



**IN THE CONSISTORY COURT
OF
THE DIOCESE OF PETERBOROUGH**

RE ST. MARY GRAFTON REGIS

JUDGMENT

of

**HIS HON. JUDGE T.A.C. CONINGSBY, QC
CHANCELLOR OF THE DIOCESE OF PETERBOROUGH**

30 JUNE 2005

In the Consistory Court of the Diocese of Peterborough

In the matter of the Parish Church of St. Mary, Grafton Regis and in the matter of a petition for a faculty for the sale of a painting

Judgment of His Honour Judge T. A. C. Coningsby, QC, Chancellor

1. The Proceedings. The Petitioners are Charles Fitzroy and Charles Reece (churchwardens) and the Revd Roy Mellor (Rector). By a petition dated 13 December 2004 they seek a faculty for the sale of a fifteenth century religious painting. John Gallimore recently took the place of Charles Reece as churchwarden and supplied a witness statement in support of the petition. The Diocesan Advisory Committee (DAC) advised against allowing the petition and attended the hearing to oppose the petition. Directions were given by me on 30 December 2004. These included a requirement that notice be given to the Council for the Care of Churches (CCC) under rule 15 of the Faculty Proceedings Rules 2000. The CCC advised against a sale of the painting and its representative Judith Johncock attended the hearing to oppose the petition. The hearing took place at the church on 14 May 2005. The written evidence amounted to about 150 pages and oral evidence was given by all parties lasting for about eight hours. If permission to sell is given the petitioners and Parochial Church Council (PCC) have committed themselves to having a replica painted by Barrington Bramley, for hanging in the church, at an agreed cost of £9,750.

2. Description of the Painting. The painting is on wood. It portrays the betrayal of Our Lord in the garden of Gethsemane. The central figure is Christ. St Peter is in the act of putting away his sword after striking off the ear of Malchus. Judas is approaching Christ with a kiss. There are two servants and a soldier. The work is carried out with skill. The picture itself measures some 40 inches by some 22 inches, but the whole panel is larger because the picture has a surround of wood painted with studded nails. Above the painting there are crowned monograms of Our Lord. Below is an inscription in English: "Ihesu mercy and eve' mercy, For in thy mercy wholly trust". This description is based on pages 39-40 of the Journal of the British Archaeological Association, 3rd series volume 9. The Journal is unable to suggest for what place in a church (or private chapel) the painted panel was made. It might have been part of a screen, or of a reredos, or of a series above a rood loft, or it might have been intended to be hung on the tympanum above the chancel arch. In June 2004 Sotheby's valued the panel at £100,000 to £150,000 and suggested an insurance figure of £200,000. At about the same date Christie's suggested an auction value of £50,000 to £80,000 but advised that the painting should be offered to an appropriate institution in this country for £120,000.

3. Age of the painting. A number of experts considered this aspect. Christa Grossinger thinks the painting dates from about 1470 judging from the style of the

painting and the text being in English. Janet Backhouse says “around 1500”. John Mitchell says “early sixteenth century”. Anthony Fleming, who gave evidence for the DAC, associates the painting with the marriage between Edward IV and Elizabeth Woodville (of Grafton) in 1464. During the evidence a consensus emerged for a date between about 1440 and about 1520. Clearly it is not possible to arrive at a precise date. The identity of the artist is not known. He may have been English or from the North of Europe, judging from the style of the work.

4. The Church Building. The original foundation of the church was Norman. It is a good unaltered example of the Decorated style. It has a north aisle dating from the thirteenth century. The nave is a little later. The material is of coursed and squared limestone. Pevsner mentions the architectural detail in the chancel where there is a priest’s door between a sedilia and a piscina, all with ogee-shaped arches above them. For about sixty years until 2003-4 the Betrayal painting hung over the exterior doorway on the south side of the chancel (the priest’s door). The most important historical feature of the church is the early fifteenth century tomb of Sir John Woodville. This stands at the west end of the north aisle and has a carved alabaster top slab. It is regarded by English Heritage as one of the finest medieval tombs of its period. It is not well-positioned at present and the church officers wish to move it to a new position about half-way along the north wall of the aisle. It is in need of conservation. Sir John Woodville built the tower of the church. He was the ancestor of Elizabeth Woodville who married Edward IV. The Woodvilles were a prominent family in the medieval period and owned a manor house and lands in Grafton. If permission is given to sell the painting the church officers and PCC will use part of the proceeds to conserve and move the tomb. The CCC and DAC are supportive of the proposals about the tomb. My own view is that it will be a great improvement to move the tomb into a more open position where it can be fully appreciated. Its present position is not worthy of such an important and beautiful tomb. The church was repaired and restored in 1840 and 1889 and new pews were installed.

5. The Legal Principles. The leading case remains *Re St Gregory Teddington* (1972) Fam 236, the well-known decision of the Deputy Dean, Chancellor G. H. Newsom QC, sitting in the Court of Arches. He permitted the sale of two livery pots or flagons. It was pleaded that the flagons were not necessary to the church being too large for modern use and that the PCC badly needed money for church repairs. It was also pleaded that the flagons were too valuable to be kept in the church. The Deputy Dean considered each of these aspects to be important. He accepted that the flagons were unnecessary as the church had other sufficient plate. He indicated that he was looking to see whether the petitioners had proved a “financial emergency”. The architect gave evidence that urgent works at a cost of £7,500 were required. (The equivalent figure today would be about ten times as much.) The Deputy Dean held that a financial emergency had been proved. He mentioned that if the funds for the work could not be raised it would be necessary for the diocese to consider declaring the church redundant. (That is a prospect which the PCC has discussed in the present case, although they would avoid this for as long as possible.)

6. In the concluding passage in the judgment the Deputy Dean put together two reasons for allowing the appeal: "I have granted the faculty in the present case because the flagons are redundant and because there is an emergency in the finances of the Parochial Church Council due to the state of the fabric and the small congregation of the church". In my view the decision should not be read as meaning that it is only where those two factors are present that a faculty for sale can be granted. They were the factors of particular importance in that case. In the present case other points are relied on in addition, viz. inability to insure the painting for its real value, the unsatisfactoriness of insuring for a modern replacement only, the unwillingness of the churchwardens to take responsibility for having the painting in church, the impracticability of any security arrangements (such as a secure container for the painting or an alarm system for the building or for the painting) and the fact that the church is only open for services twelve times per year and arrangements could not be made for the public to view the painting at other times. That such considerations are relevant is clear from an earlier passage in the Tredington judgment where the Deputy Dean said: "To obtain a faculty some good and sufficient ground must be proved. In the case of a sale one of the grounds is redundancy. It is not an essential ground or the only possible ground. But some special reason is required if goods which were given in specie are to be converted into money".

