

IN THE CONSISTORY COURT OF THE DIOCESE OF WINCHESTER

Re the WOOTTON ST. LAWRENCE ARMET

JUDGMENT

A. Introduction.

1. Wootton St. Lawrence is a small village about two miles west of the extensive built-up area surrounding Basingstoke, created in the 1960/70s as part of the overspill programme for London. Fortunately the village retains its rural character and independence, even though the Parochial Church Council ("the P.C.C.") has joined with Oakley, the nearest part of the conurbation. Although extensively renovated during the Victorian era, the Church of St. Lawrence is an attractive building dating back to the mediaeval period. Its structure is a characteristic mixture of flint and chalk. In a recess of the south wall of the chancel is a white marble monument to Sir Thomas Hooke, baronet, who died in 1677. Sir Thomas built and lived in a local manor house called Tangier House, Tangiers being part of the dowry presented to this country when Catherine of Braganza married Charles II in 1662. Sir Thomas's effigy shows a be-wigged gentleman wearing plate armour. He is resting on one arm with one hand on a helmet. Whether he ever actually wore armour is questionable, given the fashion of the Restoration period in which his adult life was spent. About five feet above the monument is an ornate iron bracket coming down from the top of the wall. On the bracket are the initials "T.H" and the date "1677".

2. Until 1969 there hung from the bracket: a spiked metal helmet with visor ("the armet"), a pair of gauntlets, a pair of spurs and a dagger. In that year, however, the gauntlets, spurs and dagger were stolen. Because of its potential value and the evident lack of security, the armet (a photograph of which appears in the papers in front of me) was placed in a bank vault in Basingstoke. The deposit fee proved expensive. In 1974 a Faculty was granted to permit the armet to go on indefinite loan to the Armouries of the Tower of London. At the end of that year an agreement to this effect was reached between the Rector, the Churchwardens and the Department of the Environment who were responsible for the Armouries. At the time no thought seems to have been given to the implications of whether the armet was part of a funerary monument to Sir Thomas Hooke, and, if it were part of the monument, whether his descendants approved of the loan. It was simply assumed by everyone (including the distinguished ecclesiastical lawyer who was then Chancellor of the Diocese) that, without further enquiry, the Rector and Churchwardens were entitled to deal with the armet in the way proposed.

3. In the event, early in 1975 the armet was taken to the Tower of London. There it remained in store for some fifteen years. In the early 1990s, Mr Ian Eaves, the Keeper of what had become the Royal Armouries, arranged for the armet to be put on show as part of a display of church armour. In 1996, however, much of the collection of armour at the Tower, including the armet, was transferred to the Royal Armouries Museum in Leeds. Once again the armet was relegated to a storeroom, and it stayed on loan, but in store, until 2010.

4. In March 2010 the P.C.C. was short of funds and consideration was given to the possible sale of the armet. On the 10th April the P.C.C. unanimously approved its sale. The Royal Armouries valued the armet at significantly more than £25,000 (see letter

dated the 9th March). On the 12th July the specialist London valuers and auctioneers, Thomas Del Mar, gave a “conservative pre-sale estimate” of £30-40,000. The Diocesan Advisory Committee (“the D.A.C.”) recommended sale, but with the comment that it would be desirable for the item to be sold to the Royal Armouries or another museum in the United Kingdom rather than on the open market. A Petition for a Faculty was lodged with this Court. On the 11th August 2010 I granted a Faculty, but made it a condition of the grant that

“Subject to the possibility of a prior satisfactory and acceptable offer being made by the Royal Armouries or some other British museum or institution, the helmet shall be sold on the open market for the best possible price”.

I made further conditions with regard to the Archdeacon of Winchester having control over the disposal of the net proceeds of sale.

5. It is correct to say, and I frankly admit my error, that at the time when I granted the Faculty I did not have in mind either (a) the possibility that, if the helmet was a funerary monument to Sir Thomas Hooke, there might be in existence heirs to his estate, and (b) Rule 15 of the Faculty Jurisdiction Rules 2000. As to the former, I had read in the papers that the baronetcy died out in 1712. At no stage from 1974 onwards had anyone raised the possibility that, if the armet were a funerary monument, there might be heirs who should be consulted. As to the latter, Rule 15(1) provides that

“Paragraph (2) of this rule applies where a petition for a faculty

(a) concerns an article of particular historic, architectural, archaeological or artistic interest, and involves the....disposal of that article,”.

