In the Consistory Court of the Diocese of Worcester

Archdeaconry of Worcester: Parish of Welland: Church of St James

Faculty petition 11-24 relating to sale of silverware

Judgment

Introduction

1. This petition is for a faculty to authorise the disposal by auction sale of two items of silverware, currently owned by the Parish of St James, Welland:

    - an Elizabethan jug mount (silver and glass), hallmarked 1582; and
    - a silver-gilt steeple cup and cover, hallmarked 1613.

    The petitioners are the Vicar and churchwardens, and the parochial church council ("the PCC"). The latter was made a petitioner in case it was found necessary for it to give the authorisation to sell the items if a faculty were to be forthcoming; although, for reasons that will become apparent, it is likely that power to sell them will in this case rest with the churchwardens.

2. I have had the benefits of the views of the diocesan advisory committee ("the DAC") and the Church Buildings Council ("the CBC"), which I consider in more detail below. The petition was publicised in the usual way, and no responses – adverse or otherwise – have been received.

Procedure

3. In *Re St Gregory, Tredington*, a decision of the Court of Arches relating to the proposed sale of a silver flagon, and one of the two leading authorities in this area of law generally, it was noted that "faculties of this kind should seldom if ever be granted without a hearing in open court."[1]

4. However, that decision predated the introduction in the Faculty Jurisdiction Rules 1992 of a procedure whereby an opposed petition could be determined on the basis of written representations in appropriate cases, including those relating to the disposal of what are sometimes simply referred to as "treasures" (see now rule 26 of the Faculty Jurisdiction Rules 2000). Thus the Court in *Re St John, Deptford* considered that there was little to be gained by insisting on an oral hearing in a case where a confirmatory faculty was sought to authorise the sale of items of silver that had already been disposed of unlawfully.[2]

[1] [1972] Fam 236, at p 246 F.
[2] [1995] 1 WLR 721, Southwark Consistory Court.

5. More recently, the requirement for an oral hearing was reviewed in *Re St Peter, Draycott*, in which the Court of Arches confirmed that the quoted words no longer carry the weight that they did in the past.[3] Instead, it was necessary for a chancellor to consider whether an oral hearing was necessary in each individual case:

> "Whilst the [written representations] procedure has the advantage of limiting the costs of contested faculty proceedings, this should not be the sole criterion for using the procedure. Sometimes a hearing in open court may be desirable for pastoral reasons so that parishioners can raise matters before the chancellor in person. It may be desirable because novel or difficult points of law are likely to arise, or it may simply be because there are facts in dispute which need to be tested under the rigour of cross-examination.[4]

6. In the present case, the petitioners and the CBC were both content that the matter should be disposed of on the basis of written representations; and I decided that it was expedient to do so, under rule 26, and having regard to the matters mentioned in *Draycott*.

The items to be sold

7. The Director of the silver department at Christie's was able to see both of the two items in question in 2010, when they were taken to London for valuation. He has also researched their background and origin. They have also been examined by Bonhams and Dreweatts.

8. The jug mount dates from around 1582, in the reign of Elizabeth I. It is of silver-gilt; its maker is unknown. Christie's and Dreweatts suggest that the mount may have originally been attached to a stoneware jug, sometimes known as tigerware, and that the jug with its silver mount was initially in secular use; Bonhams suggest that the original body may have been glass. The glass body to which it is now attached dates from the 19th century. This history does not impair the attractiveness of the piece, but does reduce its likely value. The jug (also referred to as a flagon; the two terms appear to be synonymous) was exhibited at an exhibition in Birmingham in 1948 and at Christie's in 1955.

9. The cup was made in or around 1613, in the reign of James I, with a hall-mark of that year. The maker is unknown. It is a handsome piece, also of silver-gilt, with a matching high spire-like cover with elaborate repoussé work. It bears the arms of the Taylor family. Here too, it appears to have been used as a secular vessel for the first 120 years or so of its existence. The cup was restored in the 19th century, but unfortunately melted lead was introduced into the base, to give it added weight. In addition, the spire forming part of the cover should be removable from the remainder, but it has been fixed at some stage. As with the jug, these factors do reduce its value. It appears that the cup was sold by the church in 1845, and repurchased in 1882. The cup was loaned to the Goldsmiths' Company for an exhibition in 2008.

10. Both the jug and the cup with its cover were given by Penelope Taylor to the Church in 1735. It is not clear whether either gift was subject to any conditions, terms or

[3] [2009] Fam 93, at para 34.
[4] para 35.

stipulations. Penelope Taylor was a Lechmere before her marriage to Ralph Taylor, a wealthy landowner in Welland. The Lechmeres have lived in nearby Hanley Castle (now in the same benefice as Welland) since around the 11th century.

11. The two items have for a number of years been kept in a bank vault, and are never used for worship services. They are not insured, owing to the prohibitive costs. Their removal from the church to a secure location did not provoke any adverse comments.

12. In May 2010, Christie's valued the jug at £4,000–6,000; the steeple cup with cover at £20,000–30,000. The two items together would thus be valued at between £24,000 and £36,000. In January 2011, Bonhams suggested a reserve of £5,000 for the jug, and £18,000 for the steeple cup; and indicated that it would charge a commission of 10% and a loss and damage warranty of 1.5%. More recently, Dreweatts recommended a pre-sale estimate of £3,000 to £5,000 on the jug, and £15,000 to £20,000 on the cup, and offered to auction them at a reduced commission for charities.

13. Those figures suggest that the total to be raised for the Church from the sale of the two items might be in the region of £25,000 to £30,000, after deduction of fees and taxes.

14. If the items were to be used by the parish, they would need to be insured, and kept securely. There might also be an obligation to spend money on their conservation, although I have seen no evidence as to that.

15. I have not seen either of the two items in question, but I have been shown good quality colour photographs.

The views of the parties

The need for the sale

16. Welland is a small rural settlement between Worcester and Malvern. There has been a church there, dedicated to St James, since the 14th century. The present building (on a different site from that of its medieval predecessor) dates from 1873, and has been listed as a building of special architectural or historic interest, Grade II.

17. In 2001, when the present incumbent, Revd Frances Wookey, arrived as Vicar of Welland, Hanley Castle and Hanley Swan, attendance at Sunday worship was declining; and the church building at Welland was used for little else. With a small electoral roll of 42 committed members, the upkeep of the building placed a heavy financial burden on them. Over the next three or four years, much effort was put into exploring creative ideas for extending the outreach and mission of the two churches in the benefice, including imaginative use of the buildings. St James' Church offered the most possibilities, and the PCC accordingly set up a Development Group.

18. The Group identified areas of community needs, and ways in which the church could help to meet them. Activity at the church has greatly increased; and, just as significantly, in an area with a much higher than average proportion of older inhabitants, the average age of the congregation has decreased, with 30 children

attracted to regular activity days. The general financial position is sound; and the parish share is always fully paid.

19. In 2004 a faculty was granted to remove the pews from the south aisle. A further faculty authorised the replacement of pews in the nave by chairs in 2008, to give greater flexibility in the use of the whole church; and new wiring and lighting has been installed, along with an electronic keyboard.

20. More recently, I granted a faculty for the carrying out of a major re-ordering scheme, consisting of under-floor heating in the nave, new flooring in the nave, introduction of new facilities (kitchen, toilets and new community room) in the west end, with further new rooms in a mezzanine floor above. That scheme is to be carried out in phases. In short, it is an imaginative proposal by an incumbent and a PCC who have clearly started to get a grip on what to do with their building.

