

Re St Nicholas, Arundel

Mr James Behrens of counsel instructed by Messrs White & Bowker of 19 St Peter Street, Winchester for the Petitioners.

Mr Timothy Briden of counsel instructed by Messrs Brutton & Co of West End House, 288 West Street, Fareham for the Party Opponent.

Judgment

1. By a petition dated 22 September 2000, a confirmatory faculty is sought in relation to fifteen specific items introduced into the church following a major re-ordering. Their introduction was without authority of a faculty and hence unlawful. There is one party opponent, or objector as he would now be styled, namely Mr Robin Wootton. He takes objection to seven of the items, to the detail of which I turn later, and to a number of other matters which he alleges have also been introduced without authority. He framed his particulars of objection on two broad bases. He regarded them as unlawful as a matter of ecclesiastical law, and as representing a departure from the Anglican tradition in favour of that of Roman Catholicism. At the hearing of the petition, these broad themes were marshalled and developed by his counsel both specifically in relation to the individual items and more generally in so far as they evidence an underlying change.
2. I can deal with the background very briefly as it is uncontroversial. The church of St Nicholas, Arundel is a grade II* listed building, dating from the 1380s. The patrons of the living are the Bishop of Chichester (two turns) and the Duke of Norfolk (one turn). It has what is described as 'a long catholic tradition'. The current incumbent, Fr Keith Richards, who jointly with the churchwardens petitions for the confirmatory faculty, commenced his ministry in the parish in May 1997. In November of that year the Archdeacon of Chichester granted a licence for temporary re-ordering on an experimental basis. Broadly this comprised the removal of the upper tier of a podium upon which the nave altar stood and the re-siting of certain pews. Within a few months plans were drawn up for a major re-ordering, which found favour with the Diocesan Advisory Committee, and in July 1999, my predecessor granted a faculty for various works. These included the complete removal of the podium, and the restoration of floor tiles believed to date from the time of Sir George Gilbert Scott. New heating and

lighting systems were introduced and a complete electrical re-wiring was carried out. The cost was in the order of £150,000 and at the direction of my predecessor, the works were supervised by Mr Geoffrey Claridge, until recently the parish's inspecting architect. On 15 March 2000, I granted a further faculty, this time for the replacement of the sound amplification system and the introduction of closed circuit television. This work was likewise supervised by Mr Claridge.

3. I am in no doubt as to the success of these works. The church has a most attractive uncluttered appearance and openness. The materials and craftsmanship cannot be faulted. It is a credit to those who conceived and carried through the project, bringing a real sense of presence in a building which is at risk of being secularised by a constant throughput of tourists. I am not alone in this opinion. It is shared both by the Diocesan Advisory Committee and by the Bishop of Horsham. I pause to observe that from the various papers which I have read and which are helpfully digested in the skeleton argument provided by counsel for the Petitioners, there was considerable consultation within the parish as embryonic ideas took shape and evolved. I have particular regard to the pew sheets, the minutes of the annual parochial church meetings, the annual reports presented to such meetings and the minutes of meetings of the parochial church council.
4. However, along with the successful completion of the project came the unauthorised introduction of the various items with which this court is concerned. Their introduction does not appear to have been part of a systematic flouting of the faculty jurisdiction. Rather, it is the combination of over-enthusiasm and an extraordinary knack on the part of Fr Richards to acquire ecclesiastical accoutrements at bargain basement prices. Such serendipity coupled with the evident relief at seeing through a major project caused him momentarily to lose sight of the importance of the faculty jurisdiction and of his canonical duty under Canon F 13 paragraph 3, a duty shared with the churchwardens then in office.
5. In his witness statement, Fr Richards' apology was limited to his lack of vigilance in processing the paperwork necessary to petition for a confirmatory faculty. Doubtless on advice, the apology which he tendered to me in open court was more fulsome and contrite. In addition, the thinly veiled criticism of Mr Claridge was withdrawn by counsel for the petitioners. Whilst I would not wish to condone the failure on the part of Fr Richards to seek prospective approval for these works, his oversight is explicable, if not excusable. I have no reason to question the sincerity of his apology, made in public, in his own church, in the presence of the churchwardens, some of his parishioners and his bishop. I accept the apology and propose to say nothing further on the subject.
6. I therefore turn to the thrust of Mr Wootton's case. He maintains that those items in the petition to which he takes objection indicate a change in churchmanship. He points to the introduction of, for example, a tabernacle, six candlesticks, a sanctuary lamp and holy water stoup. Taken collectively, his counsel suggests, these indicate a departure from traditional Anglican churchmanship and a

wholesale adoption of Roman Catholic practice. Although issues of churchmanship are of general concern throughout the Church of England, they have a particular resonance in this parish in that the church includes under the same roof a Roman Catholic chapel. Styled the Fitzalan Chapel, it houses the tombs of the Norfolk and Fitzalan families. It lies at the east end of the church immediately behind the high altar and reredos. It is separated from the church by a glass screen. Many tourists visit the church in order to view the chapel through the screen, not least to avoid an entrance fee levied for those choosing to enter the chapel from the grounds of Arundel Castle.