7. The CCC has produced an excellent leaflet containing guidance about the sale of treasures. It summarises the Tredington decision in terms of a "good and sufficient reason" which may be coupled with "the redundancy of the object in question". It then lists a number of factors to be considered:

- (a) The historic interest of the object.
- (b) The relationship of the item to the history of the church, its liturgy and furnishings as a whole. (In the present case this was an important issue, which occupied much of the hearing.)
- (c) The redundancy of the object.
- (d) Security issues.
- (e) Conservation. The cost of essential conservation can be mitigated by grants.
- (f) The parish's case. This often includes the financial needs of the PCC. In the present case the petitioners say that, although a financial emergency does not exist at present, it is likely to do so soon.
- (g) In its written final submission to me the CCC also made the general points, based on previously decided cases, that the jurisdiction to allow sale of valuable items should be exercised sparingly and that where an item which has been in the church is to be removed from it a case of "necessity" for such move must be made out. In the present case the painting should be treated for legal purposes as if it were still in the church because it was in the church until 2003 and was only removed for temporary safe-keeping and a possible conservation report. The Archdeacon of Northampton (who was then the Ven. Michael Chapman) gave permission for the painting to be taken to Sotheby's for a limited period. I subsequently extended the permission until this judgment. I accept therefore that the petitioners have to make out a case of "necessity".

5. The above is the legal background against which I have to decide this Petition. There was no disagreement about the legal background. The petitioners accepted the

task before them in all respects. But they argued that the legal requirements were met. In the directions which I gave in December 2004 I listed seventeen questions which I wished all parties to address in the written evidence which they were preparing. These questions largely corresponded with the legal issues raised. I am grateful to all parties for framing their witness statements and documents in a way which responded to the questions. This resulted in the issues being squarely addressed and avoided a situation where I might not have had sufficient material on certain aspects.

7. Connection between the painting and Grafton Regis church. This is rightly a central issue. If the painting was created for Grafton Regis church and/or has a historical connection with that church and/or has been in the church since the late fifteenth century (or at least for most of that time) these will be major considerations pointing against allowing a sale. On those facts the painting ought to remain in the place where it originated and to which historically it “belongs” unless there are the strongest reasons for separating it. If on the other hand the connection with the church does not exist or is slight and/or recent the petition can be more sympathetically considered because the painting does not have a particular context of this church in which it ought to be seen. The petitioners say that there would be advantage in it being seen by more people in a museum where it could be displayed in such a way as to put it into a historical and artistic context away from the limitations of a particular place and a particular type of building (a church).

8. The evidence for and against a connection with Grafton Church. The primary case for the CCC is that there is enough evidence to show that the painting was made as one of a number of panels for a screen (or other fitting) in Grafton Church and that it was present in the church for many years until it was removed to the Rectory for safe-keeping and then returned to the church in the early twentieth century. The DAC supports the CCC case. The main witness for the CCC was Mrs Judith Johncock. She provided a nine-page statement and also attended the hearing to give evidence and to put questions to other witnesses on behalf of the CCC. The main witness for the DAC was Mr Anthony Fleming. He provided a ten-page statement and performed for the DAC a similar function at the hearing. Their statements and oral evidence dealt with all aspects of the case and not only the issue of a connection between the painting and the church. The case for the petitioners on the “connection issue” is that there is no evidence that the painting was in the church at any time before the first half of the twentieth century and that the first time there is any record of it being in the parish is that it was seen in the rectory in 1907; therefore the evidence shows that it did not have its origins in the church and was not part of a screen or other fitting in the church. The case for the CCC and the DAC is that the subject-matter of the painting shows a royal connection and that the king in question was Edward IV (1461 to 1483). His wife Elizabeth Woodville came from Grafton. The painting was probably part of a set of passion paintings for a screen and the screen was probably in the church. Alternatively the painting could have been for a screen in the chapel of the Woodville manor house. That house was later replaced by a royal residence (a palace) used by Henry VIII and Elizabeth I on their journeys to and from the north of England and in the Midlands. The painting may have moved from the manor house to the palace. During the Civil War in the seventeenth century the palace

was defended by the supporters of Charles I but was taken and sacked by the supporters of Cromwell. The painting may have been removed to a safe place before or during the siege of the palace and may have eventually found its way to the rectory (still for safe-keeping) so that it was still there in 1907. In relation to the later history of the royal estate at Grafton it is common ground that the estate was given by Charles II to his son the Duke of Grafton and the Dukes held it until the twentieth century.

9. **The witness evidence on the issue of a connection with the church.** In May 2005 Anthony Fleming (who was the main witness for the DAC) wrote to Dr Christa Grossinger to obtain her views on his theory about the royal significance of the painting. He had observed that the upper panel of the painting includes a line of eight "sun-burst" motifs. There are also four crown motifs (which surmount the IHS symbol for Christ and those in turn surmount pairs of sunbursts). Anthony Fleming thought that the sunbursts were a reference to a royal figure, probably Edward IV because of the age of the painting and a reported incident in the life of Edward IV when before the battle of Mortimer's Cross (a key battle in the Wars of the Roses) he and others saw in the sky the appearance of three suns (which Edward IV associated with the Holy Trinity). Christa Grossinger replied that she thought Anthony Fleming had set out a credible argument, which she supported. She wrote that the panel could be one saved from the palace chapel at Grafton Regis. Lord Fitzroy had previously contacted Christa Grossinger at the end of June 2004 and she had replied in writing on 2 July 2004. She thought the panel was English from about 1470. She compared it with other works in the Gothic style of the same period. She said that the crowned IHS at the top of the panel could be found in other works of the period such as tiles at Great Malvern Priory dating from 1458-9. In relation to the sunbursts she was not sure whether these were associated with Christ or could "point to Elizabeth Woodville". She concluded "It is just very difficult to pin the panel down because so much has been lost that could have been compared". Mrs Grossinger did not take part in the hearing so it was not possible to learn more from her.

