was again restricted, this time to the London Museum, as the Chancellor could not permit alienation of church treasures on the open market.

The case that authorized alienation without restriction, save for the Charities Act, was the *In Re St Mary Gilston* [1967] *P 125*, a decision by Newson Ch who seems to have been less concerned about the alienation of sacred items. This was partly because imposing a restriction on the first sale does not necessarily preserve that restriction on subsequent sales if the item is sold on. The



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effect of a restriction on the price to be obtained was also relevant. The talk concluded with consideration of the degree to which the decisions taken by the Court of Arches in respect of alienation were more a matter of policy than law.

And as Candlemas brings Christmas to an end for even the most dedicated, thank you for replies to the Christmas Quiz, as follows:

The parish has brought a beautiful Christmas tree but discovers when putting it up in church that it is somewhat top-heavy; a hammer, nails and rope are to hand - what should they do?

Ask the newest family to take it over and explain their children will love decorating the tree. That happened to me. David Pickup

Use the rope to strangle the idiot who bought the tree. Frank Cranmer

In response to this question, David Pocklington offered the following:

A church had an informal arrangement with local undertakers to place a Christmas tree on the top of the tower. After Mass, the undertakers used a rope to raise the tree up the outside of the tower, but in so doing caused one of the crenellations to shear off and fall onto the apex of the South Transept, and then to the churchyard below. Assess the liabilities involved and whether the HSE should be notified of a near miss? Was this an Act of God? Who would be liable for the distress of congregation members who were standing in the South Transept at the time?

He commented: "You couldn't make it up: but I can remember it happening (and the replacement of all the crenellations), but was not involved in any resulting legal issues."

On the Sunday before Christmas the parish will hold its annual candle-lit Carol Service; all are welcome but no child under 12 will be allowed to hold a candle. Is this restriction legal?

Yes because many adults will be emitting alcohol laden fumes and there is a danger they will explode if they hold the candles. David Pickup

Hope so: the only time I ever officiated at a Christingle I was mightily relieved to get through it without any of the kids setting light to themselves. Frank Cranmer

Following the Carol Service a sumptuous mulled wine cup is served, made with a combination of wine and port. Many parishioners enjoy a cup or two and then drive home. Several are stopped on their way home and charged with drink driving. What is the parish's liability?

None, but commonsense dictates that they should warn the parishioners that the wine is potent. They will probably need a license to supply the alcohol. Mulled wine is a crime against good taste as it ruins the taste of wine. David Pickup



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Are you suggesting that they might sue the parish for giving them the opportunity to drive with excess alcohol? Would any civil court buy that? Otherwise, surely drink driving is a criminal offence that the parish cannot, corporately, commit. Frank Cranmer

As an alternative to a Christingle Service a parish decides to stage a performance of Raymond Briggs 'The Snowman' as a good moral tale of loyalty and friendship which may be more acceptable to a multi-cultural audience. Is there any legal reason why they shouldn't?

It is probably still in copyright and everyone saw it in the 1980s and enjoyed it the first time round but by the second time it was a bit tedious and by the thirty x time it is maddening. The Snowman would probably be tagged now for taking a boy out of doors without his parents' permission. David Pickup

Why not? All sorts of stuff gets performed in churches and church halls. Frank Cranmer

The weekend before Christmas a bride is late for her wedding, by over an hour.... How long *should* the vicar wait for her to arrive?

Depends how much he will be paid. David Pickup
No idea. Frank Cranmer

Four days after Christmas the vicar meets a family to plan the funeral of a family member who died on Boxing Day; the family want to sing carols at the funeral. Is this permissible?

If he died on Boxing Day check the cause of death on the death certificate. If over indulgence of turkey, mince pies or TV then suggest tactfully something different. If over exposure to in laws then the family deserves sympathy and let them have what they want. David Pickup

Surely the answer must be "yes": there's nothing in the service books to direct what music may be performed. (I aim to have Boney Was a Warrior at mine but, of course, it won't be a C of E funeral. I reckon some might take offence, alas, at Short Ride in a Fast Machine...) Frank Cranmer

Dates for the Diary:

London lectures 2017 - free of charge and open to members and non-members, but please book ahead (with admin@ecclawsoc.org.uk) as spaces are limited.

All lectures continue to be held at Winckworth Sherwood, Minerva House, 5 Montague Close, London SE1 9BB and begin at 5.30pm with refreshments available from 5pm.

16th March 2017 – Howard Dellar, Lee Bolton Monier-Williams, *The implications of the Education Acts for Church schools and academies*



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21st June 2017 – Nigel Baker, former HM Ambassador to the Holy See, *The Embassy to the Holy See: who, what, why?*

11th October 2017 – Sir Mark Hedley DL, Deputy Chair and Deputy President of the Tribunals, *Practical Aspects of the Clergy Discipline Measure*

***'The nature and diversity of authority in Anglicanism...'*, the 2017 ELS Residential Conference and AGM will be at Trinity Hall, Cambridge** from Friday 31st March to 2nd April 2017. This will also be the 30th anniversary of the Society.

Speakers whose attendance is confirmed include Rev Dr Sam Wells (St Martin in the Fields), Professor Norman Doe (Cardiff University), Rt Rev Ric Thorpe (Bishop of Islington), Rev Lucy Winkett (St James Piccadilly), Ven Jane Steen (Archdeacon of Southwark), Stephen Slack (General Synod), Rev Canon Dr Philip Groves (formerly of the Anglican Consultative Council), Chancellor Ruth Arlow and Sir John Laws.

Most services will be held in the College Chapel and the Sunday Morning Eucharist will be in Clare College Chapel, with Right Rev Christine Hardman, Bishop of Newcastle as President and Rev Lucy Winkett, St James Piccadilly as Preacher. There are still places left but they are going quickly. Prices are variable dependent on whether you have an en suite room or not and there will be bursaries available for clergy again.

John Duddington, Editor of Law and Justice, the Christian Law Review has asked us to inform you about its one day Conference on "***The Reformation Revisited: Catholic and Protestant Approaches to Law***". It is to be held on Thursday 14th September at Heythrop College, London. Please contact John if you're interested in attending at his email address: editor@lawandjustice.org.uk. Details of the Conference and a booking form can be found on the website: www.lawandjustice.org.uk