7. Mr Wootton's concern, both on his own account and in relation to visitors to the church, is that there is a particular need for clarity of presentation and teaching of Anglican practice in circumstances where there is a contiguous Roman Catholic chapel. His witness statement reveals with some passion his belief that he is charged with protecting the faith and practices of the Church of England. Whilst not doubting the sincerity of his beliefs, I have to pay regard to the ecumenical movement as identified, in law at least, in the Sharing of Church Buildings Act 1969 and the so-called 'ecumenical canons' B 43 and B 44. I note the remark made in passing during the course of the Bishop of Horsham's evidence that one must be grateful that the aperture between the church and the Fitzalan Chapel is filled with glass and not with brick.
8. However, I perceive Mr Wootton's objection to be more subtle than an innate hostility to Roman Catholicism. As ably developed by Mr Briden, the argument is that if the Church of England ceases to be distinctive, it ceases to be. Mr Briden, in his closing submissions, spoke of churchmanship as being a matter of particular sensitivity, where a difference exists between Anglican and Roman Catholic practice. He says that it behoves a church to recognise this distinction and the overt way of doing this is in the manner in which it is furnished and ornamented. Put brutally, the suggestion is that on walking into the church of St Nicholas, Arundel, any member of the public could be forgiven for believing he was in a Roman Catholic church. The holy water stoup and the impression of a high altar upon which a tabernacle and six candles are placed are indicia of Roman Catholicism. Thus, the argument runs, there is a loss of Anglican identity. Mr Briden suggests that the distinction has become blurred and that it is visually difficult to distinguish the two in the heritage of the church.
9. In fairness to Mr Wootton, the evidence clearly supported the fact that since Fr Richards arrived in the parish in 1997, there had been a move towards Anglo-Catholicism. Through his witness statement, Mr Joe Hayes, one of the churchwardens and a petitioner, introduced a sliding scale of churchmanship, with evangelical at 1 and catholic at 10. He scored Fr Richards' predecessor and a number of priests who had assisted in the interregnum. The impression given by the evidence was that Fr Richards had taken the churchmanship up a notch. Crude though I found this sliding scale to be, I invited the Bishop of Horsham, the Rt Reverend Lindsay Urwin, to address it. I had called the Bishop to give evidence

as a judge's witness in relation to the theological issues which were raised. His answer did not fit well with the scale. He told the court that from an episcopal point of view, churchmanship was a matter of vibrancy of life - attendance, spirituality and growth. He considered that since Fr Richards' arrival, the church had become both more catholic and more evangelical. He had received no adverse comments about liturgical and other changes within the church, but he perceived a sense of renewal in parish life. Perhaps unsurprisingly, when cross-examined Mr Wootton did not feel able fully to accept the Bishop's assessment and suggested that the Bishop did not have the same insight as a resident. He accepted that although he had corresponded with the Bishop, he had never himself complained to him.

10. I fully accept the evidence of the Bishop in whose episcopal area the parish lies and I adopt his careful assessment of spiritual life in the parish. There is nothing in the evidence of Mr Hayes or that of Mr Charles Richardson, his fellow churchwarden and petitioner, which I received in written form, to suggest that the parishioners are anything but happy with the gentle move in churchmanship which has occurred during Fr Richards' incumbency. I accept that, for lack of a better expression, the churchmanship has 'gone up a notch' and I further accept that such movement, from an existing catholic tradition, has occurred with the knowledge, approval and consent of the worshipping community. Both the papers and the evidence bear this out. I reject as unfounded Mr Wootton's allegation that Fr Richards sought to silence other potential objectors.
11. The foregoing discussion has dwelt on generality in deference to the careful submissions of Mr Briden reminding me that although the petition concerned fifteen individual items which separately may not leave much to argue about, the petition must be viewed in the round. They are all part of the wider picture, to be viewed as a whole taking a broader view. Before turning to address the specific items in the petition, informed by my findings above on the broader issues, I need to consider the law.
12. The witness statement and other representations of Mr Wootton refer to various items as being unlawful under the ecclesiastical law of the Church of England. In his skeleton argument, Mr Behrens, for the Petitioners, refers to the law being 'much more tolerant of Catholic furnishings and ornaments than was the case in the nineteenth century'. He quotes M Hill, *Ecclesiastical Law* (Second edition, Oxford, 2001) at paragraph 7.114,

'In the light of the recent decisions in *Re St Thomas Pennywell* [1995] Fam 50, and *Re St John the Evangelist, Chopwell* [1995] Fam 254, many of the older decisions on illegality may now be disregarded. The previous rigorist approach should no longer be followed and the rubrics in the *Book of Common Prayer* and elsewhere are now to be given the elasticity they require.'

Mr Briden did not dissent from this statement of the law and went a little further, suggesting that in broad terms everything is now legal but not everything is expedient, having regard to the traditions of each particular parish.