21. However, of course, such a scheme costs a great deal of money – estimated at £140,000 (experience suggests that this figure will rise before the project is complete). Thus quotations from contractors vary from £86,450 to £106,709, but to this will need to be added the cost of fitting out the kitchen and constructing the mezzanine floor, as well as the balance of the fees and an allowance for contingencies. The total cost may thus well rise to £150,000 or more.

22. To meet that cost, grants have been promised from various sources – notably £66,000 from the Worcestershire LEADER programme (set up to assist projects that benefit communities in rural areas, funded by the EU and the UK government, and administered by the County Council; LEADER stands for *Liaison entre actions de développement rural*) – although this requires evidence of match funding of £60,000 by the end of 2011. A further £5,000 has been promised by the Church and Community Fund (a central Church of England charity), and £3,000 promised or paid by two private trusts. Further grants may be obtained; and there is a portfolio of shares worth approx £7,000 that may have to be sold. It is hoped that a further appeal to church members may raise up to £20,000. A short-term loan may be available to fund any temporary shortfall.

23. It follows that if the re-ordering is to proceed, the sale of the silver – raising in the region of £25,000 to £30,000 – would be crucial. It is for this reason that the Archdeacon has stated that he is "100% sure that the parish should be permitted to sell the items and use the funds in order to complete this very worthwhile project".

24. The PCC minutes of 1 December 2005 record that "there was complete agreement to the selling of the church silver currently housed in the bank safety deposit box, as hoarding the silver did nothing to further Christian activities." Some five years later, it was noted that "the church silver has been taken to Christie's for valuation, and unfortunately the steeple cup is not as valuable as we were led to believe." However, it was unanimously agreed to ratify the previous resolution to sell the particular items of church plate at auction at Christie's to raise funds for the development project."

25. The PCC has adopted a policy of keeping the church open as often as possible, as part of its role as a local centre of mission and worship. If the silverware were to be used, and kept in the church building, it would therefore be necessary to have increased security, and to insure the items in question, at considerable cost.

26. The current head of the Lechmere estate, who is churchwarden at St Mary's in Hanley Castle, is aware of the family history and the marriage of Penelope Lechmere to Ralph Taylor. He has no objection to the current proposal to sell the two items. The parish has sought to contact the descendants of the Taylor family, but with no success (not least because Taylor is not an uncommon name).

27. As well as the two items proposed to be sold, there is also a silver plated chalice and a flagon, both from the 19th century, and a more modern paten said to have been made from an old one. These two are kept in the bank vault, on the same basis; but there is no proposal to sell them.

The views of the DAC

28. The DAC has recommended the proposed sale, subject to two provisos:

    (1) there be a reserve of at least £20,000 at auction;

    (2) that the silverware be independently valued, preferably by the Goldsmiths and Silversmiths Company.

29. However, that recommendation was not unanimous, with 7 in favour and 5 against. It is perhaps significant that Mr Peplow, the DAC adviser on plate, was not present on that occasion, since he takes a somewhat different view – he respects the views of some other DAC members, but strongly urges that the petition be rejected.

30. He notes that modern society tends to dispose of treasures and artefacts much valued by earlier generations in favour of more recent creations. Whilst accepting that there may be arguments in favour of disposing of some of our church plate in order to answer to new needs and to fund modernisation, he points out that church plate, irrespective of value or age, represents a part of our history and, whether ecclesiastical or secular, is a piece in the jigsaw which, once disposed of, may never be replaced.

31. He considers that the flagon and the cup at Welland are two of the finer pieces in the diocese. If sold, the proceeds might make a temporary difference to the ministry and satisfy the current need for amenities. The demand for facilities seems to be coming from all our churches, irrespective of the size of congregation or future plans to keep the church vibrant and open. He asks whether this extra funding will make a long lasting difference, and suggests that any effect would be transitory, and that following generations may decry the actions of their forebears.

32. These two items need to be available for people to see, possibly in a diocesan treasury or in a museum. To sell them for a modest current gain would be a tragedy; and the steeple cup could well end up going to an overseas buyer. In short, he states that he hopes most sincerely that they will not be sold merely to provide facilities for St James's Church and to help with ministry there.

The views of the CBC

33. The CBC sent a caseworker to visit Welland, who noted that the two items under consideration are clearly important examples of decorative silver gilt work of their period, and that they are of national significance, having been displayed in regional

and national exhibitions (as noted above). She also observed that both pieces had been used in a domestic setting for over 100 years, although she did not consider that to be an argument in favour of their sale, and that the descendants of the donor supported the proposal. She accepted that the parish did not use the items – and used instead an older Elizabethan chalice from 1571 – and that they were last seen by the congregation in the millennium year; but that did not make them redundant.

34. She too considered that it was unfortunate that there was not a diocesan treasury where such items could be displayed, since these two compare well with similar pieces in the Victoria & Albert Museum. She accepted that they did not fit into the current safe, but recommended that security arrangements in the church be improved. As for insurance, the normal practice is for such items to be insured for the cost of a modern replacement.

35. Finally, she noted the dictum of the Court of Arches that the power to authorise the sale of treasures should be "sparingly exercised", and concluded that the CBC was unable to recommend the proposal, hoping that this would not deter the parish from continuing its excellent outreach and community work.

Response by the parish

36. The PCC, as recommended by the DAC, has contacted the Goldsmiths Company, but it was unwilling to help with any valuation. Instead, the parish approached Bonhams for a valuation in addition to that already received from Christie's – with the result already noted above.

37. In response to the observations by Mr Peplow, the parish reiterated that it had not decided to sell the two items without a lot of thought and careful deliberation.

38. Less than ten years ago, it had seemed entirely possible that the church might have to close through lack of support. However, the PCC had developed a way forward to secure the future of the building as a centre of worship and to respond to the needs of the wider village community. The parish thus believed that by securing the future of the church, not least for outreach to the community and to children in particular, that will ensure its survival to be an asset for that community for generations to come, as well as securing the continuing use of a historic building for its original purpose – worship.

39. The PCC also reiterated its concerns as to security and the cost of insurance, and pointed to the general lack of opposition to the proposed sale. Finally, it recorded the major fund-raising exercise that had taken place over the last ten years; but confirmed that the sale of the silverware was the only way on which it could meet the target.

40. As for the observations of the CBC, the parish noted that it uses throughout the year an older, Elizabethan silver chalice from 1571, which is a much more practical vessel, and can be kept in the small church safe when not in use. It sees no advantage to obtaining a better safe (at a costs of several thousand pounds) to contain the steeple cup, which would be no more visible than it is currently in the bank vault. And insurance that would only enable the parish to replace the old steeple cup with a modern substitute by definition does not ensure its retention for future generations.

The law

General principles

41. There have been a number of occasions on which the consistory courts and, on appeal, the Court of Arches, have considered the law relating to the disposal of church treasures. However, in almost all of them, the purpose of the sale has been to fund the carrying out of repairs, for which funding could not otherwise be found. The present case takes the matter one step further, in that the churchwardens and PCC at Welland wishes to dispose of the items in order to improve the church, rather than merely to repair it – for the purposes of promoting its mission.

