



Faculty – Amendment – Risk of theft - Grade I listed medieval village church - Faculty granted for remedial works to ring of three bells – Treble bell from 1630s found to be irreparably cracked and unusable – Replacement treble installed – Whether faculty should be amended to permit redundant bell to be displayed at ground floor level or at upper floor level of church tower so as to reduce risk of theft – Faculty amended to permit display at either location at option of PCC

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Wednesday, 29 December 2021

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

A Redundant Church Bell

Determined on the papers and without a hearing.

The following cases are referred to in the Judgment:

Re St Ebbe with Holy Trinity and St Peter-le-Bailey, Oxford [2012] PTSR 235

Re St Helen's, Brant Broughton [1974] Fam 16

Re St James, Welland [2013] PTSR 91

Re St Lawrence, Wootton [2015] Fam 27

JUDGMENT

Introduction

1. The issue addressed in this anonymised judgment is whether the court should permit a redundant treble church bell, dating from the 1630s, to be displayed at the base of the church tower notwithstanding the risk that it may be stolen from this village church, which is left open during the day. I have deliberately omitted referring to the names of any individuals or places (or providing specific dates for any of the bells) in order to conceal the location of the church building.

Background

2. In August 2019 this court granted an unopposed online faculty application by the minister, the churchwarden, and a member of the Parochial Church Council ('the PCC') for a faculty authorising remedial works to a ring of three bells in the tower of this Grade I listed medieval village church in accordance with proposals by the church bell-hangers, Whites of Appleton Limited ('Whites'). The three bells were a tenor and a 2nd (both dating from the 1650s) and a treble dating from the 1630s. When they were all still ringable, the bells had been rung from the base of the tower. None of the bells were listed in the Church Buildings Council's Schedule of Bells for Preservation in the Diocese of Oxford. The bell installation was in a derelict condition and Whites had advised that the bells should not be rung due to the condition of the fittings. Whites had assumed that the treble bell was already cracked.

3. The proposal had the full support of the PCC and the Diocesan Advisory Committee ('the DAC') had recommended it for approval by the court after consulting the Church Buildings Council ('the CBC') who had been content to defer to the DAC's views. The DAC's Notification of Advice advised that the proposal was not likely to affect the character of the church as a building of special architectural or historic interest.

4. The court was satisfied on the evidence that the works proposed by Whites were necessary to bring the bells back into service after 40 years of silence and that the proposals would not harm the appearance, the setting or the significance of the church building. It was a condition of the faculty that the tuning of the treble bell was to be reviewed with the Diocesan Bells Adviser once it had been repaired. The works were required to be completed by 19 August 2020.

5. In September 2021 I received (through the Registry) an email from the Diocese's Senior Church Buildings Officer ('the SCBO') informing me that during the course of the works, the existing treble had been found to be so irreparably cracked as to render it unusable, preventing it from being retained in the ring of bells as originally had been planned. After taking Whites' advice, a new treble had been located to take its place in the ring. The parish wished the existing treble, which is only 25 ³/₄ inches across, to be returned to the church and fixed in place and displayed under the recovered treble bell wheel as a feature on the floor at the base of the bell tower. The Diocesan Bells Adviser had been consulted and he was said to be generally supportive of the parish's revised proposals although he had advised that an amendment to the faculty would be required. His only reservation had been about leaving the old, cracked bell on

display in the church at ground level since, in view of its small size and weight, he considered that it would be vulnerable to theft. His preference had therefore been to return the original treble bell to the bell chamber of the church tower. However, the petitioners were not in favour of this, preferring the original treble bell to be displayed at the base of the bell tower. They proposed securing the bell to the wall so that only a very determined thief might be able to make off with it. The petitioners also pointed to the fact that the church was left unlocked every day so that no-one could work on the bell unnoticed. I was informed that the Diocesan Bells Adviser was content with this new proposal, with the proviso that the method of securing the old bell in the base of the tower should be agreed with the DAC.