13. The fact remains that judgments in the two cases set out above in the quotation from my own work have effected a significant change in the approach to be adopted by the consistory court in the consideration of the legality of ornaments and furnishings. Both are decisions of Chancellor Bursell, who is the author of *Liturgy, Law and Order* (Oxford, 1996) to which I was also taken in submissions. I do not propose to rehearse the facts of either case nor the erudite discussion in the chancellor's judgments reviewing the earlier law and assessing its application to changing liturgical law and practice.
14. Both counsel accepted that the decisions of Durham Consistory Court do not bind this or any other consistory court as a matter of strict legal precedent. However, the emergent practice in the consistory courts of both Provinces is to give effect to decisions of courts of co-ordinate jurisdiction unless there is good and compelling reason for not so doing. In this instance, I have particular regard to the fact that in both *Re St Thomas Pennywell* [1995] Fam 50, and *Re St John the Evangelist, Chopwell* [1995] Fam 254, the chancellor had the advantage of counsel as acting archdeacon performing the role of *amicus curiae*, and that both are carefully considered reserved judgments addressing with more than usual thoroughness important questions of legality in a context of general application. This court regards the two decisions as authoritative and persuasive and I have no hesitation in adopting the reasoning and conclusions set out in each.
15. It therefore follows that many of the older cases ought to be regarded, not as *per incuriam*, since they were rightly decided at the time, but no longer authoritative in the light of evolutionary liturgical change. Equally certain passages in volume 14 of *Halsbury's Laws of England*, published in 1975, which pre-date *Pennywell* and *Chopwell*, must be read with caution as must more recent texts and commentaries which fail adequately to acknowledge and describe the significant development which finds itself articulated in the two judgments. There has been a complete sea-change in the law.
16. I now turn to the specific items with which the petition is concerned taking them in the order they appear in the schedule thereto.
 - (1) Holy water stoup
17. Despite a suggestion to the contrary in Mr Wootton's statements, it was common ground between counsel that a holy water stoup is a legal item. This is clear from *Re St John the Evangelist, Chopwell* [1995] Fam 254 at 268. There can be no doctrinal objection to such a stoup where, as here, it is a matter of private devotion introduced as a result of teaching on baptism. The unchallenged evidence of Fr Richards was that this particular stoup had been found in the vestry

and, although its provenance is uncertain, he thought in all likelihood it was of a type fabricated in stone which came from the Holy Land.

18. The stoup stands by a pillar on a flower stand which Mr Briden suggested might be unstable. Fr Richards accepted that the mounting was far from perfect, but asserted that since it had been in position he could not recall an instance of it being upset despite the considerable human traffic in the area. Mr Claridge, in cross-examination from Mr Briden, stated that were he to have been consulted about the positioning of the stoup (which he was not) he would not have commended cutting into the ancient pillar to form a shelf. This was based upon his professional judgment and the likely reaction of the relevant heritage groups. I am inclined to agree and Mr Briden did not press the point. Instead, he suggested the porch as a more appropriate position for the stoup, a possibility which Mr Claridge thought might well be feasible.
19. There is insufficient information before me to determine whether or not the porch is a realistic alternative for the positioning of a holy water stoup in this church. I would not entertain such a possibility without first seeking the view of the Diocesan Advisory Committee and of relevant national amenity societies. Since Mr Wootton's objection is one of principle, founded upon what he regards as a Roman Catholic practice, I anticipate that he might persist in such objection wherever it is to be placed. I sensed that the parish might well consider at some future date installing an alternative stoup in the porch or fabricating a better stand for the free standing stoup. For that reason I propose to authorise the retention of the present arrangement but express it to be 'until further order' so that alternative arrangements might be considered at a future date.
- (2) Royal coat or arms
20. This attractive piece, discovered behind the organ pipes in 1990, had been leaning against a wall at the back of the church. It was placed on a small oak shelf near the entrance. Mr Wootton has no objection to its erection there and nor do I.
- (3) Votive candle stands
21. Two stands, of differing design, are now to be found: one half-way down the south aisle beneath a crucifix, and the other in what is styled the St Christopher Chapel. Mr Wootton has voiced no objection to these, perhaps surprisingly as they too are often though indicative of a high Anglo-catholic tradition and have proved controversial elsewhere. They were declared to be legal objects in *Re St John the Evangelist, Chopwell* [1995] Fam 254, a decision followed by Chancellor Cameron (as she then was) in *Re St John the Baptist, Greenhill* (November 2000, unreported). A decision of Lichfield Consistory Court in which the chancellor refused to permit the introduction of a votive candle stand, *Re St Oswald King and Martyr, Oswestry* (2001) 6 Ecc LJ 78 (decided in 1998), did not consider the plethora of cases discussed in *Chopwell*. It was based upon the tradition and churchmanship of the parish in question.

