decision-making and the desirability of equality of treatment between different petitioners. It concluded, with some hesitation, that it should decline to follow the earlier decision. The matter was essentially a question of doctrine rather than law, on which the views expressed to it were clear; its own reasons for disagreeing with the earlier decision constituted a good reason for refusing to follow it; and it would be wrong to determine the present petition contrary to the conclusions it had clearly reached, leaving the petitioner to invoke the court's own reasoning in an appeal to the Court of Arches or (because to an extent the matter involved doctrine) the Court of Ecclesiastical Causes Reserved. A faculty would accordingly be granted.

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Re Brookwood Cemetery

Guildford Consistory Court: Burns Ch, 22 November 2024 [2024] ECC Gui 3

Second petition for exhumation – res judicata – application to set aside refusal

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The petitioner's petition for a faculty for the exhumation of the cremated remains of her father, interred in 1967, had been refused by the Deputy Chancellor. By a second petition, she applied again for a faculty for exhumation, alternatively for the first decision to be set aside.

Rule 20.3 of the Faculty Jurisdiction Rules 2015 empowers the court to set aside a judgment if it is just and expedient to do so. The Court of Arches, in its permission to appeal order in *Re Cheshunt Cemetery* (*No 2*) [2018] EACC 4, had suggested that it was open to a petitioner to apply under this provision as an alternative to an appeal when the basis of the petition had changed (in that case, from exhumation and retention to exhumation and reinterment); or, if refused, to submit a further petition.

The issues before the court were (a) whether it was permissible to consider a second petition seeking the same relief, or whether *res judicata* and related principles applied in the Consistory Court; and (b) if it was not permissible, whether it was appropriate to set aside the earlier decision on the grounds that it was just and expedient to do so, under rule 20.3. Then the court would consider whether to grant a faculty as sought in the second petition.

Spencer Bower & Handley in *Res Judicata* described a *res judicata* as 'a decision on the merits, pronounced by a tribunal which is judicial in the relevant sense'. For these purposes, 'every domestic tribunal, including any arbitrator or other person or

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body of persons invested with authority to hear and determine a dispute by consent of the parties, court order, or statute, is a 'judicial tribunal' for present purposes, and its awards and decisions conclusive unless set aside'. The court determined that the principle, and the concomitant rule against abuse of process, did apply in the Consistory Court; and it was impermissible to present a new petition for a faculty to carry out the same works as has already been determined in a judgment on a previous petition. This was consistent with the permission decision in *Re Cheshunt Cemetery* (*No 2*), on the facts of that case.

On the power to set aside the earlier judgment under rule 20.3, the court noted that the cumulative 'just and expedient' test encompassed a wide discretion, to be exercised in accordance with principle including the policy behind the principle of *res judicata*. The class of cases when such an order might be appropriate was not closed. Considering the points made by the petitioner, it was not relevant that she had previously acted without legal advice; or that the court had informally indicated that a new petition could be brought; or that there was no subjective intention to clog up, or abuse the process of, the court. The importance of the matter to the petitioner was not itself a ground to set aside. However, this was a 'declined permission' rather than 'lost dispute' case; there was no party to be prejudiced by a set-aside or to be vexed by a second action. The new reasons which the petitioner wished to bring forward addressed directly the apparent delay which founded the original refusal of a faculty. Although the original decision was unimpeachable in its application of the legal principles to the evidence then before the court, it would be just and expedient to set the decision so that the second petition could be considered on its merits.

On its merits, including new evidence as to the delay and to the spiritual harm caused by the present interment, a faculty would be granted.

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Re St Mary, Almeley

Hereford Consistory Court: Ockelton Ch, 12 December 2024 [2024] ECC Her 1

Re-ordering – font – compliance with Canon F1

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The petitioners sought a faculty for re-ordering, which included moving the font from its place at the back of the nave to the east end of the north aisle. The reason

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