Paragraph 2 provides that, unless there has already been consultation with the Council for the Care of Churches (now the Church Buildings Council or “C.B.C.”), notice should be served by the Registrar on the Council.

I overlooked these provisions. In mitigation, I can truly say that in the twenty years since I have been a Chancellor I have paid scrupulous regard to the obligation to refer, wherever appropriate, matters to the C.B.C. or its predecessor. On many occasions their assistance and advice have proved invaluable. In this instance, however, because (a) the armet had been in a bank vault or museum for over forty years and (b) it had, and has, no spiritual or ecclesiastical significance, the need to refer the matter to the Council did not occur to me. Nor, for that matter, did it occur to my extremely experienced Registrar. Be that as it may, I take responsibility for the error. It will not happen again, not least because since August 2010 the Dean of the Arches has reminded all Chancellors of the strict need to comply with Rule 15, even in circumstances where appropriate objects were at some point in a church, but have, for a lengthy time, been elsewhere, for example in a cathedral display, a bank safe or vault, or a museum.

6. No satisfactory or acceptable offer was made by the Royal Armouries or any other British museum or institution. Nor in the months leading up to the widely-publicised sale was any objection voiced as to what was happening. In the event, on the 8th December 2010 the armet was sold in London at a public auction conducted by Thomas Del Mar. The successful bid was £45,000, with the under-bidder being the Royal Armouries. In February 2011, however, the C.B.C., through its Chair, wrote to the Diocesan Registrar expressing deep concern about the situation. This led to extensive correspondence to which I need not refer in this Judgment. Suffice to say that, after considering the various points made in the correspondence, on the 31st May 2011 I directed that it was “just and expedient” under Rule 33 to set aside the Faculty. I was, of course, troubled in retrospect by the self-evident failure to comply with Rule 15. Whether or not this invalidated the Faculty order itself was a moot point, but the

C.B.C. quite properly sought to raise three specific issues which went to the merits. It was submitted:

- (a) the armet was part of the funerary monument to Sir Thomas Hooke;
- (b) as such, it was necessary to obtain the consent of any living heirs of Sir Thomas before good title could pass to any buyer; and
- (c) in any event, the Court should not order the sale of the armet.

In the light of the representations from the C.B.C., each of these issues needed to be resolved with particular care, and, in relation to (c), by the application of the relevant law. These considerations led to my decision to set aside the Faculty and to review the whole matter. It necessarily meant that the sale in December 2010 would be put on hold. This was an unfortunate but inevitable consequence.

7. Following my direction in May 2011, the C.B.C. became a formal Objector to the Petition. Since then, two matters have delayed the resolution of this dispute. First, from time to time the Petitioners have requested adjournments in order to continue to try to trace and contact possible heirs to Sir Thomas Hooke. Secondly, I fell ill in July 2012 and it has only been since the beginning of the present year that I have been well enough to resume my duties as Chancellor. Such being the importance of the case and my earlier involvement in it, I did not consider it appropriate to delegate it to my Deputy. As it happened, the efforts to contact possible heirs took much longer than originally expected, and, so far as I am aware, there was no pressure to reach a decision in my enforced absence.

8. On the 24th April 2013, with the consent of both parties, I directed that under Rule 26 it was expedient to determine the proceedings on the basis of written representations. In the file of documents before me both sides have adduced their representations and evidence. For the Petitioners, there are expert reports from Mr Ian

Eaves and Mr Thomas Del Mar, and statements from two genealogists; for the Party Opponent there is an expert report from Dr Tobias Capwell and a letter from Mr Thom Richardson, the present Keeper of Armour at the Royal Armouries. I am grateful, in particular, to Mr Peter Smith (for the Petitioners) and the Revd. Alexander McGregor (for the Party Opponent) for their lucid and cogent written submissions. I shall consider the evidence and submissions as I turn to deal with the three matters raised by the C.B.C. in 2011.