22. In this instance, I am satisfied that the parish wishes the votive candle stands to remain. They are in regular use, one in particular by tourists, and I am content that they remain.
- (4) Choir stalls
23. The stalls were resited at the head of the north and south aisles facing the new sanctuary arrangement. Their removal greatly enhances the re-discovered encaustic tile flooring and frees up the area around the high altar and reredos. The pews have been placed on raised staging for enhanced audibility and visibility, and music desks with illumination have been added. There is no objection to this change which, in reality, is a natural and beneficial consequence of the earlier successful re-ordering. It has the approval of the Diocesan Advisory Committee and I have no hesitation in giving my approval.
- (5) Portable organ
24. A portable electronic organ was introduced into the Lady Chapel for accompanying hymns and youth services. Again there is no objection and the certificate from the Diocesan Advisory Committee commends its retention. I agree.
- (6) Taizé cross
25. Previously the east wall of the Lady Chapel was covered with a curtain which had become heavily mildewed and stained. With the reconstruction of the chapel floor in stone, the curtain was removed. The parish erected a cross on the east wall where it hangs from a nail. The cross is a copy of that from the Taizé community at Cluny in south-east France and was given to the parish without charge by St Richard's Hospital where it had previously hung in its chapel. It would appear that were it not to have been housed in the Lady Chapel, it would have been scrapped.
26. Mr Briden's objections focused upon the worthiness of the design of the cross in the context of an ancient church of this type. He did not expressly adopt Mr Wootton's comment that the crucified Christ appeared to be having his loin cloth lifted by one of the others. This he styled 'a portrayal which is open to mockery and misinterpretation, perhaps reminiscent of an Inquisition'. I do not think that the pictorial representation can be read in the manner Mr Wootton suggests and reject this objection. That the cross may have been rescued from being dumped in a municipal rubbish tip does not, in my opinion, detract from its symbolism nor the worthiness of its design. In his witness statement, Fr Richards supplied an extract from the *Oxford Dictionary of the Christian Church*, describing the Taizé community as an interdenominational and ecumenical monastic order founded in 1940 by Roger Schultz (born 1915).
27. The cross is an ecumenical symbol of reconciliation. In addition it is aesthetically pleasing and proportionate adding colour and dignity to this chapel. However, as Mr Briden submitted, the appearance and furnishing of the Lady Chapel is likely to be changed before too long. In the cross-examination of Fr Richards, it became

apparent that as a result of a generous benefaction, funds are available to provide tailor made furniture for the chapel to be designed and constructed by craftsmen. In the confident expectation that the appropriate faculty procedures will be followed, I envisage that the use and lay-out of the chapel may well be rethought in the near future. Accordingly, although I am content to grant a faculty for the retention of the Taizé cross in its present position, I express it to be 'until further order' so that its long-term future can be reviewed in due course both by the parish and by this court.

(7) Oak door for aumbry

28. An attractive icon painted on an oak door has been provided by a parishioner. The intention is to mount this door in substitution for a broken one which was previously affixed to an aumbry in the Lady Chapel. For reasons discussed below, this space can no longer be used as an aumbry and it is intended that it be used in the future for the secure keeping of holy oils. Mr Wootton does not object to this and its introduction is recommended by the Diocesan Advisory Committee. Whilst observing that it is never advisable to accept gifts or to fabricate items in advance of permission for their introduction being granted, I am content in this instance to sanction the installation. It will be a worthy addition to the Lady Chapel.

(8) Shelf for broken piscina

29. Also in the Lady Chapel are the remains of an original broken piscina. The petitioners wish to fix a solid oak shelf in the bottom so that it may serve as a credence table. This is unobjectionable and I have no hesitation in giving approval.

(9) Nave altar

30. Mr Wootton raised a number of objections to the nave altar which were pursued on his behalf with varying vigour by his counsel. The altar, obtained second hand from a sale catalogue, is fabricated of cheap reconstituted wood and is supported by an inverted 'V' of the same material. It sits on square base. Upon the advice of Mr Claridge the wood was stained making it darker. Mr Briden submitted that it was unworthy for sacred use in this historic church. It was an inexpensive stop gap measure of poor quality and out of keeping with the quality of the pews in the nave and the choir pews of which I have already made mention. Fr Richards accepted the limitations in the craftsmanship of the nave altar, but indicated that it fitted more sympathetically with its surroundings following the staining commended by Mr Claridge. One advantage of the structure is the lightness and portability of the altar, the utility of which I was able to observe as the furniture was rearranged after the consistory court had concluded.
31. Concerns were expressed by Mr Wootton as to the symbolism evoked by the design of the altar. In a letter of 6 September 1999 addressed to Fr Richards, Mr Wootton had described the supporting shape as 'a female symbol associated with the womb of a pre-Christian Mother Goddess'. With admirable euphemism,

counsel endeavoured to draw out the sexual overtones implicit in this suggestion. I found Mr Wootton's evidence on this point insubstantial and unconvincing. I can see nothing of 'new age' or 'alternative religion' in the design.

