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[2003] EWHC 1960 (QB)  
**IN THE HIGH COURT OF JUSTICE**  
**QUEENS BENCH DIVISION**

Case No: 02/TLOJ/1760

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31 July 2003

**Before:**

**THE HONOURABLE MR JUSTICE GRAY**

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**Between:**

**The Right Reverend Jonathan Clive Blake**  
**- and -**  
**Associated Newspapers Limited**

**Claimant**

**Defendant**

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**The Claimant in person**  
**Miss Adrienne Page QC and Adam Speker**  
**(instructed by Reynolds Porter Chamberlain) for the Defendant**

Hearing dates: 28-29 July 2003

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**Approved Judgment:**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
The Hon. Mr Justice Gray

**Mr Justice Gray:**

**The issue**

1. The question which I have to decide at the present hearing is whether, given that it is common ground that the defence advanced in this libel action by the Defendant raises issues which are non-justiciable, it is necessary that the action as a whole be stayed with the consequence that the Claimant would be denied the opportunity to vindicate his reputation.
2. That question arises procedurally in the form of two preliminary issues directed by me on 22 November 2002. Those issues are:
  - i) whether and, if so, to what extent, in order to determine the issues in this action, it is necessary to determine matters which are non-justiciable; and
  - ii) if the answer to question (i) is "yes", whether the action should be stayed.

**The parties**

3. The Claimant, who has represented himself at this hearing in a dignified and persuasive manner, describes himself in the title to the action as "The Right Reverend Jonathan Clive Blake". His history is in summary that he was ordained into the Anglican Church in 1981 and in due course became vicar of a parish in southeast London. He resigned his incumbency in 1993 following the breakdown of his marriage involving adultery on his part. In 1994 he relinquished his status as a priest within the Church of England. Thereafter he continued to describe himself as "Reverend Jonathan Blake" and to wear clerical robes similar to those worn by clergymen in the Church of England. The Claimant asserts that he remained a clergyman and that his robes were not designed to imitate those worn within the Church of England.
4. In January 2000 the Claimant and Richard Palmer co-founded "The Society for Independent Christian Ministry" ("SICM"). The documents in the case do not reveal how many others were involved. Subsequently "The Province for Open Episcopal Ministry and Jurisdiction" ("POEM") was brought into existence following lengthy discussions between the Claimant and Richard Palmer. The Claimant told me that the impetus for the foundation of POEM was the wish of a particular clergyman to be ordained by the laying on of hands by a bishop which SICM was unable to provide. I was further told that, being a "province" within the one Church of God, POEM was in a position through Richard Palmer, himself a former bishop of the Liberal Catholic Church, to consecrate bishops.
5. On 9 December 2000 the Claimant was ordained a priest by Richard Palmer. The following day, 10 December 2000, the Claimant was consecrated a bishop, again by Richard Palmer. An announcement of the forthcoming consecration of the Claimant

had been placed in the issue of *The Times* for 11 October 2000. Included in the papers is an Order of Service; there are also a video and still photographs of the ceremony. At the time of the consecration of the Claimant POEM was not, as I understand it, part of or attached to any particular church or denomination. But the Claimant informed me that POEM was a diocese or province within The Open Episcopal Church, whose canons were promulgated on 18 November 2001.

6. The Defendant is the publisher of the *Daily Mail*.

### The newspaper articles

7. The articles published in the *Daily Mail* which are the subject of the Claimant's complaint followed an appearance by the Claimant on a nationwide daytime television programme in the course of which the Claimant officiated in a ceremony which was described as the marriage of two homosexual men. The Claimant was dressed throughout in robes similar to those worn by bishops of the Church of England or the Roman Catholic Church. He was described by the presenters as "a real bishop". Reference was made in an interview with the Claimant before the ceremony to the fact that he had been ordained a priest and had "worked traditionally in the Church of England for 12 years". No reference was made to SICM or POEM.
8. On the following day, 15 February 2001, the first article complained of appeared in the *Daily Mail*. It was headed:

**"A gay 'wedding' conducted by a self-styled bishop, with Richard and Judy as witnesses. How daytime TV celebrated Valentine's Day."**

9. The relevant part of the text of the article read:

"...Jonathan Blake, a self-styled bishop in costume mitre and cloak, led the ten-minute segment in which he gave the union his blessing.

The divorced father-of-two and former vicar left the Church of England after questions over his private life in September 1994. He was embroiled in an acrimonious divorce battle after confessing to his wife that he had an affair with a parishioner.