6. Accompanying the SCBO's email was an email from the Diocesan Bells Adviser. He explained that the existing treble bell had been in a poorer condition than had been thought. Even after welding the initially identified cracks, others had appeared making the bell very unsatisfactory for further musical use. He confirmed that he considered the proposal to replace the existing treble bell with a redundant bell from the 1760s to be "an excellent solution", albeit one that was clearly outside the scope of the original faculty, which is why he had recommended that an amendment to the faculty would be required, as he said had been done many times in the past. Noting that the parish wished to retain the old treble bell on display at ground floor level, he confessed to being a little anxious about this as so many bells kept at ground floor level had been stolen, even from locked churches; and he expressed a preference for the bell to be kept on an upper floor of the tower. Since the PCC had said that they would provide a method of securing the redundant bell at ground floor level, the Bells Adviser had suggested this should be agreed between the PCC and DAC.

7. On the basis of the information provided, I concluded that it would be just and expedient to order that the existing faculty should be amended (pursuant to rule 20.3 of the Faculty Jurisdiction Rules 2015, as amended). I indicated that I would be content to amend the original faculty so as to permit: (1) the return of the existing treble bell for display in a secure position within the foot of the bell tower (with the method of securing the bell to be agreed between the PCC and the DAC); and (2) the introduction to the bell tower of a redundant bell (made in the 1760s) from another church. I did not consider that the exercise of this power would constitute a substantial change in the works or proposals already authorised by the existing faculty and there was therefore no need for the court to provide any directions as to the giving of any further notices to the public or to any other persons or bodies. This was because: (1) the revised proposal would still fulfil the original objective of bringing the church's ring of three bells back into service, albeit by introducing a replacement treble bell; (2) the original, but unusable, treble bell would still be retained and preserved within the church so there would be no loss of heritage; and (3) the revised proposal, borne out of the necessity of circumstance, was the product of advice from the reputable and experienced bell hangers who had originally been retained by the parish and which had been commended by the Diocesan Bells Adviser as "an excellent solution".

8. I also indicated that there would clearly need to be an extension of time for completing the works (since the time for completing them had already passed), and that this should be agreed between the Diocesan Bells Adviser and the PCC. Finally, I invited the Diocesan Bells Adviser to ensure that the introduction of the new bell was recorded in any appropriate national, county and diocesan bells registers. In the event, the period for completing the works was extended by agreement to 29 October 2021.

Dissatisfaction with the arrangements for displaying the redundant bell

9. The next development was an email from one of the petitioners (the churchwarden) to the SCBO with revised proposals for securing the bell, as follows:

“Previously I indicated that modern bolts and nylon bushed nuts would be secured in the holes drilled by Whites and the bell then anchored to the wall.

Whites sent me some photos and a description of the holes they drilled and there is a better alternative way of securing the bell

Evidently the way bells are stolen, when they are placed on the floor for display, is to turn them on their side and wheel them out through the Church door. I am told that bells up to half a ton can be moved in this way. We have about a 6 inch step up to leave the Church so that would be difficult in any event.

We will never have a solution that would stop the most determined thief but we can make it very difficult and time consuming so that with the limited scrap value is just not worth it. The [new replacement treble] bell at 7 cwt has a scrap value of about £3,200 so the small treble weighing in at less than 4 cwt is probably about £1,500.

The way to make it difficult is to attach the old headstock to the bell so it can't be rolled. We have the original treble headstock and this can be secured by coach screws through the holes drilled by Whites. Provided the coach screws are inserted at an angle both drilled holes can be used. The headstock is oak and although not pretty is sufficiently sound to take the coach screws. Once secured the heads of the coach screws (on the inside of the bell) can be rounded off. The end of the headstock (where it was housed in the wheel) is nearly the same width as the old Sanctus headstock. The iron work from the old Sanctus headstock can be screwed on the treble headstock at that point and then used to secure the treble to the wall. All screws/coach screws and other bolts will have the heads rounded.

It would take a determined thief some time and it would be a very noisy operation to steal the treble once secured in this manner.

It would also be of interest to those looking at the bell to have the (possibly) original headstock displayed.

As we do elsewhere in the Church regarding items of interest, we would provide a freestanding plaque giving information about the bell and the wheel.

The Church would be locked during the day until the treble is secured in this manner.”