42. I am also mindful that, as recently pointed out by Collier Ch in *Re St John the Baptist, Stainton by Langworth*,[5] the position has changed somewhat since the 1970s, when the Court of Arches made its decision in the leading case of *Re St Gregory, Tredington*.

43. I have therefore taken the opportunity to review this whole area of law, in an attempt to discern the underlying principles and thereby provide guidance to other parishes faced with similar concerns. I consider first the law underlying the basis on which objects are acquired and held, and then the basis on which they may be disposed.

44. Although most of the reported cases refer to the sale of "church treasures", as if that were a special category of property to which quite separate rules apply, it seems to me that there is no distinction in principle between the disposal (and I use that word deliberately, in preference to "sale") of an extremely valuable painting and that of a spare piece of carpet used in the vestry. Thus every church needs to own (or at least be given the use of) a number of movable items (chattels) for the purposes of its ministry. And that ministry will involve both the worshipping life of the local church congregation and mission to the wider community.

45. Some of those items will have been given, some lent, some bought, and some will have just appeared over the years. Some will be large (a carpet), some small (a paper clip); some old (a medieval chalice) and some new (a radio microphone). Some will be considered to be of some aesthetic value (a painting), some of none (a waste paper basket). Some will be used directly within the context of worship (a set of vestments), some for mission (the equipment used by a drop-in centre), and some for both (packets of paper). Some items will be of historic interest or sentimental value, some of none whatsoever; some used frequently, some never. And some will be of great value in money terms (such as certain old silver) – in some cases so valuable that they have to be stored elsewhere – and some of very little (modern ceramic vessels). Of course, in each case, there will be a range between the extremes.

46. It may be guessed that the reason why "treasures" have been considered to be a distinct category is simply that the bulk of the reported litigation relates to items of greater monetary value; items of less value have been acquired and disposed of without a faculty, as being *de minimis* – whether or not that categorisation is strictly

[5] [2006] The Times, 26 May, Lincoln Consistory Court.

correct in law, with regard to section 11(8) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and guidance given under that section by chancellors to PCCs. But there is no one category of items, "treasures", that is conceptually distinct, as opposed to all of the other items used (or no longer used, or in some cases never used) by the parish. And broadly the same principles apply to all such movable items, whatever their value.

47. What, then, is the basis on which such objects may be acquired, whether by gift or otherwise, to what purposes may they be put, and when may they be disposed of?

The justification for ownership by a church of movable items

48. The Court of Appeal considered a similar issue when grappling with the question of how a local authority should manage its property, in *R (Fewings) v Somerset CC*:

> "… it is, as [Laws J, the judge at first instance] very clearly explained … , critical to distinguish between the legal position of the private landowner and that of a land-owning local authority.[6] To the famous question asked by the owner of the vineyard ("Is it not lawful for me to do what I will with mine own?" St. Matthew, chapter 20, verse 15) the modern answer would be clear: "Yes, subject to such regulatory and other constraints as the law imposes." But if the same question were posed by a local authority the answer would be different. It would be: "No, it is not lawful for you to do anything save what the law expressly or impliedly authorises. You enjoy no unfettered discretions. There are legal limits to every power you have." As Laws J put it, at p 524, the rule for local authorities is that any action to be taken must be justified by positive law.
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> The positive law in issue in this case is agreed by the parties to be section 120(1)(b) of the Local Government Act 1972. That provides:
>
> > "(1) For the purposes of … (b) the benefit, improvement or development of their area, a principal council may acquire by agreement any land, whether situated inside or outside their area."
>
> At first sight this section has little to do with the present case, since we are not dealing with the acquisition of land but with the management or use of land which the county council acquired over 70 years ago. But the county council is a principal council within the statutory definition; we have been referred to no statutory provision or rule of law more closely in point; any other provision, unless more specific, would be bound to require powers to be exercised for the public good; and it seems perhaps reasonable to accept that the purposes for which land may be acquired are or may often be those to which the land should be applied after acquisition. …"[7]

49. A local authority thus may only acquire, own and manage land for the purposes provided by statute. What is the position relating to goods owned by the church?

50. In relation to goods given to a church prior to the coming into force of the Parochial Church Councils (Powers) Measure 1921, items of the kind under consideration here would have been acquired and owned by the churchwardens. The passage of the 1921

[6] [1995] 1 All ER 513 at pp 523-525.
[7] [1995] 1 WLR 1037, CA, per Sir Thomas Bingham, MR, at p 1042G.

Measure did not affect that; so that such items acquired before that time would still be owned by the wardens until disposed of.

51. Since 1921, items can be acquired by either the churchwardens or by the PCC. In the latter case, the relevant statutory provision is now section 5 of the Parochial Church Councils (Powers) Measure 1956 (the successor to the 1921 Measure), which provides as follows:

> "4. (1) Subject to the provisions of any Act or Measure passed after the relevant date [1 July 1921] and to anything lawfully done under such provisions, the council of every parish shall have: …
>
> (ii) the like powers duties and liabilities as, immediately before the relevant date, the churchwardens of such parish had with respect to:
>
> (a) the financial affairs of the church including the collection and administration of all moneys raised for church purposes and the keeping of accounts in relation to such affairs and moneys;
>
> (b) the care maintenance preservation and insurance of the fabric of the church and the goods and ornaments thereof; …
>
> provided that nothing herein contained shall affect the property of the church wardens in the goods and ornaments of the church or their powers duties and liabilities with respect to visitations. …
>
> 5. (1) Subject to the provisions of this Measure, the council of every parish shall have power to acquire (whether by gift or otherwise) any property real or personal –
>
> (a) for any ecclesiastical purpose affecting the parish or any part thereof;
>
> (b) for any purposes in connection with … "educational schemes" …
>
> (2) Subject to the provisions of this Measure and of the general law and to the provisions of any trust affecting any such property, the council shall have power to manage, administer and dispose of any property acquired under this section."

52. Happily the drafters of the 1956 Measure, unlike those of the Local Government Act 1972, saw fit to include provisions explicitly referring to the management and disposal of property, and not just to its acquisition. The principles laid down by the Court of Appeal in *Fewings* accordingly apply with even greater force. That is, a PCC does not have the unfettered powers of a private property owner, but is required to acquire, manage and dispose of property only for "ecclesiastical purposes".

53. In the case of items acquired by the churchwardens, whether before or after the coming into force of the 1921 Measure, there is no explicit statutory provision equivalent to section 5 of the 1956 Measure. However, it seems difficult to avoid the conclusion that the wardens of old, just like the PCC today, only have powers to acquire and deal with property, real or personal, for ecclesiastical purposes.

Ecclesiastical purposes

54. It seems to me that "ecclesiastical purposes" include principally, but possibly not exclusively, worship and mission. It is no coincidence that the phrase "worship and mission" appears in section 1 of the 1991 Measure, and is described in the side note to that section as "the church's purpose". The section provides (in its entirety) as follows:

"Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of a church as a local centre of worship and mission."