He now practices with The Society for Independent Christian Ministry, an organisation he helped to establish. It operates outside the conventional church. His previous wedding 'blessings' have been conducted on a speed boat and the Internet".

Two days later, on 17 February 2001, there appeared in a comment column the second article of which the Claimant complains:

### **“Rites and wrongs**

This week’s most repulsive stunt – shown on TV when elderly ladies and small children were almost certainly watching – was the Valentine Day ‘marriage’ of two particularly cheesy homosexuals on the Richard and Judy show. Officiating was an imitation bishop who was a once-divorced former clergyman. The only thing that surprised me about this disgusting event was that the producers couldn’t find a real bishop to do it. Given the appalling moral confusion of the Church of England these days, I’d have thought its bishops would have been queuing up. It’s at times like this I thank God I’m an atheist”.

10. In his letter and e-mail of complaint about these two articles, the Claimant stressed that he was a validly consecrated bishop of the Christian church. He insisted that his proper title is the Right Reverend Jonathan Blake or Bishop Jonathan Blake.

### **The parties’ statements of case**

11. In due course these proceedings were commenced. It is important to note how at the outset the Claimant put his case. The defamatory meanings attributed to the two articles in the Particulars of Claim, as foreshadowed in the letter before action, are:
  - i) that the first article meant that the Claimant, though not a validly consecrated bishop and not entitled to be called a bishop, publicly styles himself as a bishop and publicly masquerades as a bishop in bishop’s costume.
  - ii) that the second article meant that the Claimant, though not even a clergyman, publicly and dishonestly imitates a bishop, an office for which he has no qualification whatsoever, and thereby sets out to deceive the public.
12. The Amended Defence puts in issue the claim of the Claimant to have been consecrated a bishop within the Province for Open Episcopal Ministry and Jurisdiction and his claim to apostolic succession going back to Vatican Records. There are pleas of justification and fair comment. The primary meaning sought to be justified as true is

“that the Claimant is a self-styled bishop in that he calls himself a bishop and presents himself as such in the costume of a bishop, in circumstances where he has created himself, or caused himself to be created a bishop of an organisation created by him, and of a diocese also created by him; and in circumstances where, by ordinary standards of this society, he is not a bishop and would not merit appointment as one”.

13. In the alternative the newspaper contends that the articles were true in the meanings put upon them by the Claimant which I have set out at paragraph 11 above. In the further alternative the Defendant pleads that it is true that the Claimant is in all the circumstances an imitation bishop. This last meaning is also sought to be defended as being a fair comment on a matter of public interest.
14. The supporting particulars set out in some detail from paragraph 6.41 to 6.54 the events leading up to the ceremony which took place on 10 December 2000. It is asserted that, having left the Liberal Catholic Church, Richard Palmer had no authority to ordain the Claimant as a priest beyond the authority he assumed upon the founding of SICM which was founded by Palmer and the Claimant. As to the consecration of the Claimant as a bishop within POEM, the Defendant alleges that Richard Palmer purported by self-appointment to be a bishop within POEM. It is further alleged that the consecration did not take place within, or in conformity with the rules of, any established Christian denomination or according to any rules or criteria established independently of SICM or POEM. Accordingly it is the Defendant's case that the Claimant's claim to the status of a bishop was without any validity, save as accorded to it by the Claimant and Palmer by agreement between themselves.
15. The Defendant alleges that the Claimant caused and/or instigated his own appointment as a bishop in an organisation founded by him and in circumstances where he did not have the seniority or good standing required for such an appointment. So, it is alleged, the Claimant is rightly described as a "self-styled" bishop: by publicly styling himself a bishop and dressing up in the costume of a bishop of the Church of England and the Roman Catholic Church, he is masquerading as an independently appointed religious leader of high rank who attained such status as the product of appropriate and established procedures. By this means, it is contended the Claimant has been dishonestly imitating a bishop, an office for which his history and record show him to be unsuited.
16. In the Reply the Claimant asserts that Bishop Palmer, following the Augustinian principle maintained in the Western church, retained the power to ordain him as a priest. As to his own consecration, the Claimant relies on the fundamental principle, enshrined in all the codes of canon law of catholic apostolic churches, that only a bishop can confer orders to a bishop, thereby by logical process securing the succession. The Claimant contends that there was a Mandate for his consecration which had nothing to do with him. He denies masquerading as or imitating a bishop.

### **The evidence**

17. Witness statements have been exchanged. Unsurprisingly in the light of the contents of the Defence, the statements of the Claimant and his witnesses Richard Palmer and Professor Elizabeth Stewart are redolent with doctrinal, procedural, jurisdictional and historical arguments in support of the validity of his consecration.