10. This email was referred to the Diocesan Bells Adviser who responded:

“Whereas ‘sound’ bells can be rolled out as you indicate, this is not often done as more usually bell hangers use trolleys. But thieves commonly simply smash bells with a sledgehammer and carry out the pieces in about 5 minutes. Thus, whilst it is a nice idea to refit a headstock, I don't think this will deter even a casual thief and I would guess that the bell would disappear in broad daylight within 6 months if the church is left open during the day.

I am sorry to be so depressing over this matter, but I am sure a genuine bell historian would not mind applying to view the bell located on an upper floor of the tower.

The continued existence of the bell will be recorded in the bell database for all the world to see.”

(In passing, I note that Dove’s Guide for Church Bell Ringers has not yet been updated with details of the new bell; it also records that restoration work is “under way”.)

11. The Registry referred this email exchange to me and asked if it changed my views. I was informed that the SCBO had confirmed that she was content with the parish’s proposed arrangements and that she considered that it would be good for the bell “to be seen and interpreted”. So long as the insurers and the PCC were both aware of the risks, she could not see there being any problem, although she appreciated the Bell Adviser’s concerns.

12. In view of the Bell Adviser’s dismal prediction regarding the risk of the redundant bell being stolen, I indicated that the first part of the proposed amendment to the faculty should be redrafted so as to permit “... the return of the existing treble bell to a secure position on one of the upper floors of the bell tower (with the method of securing the bell to be agreed between the PCC and the DAC) ...”. Whilst I agreed with the SCBO that it would be desirable for the bell to be seen and interpreted if this could be achieved without undue risk of the bell being stolen, I was concerned that even if the insurers and the PCC were aware of the risks of displaying the bell on the floor of the bell tower, the threat of it being broken up and disappearing seemed to be too great if the church were to be left open and unattended. I expressed the hope that any genuine historian with an interest in church bells would not mind applying to view the bell if it were to be located on an upper floor of the tower. The amended faculty was therefore issued in this form without any further reference to the parish.

13. About a fortnight later I received an email from the churchwarden/petitioner (forwarded to me by the Registry) informing me that the new replacement bell was to be hung on 15 October and that the old treble and its headstock were being winched up into the bell chamber on the same day. The email went on to question the revised conditions of the faculty, and in particular the “dire prediction” from the Diocesan Bells Adviser which had pre-empted the change in wording. As he was characterised as having put himself in the position of an expert advising the Chancellor, the churchwarden invited the Bells Adviser to provide any evidence in support of his assertion that “thieves commonly simply smash bells with a sledgehammer and carry out the pieces in about 5 minutes”. Online research was said to have produced no evidence whatsoever that bells on display had been smashed and removed in such a manner. Although there had been instances of bells being stolen, they had been stolen as a whole, and some had been recovered. The churchwarden had been advised by a person who used to work at the Whitechapel bell foundry that the normal method used by thieves to take a bell which was on display in a church was to put it on its side and to roll it out. The proposal he had put to the DAC would prevent that happening; and, in any event, “Smart Water” would have been applied to the bell. I was invited to ask for any evidence to support the Bells Adviser’s assertion. If there were no such evidence, then the churchwarden asked for the original wording that I had proposed for the amended faculty to be substituted for the current wording so that the bell could then be displayed at the ground floor level of the bell tower. The churchwarden pointed out that the church whence the new bell had been sourced was displaying two medieval bells and was believed to be open for visitors during the day, as is the case with this church.

14. The Registry informed me that the SCBO had been referred to the churchwarden's latest email, and she had confirmed that she adhered to her previous acceptance of the parish's proposed location for the redundant treble bell at the base of the tower, subject to appropriate security measures and notification to the parish's insurer.

15. In the light of the churchwarden's email, I invited the Registry to see if the Diocesan Bells Adviser wished to respond. He did so as follows:

"I am aware of a number of bells being stolen over recent years, both from the upper floors of towers and at ground level. [The churchwarden] is quite right that a determined thief will break in and steal from an upper floor, but I challenge him regarding the attraction of the bell in question, which weighs approximately 3.75 cwt as bells much smaller than this have been stolen for their scrap value.

