Surveyors Association and the PCCs of any other parish where he was the inspecting architect. [DW]

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Re St Margaret, Rottingdean
Chichester Consistory Court: Hill Ch, 15 June 2020
[2020] ECC Chi 4
Headstones – offensive inscriptions – removal and storage – directions

The court gave reasons for emergency faculties issued in the preceding days for the removal of two headstones and their safe storage in a secure and undisclosed location. The headstones marked the graves of two music-hall performers, both of whom died in 1962, and described their stage personae in terms that had come to be recognised as deeply racially offensive. Following public protests animated by the Black Lives Matter campaign, the parish had obscured the inscriptions with black dustbin bags, and sought a faculty to erect more substantial, wooden protection around the headstones. In granting that emergency faculty, the court indicated that it would be receptive to a further application for the immediate removal and storage of the headstones while their long-term future was considered; that further application had been made. Headstones belong to the heirs-at-law of the deceased. However, while their removal or alteration can only be undertaken under a faculty, such a faculty can be sought by parochial clergy, churchwardens, parochial church councils, archdeacons and parishioners, as well as the owners of the headstone.

The court directed that the headstones be removed and stored securely, remaining under the jurisdiction of the court and pending further order; that the archdeacon be made an additional party to the proceedings; that best endeavours be used to trace the heir-at-law of each of the deceased; and that a petition for a confirmatory faculty with detailed proposals for the future of the headstones be lodged within six months. [DW]

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Re Lambeth Cemetery
Southwark Consistory Court: Petchey Ch, 28 July 2020
[2020] ECC Swk 4
Exhumation – conflicting binding authority – relevance of precedent

The petitioner sought a faculty for the exhumation of the remains of his stillborn son so that he could be reburied in an unconsecrated burial chamber with the

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remains of the petitioner's deceased wife. In applying the test in *re Blagdon* the court found exceptional circumstances, and a faculty was granted.

The court considered the state of the differing binding precedents on exhumation in the two provinces. In the northern province, the decision of the Chancery Court of York in *re Christ Church, Alsager* was still binding authority, to the extent that it differed from *re Blagdon* (as applied in *re St Chad's Churchyard, Bensham* [2017] Fam 68, Durham Consistory Court). The court noted that section 14A(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provided that:

> A decision of the Arches Court of Canterbury or the Chancery Court of York is to be treated by the other Court, and by the lower ecclesiastical courts in the province of the other Court, as if it were a decision which the other Court had itself taken.

Prior to the enactment of that section, Southwark Consistory Court was bound by the decision in *re Blagdon* but not by the earlier decision in *re Alsager,* but now the position was not so clear; both decisions appeared to be binding on it. It fell to the court to consider which authority to prefer. The court noted the dictum of Denning J in *Minister of Pensions v Higham*, cited with approval elsewhere, that there was a 'general rule that where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred, if it is reached after full consideration of the earlier decision'. The court therefore concluded that it should start from the position that it was appropriate to follow *re Blagdon* rather than *re Alsager* unless there were particular reasons why it should not.

The court further considered the relevance and status of factual precedents. While the common law doctrine of precedent was not historically part of canon law, the desirability of securing equality of treatment between petitioners was described by the Court of Arches in *re Blagdon* as the practical application of precedent. If the court was to be confident that equality of treatment was being secured, it needed to consider other decided cases; where factual distinctions were drawn between cases, it was important that the distinctions drawn should be intellectually defensible and not subject to the criticism that they were too fine to be justifiable. [DW]

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