10. On 11 August 2004 an expert from the Society of Antiquaries of London wrote that the panel was too large to be from a screen (presumably a chancel screen) but it might have been from a panelled church or chapel such as that in Winchester Cathedral. She continued: "There is always a temptation to assume a logical context for the fragmentary remains of medieval art". That is a warning which I will heed. Later in her letter she wrote: "I saw Christa Grossinger and asked her opinion of the painting which she told me she had examined. She seemed as unable to help as I have been". On 8 March 2004 another expert Janet Backhouse wrote to Lord Fitzroy with her views. She had discussed the painting with Christa Grossinger. She wrote: "In broad outline I would go along with Christa though I think I would be saying circa 1500". In relation to a possible connection with Elizabeth Woodville and Grafton she wrote: "I suspect we are dealing with something rather too late to make a family link likely".

11. In about 1710 a church historian named Bridges visited churches in Northamptonshire and wrote that there were the fragmentary remains of a former rood screen visible in the church and that one panel from it, being a painting of St Dionysius, was on a wall of the chancel. My comments on this are as follows: (a) the evidence for

the existence of a rood screen is not very strong, (b) Bridges was clearly not describing the Betrayal panel but a quite different panel depicting the saint, (c) that if the Betrayal had been in the church in about 1710 it is almost certain that Bridges would have mentioned it because it would have been of at least as great importance as the painting of the saint and (d) the existence of the saint painting in 1710 suggests (if anything) that any screen or other fitting (such as a reredos or wall-panelling) in the church was more likely to have been composed of a series of panels of saints than panels portraying the passion of Our Lord (such as might include a Betrayal). In my view the evidence from the Bridges record of the church and its contents points to the Betrayal panel not being in the church and not being connected with the church in the early eighteenth century. One can go to a later period as well. The church was twice restored in the nineteenth century and the painting was apparently not there. It was seen in the rectory in 1907 and it was in the church by 1942. At what point it moved from the rectory to the church is not known. Thus there is evidence that the painting was not in the church between about 1700 and about 1910. If that is correct why was it not there if the DAC and CCC case is correct that the painting “belonged” to the church? The fact that the rector had it in the rectory in the late nineteenth and early twentieth century would suggest that the painting belonged to him and not to the church. The DAC and CCC do not suggest any reason why the painting could not have been in the church after the Cromwellian period was over. If the painting was not connected with the church it could have arrived in the church in the first part of the twentieth century because it was given to the church in the lifetime of the rector who had it in the rectory in 1907 or upon his death. If it was not required by the person who had ownership of it he might have considered the church to be a suitable place for it because of its content.

12. In the 1830s another Northamptonshire historian called Baker recorded that the panel depicting St Dyonisius (or Saint Denis) was still in the church. Like Bridges a century earlier he did not mention any other painting being in the church. The painting of Saint Dyonisius was apparently lost at some time during the Victorian period. During the early part of 2005 a local resident Mrs Susan Blake carried out some research at the request of the petitioners. She went to the Northamptonshire Records Office and looked at the Returns made to Episcopal and Archdeacons’ Enquiries by the Incumbent and Churchwardens for the period between 1837 and 1919. These returns would normally include reference to any significant painting belonging to the church. She also inspected the terriers (or church contents inventories) held at the same records office. She saw the terriers for Grafton church for the years 1720, 1723, 1726, 1733, 1736, 1739, 1744, 1749, 1752, 1758, 1761, 1767, 1774, 1777, 1780, and 1786. She also saw survey documents for 1552 and 1683. In none of those documents was there any reference to the Betrayal painting. Mrs Blake’s evidence was not challenged, save to suggest that for some reason churchwardens might have decided not to include the Betrayal painting when making returns and terriers despite having it in the church, or that if it was still part of a screen or reredos they would not have mentioned it as a separate item. I did not find that point convincing. The purpose of returns and terriers is to record the contents of churches. If it had ever been part of a screen or other fitting the painting must have become detached by the time these eighteenth century returns and terriers were being submitted. Bridges in about 1710 did not see a screen in position (only some fragments). There is a strong

inference that the churchwardens did not record the Betrayal painting because it was not in the church. That fits perfectly with the evidence of Bridges and Baker and the painting being in the rectory in 1907. I believe that the proper finding to make is that the painting in question was not in the church after 1700. Also, on the basis of the 1552 survey record, it was not in the church in the sixteenth century. If the painting was not in the church in those centuries and since there is no reason why it should have been there earlier I must find on the evidence that it was never in the church (prior to the early twentieth century). No suggestion has been made of a reason for removal during the period between the date of the painting (assuming that to be about 1470) and 1552 (or for that matter the next survey report in 1683). The suggestion about removal during the Civil War related to a different century and was of a possible removal from the palace and not from the church. In this connection I may say at this point that it does not help the case that there should be two theories: (a) that the painting “belonged” to the church from the outset, (b) that it “belonged” to the chapel of the Woodville house (and later “belonged” to the palace) and only after that it became the property of the church. When a judge is being to ask to make a finding on a particular matter the case is weakened by postulating alternatives because if one is right the other must be wrong and vice versa, so that the judge cannot be sure enough about either.

13. **Conclusions on the matter of a connection with the church.** As I have indicated the important evidence here is the absence of any record of the painting being in the church, or connected with the church, at any time prior to about 1940 and the fact that it was in the rectory and not the church in 1907. The DAC and CCC have made a point based on the observation in 1907 that the painting was in the rectory for “safe-keeping”. They conjecture that it was safe-keeping “on behalf of the church”. But that entirely begs the question. The safe-keeping is equivocal and therefore non-probative. The safe-keeping could have been for a multitude of reasons. Perhaps the Rector (or even some previous Rector) found the painting in some other part of England (or even in a north-European country) where its value was not appreciated and acquired it in order to “give it a home”. There is no justification for assuming that the Rector was looking after the painting “because it belonged to the church”. The inference should be the other way round because if it belonged to the church he should have placed it there. Eventually it **was** placed there (in the time of a subsequent rector). So it could have been placed in the church before 1907 if the then Rector knew that that was where it should be. The placing in the church in the twentieth century is no evidence that the painting belonged to the church. If it was a painting no longer required in the rectory it was a natural step to place it in the church. It was hung on a simple wall-fixing on the south side of the chancel where it had no liturgical or other spiritual function or significance, but would have been a decorative embellishment.

