

**Neutral Citation Number: [2019] ECC Der 7**

**In the Consistory Court of the Diocese of Derby**

**In the Matter of Kirk Hallam, All Saints, and**

**In the Matter of a Petition dated 15th August 2019, presented by Rev'd Christine French, Priest-in-Charge, and Janet Wheeldon and Linda Gregory, Churchwardens, for the transfer of ownership of part of a sword.**

### **Judgment**

- 1) Kirk Hallam lies to the south-west of Ilkeston in the south-east of the Diocese, and is part of the borough of Erewash. The church is Grade I listed. The name 'Halum' is found in the Domesday Book, though that may refer to West Hallam, Kirk Hallam or both. All Saints dates from the Norman period and until the Dissolution in 1539 it was linked with Dale Abbey, (on the outskirts of Derby), which provided the priests for this parish and other neighbouring villages. Thereafter the advowson passed into private hands. The building subsequently became ruinous and was close to demolition in the late 18th Century, but, following a public subscription, sufficient funds were raised for its restoration. The small agricultural population of the parish expanded rapidly in the 1950's and 1960's with large public sector housing developments and the establishment of Stanton and Staveley's pipe-works, but the latter has now gone.
- 2) It is unnecessary to describe the building in any detail, as the petition relates solely to a wrought iron artefact, thought to be part of a sword, the ownership (and possession) of which the petitioners wish to transfer permanently to Erewash Museum. The Church dates back to the C14th and C15th certainly, and was heavily restored in the C19th. Originally the churchyard surrounded the church building, but in more recent times, it has been necessary to acquire and add other areas of land to meet the need for burial space. In around 2006, while a grave was being dug, in a newer area, this metal object was uncovered. It was sufficiently recognisable to attract the attention of the diggers and was reported to the then incumbent. In a very helpful communication to me, dated 26th October, Mrs French, who has been in post only since 2014, tells me that the then parish priest asked the PCC at the time to keep the matter quiet, for fear of being swamped with metal-detectorists, if news of the find got out. Neither the PCC minutes nor the terrier mention the discovery. That is unlikely to be an oversight.
- 3) I have been provided with a Conservation Report dated 11th June 2010, prepared by Hazel Gardner, a student at the University College London Institute of Archaeology. It seems to me a thorough and professional piece of work, but surprisingly, there is no confirmatory signature on the document, from a staff member or supervisor, although a space for that is provided. The report describes the object as an 'Anglo-Saxon sword/weaving-batten' although I shall confine myself to 'sword', which sounds much more romantic and interesting. It is made of wrought iron, with no admixture of gold or silver, which might have engaged the provisions of the Treasure Act 2006 and the Code of Practice 2nd edition revised published thereunder. In essence, it is not 'treasure trove'.
- 4) The remaining part of the sword is 38cm in length, 5.4cms wide at its maximum, and 0.6cm thick. It weighs 267gms. A photograph shows the upper part of the blade, and the tapering haft or tang (the projecting bit that the hilt or handle fixes on). It is heavily corroded and very fragile. It had apparently been seen previously and assessed by UCL in 2009, and was not re-weighed in 2010 because of its obvious fragility and the difficulty of supporting the ends if placed on the laboratory scales. At that earlier time it had apparently been put into a protective box on polyethylene foam. There were many detached fragments. I am told no other parts of the item, or human remains, were found where it was first discovered. It was thought to be Early Medieval, early Anglo-Saxon or Viking in origin, which seems a fairly wide spread.
- 5) The possibility is raised in the report that the item is in fact a weaving-batten, the purpose of which is described. Such battens were 'high-status' objects usually of bone or wood. An iron one would be an 'archaeological rarity' or 'prestige object', but the similarity of shape of a weaving-batten to a sword, is said by one authority to suggest that battens were sometimes re-used swords. Weaving-battens are known to occur as grave-goods. (My own view, for what

little it is worth, is that the area it was found in would only have been used for burials of human remains, some hundreds of years after it became buried.) Mrs French indicates that graves are dug into undisturbed ground, in the churchyard, and not that parts of an ancient burial ground are being re-used.

