

In the matter of Coombes Parish Church

Judgment

1. This case concerns the 'corpus' figure from a medieval crucifix. It is an item of exquisite craftsmanship. According to Dr Marian Campbell FSA, (formerly senior curator of metalwork in the Department of Sculpture, Metalwork, Ceramics and Glass at the Victoria and Albert Museum), it originated in Limoges in the thirteenth century. A note in the *Sussex Archaeological Collections* (1890, vol 38, pp 189-190) indicates that it was found in the churchyard of Coombes parish church in about 1877. The 'corpus' was displayed high in a window arch of the church from then on - until that is, it was stolen some four years ago.

Brief procedural history

2. To the surprise of many, the stolen 'corpus' came to the attention of West Mercia Police and arrangements were made for it to be returned to the parish church in November 2015. The parish, understandably, were reluctant to return so precious an item to the church where it would be vulnerable to further theft. It is less than 10 cms in height. The church is relatively isolated, though close to a major road. The parish commendably keep it open for public prayer and for visiting, not least to view its famous series of twelfth century wall paintings. The church has no electricity supply and installing an alarm would not be straightforward.
3. The Archdeacon of Chichester made a place of safety order on 16 December 2015, and the matter was referred to this court. I directed that the provisions of section 21(6) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 be disapplied and instead I required the priest-in-charge and churchwardens to petition for a faculty to make appropriate provision for the 'corpus'.
4. The petition which was duly lodged seeks the court's permission for the 'corpus' to be made the subject of a long-term loan to Chichester Cathedral so that it may be securely housed in its treasury and therefore available for public viewing. On 15 January 2016, I granted an interim faculty permitting the 'corpus' to remain in the place of safety previously sanctioned by the Archdeacon, the location of which need not be disclosed in this judgment.

Disposal on written representations

5. By email dated 31 May 2016, the petitioners indicated their consent to the matter being determined by written representations. The judgment of the Court of Arches in *Re St Lawrence, Oakley with Wootton, St Lawrence* [2014] 3 WLR 984, states in clear and uncompromising language (at paragraph 19) that faculties in disposal cases should seldom be granted without a hearing in open court. Since what is proposed is not an outright alienation of the 'corpus' to a third party but the depositing of the item in the mother church of the diocese by way of long-term loan, I take the view that the full rigour of this strict enjoinder does not apply. The proposal, in truth, is uncontroversial and, in this particular case, the court would not be any better informed by the convening of a hearing in open court and the

taking of live evidence. I have had regard to the overriding objective as set out in the Faculty Jurisdiction Rules 2015 and in particular r 1.4(2)(c): ‘deciding which issues (if any) need full investigation and a hearing in open court and accordingly disposing of others summarily or on consideration of written representations’. In all the circumstances, a hearing would serve no purpose other than to add delay, inconvenience and expense, and in my opinion the court can do complete justice to the matter on the basis of the documentary material which has been carefully collated by the petitioners.

The item in question

6. In a very full and helpful note dated 6 April 2016 (illustrated by an attractive postcard image) Dr Campbell writes as follows:

‘The crowned figure of Christ is made of copper, hammered, engraved and originally enamelled and gilded. It was made for attachment to an altar or processional cross ... Although damaged, it retains traces of the original gilding, and tiny fragments of blue enamel on the loincloth. It dates from perhaps the first half of the 13th century. Its technique and style indicate that it was made in the workshops of Limoges in France, and is a typical example of Limoges workmanship, save for one feature, that the eyes are not of the more usual blue glass, but are simply gilded hollows.’

7. Dr Campbell further notes that the chancel of the church (which is a grade 1 listed building and saxon in origin) was apparently rebuilt in the late 13th or early 14th century and she speculates that a new Limoges cross was presented to the church for its altar at this time. She states:

‘The damage to the crucifix figure – the loss of an arm, a hand and the piercing of the loin cloth – is suggestive of some violence and may not simply be accidental, but may reflect its fate at the time of the Reformation’.

There are records of wilful damage occurring to crucifix figures such as these: M Lewis ‘Heavenly treasures – Limoges enamels recorded by the Portable Antiquities Scheme’, *Treasure Hunting Magazine* (December 2011) pp 16-21.

8. The piece is of more than local interest: see M Campbell, ‘Au sujet de quelques émaux de Limoges inconnus trouvés en Angleterre’, *Bulletin de la Société Archéologique et historique du Limousin* (forthcoming). The prolific output from Limoges was exported as far as Russia, Iceland and the Middle East, and the town had become part of the domains of Henry II of England on his marriage to Eleanor of Aquitaine in 1152. In her note, Dr Campbell states:

‘This corpus figure is not simply a mute testament to a long lost crucifix, but a rare evocation of the artistic links between England and France in the Middle Ages.’

She also observes that the treasury at Chichester Cathedral already houses another piece of Limoges work, part of a censer, and the Coombes ‘corpus’ would be an appropriate companion piece.

Consultation

9. There was no response to public notice. The DAC, in its Notification of Advice recommending the proposal, properly advised that the parish consult the Church Buildings Council and Historic England. The latter replied to the parish by email of 15 March 2016 indicating that it did not wish to comment. The CBC responded more fully and the court has had the benefit of an extremely helpful letter dated 21 April 2016, sent to the petitioners by Christina Emerson, its Church Buildings Officer. Ms Emerson restates the CBC’s policy

that: 'church treasures belong in churches, and should only be removed in exceptional circumstances'. She continues, 'However there are some instances where a loan arrangement may constitute an acceptable solution' and she identifies a number of features which militate in favour of what is proposed by the petitioners in this case, all of which are rehearsed elsewhere in this judgment. Ms Emerson concludes, 'The Council would therefore not object to the principle of a permanent loan to the Chichester treasury' and she makes some extremely useful suggestions as to the practicalities of such an arrangement. I wish to record the court's gratitude to the CBC for the thoroughness and expedition of its very helpful advice upon which I have placed reliance.