14. Set against the strong evidence which I have outlined that the painting was never in the church I was not convinced by Anthony Fleming’s theories about royal motifs in the painting and a connection with Elizabeth Woodville. Lord Fitzroy (who trained as an art historian) disputed the theories. In relation to the “sunburst” motifs Lord Fitzroy considered that these were merely decorative, or that if they were symbolical they referred to Christ (who is the central figure of the painting) and not to Edward IV or any

other royal person. Mr Fleming made a connection between the sunbursts and a tradition that Edward IV saw three suns in the sky after the battle of Mortimer's Cross which the king interpreted as representing the Holy Trinity. Mr Fleming suggests that the sunbursts in the painting also represent the Trinity. There is a difficulty in that there are only two sunbursts beneath each of the Crown and IHS symbols which would not indicate a trinity. But Mr Fleming suggests that the third member of the trinity in each case is the figure of Our Lord. I found this unconvincing. If the artist wanted to use sunbursts to represent the Trinity there is no reason why he should not put three sunbursts beneath each IHS symbol. There are four groups of two sunbursts and only one figure of Our Lord, so there is an insufficiency of symbols to supply four sets of three. I am not able to conclude that the sunbursts indicate the Holy Trinity. Mr Fleming also made a point about the flower decorations on the robe of Christ and the figure of Saint Peter. He thought these were white roses which he connected with the House of York to which Edward IV belonged. Lord Fitzroy thought they were merely decorative and were typical of the "Mille Fleurs" style of painting in the fifteenth century. Mr Fleming accepted that this style was prevalent both in England and on the Continent during the period when this painting was executed. In relation to the four crowns in the upper part of the painting these are in my view associated with Our Lord, rather than with royalty, because they are immediately above the four IHS symbols. Mr Fleming sought to argue that the crowns were symbols of royalty referring to Edward IV (thereby providing the beginning of the argument for a connection with his queen and through her with Grafton). My conclusion is that the four crown symbols refer to Our Lord because they are placed immediately above the four IHS symbols. The crowns relate to the kingship of Our Lord. He is the principal subject of the painting. This is not a painting which contains any references to Edward IV. It may have been painted either before the commencement of his reign or after its conclusion. But even if it was painted during his reign there is nothing to connect it with him. The subject matter and the decorations are all consistent with a religious work having no other reference to the king. The flowers do not connote the House of York. I would add that even if (contrary to what I have decided) there were some connection with Edward IV in the painting, there is certainly no connection with Elizabeth Woodville or Grafton. The emblems of the Woodville family were the letter L and a bird. These do not appear in the painting.

15. Part of Mr Fleming's theory is that Edward IV and Elizabeth Woodville may have married in Grafton Church. Lord Fitzroy, in his oral evidence, pointed out that there was no evidence for that, but there was a tradition to the contrary. The marriage is said to have taken place on May Day 1464. There is a record of Edward IV being in Stony Stratford on 30 April 1464. During that year his advisers were arranging a marriage for him with the daughter of a foreign royal family. At Michaelmas Day 1464 he informed his advisers that he was already married to Elizabeth Woodville. He said that he had married her secretly. The tradition is to the effect that he married her in a hermitage chapel. If the marriage had been a public royal marriage it seems unlikely that it would have taken place in an unimportant village church at Grafton. If the marriage was a secret one it would probably not have taken place in any church. My conclusion has to be that there is no evidence that the couple were married in Grafton Church. For that matter there is no evidence that Edward IV ever visited the village of Grafton or the

Woodville property. If he did visit the manor house while courting Elizabeth there would have been no reason for him to enter the church as the manor house had its own chapel. Lord Fitzroy also made the point that the appellation “Regis” associated with Grafton does not occur in the medieval period but relates to the use of the subsequently-built royal palace by Henry VIII and Elizabeth I in the sixteenth century.

16. My conclusion about Mr Fleming’s evidence about a historic connection between the painting and Grafton church is that it was an interesting theory but it was no more than a theory. In any event it cannot stand against the other strong evidence that there was never a connection between the painting and the church, either in terms of its content or in terms of its provenance. I therefore find that there is no evidence that it was painted for the church or that it was in the church or that it was “rescued” from the palace during the Civil War and came into the church at that time. The evidence is that it did not come into the church at either of those times, nor at any time until the early twentieth century.

17. Part of the case for the DAC and the CCC was that, if the painting was not connected with the church, it was nevertheless connected with the parish and that it ought to remain in the church (for the benefit of the parish and so that it can be viewed by interested persons in its historic setting). I accept that a connection with a parish (and not just with a church) is a matter relevant to whether a sale should be permitted. But because of my conclusions on the arguments advanced by Mr Fleming I am unable to find that the painting has any connection with the Woodville family, the manor house or the parish of Grafton. It is a good quality religious painting of the fifteenth century, probably part of a triptych or reredos consisting of other passion scenes. It could have been painted for use in any church or chapel in the British Isles or even (because it has certain Dutch French or German stylistic features) a similar setting in northern Europe. It is impossible to say where it was between the time of its painting and some time not long before 1907. Having dealt with that important part of this case I need to point out that my conclusion on a lack of connection with Grafton is not conclusive of the Petition.

18. **Is the painting a significant item in terms of the mission and ministry of Grafton church?** In the Tredington and subsequent cases the word used for considering this criterion has sometimes been “redundancy”. I prefer not to use that word because of its connotations in other contexts. The main matter which has to be considered is whether the item in question is significant in terms of the worship or other spiritual activity within the church. But I consider that the concept must also include importance to the community. A painting in a church may not be directly referable to any worship or spiritual activity in the church, or even any specific mission of the church, but it may nevertheless be an item which is valued and wanted by members of the community as an adornment for their church. The stained glass roundels in the church at Whitfield (in this diocese) are examples of items of importance to the community although they are not of religious significance. They are important because they contain the coat of arms and other insignia of the Washington family, one of whom became a President of the United States of America. I do not consider the Grafton painting to be an item which is either significant in terms of the religious activity in the church or in

terms of the community. It was hanging on a side wall of the chancel for about sixty years. The petitioner's evidence shows that it was only viewed on rare occasions either by parishioners or by visitors. People would look at it briefly and then move on. My conclusion is that it is not an item which is in any way necessary to the worship or other activity of the church and is not a valued item within the community. It is relevant that no members of the community wrote to object to the sale of the painting or wished to take part in the faculty proceedings in any way. The painting has been of some decorative use but that is all. If the term "redundancy" is to be used then I would say that the painting is as much redundant as the flagons were in the Tredington case although for different reasons. I ought not to refuse a faculty on the ground that there are important reasons (to do with the spiritual use of the painting or its importance to the community) for keeping the painting in Grafton church.