B. Did the Armet form part of a Funerary Monument?

9. In their original submissions dated the 20th May 2011 the Petitioners query whether the armet and the other, stolen, items were part of a monument to Sir Thomas Hooke. They point out that the Church was re-built in 1863 and the original location of the bracket is unknown. The writer of the Victorian County History described the monument, but only referred to the bracket and the items hanging from it on a later page. Mr Eaves and Dr Capwell, the two experts, however, seem to agree that it would have formed part of a funerary monument to Sir Thomas. I find it difficult to disagree with this conclusion. The initials and date on the bracket provide compelling evidence. How it came to be acquired as part of Sir Thomas's monument is more speculative. The armet would appear to be of Flemish origin. It dates from the early sixteenth century.

10. Dr Capwell, who is Curator of Arms and Armour at the Wallace Collection, says:

“The setting-up of pieces of armour as funerary achievements, symbols of knightly power and authority, granted to the knight in his lifetime by God and given ritually back to God after his death, was a common practice in England from at least the

fourteenth century...In the seventeenth century.....it became increasingly common for much older helmets to be appropriated and re-used on new monuments. Therefore, it is not at all uncommon to find re-cycled fifteenth or sixteenth century helmets associated with the monuments of seventeenth century noblemen...The Wootton St. Lawrence armet could have been originally part of an older, now lost, monument in the same church, it could have belonged to an ancestor and remained in the Hooke family, or it could have been acquired through other means.”

Mr Eaves considers its origins to be more mundane:

“The most likely source of such a helmet.....would have been the funerary furbisher who would, as was the usual practice at that late date, have endeavoured to acquire it as inexpensively as possible from a source of obsolete armour and modified it for use as part of a funerary achievement... and then painted it.”

11. I am inclined to accept this more mundane explanation, but, whether it be correct or not, I am satisfied on the balance of probabilities that the armet formed part of a funerary monument set up after his death to the memory of Sir Thomas Hooke. It follows that, even though it was in a sense attached to the building, it never became part of the freehold of the Church. It remained the property of the person by whom it was erected during his or her lifetime. On the death of the person placing it in position it became the property of the heirs of Sir Thomas Hooke. This has been long established at common law, and it has been enshrined in statute in Section 3 of the Faculty Jurisdiction Measure 1964.

C. Has the Consent of all Living Heirs to Sir Thomas Hooke been obtained?

12. This was the task imposed upon the Petitioners following my direction in May 2011. It was not exactly straightforward, and it took a considerable time to research.

The Petitioners sensibly enlisted the help of two genealogists who doubtless were much exercised trying to trace any existing heirs. Two have now been found, Sir John Hamilton Spencer-Smith and Mr. James S Lee. By a deed of gift dated the 28th February 2012, the former transferred the whole of his ownership in the armet to the churchwardens of the parish of Oakley with Wootton St. Lawrence, with intent to give effect to the sale of the armet in exchange for the P.C.C. undertaking to maintain and repair the tomb of Sir Thomas. Mr James Lee has also agreed to the sale and to transfer his interest in the armet on condition he receives half the price obtained on the sale.

13. As I understand it, therefore, the parties to this case agree that the armet is owned jointly by the churchwardens of St. Lawrence and Mr James Lee in equal shares. It follows that there is now no issue relating to the ownership of the armet or, subject to Mr Lee's interest, the right of the churchwardens to give good title under a sale. By virtue of this agreement, the Court may, in the exercise of its discretion, grant a faculty. The agreement, therefore, allows me to focus on the crucial, but contentious, issue, namely whether or not the sale of the armet should be permitted.

D. The Petitioners' Case in support of the Sale.

14. The general principles to be applied were first set out by the Court of Arches in **Re St. Gregory's, Tredington** [1971] 3 All ER 269. A Chancellor has a discretion whether or not to order the sale of a moveable item from a church. Each case will fall to be determined on its own facts. The discretion should be exercised sparingly and only if there is a special reason. A good reason for a sale is that (a) the item is redundant to the use of the church in question and/or (b) there is a financial emergency which requires the injection of capital from the proceeds of any sale.

These, however, are not the only grounds for exercising the Court's discretion in favour of a sale. Relevant considerations are (i) the armet is a secular item rather than an item of spiritual significance (see **Re St. Bartholomew's, Aldbrough** [1990] 3 All ER 440 at p. 454) and (ii) because over forty years have passed since the item was last in the Church, there has already been a "substantial degree of alienation" between the armet and the memorial to Sir Thomas (*ibid.* at p.454). The Petitioners submit that the armet has "played no part in the life of the Church for over forty years". It is, in effect, redundant to the needs of the Church.