55. As to the interpretation of section 1, the Court of Arches in *Re St Luke, Maidstone* held that:

> "… (1) in the absence of words expressly limiting the wide jurisdiction long enjoyed by chancellors, section 1 cannot be said to apply to chancellors, since they are not persons carrying out functions of care and conservation. Rather, in carrying out their functions under the faculty jurisdiction, the chancellors are to "hear and determine . . . a cause of faculty:" see section 6 of the Ecclesiastical Jurisdiction Measure 1963.
>
> (2) Section 1 of the Measure of 1991 does, however, apply to bodies whose legal function is the care and conservation of churches. Every diocesan advisory committee and the Council for the Care of Churches clearly fall within this category. The wide statutory responsibility of … English Heritage, for the preservation of historic buildings (section 33 of the National Heritage Act 1983) would appear to bring that body within the section but, even if not strictly included, we are aware that English Heritage applies the spirit of the section in practice. In so far as the national amenity societies and conservation groups generally are prepared to adopt the same approach it will undoubtedly be of assistance to the chancellor.
>
> (3) If the section had applied to the chancellors it would have added nothing to the existing duty and practice of chancellors.
>
> (4) In construing the words "the role of a church as a local centre of worship and mission" it is permissible to consider not only the interests of local parishioners but also the interests of those regular members of the congregation who do not reside within the parish.
>
> (5) It was argued on behalf of the petitioners that the words "due regard" in section 1 of the Measure of 1991 impose upon those bodies to whom this section applies a duty to treat "the role of a church as a local centre of worship and mission" as the paramount consideration. We reject that argument. In our judgment the section requires the bodies in question not simply to concentrate upon the effect of proposed works upon the fabric or appearance of the church in isolation, but to consider the proposals in the context of and taking full account of the role of a church as a local centre of worship and mission."

56. It is clear that the word "church" throughout the 1991 Measure refers to the building commonly known as the parish church, rather than the group of people worshipping in it. It probably does not apply to the movable items (chattels) within or associated with such a building. However, it would be odd, to say the least, if those bodies carrying out functions of care and conservation in relation to such items were not to have due regard to the role of a church as a local centre of worship and mission. Of course, as explained in the fifth point in the above extract from *Maidstone*, that is not in all circumstances the paramount consideration.

57. The above considerations satisfy me that the principal, and probably sole, justification for churchwardens or a PCC acquiring or owning movable property is either:

- for current use for ecclesiastical purposes, including in particular worship or mission; or
- for possible future use for such purposes; or

- as a form of investment, to be sold at some point in the future to fund the carrying out of such purposes.

This may be subject to the specific terms on which a particular item was initially given to the church; but it is likely that such terms will encompass one or more of the above points.

Items in use

58. Clearly there will be scope for disagreement as to what would fall within the first of the three categories above – whether, for example, a particular painting or other artwork is or might be an aid to devotion; and as to how many Communion vessels are required. It is not only beauty that is in the eye of the beholder. And obviously some items will be more used less frequently than others, for example because of what they are (as with the nativity scene that is only used at Christmas, or stacking chairs that are brought out only occasionally) or because of their value or fragility (a set of old and special vestments that are worn only on Easter Day).

59. However, items that are permanently kept in a locked cupboard in the vestry, a parishioner's attic, or a bank vault, do not fall into this category.

60. In relation to the specific case of silver for communion, it should be borne in mind that Canon F3 ("Of the communion plate") provides as follows:

> "1. In every church and chapel there shall be provided, for the celebration of the Holy Communion, a chalice for the wine and a paten or other vessel for the bread, of gold, silver, or other suitable metal. There shall also be provided a basin for the reception of the alms and other devotions of the people, ands a convenient cruet or flagon for bringing the wine to the communion table.
>
> 2. It is the duty of the ministry of every church or chapel to see that the communion plate is kept washed and clean, and ready for the celebration of Holy Communion."

It has been held that this allows for the possibility of more than one chalice in appropriate cases.[8] But clearly the emphasis is on supplying the items that are actually needed for the Communion, which may happen to be beautiful pieces of metalwork, rather than acquiring (or retaining) works of art for their own sake.

61. Canon F14 ("Of the provision of things appertaining to churches") then provides:

> "The things appertaining to churches and chapels, and the obligations relating thereto, and to the care and repair of churches, chapels and churchyards referred to in the foregoing Canons shall, so far as the law may from time to time require, be provided and performed in the case of parochial churches and chapels by and at the charge of the parochial church council."

62. The injunctions in Scripture to give generously are in the context of giving to the needs of the temple (in the Old Testament) or of the church, or – much more frequently – to assist with the practical daily needs of individuals. And of course we are reminded that it "it is more blessed to give than to receive" (Acts 20 v 35). From the point of view of

[8] Lyndwood, 252.

the recipient, however, we are told to pray for daily bread (what we need), but not to build bigger barns to hold surplus wealth.

63. As to the second category, items set aside for future use might include, for example, a set of candlesticks not currently being used during the incumbency of a more low-church minister; but they might well come back into use at some stage in the future.

Movable items as an investment

64. The third category above takes into account the fact that a PCC will need to maintain some financial reserves against the possibility of future expenditure being required – either on the buildings, or on a variety of other items. And those reserves may be held as cash in the bank, or shares, or invested in fine art or other movable items of value.

65. But where that is the only reason for holding an item, it does not fall to be treated any differently from any other investment. That is, the members of the PCC as trustees are under a duty to manage the property of the church (in whatever form it happens to be for the moment) wisely, and to sell or re-invest it as occasion requires.

66. Of course a church may entirely properly hold onto a substantial surplus, if it knows that a building project is looming, or if it wishes to employ a member of staff in the future, or for some other specific reason. However, there is no particular justification for holding onto items "just in case". Thus it is prudent to maintain a fund (including, possibly, in the form of valuable artefacts held at the bank) against the possibility of a rainy day; but not against a rainy year. And that will of course provide no basis for holding onto the fund, or the items, once the rainy day arrives: as it was put by the Court of Arches in *Tredington*:

> "Fifth, [it is said that] to sell the flagons would be economically unwise, since they are an appreciating asset. This may be true, but it assumes that they will ultimately be sold, and the emergency is now."[9]

67. Obviously, an item can only be disposed of once. So it will be for the parish to decide in each case whether the moment has arrived; and the existence of the faculty jurisdiction ensures that such a decision is not made lightly or capriciously.

68. This category also recognises that churchwardens or a PCC may acquire items that can have no possible use, either present or in the future, directly for worship or mission. They may, for example, be left in a will the contents of a house. In such a case, they should sooner or later be sold, and the proceeds used to fund the ecclesiastical purposes of the church.

The decisions before Tredington

69. Against that background, I now turn to consider the main reported decisions of the courts relating to the disposal of movable items, and in particular the decision in *Tredington*.

[9] [1972] Fam 236, per Newsom, Deputy Dean, at p 245B.

70. It appears that the first relevant and available decision, and indeed the only one prior to 1965, was *Vicar and Churchwardens of St Mary, Northolt*, a decision from 1920 relating to the sale of church plate.[10] The chancellor in that case had taken a very restrictive line – deciding in particular that vessels that had been used for sacred purposes should not be applied to secular uses, on the basis of a passage from Archbishop Rich in 1236.

71. In the next reported case, *Re St Mary, Gilston*, a case concerning the proposed sale of a silver flagon that had been used as a communion vessel, Newsom Ch declined to follow the decision in *Northolt*, and observed in passing that "churchmen are much more conscious of the need to make full and deliberate use of the resources of the church for the benefit of the church as a whole".[11] He held that there was no bar in principle to the sale of communion vessels, nor any reason to control the person to whom it is sold. He made it plain that a faculty would always be required for the sale of treasures, and that such a faculty should not be granted lightly. He further held that a vessel that had been consecrated for sacred purposes should not be sold until it had been deconsecrated either by the Bishop or by the Archdeacon as his agent. I return to that point later in this judgment. He accordingly granted a faculty, and gave directions as to how the proceeds of sale were to be dealt with.

