'principles of security and safe custody' of human remains were threatened and that the purpose of the re-burial of the remains was to satisfy the emotional needs of the deceased's daughter at this stage of the bereavement process. [RA]

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Re Holy Innocents, Southwater
Chichester Consistory Court: Hill Ch, June 2009
Faculty – interregnum

In granting a faculty for a modest re-ordering the chancellor rejected the submission in certain letters of objection that such works should not be commissioned during an interregnum. The chancellor observed that twenty-first century constraints on clergy deployment and the empowerment of the laity in collaborative leadership meant that it could not be expected that the life, witness and ministry of a parish should go into abeyance merely because the benefice was temporarily vacant. [RA]

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Re St Mary, Westham
Chichester Consistory Court: Hill Ch, June 2009
Faculty – planning permission – re-litigation

Planning permission had been granted for the erection of a storage shed in the old churchyard. In granting a faculty for such work the chancellor found that objections in relation to noise, materials and visual amenity were genuinely planning matters such that it would be inappropriate for them to be re-litigated in the consistory court. [RA]

doi:10.1017/S0956618X09990639

Jivraj v Hashwani
Commercial Court: David Steel J, June 2009
Ismaili community – arbitrator – discrimination

The parties were members of the small Ismaili community, a branch of Shia Islam. When starting a business venture in 1981 they entered a joint venture

after the intervention of the Archdeacon. He held that the reference to the Archdeacon did not prevent the Chancellor from making such an order without the Archdeacon's intervention, but for abundance of caution he invited the Archdeacon to exercise his power to refer the matter to him for determination. At the second hearing, the Chancellor issued a faculty for the interim works proposed, subject to them being completed before the expiry of time for implementing the planning consent.

Leave to appeal

An application for leave to appeal was determined by the Court of Arches on 6 August 2009. The Dean reviewed the law on the appropriate test to be applied when leave to appeal is sought, restating that what needs to be shown is 'real prospects of success' or 'some other compelling reason why the appeal should be heard', expressions derived from part 52.3(6) of the Civil Procedure Rules. Adopting this approach, he rejected two proposed grounds of appeal from the first judgment; namely that the power to grant such an interim faculty was only to be used in emergencies and that, if such a power did exist, the normal procedure for giving notice should apply (rule 6). He held that there was significant precedent for the making of such orders and that the precise form of notification of interested parties could be made on a case by case basis by the Chancellor. In this case the form of notification was agreed by the parties after the first hearing. Regarding the application for leave to appeal the second judgment he held that the Chancellor had balanced all the relevant factors before him and had come to a decision. Following the decision in the Court of Appeal in *Alltrans Express Ltd v CVA Holdings Ltd* [1984] 1 All ER 685, [1984] 1 WLR 394, that 'the court must not be tempted to interfere with the judge's order merely because we would have exercised the discretion differently from the way in which the judge did' the applications were refused. [WA]

doi:10.1017/S095618X09990652

R (on the application of HM Coroner for the Eastern District of London) v the Secretary of State for Justice

Divisional Court: Laws LJ and Tugendhat J, July 2009

Exhumation – Secretary of State's licence – faculty – judicial review

A young man met his death in Belgrade in January 2004 and was repatriated to England shortly thereafter. He was buried in Gunnersbury Cemetery in Acton. An 'open verdict' which was recorded at a coroner's inquest held in September 2004 was overturned by the High Court in May 2006. A second inquest was

ordered, to be undertaken by a different coroner, who formed the view that the deceased's body should be exhumed. A coroner has power to issue a warrant of exhumation under section 23 of the Coroners Act 1988. However, this power may only be exercised if the body in question is lying within the coroner's district, which it did not. Where, as here, a coroner is ordered by the Court to hold a fresh inquest under section 13, that coroner is treated as if he were the coroner for the district who held the original inquest. However, the body did not lie within that district either.

Accordingly the Coroner for the Eastern District of London applied to the Secretary of State for Justice (as he now is) for a licence under section 25 of the Burial Act 1857. A licence was granted but before it could be implemented it transpired that the views of the close relatives of the deceased had been sought. They were of the Serbian orthodox faith and regarded it as contrary to their religion for a body to be exhumed. The licence lapsed. The Coroner subsequently applied to the Minister for the licence to be reissued. He refused and the Coroner sought to challenge this refusal by way of judicial review. She also invited the High Court to exercise its inherent jurisdiction and order an exhumation. The deceased's relatives drew to the attention of the Court the fact that the deceased was buried in a portion of Gunnersbury Cemetery which had been consecrated in accordance with the rites of the Church of England. This had not previously been appreciated by the Coroner. Accordingly, irrespective of whether a licence was granted, no exhumation could take place in the absence of a faculty from the Chancellor of the Diocese of London.