In the case of [this] relatively isolated village and church, I had concluded that the likelihood of theft of a bell on view at ground level in the unlocked church was greater than the possibility of theft of the bell unseen behind locked doors at an upper level in the tower. Even if the bell were to be 'secured' by bolts to the wall (or floor) it would be very easy for an unskilled thief to use a small battery-powered angle grinder to remove the bell's headstock and cut away such fixing in a minute or two and with an accomplice to break or roll the bell away and load it in a large car or small van. If the headstock remained on the bell this would actually facilitate it being rolled out of the church. Pieces of a broken stolen bell were discovered in Ireland a few years ago and several stolen bells have been found in scrapyards.

In terms of expert evidence, has [the churchwarden] any evidence of a similarly secured bell in similar circumstances having survived 'un-stolen' anywhere? My only concern is to protect the church's heritage assets."

16. I invited the Registry to pass the Bell Adviser's latest comments to both the churchwarden and the SCBO to see if they wished to make any final response. I also asked the churchwarden to ensure that this whole series of email exchanges had been passed on to the church's insurers for their views, and for him then to obtain the views of the PCC in the light of the insurers' response.

17. In response, the Registry forwarded four further emails to me. The first was from the churchwarden, who made the following points:

(1) The oak headstock is about 1 ft in depth, 6 inches wide, and about 3 ft across. The coach screws securing the headstock would be from the inside of the bell and rounded off, so to try to undo the screws the bell would have to be turned on its side. It is not a practical proposition for a small battery-powered angle grinder to cut through that amount of material, and certainly not in a minute or two. I accept that a determined thief could eventually steal the bell but the value based on the scrap value of the replacement bell is about £1,800 without any security markings. With Smart Water applied, and a notice attached to the bell confirming that fact, the scrap value is minimal.

(2) No evidence has been provided to support the Bells Adviser's assertion that "thieves commonly simply smash bells with a sledgehammer and carry out the pieces in about 5 minutes".

(3) In response to the question whether the churchwarden has any information of a similarly secured bell in similar circumstances having survived “unstolen” anywhere, the churchwarden stated that he was not holding myself out as an expert and therefore he did not have that information.

The churchwarden confirmed that he was sending the email trail to the church’s insurers and would copy the Registry into their response.

18. The churchwarden duly submitted his email to the church’s insurers in which he wrote:

“I have been in correspondence with the Chancellor’s office over whether the [1630s] redundant treble, currently being stored in the bell chamber, can be lowered and displayed internally at the base of the bell tower. The Chancellor has asked that you are copied in with the email trail for your observations.

The Bells Advisor having initially indicated that the bell could be displayed at the base of the tower has had a change of heart and considers the risk of theft to be too great even with the bell secured as indicated in the correspondence and marked with Smart Water.

Please would you let me know whether there would be any special insurance requirements if the bell was displayed at the base of the bell tower above and beyond the works set out in the email trail.”

The underwriter for church operations replied confirming that “... there are no insurance implications should you decide to display the bell at the base of the tower. The church should consider the security and theft risk and whether they think this will be practical. If possible security measures should be implemented to try to reduce the risk of theft.”

19. The churchwarden also confirmed that there are only seven members of the PCC “and we are all of like mind that the bell should be displayed”.

20. The SCBO confirmed that she had nothing further to add, whilst reminding me of the terms of the Diocesan Bells Adviser’s original email response in which he had written:

“The parish wish to retain the old treble bell on display at ground floor level. I am a little anxious about this as so many bells kept at ground floor level have been stolen, even from locked churches, and I would have preferred for it to be kept on an upper floor of the tower. The PCC say they will provide a method of securing it at ground floor level and I suggest this should be agreed between the PCC and DAC.”

Analysis and conclusions

21. In the course of my deliberations, I have consulted the CBC’s Code of Practice regarding the Conservation and Repair of Bells and Bellframes (first published in 1993). Appendix 6 briefly addresses the security of disused bells. It reads:

“In England during the 25-year period to 1990, many bells were stolen, ranging in casting date from c.1275 to modern times, some weighing over half a ton. Few have been recovered. Disused bells are very vulnerable to theft, particularly when left in the body of the church, and it may be appropriate to deposit them in a museum on indefinite loan. Alternatively, they should be preserved in the tower, near the other bells, no lower than the first floor. Wherever possible, disused bells should be returned to use.”