15. The Petitioners submit that, in practice, and for obvious security reasons, there is no prospect of the armet ever returning to the Church. It is an antique, the value of which has in no way been reduced by its removal from the Church. Unless it is sold, the armet is likely to stay in a museum (or a museum's storeroom) indefinitely. This would confirm the sense of alienation or disassociation from the memorial and the Church generally. Further, in this particular case there is, and was, no aesthetic or artistic connection between the armet and the memorial. Its absence has not affected the quality of the marble effigy of Sir Thomas or the aesthetic pleasure to be derived from it. These elements, involving (a) alienation/disassociation and (ii) lack of artistic/aesthetic connection, were significant factors influencing the decision of the Court in the similar case of **Re St. Bartholomew's, Aldbrough** (see p.454); and the decision in **Re St.Mary's, Broadwater** [1976] 1 All ER 148 largely turned on the disassociation between the mediaeval helmet in that case and the tomb to which it was an accoutrement (see p.153, Letter C). An additional factor in the present case is that there was no personal link between Sir Thomas Hooke and the armet. The armet was likely to have been acquired in the way described by Mr Eaves. As for the Hooke family, its connection with the parish ceased in 1710 when Sir Hele Hooke sold

Tangier House two years before he died. This contrasts with the centuries-old link between some families and the villages where they live.

16. It is accepted that there is a difference of opinion between Mr Eaves and Dr Capwell regarding the historical importance of the armet. For the reasons set out in his report Mr Eaves takes the view that, whilst it is obviously a valuable historical artefact, it is not of exceptional scholarly interest. Its existence has been known to scholars since 1922, but until now no one has regarded the armet as of particular significance in the history of the development of armour. He further points out that in the two cases cited above in paragraph 15 (and in a further case in 1996) faculties for the sale of helmets were ordered, when in each case the helmet was “of greater rarity and historical importance” than in the present case.

17. In his statement Mr Thomas Del Mar refers to the auction sale in December 2010, and the bidding for the armet. He says:

“The buyer is an individual who is highly respected by the curatorial staff at the Royal Armouries in Leeds, the Wallace Collection and the Metropolitan Museum of Art in New York. I am satisfied that the armet would be safely preserved by him and have no reason to believe it could not be made available for research purposes should that be required at some future date, though its history has already been extremely well researched and documented....”

He goes on to point out that, because of the armet’s value, an Export Licence was and is required. The Export Review Committee would have considered this matter on the 13th April 2011, but adjourned the hearing in view of the points raised by the C.B.C. It must follow that, if the Court were to rule in favour of the sale, the Committee would still have to decide whether or not to permit the armet to go abroad.

18. The Petitioners submit that the Church at Wootton St. Lawrence is now facing very real financial difficulties, which would be alleviated by the proceeds of sale of the armet. Whatever may have been the position in 2010, the situation now is arguably critical. Since the original Faculty was granted, lead has been stolen from the Church roof. The P.C.C. has been obliged to obtain an initial loan from the Diocese in the sum of £60,000 to carry out the repairs necessary to make the roof watertight. Further, the P.C.C. has been obliged to assume financial responsibility for the demolition of the redundant St. John's Church elsewhere in the benefice. For this purpose a further loan of £40,000 has been obtained from the Diocese. In addition, there is a need for considerable capital expenditure on a new heating system to replace the existing one, which is presumably inadequate and/or expensive to run. These three matters create a financial need amounting to an emergency within the definition given in **Re St. Peter's Draycott** [2009] 3 W L R 248:

“an immediate pressing need to carry out urgent critical work for which funds are not, or cannot be made, available”.

In that case, however, “financial emergency” was the sole ground relied on in the petition. The font, which the petitioners wanted to sell, was not redundant. It continued to be in regular use in the church.

