

authority, the chancellor had, with her agreement, withdrawn the authority that would otherwise have been delegated to her under the Churchyard Rules. Although he granted a confirmatory faculty as sought, the chancellor said that it was ‘deplorable that there have been so many apparent breaches of the Churchyard Rules and the faculty jurisdiction’. At the request of the present incumbent the chancellor continued the withdrawal of the incumbent’s delegated authority for another five years, in the hope that this would help her in what continued to be a difficult pastoral situation. [Alexander McGregor]

doi:10.1017/S0956618X11000986

Re Radcliffe Infirmary Burial Ground

Oxford Consistory Court: Bursell Ch, June 2011

Disused Burial Grounds Act 1884 – exhumation – public interest

The Chancellor, Masters and Scholars of the University of Oxford (the University) petitioned for a faculty for the exhumation and re-interment in consecrated land elsewhere of human remains buried in the burial ground of the former Radcliffe Infirmary. The burial ground had been consecrated by the Bishop of Oxford in 1770 and was closed for burials in 1855. The University sought the faculty because it wished to build on the site of the burial ground. Trial trenches (which had been dug pursuant to an earlier faculty) had resulted in an estimate of there being 700 extant burials. The University intended to use the plot of land for building a school of government, having been promised a donation of £75 million for the purpose. The University’s evidence was that the creation of the school was intended to be of ‘a real and significant public benefit’, its particular aim being ‘the improvement of world-wide government’. Planning permission had not yet been obtained but the chancellor considered that the usual practice of declining to decide a faculty petition until relevant planning permission had been granted had always been tempered by common sense. In the present case, the chancellor accepted that it would be draconian to insist on planning permission (the costs associated with which were estimated at £1.3 million) being obtained without the petition have first been decided.

The chancellor considered whether the prohibition on building contained in section 3 of the Disused Burial Grounds Act 1884 applied to the burial ground in question. He held that section 5 of the 1884 Act – which provides that the Act is not to apply to any burial ground sold or disposed of under the authority of an Act of Parliament, as the ground in question had recently been – was engaged and that the Act did not now apply. As to the question of exhumation, the

chancellor considered *Re Christ Church, Alsager* [1999] Fam 142, *Re Blagdon Cemetery* [2002] Fam 299, *Re St Mary the Virgin, Woodkirk* [1969] 1 WLR 1868 and *Re St Nicholas, Sevenoaks* [2005] 1 WLR 1011 (which could be characterised as ‘public works’ cases). The chancellor was satisfied that the proposed use of the burial ground by the University for academic purposes would be greatly for the public benefit, that ‘the most credible and convincing reasons’ had been put forward for the exhumations, that they amounted to ‘special circumstances’ and that the tests identified in the relevant authorities were accordingly met. The public interest that the land should continue to be used for the sacred use to which it had been dedicated was far outweighed by the need for the proposed development of the land. The chancellor further accepted that on the evidence a proper case had been made out by the petitioners that the exhumed bodies should undergo archaeological medical research, but only under strict conditions. A faculty was granted subject to a number of detailed conditions. [Alexander McGregor]

doi:10.1017/S0956618X11000998

Re St Mary the Virgin Churchyard, Burghfield
 Oxford Consistory Court: Bursell Ch, June 2011
Churchyard – unlawful items

In an attempt to enforce the Churchyard Regulations, the incumbent and churchwardens applied for a faculty for the removal of items unlawfully introduced around 67 graves within the churchyard, including ornaments, chippings, kerbs and lights. The Churchyard Regulations permitted the placing of toys or similar ornaments on graves for a period of twelve months after the interment but required their removal by the family or incumbent thereafter. The chancellor reviewed the relevant law and confirmed that, if an appreciable time had passed after the twelve-month period had elapsed, then the authority of a faculty would be required for the lawful removal of the items. Parents of children buried in some of the relevant graves objected strongly to the removal of the unlawful items, indicating that some such items had been in place for as long as 15 years without complaint or removal. It was argued that it would be in breach of those parents’ rights under Articles 8 and 9 of the European Convention on Human Rights to require the removal of the items placed by the graves. The chancellor referred to the decision in *Jones v UK* [2005] ECtHR 42639/04 and concluded that neither Article 8 nor Article 9 was engaged in this case. In granting the faculty, the chancellor observed that a failure to enforce the Churchyard Regulations created a grave danger of very