18. Each side has also retained an expert. Mr Mark Hill, a barrister specialising in ecclesiastical law, prepared a report for the Defendant. He alone gave oral evidence which consisted entirely in cross-examination by the Claimant. For the Claimant the Reverend Dr Kenneth Leech, an Anglican priest and community theologian, prepared two briefer reports. Since it is common ground between the parties that issues do arise in the present case which are not justiciable, it is unnecessary for me to say more at this stage about the experts' reports. I shall, however, have to return to the conclusion expressed at the end of the second report of Dr Leech.

### **The area of non-justiciability**

19. There is, as I have said, a measure of agreement between the parties on the question whether the court can or should adjudicate upon the claim of the Claimant to validity as a bishop. In his skeleton argument the Claimant states:
- “It is a fact... that there is no forum or expert anywhere worldwide that can make an objective doctrinal determination as to who is or who is not a validly consecrated bishop”[Claimant’s underlining].
20. In his report for the Defendant Mr Hill agrees with that proposition. He does not consider that the Claimant’s claim to validity can be adjudicated upon by the court. It would involve a detailed and painstaking examination of questions of doctrine, theology and ecclesiology combining an assessment of history and a full understanding of contemporary and emergent theology and ecumenism. Mr Hill accepts that legitimate yet differing views may be held with integrity. Dr Leech concurs.
21. It seems to me that Mr Hill is right to say that the area of non-justiciability is somewhat wider than those formulations suggest. It is well-established by such cases as *General Assembly of Free Church of Scotland v. Lord Overtoun* [1904] AC 515; *R. v. Archbishops of Canterbury and York ex parte Willicmson* (transcript from M Hill, *Ecclesiastical Law*, 2<sup>nd</sup> Ed, OUP, 2001 at 672-676) and *Varsani v. Jesani* [1999] CH 219 that the court will not venture into doctrinal disputes or differences. But there is authority that the court will not regulate issues as to the procedures adopted by religious bodies or the customs and practices of a particular religious community or questions as to the moral and religious fitness of a person to carry out the spiritual and pastoral duties of his office. The topic is addressed in M. Hill ‘*Judicial Approaches to Religious Disputes*’ in R O’Dair & A. Lewis *Current Legal Issues 4: Law and Religion* (OUP, 2001) 409.
22. In *R. v. Chief Rabbi ex parte Wachmann* [1992] 1 W.L.R 1036, where a local rabbi sought judicial review of the declaration of the Chief Rabbi, following an investigation into allegations of adultery with members of his congregation, that he was religiously and morally unfit to occupy his position, Simon Brown J said at p1042:

“As Mr Beloff points out, the court would never be prepared to rule on questions of Jewish law. Mr Carus, recognising this prospective difficulty, says that in advancing his challenge here, the applicant would be prepared to rely solely upon the common law concept of natural justice. But it would not always be easy to separate out procedural complaints from consideration of substantive principles of Jewish law which may underlie them ...

That consideration apart, this court is hardly in a position to regulate what is essentially a religious function – the determination whether someone is morally and religiously fit to carry out the spiritual and pastoral duties of his office. The Court must inevitably be wary of entering so self-evidently sensitive an area, straying across the well-recognised divide between church and state. One cannot, therefore, escape the conclusion that if judicial review lies here, then one way or another this secular court must inevitably be drawn into adjudicating upon matters intimate to a religious community”.

23. That reasoning was applied by Auld J (whose judgment was upheld by the Court of Appeal) in *R. v. the Imam of Bury Park Jame Masjid Luton and others ex parte Suliman Ali* (*The Independent*, 13.9.91; *The Times* 12.5.93), where the court had been asked to intervene in an internal dispute as to the role of an Imam in a mosque community. Auld J said:

“In short, the issues raised involve an examination of religious law and the custom and traditions of a particular local religious community which the court is not competent to undertake”.

24. My conclusion is that many of the issues raised by the prefatory averments in paragraph 1 of the Particulars of Claim and by the particulars relied on in support of the defences of justification and fair comment fall within the territory which the courts, by self-denying ordinance, will not enter.