19. It is further submitted that, where the sole ground for the sale of a valuable asset is a financial crisis in the parish, a financial emergency has to be proven. In cases, however, where the moveable item is redundant or superfluous to the needs of the church, the Court is entitled to treat as sufficient a lower standard of financial need. This is evident from a series of recent cases decided in various Consistory Courts. In **Re St. John the Baptist, Halifax** (2000) 6 Ecc L.J. 167 a faculty was granted for the sale of redundant silver cups and patens so as to assist with fundraising for restoration

work. In **Re St. Giles, Lincoln** (2006) 9 Ecc L.J. 143 a faculty was granted to an impoverished parish to sell a painting with little connection with the church in order that the proceeds of sale go to towards the general repair fund. In **Re St. John the Baptist, Stainton-by-Langworth** (2006) 9 Ecc L.J. 144 a faculty was granted to sell items of redundant silverware where there were good financial reasons for so doing. In that case Chancellor Collier Q.C. observed that, since the **Tredington** case, the more complex financial arrangements that now exist for the benefit of church and congregation may give rise to good financial reasons for the sale of valuable, but redundant, items in circumstances short of a financial emergency. Further persuasive authority is found in three cases decided since **Re St. Peter's, Draycott**. In **Re St. Columba, Warcop** (2010) 13 Ecc L.J. 371 a faculty was granted for the sale of two pictures on the basis that, having been in a museum since 1957, they were redundant to the use of the church, and a sale was justified in circumstances where the P.C.C. had limited resources and was in debt due to recent work undertaken to improve the facilities of the church. Similarly, in **Re St. James, Welland** (2012) 14 Ecc L.J. 144 a faculty was granted for the sale of silverware that was not in use in order to finance a re-ordering of the church. In **Re St. Michael and All Angels, Withyham** (2011) 13 Ecc L.J. 380 four paintings too valuable to be in the church had been in a museum for fourteen years. There was no realistic prospect of the paintings returning to the church. A faculty was granted for their sale in circumstances where, although there was no financial emergency, the church was facing general financial problems.

E. The Party Opponent's Case against Sale.

20. Reliance is placed on the principles set out by the Court of Arches in **Re St. Peter's, Draycott** at paragraph 61 of the judgment:

- (i) a good and sufficient ground must be proved;
- (ii) the onus of proof lies fairly and squarely on the petitioners;
- (iii) a relevant fact indicating that there should be no faculty may be that the articles are part of the heritage and history not only of the church, but also of all the people, present and future, of the parish;
- (iv) the jurisdiction should be sparingly exercised.

The Court accepted the concept of “a gradation of proof” and approved the proposition enunciated by the Chancellor in the **Stainton-by-Langworth** case as having general application to any valuable or historic article:

“Quite clearly 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 there is sufficient reason in all the circumstances to allow a sale”.

The Court distinguished between “financial need” and “financial emergency”. If the latter was relied on as, in itself, sufficient cause for sale, then it had to meet the definition already quoted in paragraph 18 above.

21. It is submitted that the concept of redundancy is inappropriate in the present case. Unlike, for example, old bells no longer of any use, the armet has not become redundant. It never had a practical use. It simply formed part of the funerary accoutrements to the memorial to Sir Thomas. As such, it is outside the concept of redundancy as defined in the **Tredington** judgment.

22. The Party Opponent submits that the armet should remain in the custody of the Royal Armouries, which is the national custodian of such articles. Most of the pieces of armour the Armouries have received from churches are likely to go on display

there over the course of the next few years. Reliance is placed on the letter from Mr Richardson in which he refers to the helmets preserved in English churches as “a highly important part of our nation’s heritage, in particular because they provide almost the only surviving examples of armour worn in England before the sixteenth centuries.”

Later in his letter Mr Richardson observes:

“If the sale of the Wootton St Lawrence armet is ultimately ratified by the Court and a faculty granted, such a judgment is likely to open the floodgates for other parishes seeking to turn the armour in their care into cash. When such helmets appear on the art market they are almost universally sold abroad. While the museum will do its best to acquire these pieces for the nation, as it has done in the past, it is unlikely with the current state of museum funding that we will be able to acquire many examples, even if we were able to secure a temporary export bar following sale, and many will inevitably leave the country.”

It is submitted that, if the Court were to uphold the argument that the armet is redundant, every valuable article which has, for reasons of security, been deposited for any length of time in a cathedral treasury or a museum could be said to be redundant. It could be a precedent for other parishes to seek faculties for sale.

23. It is submitted that “financial emergency” should be given the narrow meaning prescribed in the **Draycott** judgment. Mere financial need that falls short of a financial emergency will not justify disposal of an article of artistic or historic value. Consistory Court rulings which adopted a less stringent approach than that laid down in **Draycott** should not be followed. This applies to any decision based on a combination of financial need and the concept of redundancy, which for the reasons already given does not arise here.