The law on church treasures

10. The discretion to permit the disposal of church treasures is one which should be sparingly exercised. For an example of the court's general approach to such cases, see *Re St James the Great, Flockton* [2016] ECC Lee 4, Leeds Consistory Court, *per* Hill Ch at paragraph 36.

11. The Court of Arches in *Wootton* (*supra*) identified at paragraph 34 of its judgment three distinct types of disposal of treasures namely:

- i. those not involving any change of ownership, such as a long-term loan to a museum, gallery or diocesan treasury ('disposal by loan');
- ii. sale to such an institution with title passing, though possibly at an undervalue ('disposal by limited sale');
- iii. commercial sale at the best price achievable ('disposal by outright sale')

The Court of Arches advocates a sequential approach with chancellors considering each of the foregoing categories of disposal in ascending numerical order. In particular, the Court comments at paragraph 36:

'Disposal by loan and disposal by limited sale both safeguard the security and (to some extent) visibility of the article ... [but] ... ownership and any form of control are entirely lost in both forms of disposal by sale.'

12. What is proposed here is the lowest level of disposal, namely a long-term loan to the cathedral treasury which will allow the 'corpus' to be held securely within an Anglican foundation where it may readily be viewed and appreciated by the public at large. Although the presumption against disposal remains, it is more easily displaced in circumstances where there will be no change of ownership and where the object will remain on public display in an ecclesiastical setting.

Assessment

13. On the information before me, I have come unhesitatingly to the conclusion that the petitioners have discharged the burden of proof which lies upon them to satisfy the court that the presumption against disposal is rebutted. I have particular regard to:

- i. the 'corpus' has been stolen once and would be vulnerable to further theft if returned to the church. It is only by good fortune that it was reunited with the parish last November;
- ii. the parish does not have the means securely to house the 'corpus' in the church;
- iii. between its restoration to the church in 1877 and its later theft, the 'corpus' has not been used in for sacramental or liturgical purposes, but merely exhibited as an item of historic and aesthetic interest;

- iv. the expert opinion of Dr Campbell urges that the primary consideration for the future display of the 'corpus' must be its safety and its context. I fully concur that this constitutes the proper approach;
- v. the CBC, having considered the matter very fully, and noting the paradigm that church treasures belong in churches, nonetheless favours the proposed loan in this instance for display in the cathedral treasury;
- vi. the DAC issued a Notification of Advice on 19 February 2016 recommending the proposal;
- vii. a long-term loan to the cathedral treasury would provide security whilst allowing the public extensive access to view the 'corpus';
- viii. the connection with the mother church of the diocese is a weighty factor, assisted in this instance by the fact that the 'corpus' could be displayed alongside another sacred piece of Limoges work;
- ix. since what is proposed is merely a loan (albeit long-term) the 'corpus' will remain subject to the faculty jurisdiction and, should circumstances change, the decision to deposit the 'corpus' in the cathedral treasury can be revisited at any time and if, at a future date, the court considers it just and expedient, the faculty can be amended and an alternative solution found;
- x. it remains open for court to permit the 'corpus' to pay a return visit to Coombes parish church or perhaps on an *ad hoc* basis for it to be displayed or examined elsewhere should suitable occasions arise in the future.

14. In the circumstances, I am persuaded that a faculty should be granted in this instance permitting the 'corpus' to be removed from its current place of safety and deposited in the treasury of Chichester Cathedral. The faculty will be subject to the following conditions:

- i. that the 'corpus' will be the subject of a long-term loan, for ten years in the first instance but renewable thereafter, for successive ten years periods, on such terms as may be agreed between the Dean and Chapter of Chichester and the priest-in-charge and churchwardens of Coombes and approved by the court;
- ii. the 'corpus' shall continue to be subject to the faculty jurisdiction and shall not be moved whether permanently or temporarily, altered in any way, or made the subject of any scientific or other investigation without prior permission of the court;
- iii. that the parish shall set up within the church a suitable photographic record of the 'corpus' together with an explanation of its history and removal to the cathedral treasury in such a manner as may be approved by the court;
- iv. that the 'corpus' should be made available for public viewing at the cathedral treasury during normal public opening times and that the Dean and Chapter shall provide an explanatory note describing its provenance and subsequent history;
- v. that the Dean and Chapter shall maintain adequate insurance for the 'corpus';
- vi. that pending arrangements being made by the Dean and Chapter to receive the 'corpus', it will remain in its current place of safety;
- vii. that the costs of and occasioned by this petition (together with the interim faculty) shall be borne by the petitioners with the Dean and Chapter making such contribution as is deemed fair and reasonable.

15. By way of postscript, Dr Campbell's observation on the wilful vandalism of objects such as the 'corpus' at the time of the Reformation makes fascinating reading. She speaks of them being 'forcefully folded in two or twisted'. This has echoes of some of the instances

identified in Eamon Duffy's magisterial work, *The Stripping of the Altars: Traditional Religion in England, 1400–1580* (Yale University Press, 1992). With the 500th anniversary of Martin Luther's activities in Wittenberg falling next year, the Reformation will be firmly within the public consciousness. This may afford the Dean and Chapter an excellent and timely opportunity to capitalise on its new acquisition as part of the cathedral's educational function which it discharges to such good effect.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

1 June 2016