### **Should the action be stayed?**

25. If it be right that the court will decline to determine those issues, the next question which arises is whether the action can nevertheless proceed to trial, perhaps with some adaptation of the issues as they stand at present on the pleadings, or whether the action must be stayed. This is the essential question which I have to decide. In approaching it, I must and do bear in mind the extreme reluctance of the court to stay proceedings in circumstances where, as here, the consequence of so doing would be to prevent the claimant achieving the vindication which is the avowed object of the proceedings.
26. *Prebble v. Television New Zealand Limited* [1995] 1 AC 321 was a libel action brought by a government minister, where the defence of justification relied on by the

defendant included particulars charging the claimant and other ministers with making misleading statements in parliament and introducing legislation for dishonest and improper motives. Giving the reasons of the Privy Council for reversing the decision of the New Zealand Court of Appeal to impose a stay, Lord Browne-Wilkinson said at 337:

“...The stay effectively prevents the Plaintiff from establishing, if he can, that he has been most seriously defamed. Their Lordships were told that it was not part of the Defendant’s case before the Court of Appeal that there should be such a stay: the suggestion of a stay originated from the court itself. Before their Lordships, the Plaintiff’s counsel suggested that he had not been allowed sufficient opportunity to address the Court of Appeal on the point and that as a result they had fallen into error as to the importance of the allegations struck out relative to the main issues in the case.

The majority of the Court of Appeal took the view that the allegations struck out were ‘very close to the core of this political case’... and that without regard to such allegations the court could not adequately ‘consider a substantial plea of justification or... properly quantify damages’... Therefore the dispute was, in their view, incapable of being fairly tried and should be stayed. McKay J. took the view that the allegations struck out would not be determinative of the defence of justification and would have refused a stay.

Their Lordships are of the opinion that there may be cases in which the exclusion of material on the grounds of parliamentary privilege makes it quite impossible fairly to determine the issues between the parties. In such a case the interests of justice may demand a stay of proceedings. But such a stay should only be granted in the most extreme circumstances. The effect of a stay is to deny justice to the plaintiff by preventing him from establishing his good name in the courts. There may be cases, such as *Wright’s*, 53 SASR 416, where the whole subject matter of the alleged libel relates to the Plaintiff’s conduct in the house, so that the effect of parliamentary privilege is to exclude virtually all the evidence necessary to justify the libel. If such an action were to be allowed to proceed, not only would there be an injustice to the defendant but also there would be a real danger that the media would be forced to abstain from the truthful disclosure of a member’s misbehaviour in parliament, since justification would be impossible. That would constitute a most serious inroad into freedom of speech”.

The Privy Council held that the allegations which had to be excluded on the ground of parliamentary privilege were comparatively marginal so that the case could proceed, albeit deprived of the full evidence.



27. Realistically recognising the existence of a problem of non-justiciability, the Claimant, basing himself on the second report of Dr Leech, maintains that underlying the doctrinal issue as to the validity of his consecration there is what is described as a secular issue which may appropriately be determined by the court. Dr Leech formulates the secular issue as follows:

“The (secular) legal issue is whether Jonathan Blake was, in historical fact, consecrated as a bishop”.

28. The Claimant in his skeleton argument elaborates: he asserts that his claim is (or could be) based on the “self-evident historical facts” that he was ordained a priest and consecrated a bishop within POEM in a ceremony officiated by Bishop Palmer. He adds that both he and those in attendance at his consecration and those to whom he has ministered since believe him to be a validly consecrated bishop.
29. Dr Leech supports this approach. He expresses the opinion that on the historical evidence the Claimant was clearly consecrated as a bishop. Dr Leech adds that, if the question is then asked whether the Claimant was consecrated within a valid historical succession, the answer is also Yes. Dr Leech concedes that other churches may not recognise this. But this has been the case for hundreds of years. Other churches may reject him, but there is no doubt that the Claimant was consecrated a bishop “within an actual church”.
30. The Claimant makes the point that the readers of the *Daily Mail* were kept in ignorance of these “historical” facts with the result that the impression was given that “one day I had decided to pop in to Wippel’s (ecclesiastical outfitters) and purchase a purple cassock to con the public into believing I was one when the fact was I was not a bishop, because no one had appointed me a bishop other than myself, that I was imitating a bishop, was masquerading as a bishop and was an impostor”. The essence of the Claimant’s complaint is that the *Daily Mail* articles, which came after 20 years of trying to help people through his ministry, attacked his integrity. If the action were to be stayed, he would be prevented from demonstrating that he is no mere imitation bishop, with the result that his integrity would be further undermined.
31. For the Defendant Miss Adrienne Page QC argues that the issues which are accepted by the Claimant to be non-justiciable are so fundamental that the action cannot fairly be tried. The defences of justification and fair comment are properly pleaded being directed at meanings which the newspaper articles are capable of bearing or in the alternative at the meanings of which the Claimant complains. She suggests that the European Convention on Human Rights is engaged. Citing *Serif v. Greece* [2001] 31 EHRR 561, *Manoussakis v. Greece* [1996] 23 EHRR 387 and section 13(1) of the Human Rights Act 1998, she submits that for the court to reject the claim of the Claimant to have been validly appointed a bishop might contravene the rights of the Claimant under Article 9 (the right to freedom of religion). At the same time she contends that, if the right of the newspaper to deploy material in support of the defences of justification and fair comment were to be circumscribed by the court, its right to freedom of expression under Article 10 might be infringed: see *Otto-*