72. That approach was also taken, albeit with noticeably less enthusiasm, in *Re St Mary, Westwell*[12] – another case involving vessels formerly used for communion but now stored in a bank because of their great value (£32,000; in today's terms, around £500,000, by reference to the retail price index, or over £800,000 by reference to average earnings).

The decision in Re St Gregory, Tredington

73. It has already been noted that the law on the sale of church treasures was considered recently by the Court of Arches in *Re St Peter, Draycott*. The Court in that case, considered in more detail below, accepted as a starting point the "succinct and accurate summary of the main principles governing faculties for the disposal of movable property" set out by Briden Ch in his judgment at first instance. That summary itself noted that "the principles governing the power of the consistory court to authorise the disposal of movable property are to be found in *Re St Gregory's, Tredington*".[13]

74. For reasons that will become apparent, I consider that the decision in *Draycott*, although clearly relevant, is of only limited applicability to the present case. I therefore focus particularly on the principles laid down by the Court of Arches in *Tredington* – which are still binding on this court, except (as already noted) in relation to the need for an oral hearing.

75. The decision in *Tredington* was that of the Court of Arches in 1972 on an appeal against the refusal by Gage Ch to grant a faculty authorising the sale of two 16th

[10] [1920] P 97, London Consistory Court.
[11] [1965] P 125, St Albans Consistory Court, at p 131A.
[12] [1968] 1 WLR 513, Canterbury Commissary Court
[13] Quoted at [2009] Fam 93, paragraph 60.

century silver livery pots or flagons – also of great value (£35,000). The petitioners were the rector and churchwardens, together with the PCC – the latter being involved as it had to consent to any sale of treasures. The reason for the proposed sale was to pay for the repair and maintenance of the church and its furniture, estimated to cost £16,000. The flagons were said to be unnecessary, since the parish had other vessels available for communion. The Central Council for the Care of Churches ("the CCC"; the predecessor to the CBC) opposed the sale, as it had in *Gilston* and *Westwell*; the DAC also opposed the sale. The archdeacon was in favour.

76. Newsom Ch gave judgment sitting as Deputy Dean. Perhaps not surprisingly, he took the same line as he had at first instance in the *Gilston* case. First, he confirmed that a chancellor had jurisdiction to grant a faculty for a sale. The legal title to treasures – as with other goods of the church in the parish – rests with the churchwardens, who may (with a faculty) sell them or even give them away. He observed:

> "To obtain a faculty, some good and sufficient ground must be proved. In the case of a sale, one of the grounds suggested by Sir Robert Phillimore is redundancy. It is not an essential ground or the only possible ground. But some special reason is required if goods which were given to be used *in specie* are to be converted into money. Like all faculties, of course, this kind is a matter for the chancellor's judicial discretion"[14]

And on appeal the Court of Arches may substitute its discretion for that of the chancellor. Secondly, he repeated his conclusion from *Gilston* that there was no bar in principle to the sale of communion vessels.

77. In the light of those general principles, the Deputy Dean considered the facts in the case before him. It was clear, he said, that the flagons were unnecessary, the church having sufficient plate. It was also clear that this was a large country church, on which a great deal needed to be spent. In the light of that, and the evidence as to considerable giving by the congregation in spite of modest church attendance, he concluded that there was a financial crisis. There was no suggestion that the church was to be closed; so the parish wished to sell the flagons.

78. He noted that three matters had influenced the judgment of the chancellor, each of which he rejected. First, the argument that "there is a body of people within the Church which feels very strongly about the sale of communion vessels" had been supported by no evidence. Second, the view expressed by a representative of the DAC, that "it is a wealthy parish", confused the wealth of the inhabitants of the parish as a whole with the resources available to the PCC and the congregation. The third matter was the evidence of the archdeacon, as to which the Deputy Dean held as follows:

> "Towards the end of the memorandum which he produced, [the archdeacon] said:
>
> > "I would like the livery pots available for sale – but not simply to relieve the parishioners of Tredington of their obligation to maintain their parish church in good repair. I would like it to be laid down that some portion of the proceeds of sale should be applied to promoting the Kingdom of God pastorally, educationally and compassionately, both within the parish and beyond its frontiers."

[14] [1972] Fam 236 at p 240H.

> This evidence was really irrelevant. There may well be cases in which churchwardens, with the consent of the parochial church council, ask for a faculty to enable vessels to be sold in order to put the proceeds to a different charitable and religious use, inside the parish or beyond its boundaries or to use the proceeds for such a gift and for work to the fabric. If the vessels were proved to be unnecessary there would be jurisdiction to grant such a faculty, since Sir Robert Phillimore recognised in the passage quoted above that the goods of the Church may be the subject of a gift. I have myself in the diocese of St. Albans recently granted a faculty to enable modern and only fairly valuable communion plate, proved to be unnecessary, to be given to an overseas bishop for use in his diocese.
>
> There may well be cases where the conscience of a rich parochial church council will impel it to ask leave for the sale of unnecessary plate so that the proceeds may be given to some charitable and religious object: such a case must be considered when it arises. But that is not the present case, which is put on the ground of financial emergency caused by the fabric. In such a case it would not in my opinion be proper for the court to seek to force the petitioners to undertake to make such a gift of what is after all the parish's property or to refuse a faculty because they declined to do so. If the faculty is granted in the present case and a surplus later emerges, this parochial church council may well wish to make such an application by means of a fresh petition. But that is not the issue on this petition." [15]

79. I quote that passage in full, because in today's climate there may well be other parishes who have the good fortune to own valuable plate that is no longer required, and which they wish to sell – perhaps partly to defray the expense of repair and maintenance, and partly to give to other worthy causes, at home or overseas. Clearly there cannot be a rule of the kind hoped for by the archdeacon in the *Tredington* case, but it might well be that a parish would wish to put forwards such a suggestion of its own volition. However, such a suggestion does not form part of the present petition.

80. The Deputy Dean also rejected the views of the DAC and the CCC. He pointed out that where flagons (or other similar items) are given to a church to be used in the course of worship, but are far too valuable and are thus stored elsewhere for safety, the wishes of the original donor are frustrated in any event. He accepted that the items to be sold were part of the history of the county, but observed that to house them in a local museum would not assist the present needs of the church; and that to sell them would facilitate the preservation of the church, which is also a part of local history. Further, he disagreed with the submission of the CCC to the effect that to sell the flagons would be economically unwise, as they were an appreciating asset; they would have to be sold one day if they were to be of use. Finally, it was irrelevant that, once sold, the items might be exported out of the country – there existed procedures to enable the secular authorities to prevent that if they wished.

81. For those reasons, he allowed the appeal and granted a faculty. He directed that the net proceeds of the sale (after meeting the costs of the litigation) were to be paid to the DBF, subject to the parish being enabled to carry out the repairs to the church as instructed by its architect. The remainder, and the interest accruing on it, was to be invested so as to accumulate. Thirdly, the parish should commission an appropriate

[15] [1972] Fam 236 at p 243F.

memorial to the original donor of the flagons, so as not to discourage such donations being made in the future.