32. Mr Briden suggested that Fr Richards might care to use an altar frontal which, by reaching to floor level, would cover the V shape that offended Mr Wootton's sensibilities. Fr Richards replied that he would be content to do so were I to order it. I do not consider such a course to be necessary. Mr Behrens took me to part of the judgment of Newsom Ch in *Re St Stephen's Walbrook* [1987] Fam 146 at 150 in which, by implication, no objection was taken to the absence of a deep overhang or frontal. This finding was unchallenged in the Court of Ecclesiastical Causes Reserved which overturned the first instance judgment on other grounds.
33. The shape of the altar has found favour with the inspecting architect and the Diocesan Advisory Committee. The lack of solidity draws the eye through the nave altar to the high altar beyond. The relative flimsiness of the structure is only apparent upon close inspection and the altar sits in an area roped off from the public. Fr Richards accepted the suggestion that it might be worth enquiring whether the benefactor might wish to apply his or her generosity in the creation of a better nave altar rather than one for the Lady Chapel but he doubted that the individual would be agreeable. In any event, I cannot determine this petition on the basis of remote future contingencies but upon the facts as they now appear. I consider the case for the retention of the nave altar to be made out and can see no need to make any requirement as to its covering, save as prescribed by canon F 2 paragraph 2.
- (10) Six candlesticks
 - (11) Tabernacle
 - (12) Sanctuary lamp
34. I take these three items together as they were conveniently so dealt with by counsel in argument. The general objection advanced by Mr Wootton in relation to these items and, to a lesser extent, the holy water stoup is that their cumulative effect is visually to express Roman Catholic tradition and practice. I have sought to address the theoretical element of this objection earlier in this judgment. I now turn to the practical aspects. The candlesticks and the tabernacle, or sacrament house, were obtained cheaply by Fr Richards. Each purchase he styled 'a good deal', in what became a recurring theme in his evidence. The candlesticks needed polishing to bring them up to the condition in which they now appear.
35. There was some dispute as to the number of candlesticks previously in use on the altar and, in particular, what had been the intention of Sir George Gilbert Scott when the interior was remodelled. I was shown various photographs, some of which showed two and others of which showed six. It was impossible to date the photographs with precision. I do not regard any of these photographs as determinative. Fr Richards' evidence that six candlesticks were stolen in about

1990 was unchallenged, and Mr Briden rightly pointed out that the parish had survived with only two for some ten years.

36. There was evidence from Mr Claridge that he had been consulted after the purchase of the candlesticks and asked whether they were appropriate for the intended position. With forty years' experience as an ecclesiastical architect and as a long standing member of the Diocesan Advisory Committee, he felt able to say that in relation to their height, style and colour they were fitting aesthetically and architecturally. He indicated how the reredos had been raised and lowered by degrees during the re-ordering so that the proportions could be judged. Mr Claridge stated that he had not been consulted about the tabernacle and, had he been, he would have explored the possibility of locating an aumbry in a position other than the unsatisfactory location in the Lady Chapel. He did, however, suggest that the existence of wall paintings meant that it might not be easy to find a suitable place where the necessary opening up of the wall could take place without detriment to the fabric of the building.
37. Mr Briden advanced with moderation an attractive submission, namely that having regard to the absence of consultation with the inspecting architect, an appropriate course would be for me to grant a temporary faculty whilst enquiries were made as to the feasibility of installing an aumbry elsewhere in the church. I considered that an appropriate form of words could be devised to meet the practical objections made by Mr Behrens. However, the timely intervention of Mr Steven Sleight, secretary to the Diocesan Advisory Committee, elicited the information that this point had been discussed at a site visit conducted by the Committee and that it had been of the opinion that no suitable alternative site presented itself. That being so, I consider that the course suggested by Mr Briden which had initially commended itself to me, would in all likelihood prove futile.
38. I must therefore resolve two questions: are these ornaments lawful, and (if so) are they expedient? I pay no regard to the fact that the installation is complete, since the *fait accompli* argument carries no weight when a confirmatory faculty is sought. For the reasons given above, I am satisfied as to the lawfulness of these items. In relation to the candlesticks, although two may be regarded as the liturgical norm, more than this number are permitted, as for example in *Re St Saviour's, Walthamstow* [1951] P 147, where six were allowed.
39. As to the tabernacle, I adopt the conclusions of Bursell Ch in *Re St Thomas, Pennywell* [1995] Fam 50, in which he stated,
 '... as on at least two occasions sacrament houses have been permitted by consistory courts, I am strengthened in my view that they are consistent with, and subsidiary to, the ministrations of the Church.'
In this regard, I am compelled to conclude that the decisions in *Capel St Mary v Packard* [1927] P 289, *Re Lapford (Devon) Parish Church* [1955] P 205, and *Re St Mary, Tyne Dock* [1954] P 369 can no longer be considered declaratory of the law today. It follows that the extract from L Leeder *Ecclesiastical Law Handbook*

(London, 1997) at page 294, upon which Mr Wootton had placed undue reliance in his written comments, must be read with care and applied with caution. I therefore reject the plea of illegality contained in Mr Wootton's statement although not advanced by his counsel.

40. The issue on the sanctuary lamp was a narrower one, as to the colour of the light. Mr Wootton relied upon L Leeder, *Ecclesiastical Law Handbook* (above) at page 293 repeating verbatim an extract from the *Legal Opinions Concerning the Church of England* (Church House Publishing, 1994) which at page 219 reads, 'In the Church of England red sanctuary lights are a call to prayer. White lamps indicate that the Blessed Sacrament is reserved. Blue lights are customarily hung in a Lady Chapel.'