*Preminger-Institut v. Austria* [1994] EHRR 34 and section 12(4) of the 1998 Act. This is one of those exceptional cases where justice requires that the action be stayed.

## Conclusion

32. I start by considering the question whether, on the pleadings as they stand at present, the Defendant can establish its case for the imposition of a stay by reason of the existence of issues which are non-justiciable.
33. I have already expressed my conclusion at paragraph 24 above as to the range of issues which the court will decline to determine in this field. It seems to me plain that there are numerous questions raised on the parties' statements of case which, according to the authorities already cited, are not justiciable. Such questions include, by way of example only, substantive doctrinal questions including the canon law of catholic apostolic churches; questions of ecclesiastic procedure such as the authority and entitlement of Richard Palmer to consecrate the Claimant and the validity (in the absence at the time of any denomination or established church) of the consecration of the Claimant; questions whether the consecration of the Claimant was in conformity with the customs and practices of any established Christian denomination or criteria independently of POEM and finally questions as to the moral standing and fitness of both Richard Palmer and the Claimant for episcopal office. I emphasise that these are no more than examples of the questions arising on the pleadings which appear to me to come within the forbidden territory of non-justiciability.
34. On the existing statements of case it is impossible for me to say, as was said in *Prebble*, that the non-justiciable issues are so marginal that the action can proceed to trial.
35. Bearing in mind, however, that a stay will only be granted in the most extreme circumstances because the effect would be to deny the Claimant the opportunity of establishing his good name in the courts, I must consider whether the issues which at present arise on the pleadings can be so adapted or tailored as to permit the action to proceed albeit with some limitation imposed as to the nature of the material which may be deployed. This was the solution proposed on behalf of the plaintiffs in *Hamilton and Greer v Hencke* (May J, 21.7.95, unreported (the "cash for questions" case. Lord Williams of Mostyn QC for the plaintiffs proposed that there might be excised from the case all reference to the motive which Mr Hamilton may have had for asking certain Parliamentary questions.
36. I suggested to the Claimant in the course of argument possible ways out of the impasse, for instance that he might withdraw his claim to have been validly consecrated as a bishop and complain instead that the *Daily Mail* articles defamed him by suggesting that his claim to be a bishop was dishonest because he had not taken part in any consecration ceremony. This suggestion is a modified version of the secular issue which Dr Leech maintains could be decided by the court (see paragraph 27 above). The Claimant was understandably somewhat reluctant to abandon his

claim to have been validly consecrated. Even if he had been more enthusiastic, I think that the objection to the suggested course which was taken by Miss Page is well-founded: she argued that the newspaper would still wish to advance the case that the consecration service had no religious or ecclesiastic validity, so that it was in effect a charade, and that to prevent the newspaper from advancing this case would be manifestly unfair and a serious invasion of its Article 10 right.

37. I note that in the passage from *Prebble* quoted in paragraph 26 above Lord Browne-Wilkinson made reference to the risk of an inroad into the right of the defendant to freedom of speech. That was the reason why May J rejected the course proposed by counsel for the plaintiffs in *Hamilton and Greer v Hencke*. He pointed out that:

“it has to invite the court to prevent the defendants from attributing to the publication the wider meaning for which they contend, a meaning which ... the publication plainly bears and which the plaintiffs themselves have in substance attributed to it in their pleading ... it would be both unfair to the defendants and quite impractical to confine their justification so as to omit the alleged link between the alleged payments and the admitted asking of the questions..”.

38. It appears to me that the issues in the present action cannot be adapted so as to circumvent the insuperable obstacle placed in the way of a fair trial of this action by the fact that the court must abstain from determining questions which lie at the heart of the case. I am of course well aware that a stay will deprive the Claimant of the opportunity to obtain vindication. But I am driven to the conclusion that in the present case, as in *Buttes Gas v Hammer* [1982] AC 888, *Allason v Haines* [Owen J, *The Times* 25.7.95] and *Hamilton and Greer*, there is no alternative but to stay the action.