82. Finally, the Deputy Dean in *Tredington* noted that it would be helpful for the archdeacon to be an interested party in cases of this kind. If he wished to oppose the petition, he can set up a positive case accordingly; but if he supports it or is neutral, he can instruct counsel to put the petitioners to proof. And he finished his judgment by observing:

> "As to the grounds for granting the faculty, I have granted it in this present case because the flagons are redundant and because there is an emergency in the finances of the parochial church council, due to the state of the fabric and the small congregation of the church. I have also stated that faculties can be granted to enable churchwardens to make a gift to religious and charitable purposes. I must not be understood to say that those are the only grounds for exercising the discretion in favour of a sale; other kinds of cases must be considered as and when they arise, but the jurisdiction should be sparingly exercised."[16]

83. This makes it plain that there is no limit in principle to the type of circumstances that might be held to justify a sale; but also that parishes should only embark on this course exceptionally.

Cases since Tredington*: disposal of silver*

84. The *Tredington* judgment was first considered, and approved, by the Dean of the Arches in *Re St Martin-in-the-Fields*[17] – save that he noted that, in assessing whether there is a "special reason" to justify the sale of an item, a chancellor must also take into account the special character of the ministry of the church in question. There too the Court required a worthy object to be introduced as a memorial to the original donor of the object now being sold, and the person in whose memory it had been given.

85. The *Tredington* judgment, with the gloss added in *Re St Martin-in-the-Fields*, was then applied in a series of cases relating to the disposal of silver. The first, *Re St Mary le Bow* was altogether untypical, due to the exceptional circumstances of churches in the City of London in general, and that one in particular.[18] However, a faculty was granted for the sale of various items from the "agglomeration of silver" now owned by the parish, selected so as not to flood the market, because of the special needs that were found by the court to exist.

86. In *St Mary of Charity, Faversham*, by contrast, a faculty was not granted to sell two silver flagons to meet part of the cost of extensive repairs to a large and important church, at the same time as mounting a substantial appeal to both the congregation and the wider community.[19] The Commissary General, after considering at length the issue of title to the items in question, noted that the parish did not want to sell the flagons, and did not intend to do so unless the appeal failed; and that it was by no

[16] [1972] Fam 236 at p 246.
[17] Unreported, 31 October 1972.
[18] [1984] 1 WLR 1363, London Consistory Court.
[19] [1986] Fam 143 Canterbury Commissary Court.

means certain that the appeal would fail. He therefore decided that the parish had not proved good and sufficient grounds to justify the proposed sale. However, he indicated that if after a year or more it became clear that the appeal had failed or would inevitably fail, and the parish presented a fresh petition to sell the flagons, he might have to grant a faculty, as he considered that their retention was less important than the preservation of the church.

87. In *Re St John, Deptford*, various items of silver had already been disposed of unlawfully; and the Court held that, in the absence of a faculty, title would not have passed to those now physically in possession of them.[20] However, to refuse a confirmatory faculty would serve no practical result – especially since the items in question had undoubtedly been redundant. It may be noted in passing, however, that the Court will not always grant a faculty in such case – thus in *Re St Mary, Barton upon Humber* the Court refused to authorise retrospectively the purported sale of a set of Royal Arms by a church to a national auction house, and required its return.[21]

88. A more typical case was *Re St John the Baptist, Stainton by Langworth*, mentioned earlier, which is perhaps the most significant of all those being considered; the judgment represents a thoughtful reassessment of the principles set out in *Tredington*. In *Stainton*, the facts were by no means unusual: a parish sought to sell some silver to fund the cost of relatively minor works of repair to the tower. The chancellor reviewed the law, and summarised it as follows:

> "This means that the Chancellor will consider all the evidence surrounding the proposed sale, he will consider the reason for the sale, the proposed use of the money to be raised, the historical or artistic significance of the item, and then exercise his discretion in deciding whether a good and sufficient reason has been proved. He will not be fettered in the exercise of that discretion by requiring in addition to redundancy, evidence of "dire financial need in connexion with the repair of the church building which could only be resolved by the sale of the plate" …, but will consider all the evidence and then exercise his discretion.
>
> "Very often, he will be considering questions of financial need, since parishes do not usually consider selling historical items unless they are in need of cash. In those cases he will have to weigh the need of the parish against the loss measured in terms of historic, artistic or cultural value. …
>
> "The more valuable the plate, particularly having regard to its artistic and historic value, the weightier will need to be the reason before the court in its discretion concludes that it is a sufficient reason in all the circumstances to allow a sale."[22]

The last sentence in the above passage was quoted with approval by the Court of Arches in *Draycott*, which commended what it described the Chancellor's "gradation of proof".[23]

89. The Chancellor concluded,

> "The test in short is whether on the balance of probabilities a good and sufficient ground has been established for the sale. A good ground is a special reason. A sufficient ground

[20] [1995] 1 WLR 721, Southwark Consistory Court.
[21] [1987] Fam 41, Lincoln Consistory Court.
[22] Paragraph 16.
[23] [2009] Fam 93, paragraph 64.

is one which, when considered against all the other material before the court, is of sufficient weight to persuade me that a faculty should issue."[24]

90. This suggests that the key factor, to be balanced against the desire to retain the item in the church, will be not necessarily the "needs" of the parish – for example, to fund repairs – but simply "the reason for the sale" – which might be more generally to fund the mission of the church. In that case, the chancellor noted that the silver was not required, and that the parish was using regularly for communion purposes an earlier cup of 1568. He noted too that the pieces to be sold were capable of being recorded in writing and by photographs. He observed that the cathedral treasury would not be able to display them, so that they would not be any more visible than they currently were, in a bank vault.

91. He concluded his analysis as follows:

> "I am very conscious that the church at large has the responsibility for maintaining a vast part of the nation's built heritage. The responsibility for this falls to a large extent upon small congregations in the countryside who are seeking like the congregation at St John the Baptist to fulfil that duty. Such money from central or local funds and whether government or charitable funds is extremely limited and is likely to be spent on more prestigious projects than those represented by the current needs of this parish. I have to strike a balance between on the one hand the national and local bodies that look to parishes like St John the Baptist to maintain the historic fabric and yet at the same time not to dispose of any historic artefacts whose sale might enable them better to fulfil that responsibility and on the other hand the cry that comes from the faithful saying we will do our best but we cannot always do it all. In those circumstances I have to strike a balance as to what are the proportionate demands that can be made of them and what would be disproportionate.
>
> In my judgment the financial climate has changed since Tredington and I must not allow anything to fetter my discretion in striking that proper balance in today's climate. I consider that I am under a duty to weigh up all the circumstances and to have in mind the greater picture of maintaining the viability of the church so that for as long as possible it can fulfil its calling to mission whilst at the same time it discharges its overall responsibility for what has been entrusted to it from the past. This often involves a more complex balancing exercise than simply asking whether there is a sufficiently dire financial emergency to justify the sale of an historic asset.
>
> In this case I have in mind that this proposal was publicised by notices displayed inside and outside this church, which the petitioners point out was regularly attended during the relevant period by people visiting the churchyard to lay flowers on graves. There were no objections. In my judgment although this has not been tested, I am aware from other cases where this has been an issue, that on the whole the general public feel that the church should not be asking for money from the public to repair fabric when they have redundant items such as this which could be sold. The PCC believe that that would be the local view, although they have not taken the debate outside their own number. It may be argued that if this attitude prevails there could soon be little left of the historic heritage. That may be so, but I am conscious that the life expectancy of many Grade I country churches is very limited, and so long as a church can be maintained as a symbol of the Christian presence in the community so that there is some prospect of a viable

[24] Paragraph 17.

congregation not only remaining but being built up in the future then that will be a significant factor in deciding these difficult issues.