20. **In terms of access by the public to view the painting, is Grafton church a suitable place?** Having decided against the supposed connection between the painting and Grafton I consider that the church is not a good place for the painting. As the church is only used for worship once per month and has a usual congregation of between six and eight people very few people have been seeing the painting. The petitioners' evidence is that requests by visitors to the key-holder for access to the church were rare and there was no recollection of anyone visiting specifically to see the painting. This of course was at a time when the importance of the painting had not been recognised. Now that it has been recognised, and in view of the consultation about it and a certain amount of publicity relating to the faculty proceedings, it can be expected that more people will wish to see the painting. My belief is that the painting ought to be in a more public place such as a museum or gallery where it can be seen by more people. Because there is no artistic or historical connection with Grafton there is no reason why the picture should not be in any museum or gallery in the United Kingdom where there is a compatible collection of works and where it can be displayed in the context of some explanatory information. There is no reason why it could not be displayed by a major museum or gallery such as the Victoria and Albert Museum or the Tate Gallery or a more local gallery. At the moment the information from the Northampton Museum and Art Gallery (which is the nearest suitable gallery) is that it is not interested in the painting, but I believe it would be useful to renew the approach to that museum because the precise reasons for its lack of interest were not made clear and its position may have changed. I am satisfied that in terms of access by the public the advantage falls against retention in the church.

21. **Have the petitioners established a special reason (or reasons)?** This of course is the heart of the matter. The petitioners include a number of reasons which they say should be taken together. These are as follows: difficulties over the security of the painting (steps to prevent it being stolen), difficulties over keeping it insured and a serious financial position in which the PCC will not have sufficient funds to meet the expense of maintaining the church building over the next few years (and for the foreseeable future). In terms of the evidence on these matters some of it is in the written material and some in the oral evidence.

22. **Security and insurance issues.** The security problem is obvious. There is a serious risk of the painting being stolen from the church, whatever precautions might be taken in terms of an alarm system or a security cabinet placed around the painting. At the directions stage of this matter the fitting of a security cabinet was being suggested by the CCC and the DAC as a method of protecting the painting from theft, but this proposal has not been pursued. This is because a thief would not be deterred by the cabinet, but would remove both cabinet and picture. The DAC and CCC have advised that the painting should be fixed to the wall by about seven “bolts”. These could not be put through the wooden panel of the painting because that would damage it. The bolts would have to be placed at the edges of the panel with projections to hold the painting in position. In my view it would be a simple matter for a thief to prize away the bolts, or prize the points of them out of the wall, in order to release the painting. It would only be necessary to prize away four of the bolts as the painting would then slide out from the bolts on the “opposite side”. The CCC and the DAC have suggested that the painting could be mounted in a different position from its former position. The suggestion is that it be placed over the chancel arch. The obvious drawback of that proposal is that the painting could not be readily viewed in that position. It is a painting which needs to be viewed from no more than three or four feet in order to see the details, read the script and appreciate the facial expressions. Also a determined thief would not be deterred. He would bring in a portable ladder to get easy access to the chancel arch. My conclusion is that there is no method of mounting which can do anything of value to minimise the risk of theft.

23. The CCC and DAC also suggested the fitting of an alarm system. This could be either a system fitted to the painting or an alarm system (with CCTV) in the church. The main problem with both systems is that the alarm needs to be heard in time for a suitable person to come to the church before the theft has been carried out. The petitioners consider that this is not possible. It would not be desirable to make any local resident responsible to answer the alarm and go to the church because of the risk of assault to that person. None of the church officers or members of the PCC considered that they should be given such a task. Diana Fitzroy gave evidence to me that there are only three houses near enough for an alarm to be heard. One of these is now used as a residential unit for people with head injuries and the proprietors are “not interested” in the church. The homes of Mr and Mrs Blake and of the Fitzroys (the Old Rectory) are near enough, but the occupiers would not wish to place themselves at risk by answering the alarm. Also it would only take a few minutes for a determined thief to break into the church and remove the painting and he would be expected to ignore the noise of an alarm. He might find and disconnect the electrical supply to the alarm. As to the alternative suggestion of having an alarm connected to the police station, it was pointed out that it takes a police car 15 to 20 minutes to reach the village by which time a thief would have left. As to the likelihood of a theft Diana Fitzroy said that there had been four burglaries at the Old Rectory in the last two years and there had been a burglary in the church in which a bishop’s chair and a pair of candlesticks were taken. I find that there is no step which can be taken to make the painting secure if returned to the church and no way in which an alarm system would significantly reduce the risk of theft. Theft of the painting would be a most serious matter as it would result in a valuable painting of historical and artistic

importance being lost. The petitioners feel that it would be irresponsible for them to bring the painting back into the church. They do not want the responsibility of having it there when they know that it cannot be protected. They feel that if it were replaced in the church and then stolen they would receive justifiable criticism for not protecting the painting. I consider that these feelings are understandable and right.

24. On the matter of insurance, it appeared by the end of the hearing that the CCC and DAC were not strongly disputing the petitioners' case that the painting could not be separately insured. The existing church insurance includes cover in the sum of £15,000 which would include the painting. Beyond that if it were intended to cover the painting separate insurance would be required. The CCC guidelines state that full insurance is not required and the cover may be only for a modern replacement. That being the case all parties are accepting that there is no requirement to cover the painting for its value (which is for this purpose about £150,000). But that does not leave the petitioners in a comfortable position because in the event of theft virtually the whole value of the painting would be lost. As part of their preparation of their case the petitioners took steps to find out whether there was any realistic way of insuring the painting for something like its value. Their enquiries showed that this is not possible at anything like an affordable premium. Iain Fairley (an insurance consultant) said that the church provided a poor level of security and that he did not expect an insurer to accept a proposal to insure. If cover at a lower figure than full value was proposed the insurer might reject a claim for non-disclosure of material facts (the true value). Another insurance consultant Mr R. Graham of Blackwall Green thought there were too many problems to make insurance viable and that, if an insurer could be found, the premium would be more than the church could pay. The Ecclesiastical Insurance Group gave a provisional quotation to insure the painting for £50,000 at a premium of £5,000 per annum, subject to a very sophisticated alarm system and anti-bandit display case which would cost over £10,000 to install and would carry annual maintenance costs. The PCC cannot afford £5,000 per annum plus annual costs.