The Divisional Court dismissed the Coroner's application. It noted that the Secretary of State had a long-standing general policy, but that he had become aware of a number of additional matters between the issuing of the original licence and his subsequent refusal to re-issue it. These included: opposition from the family; property rights of the mother concerning a memorial which she had caused to be erected over the grave; the impact of the proposed exhumation on a neighbouring grave; and the possibility of alternative remedy invoking the High Court's jurisdiction under section 13 of the Coroners Act 1988: *R v Saunders* (1719) 1 Strange 168, (1719) 93 ER 452. The appropriate defendant for the alternative remedy, however, would be the next of kin of the deceased and not the Secretary of State. The Court was not persuaded that it had any power to override the property rights of the deceased's mother, and he concluded that no useful purpose would be served by granting relief in these proceedings now that it had been established that a faculty was required. 'It is not for this court', he said, 'to express views on matters which it is for the Chancellor of the Diocese to decide.'

Likewise, the Court was not persuaded that there was any fault in the reasoning of the Secretary of State, as the facts had changed from what he had understood them to be at the time that he granted the original licence. It was his duty to consider the application for re-issue in the light of the circumstances as he

then knew them to be. The fact that he placed greater weight on the objections of the family was not a matter for criticism. There was no irrationality on his part. The Secretary of State did not pursue a claim for costs, but the Coroner was ordered to pay those of the deceased's relatives. [WA]

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Re All Saints, Sidmouth
Exeter Consistory Court: McFarlane Ch, August 2009
Re-ordering

The church, with no parish attached, was Grade II listed and built in 1840. It had a well-attended Sunday service in contemporary style held in the church hall, the church itself being seen to be unsuited to this style of worship. The petitioners sought a faculty for a radical re-ordering of the church, including the removal of galleries in the north and south transepts and the building of a link between the church and the adjacent church hall. With the exception of the proposed re-painting of beams in the ceiling the DAC had no objection. During the consultation period, two local individuals, the Victorian Society, the Church Buildings Council, the District Council and English Heritage objected to all or part of the scheme. English Heritage became formal objectors.

The principal arguments centred on the proposed removal of the galleries, which were narrowly banked, making it impossible for those seated there to see what was going on at ground level during worship. The chancellor held that if the galleries were not removed then much of the rest of the scheme would need to be re-thought. In considering the *Bishopsgate* questions he found that the pastoral needs of the parish and the heritage arguments 'collide head-on'. He found that the original purpose of the building when it was founded in the nineteenth century was to provide modern worship as an alternative to the traditional worship of the nearby parish church. He held also that the galleries were indeed redundant and unusable and, in any case, the gallery at the west end would be retained as an example of the original architecture.

The chancellor found that the petitioners had shown that the necessity for the works outweighed the undoubted adverse effect on the character of the building. A faculty was granted subject to provisions, including the retention of the original decoration of beams and the retention of pews in the west gallery and with the exclusion of the proposed re-siting of the font. [WA]

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Re All Saints, Crawley Down
Chichester Consistory Court: Hill Ch, August 2009
Headstone – churchyard regulations – inscription – Christian content

The petitioner sought a faculty for the erection of a headstone over the grave of her husband. The proposal fell outside the Churchyard Regulations in a number of respects, including its shape (a closed book), and the content of the inscription was not considered appropriate. The chancellor indicated that he would permit the shape of the headstone, noting the deceased's love of books and literature. He also could see nothing objectionable in the use of a nickname (provided that the same was used in addition to the deceased's full name) and the terms 'Dad and Grandad', observing that '[n]ot everyone is known by the name on his or her birth certificate. Provided that there is nothing trivial, inappropriate or disrespectful in the nickname. . .then it is right to include it'. The deceased was known by his family and the local community as 'Jacquer' and that is how he should be remembered in death.

However, the chancellor refused to grant the faculty in the form lodged on the basis that the proposed inscriptions 'Taken suddenly too soon' and 'Simply the best' were not appropriate in a Christian burial ground. In particular, the former inscription could be the cause of offence in relation to the Christian teaching on death and resurrection and the latter little more than the part of the lyrics of a popular song. [RA]

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Re St Augustine, Holly Hall, Dudley
Worcester Consistory Court: Mynors Ch, September 2009
War memorial – additional inscription

A memorial set up in memory of those who died in the First World War had been re-sited in the 1980s and now stood within the churchyard and therefore within the jurisdiction of the consistory court. The petitioners sought to add a bronze plaque matching the original First World War plaque to commemorate those of the parish who were killed in action in the Second World War. By the time the petition was heard the plaque had already been cast. It contained, in addition to the names, the date 3 September 2009 (being the seventieth anniversary of the start of the war) and the words 'Your life! Our freedom!' The Chancellor permitted the addition of the plaque with the removal of the final words. There was some debate about the date, 3 September 2009. The chancellor considered this to be a significant and suitable date, and it was immaterial that the date had passed prior to the addition of the plaque to the memorial. [WA]

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