- 6) It was felt necessary at UCL to stabilise the object and stop further corrosion, as it was 'under threat of complete disintegration'. There is an interesting description of how this process was carried out, but it is unnecessary even to summarise it, as it is largely irrelevant to the issues I am dealing with. Suffice it to say, that some of the loose pieces were re-attached with a specialist adhesive, and a new packaging surround created within which it can be kept in an anoxic (oxygen-free) and desiccated environment. These are necessary to ensure the object's continuing existence, according to the report.
- 7) Mrs French tells me All Saints is a rather small church, and damp. It is open only one or two days of the week and it would therefore be difficult to afford convenient access to members of the public who wanted to see the sword, (or to provide any sort of security, presumably). As far as I can see from the information available, the sword has never been located in the church building even temporarily, and certainly never for any long period. Mrs French clearly does not believe it would prolong the life of the sword to have it kept there. Following the examination in 2010, it remained in the custody of UCL, and was only removed from there by the Collections Manager of Erewash Museum, who has placed it in their store room with its controlled environment, (obviously with the consent of the parish priest), during October 2019. Apparently a local historian, Esther Collingham, was aware of the find and brought its existence to Mrs French's attention at some time following her arrival. She doubts that without Mrs Collingham's persistence she would have ever become aware of its existence. The present PCC seem to know little of the history.
- 8) Mrs French tells me - and this was not in the original documentation, but set out in her recent communication - that she has managed to secure grants from Erewash Borough Council and HLF for a purpose-built display unit, following the receipt of appropriate specialist advice, at a cost of just short of £4000, and for it to go to Erewash museum. This is open 6 days a week.
- 9) The petition states that the sword is of no commercial value, although I dare say a collector of historic items might be prepared to give a small sum to acquire it. However the proposal is to transfer it free of charge on a permanent basis, to Erewash Museum, for public display as an item of local interest emanating from the pre-industrial period. The Museum is keen to acquire it. They are an accredited museum and willing to accession the sword, which is museum - speak for indicating that it falls within their collection policy.
- 10) **Legal issues:** The assumption was made by UCL that as the sword was found in consecrated land, that, as a matter of law, it belongs to, or ownership vests in, the parish priest. (One sometimes reads of the value of finds made by metal-detectorists being split equally with the landowners, usually farmers, on whose land they have been searching, with permission, so that all seems a reasonable conclusion.) However, the better view is that once excavated from the land, the item is a 'movable' and ownership of the movable goods of the church vests in the Churchwardens for the time being, collectively, as they constitute a 'quasi-corporation' that continues to exist, whoever the individual holders of the office may be. The fact the Churchwardens 'own' the movable goods of the church is established by Canon E1 para.5. It is important therefore that the Churchwardens are agreeable to the disposal proposed in the petition, and as they are both petitioners, there can be no doubt of that. Also the PCC must agree to the transfer, and the petition recites that 12 of the 13 members who were present, did so at the meeting on 11th September 2018. (Other movables vested in the Churchwardens would be things such as hassocks, microphones and loudspeakers, paintings, chairs (as opposed to fixed pews) or other loose items of furniture, service books or communion plate. This 'ownership' is of course not for personal benefit, and does not give an unrestricted power of sale or disposal, which is also subject to the consent of the PCC, and in at least most cases, the consent of the Consistory Court under the faculty jurisdiction.)
- 11) There are two other matters of law that need to be dealt with, before a decision can be made.
- 12) First, under Rule 9.6(1) of the Faculty Jurisdiction Rules 2015, where proposals in a petition *'involve (a) the.....disposal of an article of special historic, architectural, archaeological or artistic interest... (2) the chancellor must seek the advice of the Church Buildings Council on the proposals.....*