25. Mr. Redman, a witness for the DAC, provided a witness statement about the valuable painted reredos at Thornham Parva church in Suffolk. That is fitted with a sophisticated alarm system and an anti-theft case and has been in position without an attempt at theft for several years. Mr Redman also gave evidence at the hearing and was asked questions by Lord Fitzroy. In his written statement Mr Redman said the cases of Thornham Parva and Grafton were similar so that if the reredos could safely be left at Thornham Parva (and if that was the right result there) the same should happen at Grafton. I have come to a contrary conclusion. The differences are as follows:

- (a) The Thornham Parva reredos is a larger work than the "Grafton" painting. It measures ten feet in length by about three feet in height. It is heavier than the panel in question. It would be more difficult to remove because of its size.
- (b) The reredos was considered to be of such national importance that the restoration and security arrangements were all paid for by major bodies such as the Getty Foundation, the Wolfson Foundation, the Lottery Fund and English Heritage. In the case of the panel there would no doubt be substantial grant funding available, but nothing has been offered at present and the petitioners expect to have to find part of the funding from parish

sources. In the last few years they have made appeals to the parish for repairs to the church which have already been carried out and they feel that a further appeal or appeals would not succeed at present.

(c) At Thornton Parva the PCC church officers and congregation were most anxious to be able to keep the reredos and were prepared to put a great deal of effort into the project of raising funds. At Grafton the PCC and officers, while having a proper sense of the value of the painting, do not have enthusiasm for all the work which would be involved in having it conserved and brought back into the church. There was no petition for a faculty for removal at Thornton Parva. On the contrary all the impetus was to keep the reredos.

(d) At Thornton Parva the reredos was important in the worship and liturgy of the church because of its position immediately behind the Holy Table. It is understandable that great efforts were made to keep it. The Grafton panel is not of liturgical significance.

(e) Thornton Parva has a somewhat larger village community and congregation than Grafton. The church in Grafton is not well supported by the community. Of the people who have moved to the parish within the last ten years or so only one person has joined the congregation. The community does not show an interest in the panel.

I conclude that there is only a surface similarity between the Thornton Parva reredos and the Grafton panel and that this is not such as to indicate that what was achieved at Thornton Parva should be attempted at Grafton.

27. **The financial position.** The resources of the PCC are extremely limited. This is an important factor in the case. The parish has approximately thirty dwellings, with a population of 120. The village is probably the smallest of the five villages forming the benefice. The total congregation is fifteen of which only 6 to 8 people normally attend the monthly service. The church has occasionally been used for drama, but is not normally used for community purposes. This is because it is at the extreme end of the village and stands in a narrow lane where there is no proper parking space. Also there is a village hall which is nearer to most of the houses. The church is a grade II (with star) listed building and is in a conservation area. This fact imposes financial obligations on the PCC. The churchyard is open and therefore still in use for occasional burials.

28. The PCC has been forced by its financial circumstances to consider the possibility in due course of having to ask the diocese to make the church redundant. But the officers and PCC wish to postpone this for as long as possible. The parishioners who attend the church are very committed towards maintaining it as a place of worship and as a symbol of the importance of a spiritual dimension, but financial problems may eventually make their aspirations give way to necessity. The petitioners and PCC feel that to some extent there is a choice to be made between a reluctant sale of the panel and being able to maintain the fabric of the building. They wish to keep the church available for the next generation. The Priest-in-charge the Revd. Roy Mellor, who has come fairly recently to the benefice after a very long interregnum, fully supports the other petitioners and the PCC in their judgment that the best course for the future of this church is for funds to be made available by the sale of the panel. He agrees that part of the proceeds should be used for the restoration and re-siting of the Woodville tomb. The petitioners

feel that fund-raising from the community has stalled. At the same time there are works required to the church which amount to about £150,000. Some of these are urgent and others can be done over a period of about five years. No doubt at the next quinquennial inspection the church architect will report other fabric problems. The church does not have modern amenities and the PCC would like to have the funds to deal with its deficiencies so that greater use can be made of it. It lacks the following facilities: disabled access, a loop system for the hard of hearing, effective and efficient heating (at present there are only a few overhead gas heaters), toilets, simple catering facilities and adequate car-parking. If these facilities could be provided the PCC would be able to arrange activities in the church such as drama, concerts, lectures and medieval evenings. The PCC would use part of the proceeds of sale for the replica of the panel to be painted by Barrington Black. This would be displayed and would become part of a lecture on medieval history.

28. The last Quinquennial Report carried out in 2003 by the well-known local architects Gotch Pearson. It calls for substantial works to be done. The priority works are as follows: Windows and drainage £9,000, stonework repairs £4,000, glazing repairs £3,000 and other smaller items £960. The main item in the list of less urgent works is tower roof and gutter, lead and timberwork £14,500. The other items in this category amount to £3,780. The remaining works which the PCC wishes to carry out are treating of pews and floors for woodworm and beetle £11,000, a new organ £35,000, repair and moving of the Woodville tomb £30,000, heating and rewiring £15,000, lime-washing of the interior £5,000, a ramp for the disabled £500, window grills £4,000, replacement of chancel door £1,000 and other items £16,750. This latter figure includes the replica painting at £9,750. The total of all the items of work is £149,340. Mr Fleming suggested that not all the items are essential works. I find that some of the works in the additional list are not essential now, but that all the items will have to be dealt fairly soon and none of them can be ignored. Some of the works can be carried out over time and the replacement of the organ can probably be delayed for a few years. But within that time other essential works will emerge, so that the PCC is at severe risk of never being able to “catch up” with its financial commitments in respect of the fabric.