I see nothing of prescription in this statement, and nor could the Bishop of Horsham whose evidence was that although white was the norm, red was acceptable. The *Bishop's Regulations for the Reservation of the Sacrament* (which are reproduced as Appendix C to the *Chancellor's General Directions Concerning Churches and Churchyards*) state at paragraph 4 that 'The presence of the reserved sacrament is usually indicated by a white light'. Fr Richards, supported by the churchwardens, indicated that the white light created by clear glass tended not to be visible against the glass screen in front of which the sanctuary lamp is positioned. For that reason, red glass was substituted, to which Mr Briden put forward no legal objection.

41. As to the matter of expediency, I have regard to the fact that the previous aumbry in the Lady Chapel had been broken into and that its position was in close proximity to the route taken by tourists to view the Fitzalan Chapel producing a high volume of human traffic. The reservation of the sacrament in that place was, and remains, neither secure nor seemly. Within this diocese, guidance may be found in the *Bishop's Regulations for the Reservation of the Sacrament*. Dignity and security, in the opinion of the Bishop of Horsham and accepted by both counsel, are regarded as essential to the practice of reservation. The practice at St Nicholas is for the provision of communion to the sick, a task carried out by a number of eucharistic ministers. Mr Briden submitted that in this instance, the parish overstepped the boundary and indulged in veneration, a practice inconsistent with Anglican teaching and tradition. He said it was calculated to give the wrong image to the world at large, or at the very least to church people. The Bishop of Horsham, in his evidence, spoke of the mystery of the eucharistic presence, whereby the Lord will not be trapped in the sacrament but will be found there. Reservation, he reminded the court, was sacramental, being an outward sign of an inward and spiritual grace.

42. Ultimately, I am against Mr Briden on this point. I can find no support in the evidence for the contention that the practice in this church has become one of veneration. I note its catholic tradition and the use of the aumbry prior to the installation of the tabernacle, in relation to which no objection was voiced by Mr Wootton or anyone else. I also have regard to the layout of the sanctuary and nave

which, as Mr Behrens rightly observed, made no provision for public access in the vicinity of the tabernacle nor for kneeling before it. I am mindful of Mr Briden's careful submission that one must consider the whole picture, not merely individual facets. Nonetheless, for the general reasons set out earlier in this judgment and for the more particular ones discussed above, I am satisfied that all the objects which have been introduced are legal and that they are appropriate and expedient for the character of the building and the tradition of its churchmanship. Although a clear or white light is the liturgical norm for sanctuary lamps, a red light has here been substituted for enhanced visibility. I do not regard this as a matter of legal or doctrinal significance and am happy to authorise either.

(13) St Nicholas' statue

43. Currently this statue rests unsecured on a table. The petitioners for reasons of safety and aesthetics wish it to be positioned on a plinth secured to the pillar against which it stands. There is no objection to this proposal and it has the approval of the Diocesan Advisory Committee. I am agreeable in principle. However, mindful of the historic integrity of the building as discussed in relation to the holy water stoup, I am not prepared to authorise this aspect of the work to be commenced until detailed proposals for the plinth and its fixing have been approved by me, having first been submitted for comment to the Diocesan Advisory Committee.

(14) St Christopher Chapel

44. At the north side of the church, behind the organ, is a discrete area which, it is understood, was dedicated in the 1380s to St Christopher. Although once a 'children's chapel', in more recent years it had been used as something of a dumping ground, where an unsightly collection of ecclesiastical detritus had accumulated. Fr Richards sought to reclaim it as a haven of serenity and in doing so installed an 'altar'. I adopt that word with caution since, in reality, it is an old hymn book trolley to the top of which a flat wooden board has been affixed. A simple altar frontal with a drop reaching to the stone floor masks what lies behind.
45. I approach this element in two stages. First, there is nothing objectionable and much that is laudatory in recovering this part of the church for prayer and reflection. Its previous cluttered appearance can have done nothing to enhance the dignity of the building. There is evidence in the form of a mediaeval piscina that there was eucharistic worship in this part of the building. What is now styled the St Christopher Chapel is available for private devotion and, as Fr Richards indicated in his evidence, is used for choir and instrumental practices and for meetings during the week. Fr Richards stated in cross-examination that, as a matter of personal taste and experience, he believed that a holy table is a necessary aid for private devotion. He said that he had not used and did not intend using the St Christopher Chapel for eucharistic celebration until a more seemly altar was in place. What was there, he indicated, gave a misleading appearance and was not an altar in the proper sense. He considered that this chapel would be

particularly suitable when no more than half a dozen communicants were present, as is often the case on Tuesday evenings.

