

founder and had been in the church untuned since their installation in 1732. In upholding his original decision, the deputy chancellor set down the following reasons: the tuning of bells is irreversible; the maintenance of the same sound as heard over centuries is something to be valued; tuning is a matter of taste and fashion; tuning would not be ruled out if, for example, the sound of the bells was so bad as to affect the mission of the church; the mere fact that the bells are not listed for preservation is not a reason for not preserving their sound where the work is shown to be necessary; the tuning of a complete old ring is a serious matter; and where a good case is made there may need to be a balance struck between the asserted needs of the present and the desirability of preserving the past. Where no case is made at all, there can be no reason to destroy the heritage. [RA]

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Shergill and others v Khaira and others

Supreme Court: Lord Neuberger PSC, Lords Mance, Clarke, Sumption and Hodge JJSC, 11 June 2014

Sikh charity – trustees – justiciability

The ninth claimant contended that, as the ‘successor’ to the First Holy Saint of Sikhism and, therefore, the spiritual leader of the Nirmal Sikh community, he had the power to remove and appoint trustees of two gurdwaras used by members of that community. The Court of Appeal had agreed to strike out the claim on the grounds that it was being asked to pronounce on non-justiciable matters of religious doctrine and practice and had subsequently refused leave to appeal on the same grounds. However, in doing so it had acknowledged that the matter was ultimately for the Supreme Court – which duly gave leave.

The Supreme Court allowed the appeal unanimously. On the issue of the justiciability of matters of religious doctrine, the court noted the *dictum* of Lord Bingham in *R (Gentle) v Prime Minister* [2008] 1 AC 1356 to the effect that, although there were issues which judicial tribunals had traditionally been very reluctant to entertain because they recognised their limitations as suitable bodies to resolve them, if a claimant sought enforcement of a legal right the courts had the power to decide the matter. The court noted that in both England and Scotland judges would not adjudicate on the truth of religious beliefs or on the validity of particular rites; however, where a claimant sought the enforcement of private rights and obligations that depended on religious issues, a court might have to determine such religious issues as were capable of objective assessment.

Unincorporated religious communities were voluntary associations in law and their constitutions were civil contracts by which members agreed to be bound. The courts would not adjudicate on the decisions of an association's governing body unless there was a question of some infringement of a civil right or interest. However, doctrinal and liturgical disputes were non-justiciable unless they engaged civil rights or interests or reviewable questions of public law. The governing body of a religious voluntary association had to act within its contractual powers and if, for example, it sought a union with another religious body *ultra vires* its constitution, a member of the community could invoke the jurisdiction of the courts to restrain it. Similar considerations applied where a member of a religious association was dismissed or disciplined and claimed that the association had acted *ultra vires* or in breach of due process. The jurisdiction of the courts was not excluded because the cause of the dispute was a matter of theology or ecclesiology; the role of the court in such circumstances was to keep the parties to their contract. There was a clear line of authority which contradicted the proposition that a court could treat as non-justiciable a religious dispute where the determination of the dispute was necessary in order to decide a matter of disputed legal right; and unless the parties could resolve their differences the court might have to adjudicate upon matters of religious doctrine and practice in order to determine who were the trustees entitled to administer the trusts. [Frank Cranmer]

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Re St Gwenfaen, Rhoscolyn

Bangor Diocesan Court: Doe Ch, 27 June 2014

Memorial plaque

The chancellor considered a petition for the introduction of a memorial plaque to commemorate the life of the petitioner's late mother in replacement for an existing memorial plaque on the church organ. The petitioner's mother had lived in the parish and served the church and community there for a period of forty years until her death. She had played significant roles as church organist, local teacher, fundraiser and community benefactor. She had played a principal role in saving the church from closure and in bringing the church hall back into use. The parochial church council (PCC), which had a policy against new memorial plaques, supported the petition by a majority, although it had unanimously rejected a previous petition in similar form. The vicar, diocesan advisory committee (DAC), area dean, archdeacon and former incumbent all opposed the petition.