24. The evidence, such as it is, from the parish goes nowhere near to disclosing a financial emergency. The P.C.C. is in a relatively strong financial position with an income over and above that of many parishes around the country. The loan repayments and the desire to install a new heating system cannot amount to a “financial emergency” in the sense specified in **Draycott**. Even if the sale were to be sanctioned, a one half share less commission and expenses would not amount to more than £15,000. This would only go a small way towards paying off debts of £100,000. So the benefit to the parish would only be very modest.

25. With regard to the armet itself, the independence of Mr Eaves in giving a report is questioned, because he was involved in the preparation of the auction catalogue entry for the armet in 2010. Pausing there, whilst this is undoubtedly true, I unhesitatingly reject the insinuation that Mr Eaves has a financial, partisan interest in giving his current assessment of the historic significance of the armet. The proposition makes no sense. In the catalogue he would have been doing his best to make the lot sound an attractive proposition to a potential buyer. In his report, however, he is saying that the armet is, in fact, not as unique and important an article as Dr Capwell asserts. This situation, with its innate contradiction, does not suggest to me that Mr Eaves has any financial motive in presenting his report. Nor do I accept that his report is “polemical”. He simply expresses his expert opinion, which is fairly based on a lifetime’s knowledge and experience in the arcane field of historic armour.

26. It is submitted that I should prefer the views of Dr Capwell. The Court should accept that the armet is a rare and important article of considerable historic and artistic merit. It is part of the heritage and history of all the people, present and future, of the parish of Wootton. It is also part of the national heritage and history. It is submitted that this is a matter which militates strongly against a faculty being granted for its

disposal. Further, by virtue of its intrinsic value, weighty reasons would need to be proven to the satisfaction of the Court to justify its sale. It is also suggested that a factor weighing against sale is that half the proceeds would end up with a private individual, Mr Lee.

27. Finally, it is submitted that, if, contrary to the above arguments, the Court were minded to grant a faculty, it should be granted on condition that any sale should only be to the Royal Armouries or to another museum in this country:

“Such a condition would be the minimum necessary to ensure that an important aspect of heritage was not permanently lost to the local community and the nation”.

F. The Petitioners’ Response.

28. The principle of “gradation of proof”, which was accepted in **Re St. Peter’s, Draycott**, is dependent on all the circumstances of the case. In certain circumstances a lesser standard of proof may be sufficient. **Draycott** (paragraphs 76 and 82) requires a Chancellor in the exercise of his discretion to undertake a balancing exercise involving the elements for and against a sale. In **Re St. Mary’s, Broadwater** (see above) the Chancellor seems to have accepted that, where an item, such as a jousting helmet, has been given to a church as a personal memorial, the Court has a freer hand in exercising its discretion “and it was not necessary to find that a financial or other emergency for disposal exists in the parish”.

29. Although **Draycott** is a decision of the Court of Arches, the facts of **Draycott** were entirely different. The font in question had been in use in the church since it was built in 1861 and its artistic style was integral with that of the rest of the church. The factors taken into account (paragraph 76) included: (i) the font was part of the heritage and history of the church and of all who have been baptised in it; (ii)...it was not

redundant; (iii) it was a fundamental feature and principal asset of the church; and (vi) the church would be diminished in interest by the disappearance of a work of considerable architectural, artistic and historic importance. The only factor relevant to the present case is that the font would have passed into private ownership and would no longer be accessible to the public.

30. It is submitted that redundancy is still a relevant concept notwithstanding that the armet has never been associated with worship in the Church. Redundancy is an appropriate term to describe the situation where an article has both been separated from a church, and serves, and will continue to serve, no useful purpose in the church (see the judgment in **Re St Giles, Lincoln**, above). In the more recent case of in **Re St. Michael and All Angels, Withyham** (above) where there was no realistic prospect of the paintings ever returning to the church, Chancellor Hill Q.C., in applying the principles of **Draycott**, recognised that the relevant factors militated in favour of a faculty even though there was no dire financial emergency. A similar situation obtained in other recent Consistory Court cases where faculties were granted. In this context the Petitioners submit that the factors set out in Paragraph 15 above are particularly relevant. These factors mitigate the need to demonstrate a financial emergency, the only ground upon which the petition in **Draycott** appears to have based.