22. I have also considered the decision of the Arches Court of Canterbury (Sir Harold Kent) in *Re St Helen's, Brant Broughton* [1974] Fam 16. There the rector and the churchwardens had sought a faculty for the permanent removal and sale of a valuable C 15th painting, estimated (even in 1971) to be worth between £10,000 and £40,000, which had been above the church altar as the centre-piece of an architectural scheme since 1887. The petition was based on the grounds that it was impossible to protect the painting adequately in the church; that it was impossible to obtain adequate insurance cover for its full commercial value; and that, in any event, an undue financial burden would be placed on the parish if the painting were retained. The petition was opposed by 21 parishioners. Chancellor Goodman (in the Diocese of Lincoln) had held that the petitioners had not discharged the burden of proving a good and sufficient ground for the faculty, and he had dismissed the petition; and his decision was upheld on appeal to the Court of Arches.

23. After referring to the evidence showing the risks of theft and vandalism, and the impossibility of guaranteeing the safety of valuable articles in a country church, the Chancellor had found that although the practical measures to protect the painting, which were acceptable to the insurers (who had offered cover), would not provide a complete defence to a determined criminal, and whilst police assistance might not always be readily available if the alarm were to be activated, they were clearly the most that could reasonably be undertaken. They would, in the Chancellor's judgment, be sufficient to justify the retention of the painting in the church so far as the security angle was concerned. The Chancellor attached weight to the significance of the painting in its setting, and its quality as an aid to devotion; and this was a factor to be set against the risks of the painting's retention in the church.

24. The most important ground of appeal concerned the security aspect and was founded upon the fact that it was impracticable to provide a sufficient degree of protection for the painting against the risks of theft and damage whilst it remained in place in a small country parish church. The petitioners submitted that the Chancellor had exercised his discretion against the weight of the evidence in this regard. The principal points which impressed the Dean were as follows: (1) The painting was vulnerable to theft, now that its value was known. The Dean accepted the argument that notoriety made it less saleable by a thief, but anonymity was a better protection than notoriety. (2) The practical security arrangements, as the Chancellor had found, would provide no complete defence against a determined criminal. (3) The churchwardens had an understandably strong feeling that the risks of retaining the painting within the church were incompatible with their responsibilities. The strong argument the other way was that some element of risk must be accepted if, in the Chancellor's phrase, "we are to continue to enjoy the works of man's hand in the places where they belong." The Dean rejected the plea that the painting belonged anywhere else than in this church. He also noted that "the church should not be over-anxious about its possessions."

25. At page 23C-F, the Dean rejected the first ground of appeal: that the Chancellor had failed to give sufficient weight to the risk of theft and damage if this valuable painting, of which the value was by then well known, were to remain in this country church, with the security arrangements falling a good deal short of complete protection. Obviously, the Chancellor had appreciated the risks — that was clear from his careful and admirable judgment after a long and patient hearing; but he had had to weigh them against the other factors, especially the significance and quality of the painting in its setting. This was not a case of redundant church plate kept in a bank, with the donor's intentions already frustrated. Here the donor's intentions

that the picture should be the centrepiece of an architectural scheme in which he took a great personal interest were still being fulfilled; many parishioners regarded the picture with affection, some as a devotional aid. Unlike most cases in which petitions for faculties to sell church treasures had been granted, this petition was strongly opposed, and parochial feeling was divided. Parochial feeling was not decisive, but it was a matter to which great weight was due. The truth was that the petitioners had a very heavy burden to discharge in order to satisfy the court that there was a good and sufficient ground for granting a faculty in this rather special case. In the Dean's judgment, the Chancellor had been right in holding that they had failed to discharge that burden, and he had rightly exercised his discretion in refusing the faculty. The appeal was therefore dismissed.

26. I recognise that the *Brant Broughton* case is very different from the present case because there the artefact in question, a valuable painting, had been gifted to the church by a former rector of the parish, and had been installed in the church in 1887 above the altar, in the centre of the reredos, specifically to be seen and enjoyed in that setting, as an aid to devotion. In the present case, the treble bell had been installed in the church tower where it could not be seen at all, but where it could be heard by the whole parish. However, the significance of this decision for present purposes is that the Arches Court refused to interfere with the decision of the Chancellor of the Diocese to retain the painting within the church as the centre of the reredos despite the fact that the painting was vulnerable to theft and that no practical security arrangements could provide a complete defence against theft by a determined criminal. From such limited researches as I have been able to make on the internet, happily the painting remains there to this day.