46. Mr Wootton raises no objection to the recovery of this area for devotional purposes. His comments, however, are directed to the second stage namely whether it is lawful to have a fourth altar and, if so, the suitability of what is in place. In his written submissions, Mr Wootton quoted a sentence from L Leeder *Ecclesiastical Law Handbook* (above) at page 292: 'An additional and even a third holy table may be sanctioned on the grounds of convenience'. To this he added in manuscript the marginal note 'but not a fourth'. Mr Briden did not assert, as Mr Wootton previously had, that a fourth altar *per se* was illegal. Rather, he relied upon his argument on accretion, asserting that there was sufficient provision already by way of the altar in the Lady Chapel. Mr Briden asked rhetorically what message is given out by the proliferation of altars. Mr Behrens was unable to point me to a reported case in which the introduction of a fourth altar had been in issue, but took me to *Re St Mary Tyne Dock* [1954] P 359 at 381. That case, read with *Re St Michael Bromley* (1908) 25 TLR 95 and *Re St Margaret's Toxteth Park* (1924) 40 TLR 687 seem to support the following propositions:

- i. the introduction of an additional holy table will not be permitted if it is likely to be an object of superstitious reverence;
- ii. the question to be determined is whether the additional altar would serve a useful purpose;
- iii. such question falls to be determined upon an assessment of practical convenience.

In this instance I can see no indication that an altar in the St Christopher Chapel is likely to become an object of superstitious reverence and Fr Richards has made out a good case in relation to useful purpose. I am also satisfied that the introduction of an altar would be practically convenient. That eucharistic provision is already made in the Lady Chapel by way of a holy table is not, in my opinion, determinative although I adopt the timely reminder from the Bishop of Horsham that Mass ought not to be celebrated at different altars in the church at the same time.

47. Although I am satisfied on the evidence and the law that the provision of an altar in the St Christopher Chapel is both legal and expedient, I am not prepared to sanction the retention of the structure there existing which masquerades as an altar. While fully accepting that it serves a purpose in indicating that the area is a place of prayer and sets an appropriate tone, it is highly inappropriate for the celebration of the Mass, being a memorial of Christ's sacrifice. I respect and commend the restraint on the part of Fr Richards in declining to use this 'altar' for eucharistic worship. I do not propose ordering the removal of this 'altar'. Instead I propose to allow it to remain for a limited period, twelve months in the first instance, during which time I expect the parish to revert to me within the terms of the existing petition with plans for a more appropriate altar. I anticipate that this will be taken forward in conjunction with the proposals for the Lady Chapel

which I have mentioned earlier in this judgment. It will require consultation with the Diocesan Advisory Committee and public notice at the church. In the event that no plans are forthcoming within that period or such extension as might be allowed, I require that the 'altar' then be removed.

(15) Statue of Mary

48. A small statue of the Madonna and child has been placed in a niche on the north wall of the Lady Chapel. There is no objection in relation to this and I am happy to authorise it by way of confirmatory faculty.

49. The following matters form no part of the petition which falls to be determined in this matter, but they were raised by Mr Wootton in his written submissions. I propose to take each in turn and, for convenience, to number sequentially from where the petition leaves off.

(16) Stations of the cross

50. Mr Wootton states in his written submissions that the requirement of a faculty for stations of the cross ensures the court's control over any abuse and the tendency of superstitious reverence. Whilst there is truth in this, the point is less compelling where, as here, we are concerned with paper stations used only during Lent. Although not cited by counsel, I have regard to the recent and, as yet, unreported decision of Bursell Ch in *Re Christ Church, Waltham Cross* (St Albans Consistory Court, 20 May 2001), which is the first substantive re-visiting of this matter since 1963. See *Re St Mary the Virgin, West Moors* [1963] P 390 and *Re St Augustine's Brinksway* [1963] P 365. The judgment of Bursell Ch contains a thorough consideration of the caselaw, both ancient and modern, the rehearsal of which in this judgment would serve little purpose. The position today, in my opinion, comes down to this:

- i. there is nothing intrinsically illegal in the introduction of stations of the cross;
- ii. a faculty should not, however, be granted if the stations are intended or likely to be used for superstitious purposes or to become the object of adoration or superstitious reverence;
- iii. the mere use of an image for devotional purposes is not of itself superstitious;
- iv. the question whether an image is likely to be put to superstitious use is one of fact and inference of fact in each case;
- v. in determining the nature or the likely or intended use of any image, the forms of any ceremonies and services proposed to be held with it are material;
- vi. a diversity in liturgy is now provided for by the Church of England (Worship and Doctrine) Measure 1974 and Canon B 5. Since the Church of England reposes great confidence in its incumbents, so should the consistory court, presuming an absence of superstitious purpose unless the evidence suggests otherwise;

- vii. it is not for the consistory court to enquire into the nature of private devotions, save to the extent that items designed to assist in the devotions of one person may detract from those of other people.

51. Being satisfied that there is nothing illegal in the introduction of stations of the cross, I consider that the temporary introduction of paper stations during Lent may properly be classed as *de minimis* for which the authority of a faculty is not required. I am fortified in this conclusion by a letter placed before the court from the Venerable Michael Brotherton, Archdeacon of Chichester, expressing a like opinion.

(16) Reading desk

52. Part of the former sound system was housed in the pulpit and boxed in. The boxing was removed during the reordering and Mr Wootton complains that this has left unsightly holes in the pulpit where there were formerly rawl plugs and other fittings. I consider the removal of this boxing to have been encompassed within the terms of the earlier faculty and, if for any reason not, it is *de minimis*. The holes are visible only from within the pulpit and I have been assured that the cosmetic appearance will be improved in the near future.