31. The Petitioners invite me to take into account the unfortunate circumstances set out in Paragraphs 5 and 6 above. The Petitioners have acted in good faith and, if the Court were to refuse a Faculty now, they could find themselves facing legal proceedings for breach of contract, and, in particular, for breach of warranty of title. These circumstances make the present case one that could be decided on very specific grounds which would not set a precedent.

32. In a letter dated the 17th June of this year the Petitioners' solicitor states that the net cost of the roof repairs is expected to be £30,862. The cost of the new heating to be installed as part of the re-ordering of the Church is likely to be about £50,000. I am unclear how the first figure links in with the sum loaned by the Diocese. Nor am I informed how the P.C.C. is proposing to pay for the new heating. Nevertheless, these figures indicate that, at the very least, the P.C.C. is, or will be, facing substantial financial commitments.

G. The Decision with regard to Sale.

33. (a) It is for the Petitioners to prove their case. They must prove good and sufficient grounds to warrant a sale of the armet. The Court has a discretion in the matter, but its jurisdiction to authorise the sale of a valuable article should be exercised sparingly.

(b) The Petitioners have the authority of the P.C.C. to enter into a sale. As a consequence of receiving the consent of the known surviving heirs to Sir Thomas Hooke, they are in a position to pass good title should the existing sale be authorised.

(c) The armet is a valuable antique piece of armour dating from the first half of the sixteenth century. Whether it is quite as rare an item as Dr Capwell suggests is questionable. In broad terms, I am inclined to accept the evidence of Mr Eaves with regard to both its provenance and its significance. There are finer examples in existence of helmets/armets dating from the same period. Nevertheless, the fact that a price of £45,000 was bid at an open auction is an indication of its value to collectors of armour.

(d) The connection between the armet and Sir Thomas Hooke is tenuous. He never wore it. It was probably acquired after his death as part of a funerary monument or

accoutrement. In 1677, when he died, it was a piece of obsolete armour which, according to Mr Eaves, may have been modified to make it more presentable on the wall above his marble monument. There is, however, no aesthetic or artistic link between the armet and the monument. As for the connection between the Hooke family and Wootton St. Lawrence, this was short-lived. Sir Thomas purchased the land on which he built Tangier House in 1660. Fifty years later his son, Sir Hele Hooke, sold the property. There is no evidence to suggest they were individuals of either local or national distinction. In the circumstances, the possible link between the armet and the present and future inhabitants of the parish is very limited. It does not play a significant part in the history or heritage of the village.

(e) Since 1969 the armet has not been on display in the Church. For security reasons there is no prospect of its ever being returned to the Church in the future. It therefore comes into the same category as the helmet in **Re St. Bartholomew's, Aldbrough**, the helmet in **Re St. Mary's, Broadwater** and the paintings in **Re St. Michael and All Angels, Withyham**. To adopt the phrase of Chancellor Coningsby Q.C. in the **Aldbrough** case, there has been "a substantial degree of alienation" between the armet and the Church. This alienation has also been described as a "disassociation" or "severance of connection". As the Chancellor accepted in the recent **Withyham** case, when undertaking the balancing exercise necessary to the exercise of discretion, it is a relevant factor militating in favour of a sale. Whether the word "redundancy" properly describes the situation is another matter. Since the armet never had a function within the Church, it logically cannot be said to have become "redundant" in the normal sense of the word. Whatever is the appropriate term, however, the fact remains that the connection between the armet and the Church has been severed, and there is no prospect of the severance being reversed.

(f) The Party Opponent is not suggesting the armet should return to the Church. The suggestion is that, because of its historic value, it should remain in the Royal Armouries or a museum. Leaving aside for the time being the financial position of the P.C.C., I am troubled by this suggestion and its implications. In its broadest interpretation it could affect every article of historic or artistic value which for reasons of security may have been, or should be, deposited in a museum, a gallery, a bank vault or, perhaps, a cathedral treasury. If it be thought that an order for sale could lead to such an item going to a foreign buyer (which would be the situation in the present case), should that deter or discourage the Consistory Court from exercising its discretion in favour of petitioners? In my judgment it is probably an irrelevant consideration, or, at best, only one of a number of considerations to be taken into account in the exercise of the discretion. It is surely for the Export Licensing Committee ("the E.L.C.") to decide whether any particular item should be allowed to go abroad or whether a British museum or gallery, as the case may be, should be given the opportunity to match the sale price in order to retain the article in this country. If the museum or gallery has insufficient funds, it can ask the Treasury for assistance and/or launch a public appeal. In his letter Mr Thom Richardson emphasises the current stringent limits on public funding. He makes a heart-felt plea in his position as Keeper of the Royal Armouries, but is this a relevant factor for a Consistory Court? Had the armet been in a private collection, it could have been lawfully sold to a foreign buyer, with the E.L.C. being the national arbiter on whether a licence should be granted without further ado. Should I grant a Faculty in the present case, the same situation would arise. The availability or otherwise of state funding for national museums or galleries is not, in my judgment, a relevant factor to be taken into consideration.