27. I also bear in mind that in the unfortunate case of *Re St Ebbe with Holy Trinity and St Peter-le-Bailey, Oxford* [2012] PTSR 235 Chancellor Bursell QC (in this court) confirmed (at paragraph 7 (10)) at page 241) that "... it is of the utmost importance that heritage is conserved whether or not it is perceived to be of 'practical use' and whether or not any person has a 'particular attachment' to it. Indeed, if our national and Church heritage is properly displayed, its importance and relevance may come to be appreciated by those who otherwise would pass it by on the other side." The contrary view, expressed, almost contemporaneously, by Chancellor Mynors (in the Worcester Consistory Court) in *Re St James, Welland* [2013] PTSR 91 at paragraph 108) that "... 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" was expressly disapproved by the Arches Court of Canterbury (George QC, Dean, and Chancellors McClean QC and Briden) in the leading modern case on the sale of church treasures of *Re St Lawrence, Wootton* [2015] Fam 27 at paragraph 35 on the basis that it adopted "... too narrow a role for the church as a guardian of art treasures".

28. I acknowledge that this bell is not an art treasure; but it is an important part of the heritage of this particular church which should be preserved within the church building. Now that it is no longer capable of fulfilling its original purpose as a working bell, I agree with the SCBO that, if at all possible, it should be placed on display within the church in a place where it may be viewed, and appreciated, by the congregation and visitors to the church. I appreciate, and share, the Diocesan Bells Adviser's genuine, and legitimate, concern to protect the church's heritage assets, not only for the present, but also for future generations. The churchwarden recognises that a determined thief could eventually succeed in steal this bell. I accept that the risk of this will be minimised, but not altogether eliminated, if the bell were to be displayed on an

upper, rather than the ground, floor of the bell tower. However, provided appropriate security measures are implemented to seek to minimise the risk of the theft of the bell, and provided the church's insurers are content with them, I consider that, ultimately, the decision as to how the redundant bell should be preserved within the church building is really a matter for the parish to determine, as expressed in the views of the PCC, who are said to be "all of like mind that the bell should be displayed". The Diocese's highly experienced SCBO also supports this course. I am reminded of the wise injunction, recorded in Matthew 6, verses 19 - 21, and reproduced in the Service of Holy Communion according to the Book of Common Prayer, about not laying up for ourselves treasures upon the earth, "where thieves break through and steal". This redundant bell should be available for all to see, and not just for the historian of church bells prepared to ascend to the upper floor of the church tower.

29. Notwithstanding the genuine concerns expressed by the Diocesan Bells Adviser, I therefore direct that paragraph 1 of the schedule to the amended faculty is to be further amended so as to read: "... (1) the return of the existing treble bell for display in a secure position on one of the upper floors of the bell tower or (at the option of the PCC from time to time) at the foot of the bell tower (with the method of securing the bell to be agreed between the PCC and the DAC) ...". I have phrased the further amendment in this way so that the PCC have the flexibility to change the location of the bell in response, for example, to any failed attempt to steal the bell, or to any changing requirements of the parish's insurers.

30. I would recommend that: (1) The parish should take digital photographs of all aspects of the bell (and the original headstock) and should store them on a CD-ROM (or some other suitable digital medium), to be preserved (with hard copy photographs) in the parish records. Copies of both the digital and hard copy photographs should also be sent to the DAC for their records. (2) That the parish (and the Bells Adviser) should seek to ensure that details of the precise location of the redundant bell are not published on the benefice web-site or any other public or social media, or any bells register or database.

31. This anonymised judgment can, and should, be made publicly available and disseminated to the parish, the DAC, the Bells Adviser, the Archdeacons, ecclesiastical judges, registrars and lawyers, and interested members of the public, in the usual way: but there should be no indication that this judgment relates in any way to this particular church. For this reason, I have refrained from attaching any relevant photographs to this judgment in case they might help to identify the church.

32. I waive any fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

29 December 2021