- 13) The Registrar informs me that an initial attempt to seek advice from CBC met with no response, and I directed that a further effort be made, as this Rule is clearly important. An email dated 30th October from CBC states: *'The proposals are in line with the Council's guidance and the Council, therefore, does not wish to comment'*. The Rule has now been complied with.
- 14) The second matter is also important, from a procedural point of view, and relates to the guidance provided to Chancellors by the Court of Arches (the Appeal Court for faculty cases in the Province of Canterbury) when dealing with 'church treasures', and applications for their sale or other disposal. The guidance in the case is summarised in the leading textbook, *Ecclesiastical Law 4th Edition (2018) Oxford University Press*, by Chancellor Mark Hill QC at paragraph 7.110. Part of the guidance refers to the requirement that a petition for disposal of a church treasure should seldom be granted without a hearing, and also to the strong presumption against disposal being allowed without some special reason being shown.
- 15) However this guidance is plainly based on the proposition the item in question is indeed a 'church treasure', which was defined by the Court of Arches as meaning *'articles of particular (or special) historic, architectural, archaeological or artistic interest falling within the faculty jurisdiction'*, (see *Re St John the Baptist, Peshurst* (9th March 2015, unreported)), a definition clearly reliant on what is now Rule 9.6 as cited above, although the Rule was framed for a different purpose.
- 16) I am satisfied this article is one that falls within the definition of 'church treasure' in the *Peshurst* case, but it does seem to me there has to be something more before an item can sensibly be classified as a 'church treasure'.
- 17) This item has had no ecclesiastical or liturgical purpose or function, and is not related to worship or devotion. It was not designed, adapted or used as such. It became 'church property', as far as I can tell, hundreds of years after it became buried, simply because the land where it lay became an enlargement of the original churchyard. If another neighbouring area of land had been so adopted instead, it would not have had even that fortuitous connection with All Saints. It has never been inside the church building, certainly for no prolonged period, and has not been associated with any tomb or memorial, or anything else within the building. It remains apparently a wholly non-religious artefact.
- 18) In that respect, it differs from the C15th or C16th armet (a type of helmet) that had been associated with the white marble monument to Sir Thomas Hooke, along with spurs, gauntlets and a dagger, from the late C17th, which stands in the chancel of St Lawrence Wootton. These other items were stolen in 1969, after which the armet was initially placed in a bank vault (without faculty permission). The armet was eventually the subject of a disposal petition, which came before the Arches Court in an appeal reported at *Re St Lawrence Oakley with Wootton St Lawrence* [2015] Fam 27.
- 19) It appears from the judgment that after its time in the bank vault, in 1974, pursuant to a faculty, it was transferred on indefinite loan to the Armouries in the Tower of London, and in 1996, it was transferred to the Royal Armouries Museum in Leeds along with numerous other items in the Armouries' collections. There it could be viewed but only by arrangement. Despite its long absence from St Lawrence's the Court took its connection with the church very seriously, and in the end refused permission for its disposal. (Perhaps I ought to say there were a number of other difficult issues raised in the case, including whether Sir Thomas's heirs had retained any interest in the armet under the odd rules relating to ownership of memorials, that exist in the Church of England (see *Hill op.cit.*, at 7.106 and *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*, section 66(5).)
- 20) At para 2 of the *Wootton* judgment, after a quotation from a report of a working party of the Council for Places of Worship (as the CBC was formerly known), entitled *Treasures on Earth*, relating to the whole subject of church treasures, a report debated by the General Synod, (I think in 1974,) is the comment *'Church treasures include secular objects deposited in churches for devotional or other reasons'*. It is not because the sword is a secular object that I determine, (as I do), it is not a 'church treasure', but because it has no link of any kind with the church building, or the worship or devotion that has taken place there, or any connection with anything else there. Having reached that conclusion, it seems to me the special procedure required under the *Wootton* decision, among others, does not apply, and no hearing is therefore required, nor the application of a presumption against disposal. Not every item belonging to a

church, even if of some historic or artistic or other value, is a church treasure; see for instance *Re St James the Great, Flockton* [2016] ECC Lee 4, a decision of Chancellor Hill QC.

- 21) In case I am thought to be in error in reaching that conclusion, (namely, that the sword is not a 'church treasure'), I would still judge no hearing is required before making a decision about its permanent disposal. There is no basis, in my view, for contending that more information would emerge at a hearing about the item or its source. Indeed, the parish priest and present PCC have little knowledge of how it was discovered or anything else about it, beyond what is summarised above.
- 22) **Decision:** As to the merits of the case: it seems to me that the church building is not an appropriate site for the sword to be located. It is damp, and unsuitable for the long-term preservation of the item. It would undoubtedly suffer further deterioration if retained there. It would not be easily accessible for anyone interested to see it. The Museum is well able to provide suitable storage and exhibition space, and it is open most of the week. The staff have the skill and resources to look after it properly.
- 23) I therefore grant the petition, and a faculty will issue for the permanent transfer of ownership of the sword fragment to Erewash Museum.
- 24) As a footnote, I record that some years ago I sought to access a copy of the GS document *Treasures on Earth* on line. I was unable to do so, but was very surprised at the material my search threw up. Eventually, the Library of Lambeth Palace provided me with a copy of the report. It is a document that should be better known.

John W Bullimore  
Chancellor  
29th October 2019