(g) In the circumstances, and out of deference to the C.B.C.'s position as a national body, I am prepared, despite misgivings, to take into account the matter referred to at the outset of Sub-paragraph (f) above. I bear in mind the historic significance of the armet. I shall not, however, treat this as a paramount consideration, but only as one of several factors to be weighed in the balance.

(h) Do the Petitioners have to prove a financial emergency in the sense defined in **Re St.Peter's, Draycott** ? I accept, of course, that principles of law laid down by the Court of Arches are binding upon this Court. Nevertheless, for the reasons set out in Paragraph 29 above, the facts of **Draycott** were entirely different from the facts of the present case. In a case such as the present, in my judgment petitioners have to prove financial need, amounting to good financial reasons short of a financial emergency. In reaching this conclusion I follow the line of authorities summarised in Paragraph 19 above. In particular, the three Consistory Court cases since the decision in **Draycott** reflect the law as it applies to valuable articles which have been separated or disassociated from a church and which serve, and will continue to serve, no useful purpose in the church. In this context I can see no distinction between the present case and **Re St. Michael and All Angels, Withyham**.

(i) On the evidence in the present case I am satisfied that the Petitioners have now proved good financial reasons for seeking the sale. Those reasons are probably not far short of a financial emergency in themselves, but, as I have indicated, it is unnecessary for the Court to reach that conclusion. The fact that one half of the net proceeds would go to Mr Lee is of no significance. Unless he should in due course choose to pass his share over to the Church, he would be entitled to keep his moiety, even if it comes as an unexpected windfall. Receipt by the P.C.C. of its share of the

proceeds would go some way towards alleviating, at least to some extent, the financial problems currently experienced.

(k) In reaching my decision I do not consider that the matters set out in Paragraph 31 above should amount to a relevant factor in carrying out the balancing exercise. What happened is unfortunate, but it should play no part in the decision-making process today.

(l) Nor do I accept the approach apparently adopted by the Chancellor in **Re St. Mary's Broadwater**, which is referred to in Paragraph 28 above. Even if a valuable item has formed part of a personal memorial, a financial justification has to be proved to justify the possibility of an order for sale.

34. In all the circumstances I am satisfied that the Petitioners have proved their case such as to justify an order for sale of the armet. In exercising my discretion, I have, in particular, taken into account the factors set out in Sub-paragraphs 33 (c), (d), (e) and (i) above. I have also taken into account the matter set out in Sub-paragraph 33 (g) above, but in my judgment this is outweighed by the factors in support of a sale. I have borne in mind the principle, confirmed in the **Draycott** case, that the more valuable the article, the weightier will need to be the reasons such as to justify a sale. On the facts of this case, in my judgment the Petitioners have crossed this high threshold. Accordingly, a Faculty will issue, with the same conditions attached as applied to the original order in 2010.

35. Whether this decision will open the flood-gates to other similar applications remains to be seen. I can appreciate Mr Richardson's concern, but every case has to be decided on its own facts. In the present case the factors set out in Sub-paragraphs 33 (c), (d) and (i) have proved highly significant. Whether they could be replicated in other situations, only time will tell. The problem, however, is really one for museums

and galleries. If a private owner wishes to sell a valuable item loaned to a museum or gallery, there is nothing to stop him or her going ahead. If a church has the consent of the owners of an heirloom to sell an article which has no obvious link to the building and which is superfluous to the needs of worship, why should the legal situation be, in practice, so very different ?

36. The Court costs (to be taxed or agreed) will fall on the Petitioners.

Christopher Harvey Clark Q.C.

Chancellor of the Diocese

August 22nd 2013.

