for breach of confidence rather than for defamation, the likelihood was that the allegations of corruption were true. That being so, he reasoned, the general principle that there is no confidence in iniquity applied, and that the public interest test was in any event satisfied, overriding the obligation of confidence. All that being so, he considered that the injunction should be discharged, and publication permitted.

It is difficult in a note of this length to do justice to the complexity of the legal arguments canvassed in the judgments. What is clear is that the issues at stake for freedom of the press are enormous, and leave has been given to appeal to the House of Lords.

A.T.H. SMITH

RESTORING CHANCELS AND HUMAN RIGHTS

WHEN presented with the bare facts of *Parochial Church Council of Aston Cantlow, Wilmcote with Billesley, Warwickshire* v. *Wallbank* [2003] 3 W.L.R. 283, the average non-lawyer reacts with horror. The idea that a homeowner might find herself liable to an unlimited extent for the repair of part of the local church rests uneasily with the general public. Yet the House of Lords' decision should be welcomed as restoring clarity to the law on whether charitable institutions are public authorities for the purposes of section 6(1) of the Human Rights Act 1998, in the wake of the Court of Appeal's confusing rulings ([2002] Ch. 51). Moreover, the judgment contains dicta which make it clear that land obligations which require expenditure on the part of the servient owner should not be regarded as an arbitrary taxation that might be impugned under Article 1 of Protocol 1 of the European Convention on Human Rights.

In 1986, Mrs. Wallbank obtained Glebe Farm by deed of gift from her parents, the Coultons. As the name suggests, the property encompassed glebe, or church, land. According to a conveyance of 1970, the Coultons had purchased the farm "subject to the liability for the repair of the Chancel of Aston Church". Such a burden was an overriding interest under the Land Registration Act 1925, s. 70(1)(*c*), and the Wallbanks, as successors in title to the Coultons, were therefore bound by it. By 1994 the chancel had fallen into a state of disrepair. Unfortunately for the Wallbanks, the church was not just any old church, but a thirteenth-century gem of English heritage, praised by Pevsner in his *Buildings of England* series, and the place where Shakespeare's parents married;

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it was perhaps unsurprising that the cost of repairs amounted to over £95,000. The Parochial Church Council (PCC) issued a notice to the Wallbanks requiring them to pay, and, when the Wallbanks disputed the liability, brought proceedings under section 2(2) of the Chancel Repairs Act 1932.

The Wallbanks argued that the PCC was a public authority and thus prevented from enforcing the liability by section 6(1) of the HRA 1998, such enforcement amounting to a violation of their rights under Article 1 of the First Protocol of the ECHR by depriving them of their property (bank funds). At first instance, Ferris J. held that, as the PCC was a private body, the HRA 1998 was not applicable. The decision was reversed by the Court of Appeal ([2002] Ch. 51), a move criticised by Dawn Oliver ([2001] P.L. 651) and Phillip Kenny ([2003] Conv. 351). The House of Lords, in allowing the PCC's appeal, took the opportunity to consider questions which, although not in point once their Lordships had decided that, on the facts, the PCC was not a public authority for the purposes of section 6(1), had become less clear as a result of the Court of Appeal's decision.

On the question of whether the PCC was a public authority and therefore prevented by section 6(1) from interfering with the defendants' rights, a majority (Lord Scott of Foscote dissenting) rejected the Court of Appeal's assertion that the PCC, as a body set up by law and enjoying powers beyond those of a private individual, was a public authority. The Court of Appeal sought only to distinguish the PCC from those private bodies whose power governs only their own members (universities, for example). Since the PCC was able to enforce liability against any lay rector, regardless of the latter's religious affiliation, its power extended to the general public and accordingly it came within the ambit of section 6(3) of the 1998 Act. The House of Lords criticised the inferior court's failure to consider the difference between a "core" public authority and a "hybrid" public authority. The former is any government body, court or tribunal: section 6(3)(*a*); the latter's characterisation as a public authority depends on whether it carries out a public function in any particular case. This distinction is important because, whereas a core authority is never able to bring proceedings itself, because it does not satisfy the definition of "victim" in section 7(7), a hybrid authority may, in its private function, enforce its own rights under the Act. The majority felt it was extraordinary that a church body might be considered a core public authority, since in that case it would not be able to complain of infringement of Convention rights, and this surely would contradict section 13, which expressly guarantees the exercise by

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religious organisations of the Convention right of freedom of thought, conscience and religion.

At most, the PCC was a hybrid public authority. The test for whether it came under section 6(3)(*b*) depended on the nature of the function in the particular case. The enforcement of a liability to repair could not be a public function, because it did not lie against the public in general but only against those who owned burdened land, which was acquired through a voluntary act and could be disposed of at any time in order to avoid the liability. In this respect the PCC was in no different position from that of a private individual who, as owner of, say, the benefit of a restrictive covenant, can enforce the burden as a matter of private law.

The question of the enforcement of liability as a violation of rights under Article 1 of Protocol 1 of the Convention was rendered otiose by the majority's decision that the PCC's function here was of a private nature. Nevertheless, Lord Scott of Foscote, who had agreed with the Court of Appeal's judgment on the characterisation of the PCC as public, considered that there was no violation, as the liability did not amount to a deprivation of possessions or control of property.

Lord Scott summarised the origins of the liability of owners of rectorial land to repair the chancel of the parish church. Briefly, medieval lay rectors (*i.e.*, members of the public who owned church land) were allowed to collect tithes as part of rectorial property. In exchange, they were obliged to dedicate part of the tithes to the upkeep of the chancel, the part of the church occupied by the priest. Later, the tithes were replaced with grants of formerly common land under the Inclosure Awards. Consequently, the liability to repair now arose from ownership of these lands. The burden was part of a *quid pro quo*, that is, as the flip side of the benefit of a grant of land. Although its extent was unlimited, the liability to repair a chancel could not be described as a form of arbitrary taxation and an outside intervention by the general law, as the Court of Appeal had said. On the contrary, the liability was one of the incidents of ownership of Glebe Farm. The Wallbanks had chosen to acquire encumbered land; the liability had not been imposed upon them.

This decision may provoke a drop in the value of property comprising glebe land, but it is a sensible response to the blunt approach of the Court of Appeal, whose decision might have jeopardised the ability of non-governmental organisations to assert their human rights under the 1998 Act.

LESLIE TURANO

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