29. **The financial resources available to the PCC.** The church accounts for the year to 31 December 2004 were produced. These showed income of £3,007 and expenditure of £2,946 for the year, making a positive balance of £61. However the income figure included gift aid and tax reclaimed of £1,525 which must relate to income in the previous two years when there was an appeal to parishioners for repairs. The parish share in 2004 was £1,483. The basic income from collections and donations was only £926. This is the figure which represents the normal giving potential of the congregation. It is clear that without appeals and funding from grants this is not a congregation which can maintain the fabric. Insurance cost £845 for the year. This one item uses almost the whole of the regular income. At 31 December 2004 there was cash at the bank of £7,372. This is money held mainly for the purpose of starting on the 2003 urgent Quinquennial Report repairs. The speed with which such a sum can be used up is shown by the fact that at 31 December 2003 the cash at bank figure was £14,268, but that fell to £7,310 in one year as a result of the cost of repair works. The further works which

the PCC must pay for within the next one or two years (the priority A works) will cost £17,000. Within a further one or two years the PCC must carry out the priority B works costing a further £17,000. These include the tower works and repairs to the churchyard wall estimated at £14,500 and £2,500 respectively.

30. The CCC and DAC suggested that in the case of a few of the items of work the estimated figures might be too large. I do not consider that to be the case. The amounts suggested strike me as being either broadly correct or (in some cases) on the low side. In relation to repairs to the tower and other parts of the building one would expect grants to be available. Experience suggests that these could not be in excess of 80% and that realistically one should expect 65%. In respect of some of the works it is unlikely that a grant will be available. Assuming that against costs of some £30,000 for Quinquennial works the PCC receives overall grants of 65% the PCC will have to find £12,000. Moving forward to the non-quinquennial works (excluding the cost of the replica painting) estimated to cost £105,000 and assuming grants of 65% the PCC will have to find £36,750. There will be architect's fees for design work, specifications and supervision of works. I suggest an allowance for these of about £10,000 over the next three years but that could prove to be a low figure. On these assumptions (which are only intended as a guide) the PCC will have to find from local resources about £58,000 during the next three years. During that time the need for other repairs is likely to become apparent. There may be argument about some of these figures, but they indicate a reasonably accurate picture. After using its remaining reserves of £7,000 and assuming that current income will have to be used for insurances, other outgoings and parish share, the PCC must find some £51,000.

31. I am satisfied that the PCC does not have a reasonable prospect of finding such an amount from local resources. Therefore, although there may not be a financial crisis at present, there will be a financial crisis within one to two years. This meets the Tredington criterion of a financial emergency. The DAC and CCC submitted that the financial situation at Grafton church is not necessarily any worse than at many other similar churches. The PCC does not accept that and considers its position to be worse because of the smallness of its congregation and lack of support from the community. However if it were to be the case that many other churches are in the same position that does not mean that there is not a financial emergency. Rather it means that there are a large number of other churches which have, or face in the near future, a financial emergency. Because of the high cost of repairs to churches and the need to maintain them to a good standard because of listing it does not surprise me that many churches are in, or close to, financial crisis.

32. **Conclusions.** I have come to the conclusion that the petitioners have proved the essential matters to show that they should be granted permission to sell the painting. I reach this conclusion with some reluctance because my instinct is that beautiful articles which have come into the possession of parish churches should be kept wherever possible. But here the petitioners have proved that the painting could not be kept safe if it were returned to the church and it could not be insured for more than a small amount. I consider it reasonable and right that no individual should feel under a burden of

responsibility over having an unprotected article of high value in the church. It is not reasonable that the PCC as a body should be placed in that position. I consider that the risk of theft would be high in view of the recent spread of information about the painting. It would be a simple matter for a determined thief to break into the church and remove the painting from its fixings. The whole exercise could be carried out before anyone was aware and the thief would be well out of the area by the time of discovery. An alarm system would not result in anyone arriving in time to stop a theft. In any event the PCC cannot afford the initial cost of an alarm system or its annual maintenance. The petition for sale must therefore be granted on lack of security grounds.

33. But I would also have to grant a faculty on financial grounds. The PCC is not financially viable in relation to its church repair commitments over the next three to five years. There is no prospect of its congregational or community income increasing. The PCC has done well in the past by a mixture of the determination of a few individuals and a huge amount of work in pursuing grant applications. But this can be exhausting for people who are giving their time and energy voluntarily. Several of the petitioners' witnesses made the point that members have "run out of steam" and do not feel able to face the financial future without significant funds in hand. I consider it relevant that the recently-retired Archdeacon of Northampton (who became closely involved with this matter through being asked to permit the temporary removal of the painting) thought that the painting should be sold. He wrote to me to that effect on 8 September 2004 shortly before he retired. He said he did not consider that it would be practicable to return the painting to the church because it could not be kept secure, an alarm system would not be viable and in the church it would only be seen by people attending services. I respect the Archdeacon's views as they were based on a good knowledge of the needs of the particular church and parish. I find that the necessary "special reasons" have been established and there is a necessity to sell the painting. I direct that a faculty shall issue permitting sale.

34. **The conservation issue.** All parties are agreed that the painting needs conservation. A report by Alasia Vicarelli di Saluzzo was provided by the CCC. It says that the panel is structurally sound but there is some damage. There is a crack at the top left of the panel. There are abrasions on the left side. There is an old longitudinal crack at top and bottom. There is warping of the plywood backing. There is pest damage in the plywood panel and to a lesser extent in the paint in some places. There are some other minor defects. Sally Woodcock also supplied a conservation report for the CCC. This sets out a good programme for the conservation work. The most necessary work is woodworm treatment. She thought the cost of all the conservation works would be about £3,000. This strikes me as an optimistic figure based on experience of conservation costs of other ancient articles. At an early stage Hamish Dewar estimated the cost of conservation works at between £6,000 and £7,500. Those figures strike me as more realistic. But I need not say more about the details of the conservation works needed. This is because the petitioners may decide to offer the painting for sale prior to carrying out conservation works, leaving the purchaser to have the works done. The petitioners should consider this and inform the Diocesan Registrar within two months whether they will be doing any conservation work prior to sale. It might be reasonable to do the

woodworm work only. Since the petition includes a request for permission to do conservation work, I direct that the faculty shall include this, if the petitioners so decide, but (as stated) the Registrar needs to be able to record what is to be done.