This is of course not to say that in every case where there is a request to sell historic artefacts the result will be that a faculty will be granted. Of course that does not follow. The question will always be whether in all the circumstances put before the court a good and sufficient ground has been established on the balance of probabilities. I am however quite satisfied that balance has shifted from where it lay some 20 years ago."[25]

92. This seems to be a useful and accurate summary of both the law and its application in practice, which I gratefully adopt.

Disposal of other items

93. I now consider some of the other reported cases since *Tredington* in which faculties have been sought for the disposable of movable items. The principles in them are just as relevant as those laid down in cases directly relating to the disposal of silver plate.

94. The first, *Re St Helen, Brant Broughton*[26], was a decision of the Court of Arches concerning the sale of a valuable 15th century painting that formed an integral part of the reredos of a chancel that had been heavily restored in the Victorian period. The parish wished to dispose of it solely because of the burden of coping with the security and insurance that would be necessary if it was to remain. However, both the Consistory Court and the Court of Arches found that it was possible to install adequate – albeit not perfect – security measures, and to obtain adequate insurance, to enable the painting to remain, with provision for an appropriate replacement in the event of theft; and that a gift had been received to meet the associated capital costs. The parish had accordingly failed to show a good and sufficient ground for selling the painting; and a faculty was therefore not granted. The painting is indeed still in the church some forty years later.

95. A much more recent decision concerning somewhat similar facts was *Re St Mary, Batcombe*, which also concerned a valuable painting that had been given to the church in 1922.[27] There remained no connection between the parish and the donor's family; and no objection had been raised when the painting had been removed to a place of safety, in view of its value and vulnerability to damage or theft. It was those concerns that now caused the PCC to seek to dispose of it; there was no argument that the proceeds were needed to fund repairs. In this case, and notwithstanding the objections of the CCC, the Chancellor found that the concerns of the church as to insurance and security were sufficiently well-founded to justify the disposal of the painting by sale at auction.

96. In a decision the following year relating to the disposal of a painting, *Re St Giles, Lincoln*[28], Collier Ch commented that a chancellor:

"will not be fettered in the exercise of his discretion by requiring, in addition to redundancy, evidence of dire financial need in connection with the repair of the church

[25] Paras 25-28
[26] [1974] Fam 16.
[27] [2005] The Times, 13 January, Bath and Wells Consistory Court.
[28] (2006) 9 Ecc LJ 143, Lincoln Consistory Court.

building which could only be resolved by the sale … but will consider all the evidence and then exercise his decision."

97. The most recent case, *Re St Michael and All Angels, Withyham* also concerned the proposed sale at auction of a painting, currently on loan to Leeds castle.[29] Concerns had been raised as to the prudence of selling it at the present time, the possible effect on giving, the lack of dire financial need, the failure to consult and the possibility of division within the parish. All were rejected by the Chancellor. He reviewed the law, and decided to allow the sale.

98. Another group of decisions concerned the sale of a helmet forming part of a tomb. In each case the principles laid down in *Tredington* were applied, but against the background of a consideration of the jurisdiction to authorise such a sale. In all three cases (*Re St Mary, Broadwater* and *Re St Andrew, Thornaugh*[30]; and *Re St Bartholomew, Aldbrough*[31]), it was accepted that a key issue was the extent to which the item formed part of a group that should not be separated. That might arise in the case of, for example, a matching pair of chalices, or a set of items that had always formed a group. In *Aldbrough*, a further factor was that the item in question was already in the care of the Royal Armouries, so it could not be said to be part of the ornaments of the church. A faculty was accordingly granted for sale to the Armouries or to some other suitable museum, to enable it to be appreciated by the wider public.

99. Similarly, in *Re St Mary's Warwick*, a faculty was granted to sell a parochial library to the university in whose care it had been for over twenty years.[32]

100. Finally, a petition for a faculty to sell a pair of coffin stools that were said to be no longer required was refused on the grounds that the parish had not proved that they were redundant merely by showing that they could no longer be used for their original purpose (*Re St Mary the Virgin, East Chinnock*[33]).

The decision in Re St Peter, Draycott

101. The Court of Arches in the relatively recent case of *St Peter, Draycott* considered again the matter of selling movable property, and held as follows:

> In considering his jurisdiction to authorise the sale of the font Briden Ch said, at p 4 of the judgment:
>
> > "The principles governing the power of the consistory court to authorise the disposal of movable property are to be found in *Re St Gregory's, Tredington*[34]. The redundancy of the object in question or some other 'special reason' is required to justify the granting of the necessary faculty. Financial emergency as in *Re St Gregory's, Tredington* itself is one such reason. Another is the character of the ministry of the church in question: *In re St Martin-in-the-Fields*[35]; followed in *Re St Mary le Bow*[36]. The categories of special reason are not

[29] [[2011] 14 April, as yet unreported, Chichester Consistory Court.
[30] [1976] Fam 229, Chichester Consistory Court ; [1976] Fam 230, Peterborough Consistory Court..
[31] [1990] 3 All ER 440, York Consistory Court.
[32] [1981] Fam 170, Coventry Consistory Court.
[33] [2006] 1 WLR 266, Bath and Wells Consistory Court.
[34] [1972] Fam 236, at p 246 F.
[35] unreported) 31 October 1972, Court of Arches.
[36] [1984] 1 WLR 1363.

closed. The reason relied upon must, however, be a valid one. It must also be sufficiently compelling to discharge the burden placed on the petitioners of satisfying the court that sale or other disposal is appropriate."

This is a succinct and accurate summary of the main principles governing faculties for the disposal of movable property, although two further points should also be added to take account of decisions of this court since 1972. In brief, the principles are:

(i) a good and sufficient ground must be proved (*Re St Gregory's, Tredington*[37], approved in *Re St Helen's Brant Broughton*[38]);

(ii) the onus of proof lies fairly and squarely on the petitioners (*Re St Helen's, Brant Broughton*[39]);

(iii) a relevant fact indicating that there should be no faculty may be that the articles are a part of the heritage and history not only of the church but also of all the people, present and future, of the parish (*Re St Mary the Virgin, Burton Latimer*[40]);

(iv) the jurisdiction should be sparingly exercised: *Re St Gregory's, Tredington*[41] and *Re St Mary the Virgin, Burton Latimer* [42]."

102. I observe firstly that the decision in *Draycott* concerned the sale to a private collector of a font, designed for the church in question and still in use there, and its replacement with a replica, with the proceeds going towards the repairs, redecoration and refurbishment of the building. Thus, although it contains a useful (because recent and authoritative) summary of the law on the disposal of movable items, it is of limited direct relevance in the present case.

103. In particular, it differed from the situation at Welland (and in many similar cases) in that it concerned the disposal of a piece of church furniture that:

- was a visible part of the architecture of the church;
- had been originally designed as such; and
- was still in use for its original purpose.

None of those factors apply here. Each of the items at Welland that are proposed to be sold is a freestanding chattel, not an architectural fixture, and was introduced into the church after being used elsewhere for secular purposes for many years.