(17) Removal of altar rail

53. Mr Wootton objects that the altar rail was wrongly disposed of. Such rail, being timber on metal supports, stood at the edge of the dais, the removal of which was authorised by an earlier faculty as part of the re-ordering. It is clear from the relevant papers that such removal was authorised under the terms of that faculty. There is thus no merit in this objection. I am satisfied on the evidence of the Bishop of Horsham that there is no doctrinal significance in whether communicants kneel or stand during the administration. I reject Mr Wootton's assertion to the contrary.

(18) Bishop's chair

54. The chair, variously styled bishop's or president's, is used by the bishop when he visits the church and by the president at the eucharist. The Bishop of Horsham indicated that they were becoming more commonplace with the increasing use of nave altars and the restoration of the basilican tradition. It also emphasises the role of the bishop who shares the cure of souls and whose chair is taken over by the incumbent whenever the bishop is absent. It may not be the finest piece of ecclesiastical furniture, but to the extent that my consent is required for its retention, I grant it. I reject entirely the suggestion of Mr Wootton that it is an indicium of Roman Catholicism.

(19) Sanctuary gong

55. I find that Mr Wootton's observations with regard to the use of a sanctuary gong, which was re-introduced having been found in the vestry, and the tying up of the sanctus bell rope to avoid its misuse by mischief makers, to be without foundation or merit.

56. I therefore order that a faculty pass the seal for such of the above items as I have authorised and subject to such of the conditions as are therein set out. On the question of costs, an application was made by Mr Behrens on behalf of the Petitioners. With a disarming candour, he confessed to being not entirely familiar with the bases for the award of costs in the consistory court. I was put in mind of the words of the Dean of the Arches when giving the judgment of the court in *Re St Mary the Virgin Sherborne* [1996] Fam 63 at 68F:

‘We take the opportunity to say something generally on the subject of costs, because the principles which apply within the faculty jurisdiction do not appear to be well known, or understood’

The subsequent pages of the report are required reading for all litigants in the consistory court. For those in the Diocese of Chichester I commend a summary to be found at paragraph 5.4 of the *Chancellor's General Directions* issued at Easter 2001. I also draw attention to the *Guidance on the Award of Costs in Faculty Proceedings in the Consistory Court* issued by the Ecclesiastical Judges Association last year.

57. As Mr Behrens unwrapped his submission, it became apparent that he did not seek any contribution towards the court fees since he was of the view that they would have been of the same order of magnitude even were Mr Wootton not to have objected. Whether that be right or not is a matter on which I need not comment since no application for a contribution was made. Instead Mr Behrens sought an order that Mr Wootton pay some or all of the Petitioners' costs. He stated that Mr Wootton's objections were completely unreasonable throughout. As a result, the parish had been put to the expense of engaging solicitors and counsel who had produced a lengthy skeleton argument dealing with complex matters of law and a bundle running to in excess of 260 pages together with additional papers produced at the hearing. Mr Briden answered such submission by reference to the perennial legal adage 'you can't have it both ways'. Either Mr Wootton's objections were frivolous, insubstantial and without any merit in which case Fr Richards, being intelligent and articulate, could have dealt with them himself; or they were of a complexity in law and fact as demanded counsel's attendance. It was conceded that it was the Petitioners who were the first to instruct counsel, Mr Briden being retained at a comparatively late stage to secure, I imagine, a more level playing field.
58. I have reviewed the paperwork in this case with some care. I can see nothing in the suggestion of unreasonableness on the part of Mr Wootton. He may be regarded by some as a little eccentric, and to care with more than usual passion about issues of catholicity. As Mr Briden pointed out, Mr Wootton's objections were rooted in a legitimate reading – albeit perhaps a misreading – of a scholarly work which may not have made apparent the manner in which the judgments in *Chopwell* and *Pennywell* articulated a sea-change in the law relating to liturgical ornaments. I import no mischievous intention to Mr Wootton and I consider that the attack upon his mental health as contained in the witness statements of the

Petitioners to have been ill-judged, distasteful and lacking in charity. I was relieved that such argument was abandoned when the case was opened.

59. Mr Briden made no application for costs and submitted that the proper course was to make no order *inter partes*. He commented that the Petitioners sought the mercy of the court in confirming acts unlawfully performed. It may have been for this reason that the Petitioners felt the need to be legally represented. I can see no reason for departing from the usual practice that there be no order for costs against the party opponent. The Petitioners will, of course, bear the court costs.
60. These proceedings have clearly proved a hiatus in the life in the parish. Much has been achieved by the recent major re-ordering for which Fr Richards, the churchwardens, the parochial church council and the inspecting architect deserve great credit. There is more to be done particularly in relation to the Lady Chapel and the St Christopher Chapel. It may be a source of regret that funds have now been expended on lawyers which might otherwise have been applied to these works. I am heartened that the Bishop of Horsham speaks eloquently of renewal and evangelism in this historic parish and I trust that the mission of the Church will continue and that Mr Wootton will remain a part of it.

The Worshipful Mark Hill
Chancellor



26 June 2001