35. **Faculty conditions to be observed.** The petitioners accept that the painting must be sold in such a way that it remains in England and is available for view by the public. This means that it must not be sold at auction or by private treaty to the best bidder. It must be sold to a good museum or art gallery which will agree to display it. It may be necessary to approach a number of institutions before one is found which will purchase the painting and meet the requirements. The petitioners should make enquiries and draw up a short list of suitable museums and galleries. If there is difficulty I would like the Archdeacon of Northampton, the Ven. Christine Allsopp, to assist the church officers and PCC in their approaches to institutions and in the whole matter of the sale. I am glad that she attended the hearing as this means that she is fully aware of the details of the matter. There should be a reserve price. At present I consider that the reserve price should be £160,000, but that may need to be adjusted in the light of the approaches to museums and galleries. If the petitioners wish me to alter the reserve they must write to me (through the Registrar) suggesting their proposed different reserve figure and their reasons for selecting that figure. Until the picture has been sold I direct that it shall remain at Sotheby's, but application can be made to me (through the Registrar) to alter this direction.

36. The whole matter of the sale needs to proceed with reasonable expedition but I realise that some time may be required. At this stage I will direct that the sale shall be completed within twelve months (that is by 30 June 2006), but an extension of time can be applied for if there is good reason. It will be a condition of the faculty that the petitioners and PCC will purchase from Barrington Bramley a copy of the painting at a cost of £9,750, and that this shall be displayed in the church. There must be near to it an explanation that it is a copy and how it came about that the original was sold pursuant to a faculty. The explanation should also describe the painting and its historical background. I suggest that the copy should be placed above the priest's door in the chancel, but if the petitioner's find a better place for it, they may ask for this direction to be changed. The petitioners shall lodge at the Registry a certificate of completion when the sale has taken place. It is necessary to consider how the proceeds of sale are to be applied. Initial deductions will be for the costs of the sale (including any costs of finding a purchaser), Mr Bramley's fees for the copy, and the Registry and Court costs relating to the faculty proceedings. It is usual in such cases to require that part of the balance not required within the next two years (or so) is to be deposited with the Diocesan Board of Finance (DBF) to be invested for the benefit of the PCC. This money is invested along with other parishes' funds. I propose that the amount to be retained by the PCC shall be £50,000 and that the balance shall be held by the DBF. I would direct that the PCC should be entitled to the annual income from the fund held by the DBF (or to an agreed amount each year) and should also be permitted to draw down capital sums as and when required for works to the fabric of the church. I direct that the petitioners and PCC shall send their written proposals about the proceeds of sale to the Registrar for my consideration when they have succeeded in finding a purchaser (or earlier if they wish).

37. **Reflections on the proceedings.** I am conscious of reaching a decision not in accordance with the advice given by the CCC and the DAC. I wish to make it very clear that I greatly valued the involvement of both advisory bodies and that I consider that each of them played a valuable part in the proceedings. I do not consider that their judgment was wrong. They quite correctly placed before me a cautious and conservative approach. I was able to use that as a basis for reflection upon the petitioners' case. Without a properly presented conservative approach it would be difficult to assess the matter. I expect the advisory bodies to take such a part in a case concerning the disposal of a valuable item of church property. The petitioners have to be put to proof and their arguments and evidence tested against counter-argument and evidence. That process was well conducted in this instance. The reason for the result favourable to the petitioners is that, as the matter developed and further written and oral evidence was presented, it became clear that the main planks in the petitioners' case were strengthened. That might not have happened. In a different case the petitioners' evidence might have been found wanting and in such a case this would be because of the involvement of the advisory bodies. I also remind myself that at the stage at which advisory bodies have to decide what their approach is to be they do not have all the material. They have to advise on the basis of what is available. Sometimes the petitioners' case becomes stronger and that may even happen at the hearing. That did happen in the present case. The petitioners and their witnesses were impressive and had prepared their case well. In the end the facts and the merits of the arguments fell on their side. So I express my gratitude to all who helped me: the petitioners and their witnesses (Lord and Lady Fitzroy, Jean Glanville and John Colgrove), Mrs Judith Johncock (for the CCC), Deaconess Diana Evans, the DAC secretary (who prepared the DAC case), Anthony Fleming and Anthony Redman (for the DAC) and all those who provided written reports, statements or letters. There was no material placed before me which was not balanced, reasonable and fair. The fact that I did not accept all the conclusions of some of the witnesses does not mean that I do not value their participation.

38. At an early stage of the proceedings the DAC expressed concern that the petitioners originally placed the painting with a conservator (Mr Hamish Dewar) for safe keeping without first consulting the Registrar or Archdeacon. The petitioners did apply to the Archdeacon fairly soon after that and the Archdeacon gave his certificate in writing for the painting to remain away from the church for six months. Subsequently the Archdeacon renewed the certificate for a further period and by the end of that period the matter was in my hands. It is correct that there is a requirement for church officers and PCCs to apply to the Archdeacon prior to removing the item from the church. But in this case the petitioners' motives were good. Having discovered the value of the painting they decided to move it into a safe place. The DAC was correct in drawing to my attention that there had been a technical breach and I am recording it now in order to make the position clear for the future and for other parishes. However in terms of my evaluation of the evidence in this case, and my conclusions, it is now irrelevant that there was a minor breach. I have to decide the matter on its merits and for that purpose I have to ignore the breach (while also recording it).

39. **The Registry and Court costs.** A great deal of work was done by the Registrar and his Faculty Clerk in dealing with my December directions and in preparing this case for hearing. I know that he gave valuable and impartial assistance to all involved and dealt with all their queries. He prepared an immaculate bundle of documents which was invaluable at the hearing and which was most useful during the writing of this judgment. The hearing could not have been completed in one day without the bundle. In due course the Registrar will send me a summary of his fees and expenses and I will assess them and add my own fees and expenses. The responsibility for meeting these costs has to fall upon the petitioners since they are the people seeking the faculty. But since there is an item to be sold I will order that the costs shall be paid out of the proceeds of sale. But in case of undue delay in effecting a sale I must impose a time limit and I will say that postponement shall not be beyond 30 June 2006.

40. I will finish this judgment by commending the petitioners and PCC for their sterling work in keeping their church in good order and maintaining it as a place of worship and witness. Plainly there is an excellent spirit of cooperation and optimism among the congregation. There is firm commitment to the future. My hope and expectation is that these good things will continue and increase.

Thomas Coningsby - Chancellor of the Diocese of Peterborough

30 June 2005

A handwritten signature in black ink that reads "Thomas AC Coningsby". The signature is written in a cursive style and is underlined with a single horizontal stroke.