104. It should also be noted that the headnote to the official report of the decision in *Draycott* is somewhat misleading, where it suggests that:

"a consistory court should not exercise its jurisdiction to authorise the sale of movable property in order to carry out repairs to a church merely on the basis of a financial need, but had to be satisfied that there was a "financial emergency", which meant an immediate, pressing need to carry out urgent work for which funds were not, or could not be made available."

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[37] [1972] Fam 236, at p 240.
[38] [1974] Fam 16, at p 18.
[39] [1974] Fam 16, at p 18
[40] (unreported) 10 October 1995 , at p 7.
[41] [1972] Fam 236, at p 247
[42] (unreported) 10 October 1995 , at p 7.

However, the Court actually held, as noted above, that to justify the granting of movable property it is necessary for the petitioners to show either

- the redundancy of the object in question, or
- some other special reason (and a financial emergency is merely one such reason).

105. That indeed seems to be a summary of the various decisions reviewed earlier in this judgment, especially if read alongside the judgment of Collier Ch in *Stainton*.

Conclusion

106. In the light of the above analysis, it seems to me clear that a PCC is entrusted with the ownership of movable items only in so far as they are required for ecclesiastical purposes (1956 Measure, s 5); and the same principle would seem to apply to items now acquired and now owned by churchwardens. And that may include being used as an ornament or an aid to devotion (as with icons, pictures and sculptures).

107. It is for that reason – and not simply for pragmatic considerations – that the first matter to be considered in any case such as this is whether the item in question is "redundant". What is meant by redundancy in any particular case will be for each chancellor to decide.

108. Secondly, it is sometimes argued that the Church as a whole, and each parish in particular, has a general duty to retain and care for those items it has inherited in the past. I consider that this is true only to a limited extent. The PCC does indeed have a duty to care, maintain, preserve and insure such items for as long as it owns them (1956 Measure, s 4(1)(ii)(b)). And by "preserve" I mean keep safe from harm (as in *South Lakeland DC v Secretary of State*[43]), not retain for ever. But the Church was not founded to perform the role of guardian of art treasures for their own sake; nor is there any rule of law requiring that it should fulfil such a role now.

109. Thirdly, a PCC therefore undoubtedly has a power in principle to sell or otherwise dispose of movable objects, of whatever value, that are redundant – subject, of course, in the case of items acquired by a gift, to any conditions imposed by the donor. I leave to others the question of whether it has a duty (as opposed to merely a power) to dispose of such items, as happily that does not need to be decided in the present case.

110. Fourthly, once items have been found to be redundant, they may of course be retained as an investment. But an investment is not to be permanent; it is the responsibility of the PCC – as with any charity – to decide how much it requires by way of a reserve, and in what form that should be kept. Anything in excess of that may in principle be disposed of, subject to the grant of a faculty.

111. Fifthly, there seems to be little justification for transferring valuable items from a parish to the diocesan or cathedral treasury – even assuming that there is one that is

[43] [1991] 1 WLR 1322, CA, per Mann LJ at p 1326; upheld at [1992] 2 AC 141 at p 144A.

willing to accept such a gift. If a museum wishes to purchase them, either in the context of a display relating to a local area or otherwise, so be it. But a diocesan treasury will have just the same problems with regard to security and insurance; and a diocese has no more mandate than a parish to act as a showcase for artworks.

112. Sixthly, where an object considered to be surplus is disposed of, the proceeds of disposal may be applied to any proper purpose; there is no need to show a financial emergency – although that may well be one situation justifying the disposal of an item that would otherwise be retained as part of the church's reserves. Whether in any particular case a church will be allowed to dispose of an item, and if so on what terms, will be a matter for the court, as indicated by the Chancellor in the *Stainton* case at the start of the first extract from his judgment already quoted.

113. It is true that the jurisdiction to authorise the sale of movable items should be sparingly exercised, as noted in *Tredington* and reiterated in *Draycott*. However, that is not likely to be an issue in practice, since an item, once disposed of, cannot be sold again; and a parish will therefore be prudent to sell surplus items only rarely.

114. Finally, where an object to be disposed of has been used for sacred purposes, it would be possible for the bishop or the archdeacon first to de-consecrate it. However, that would not seem to be necessary in most cases. And it may in some cases be appropriate for a new item (suitable for current use by the parish) to be commissioned in memory of the donor of the item being disposed of and those in memory of whom it was originally given.

Application to the present case

115. Each of the items to be sold in this case, the jug and the spire cup, was designed for secular use, and was used as such for a century or more before being given to the church. And each has been in a bank vault for many years, and not used for its original (secular) purpose or for its possible ecclesiastical purpose (as a chalice) or for any other purpose.

116. The CBC notes that the items were last seen by the congregation in millennium year; and that the parish uses for Communion an earlier chalice, and considers that this does not make these items redundant. I disagree. It is entirely proper that they should be brought out of storage to be displayed once in a while – not least so that the parish can remember what they own – but that does not make them in use for ecclesiastical purposes.

117. I am therefore in no doubt that they are redundant.

118. Secondly, the parish is therefore under no duty to hold onto the two items. And it is doubtful whether it would be an appropriate use of parish funds to improve the storage arrangements at the church, as suggested by the CBC, to enable it to retain items that no-one wishes to see and that will be sold eventually anyway.

119. Thirdly, there seem to have been no conditions attached to the original gift; and the current representative of the donor's family has been contacted and raises no objection to the sale.

120. Fourthly, the parish has retained these items as a form of reserve until now; but this is the time when they need to be sold. The parish has a possibly unique opportunity to improve the facilities offered at the church, to facilitate both worship and mission. And the sale of these items will make a significant difference to its ability to achieve that. I thus do not accept the view of Mr Peplow that these items should not be sold "merely to provide facilities for St James's Church and to help with ministry there"; that is precisely what they are for, if they are no longer required for the current needs of the worshipping community, which in this case are being satisfactorily met by other, more suitable items of silver in the possession of the parish.

121. Fifthly, there is in this case no cathedral or diocesan treasury. But even if there was, I would not consider that to be a more suitable home for these items.

122. Sixthly, the proposed reordering scheme seems a perfectly suitable purpose to which to devote the proceeds of sale. As I have noted, it represents a one-in-a-generation opportunity to move forward the life of the church in Welland. I hope that the re-ordering will have the desired effect; but even if it does not, it should at least be tried, and should not fail for want of finance. Clearly, these items cannot be sold again; but if this reordering is not attempted, the church may have to close, and the silver will be of no benefit.

Decision

123. For the above reasons, a faculty should issue.

124. I accept the recommendation by the DAC that a suitable reserve should be placed on the items, if they are to be offered for sale at auction. That, it seems to me, is an essential element of the churchwardens and PCC behaving responsibly as charitable trustees. A condition should therefore be imposed that a reserve of at least £20,000 should be imposed on the two items together. If the parish is advised that it would be most suitable for the two items to be sold separately, an appropriate reserve should be placed on each item, such that the total of the two is at least £20,000.

125. The proceeds of sale should be go towards the cost of the reordering currently being carried out.

126. I see no particular reason to require the items to be de-consecrated in this case; although the parish is of course free to ask for this to be done if it considers that to be appropriate.

127. Finally, in view of the relatively limited sum likely to be raised by the proposed sale, I do not consider it appropriate to impose a condition requiring the parish to commission a new item in memory of Penelope Taylor. But it might like to consider a incorporating a reference to her gift in the wording of any plaque that is eventually put up to commemorate the re-ordering.

DR CHARLES MYNORS

Chancellor 2 July 2011