

[2017] ECC Bri 2

In the Consistory Court of Bristol

In re, Oldland St Ann

HARRIS & HARRIS

26 JUN 2017

POST RECEIVED

JUDGMENT

1. On the 16<sup>th</sup> January 1959 a Faculty was granted to introduce a painting, entitled 'Ecce Homo' into the parish Church of St Ann, Oldland. The Faculty granting it states that it is a Painting by Murillo.
2. By a petition dated 19 August 2015 the Petitioners applied for a confirmatory faculty for the loan of the painting to the Bristol Art Gallery.
3. It became clear that there had been a negotiated loan to the Gallery in 2012 and the painting had remained with the Gallery since that date. No petition for its removal from the Church and loan to the museum had ever been applied for. I asked for an explanation of how this had happened.
4. The Museum wrote in September 2015, indicating that they had received the painting in good faith on a five year loan in 2012. They had carried out an investigation into the provenance and attribution and undertaken some conservation work to stabilise and limit further deterioration of the painting and the frame.
5. By directions dated October 2015 I expressed my concern that an unlawful loan appeared to have been negotiated and that the painting had been removed from the Church without a faculty being applied for. I had hoped that the serious consequences both for the PCC and the Museum would be clear.
6. I directed that both the petitioners and the Bristol Museum take legal advice to assist me with three preliminary matters:
  - a. How was the loan negotiated?
  - b. Why a faculty was now being petitioned?
  - c. What were the proposals to render matters lawful?
7. The Petitioners wrote in December 2015, reiterating that the loan was made in good faith, that the condition of the painting was deteriorating, that it is now worth approximately £150,000 and that they proposed to replace it with a copy of the painting. The PCC, I was informed, has neither the facilities nor the income to maintain the Church as a suitable environment in terms of security and preserving or maintaining the painting's condition.

8. I directed that the petitioners should apply for a fresh petition for the removal of the painting to the Bristol Art Gallery.
9. The Registrar of the Diocese of Gloucester was good enough to assist the PCC with legal advice for which I am extremely grateful. As a consequence of his generous assistance I received a very full and helpful letter setting out the unfortunate history of the matter, answering the questions I set out at paragraph 6 above. I received this letter in December of 2015.
10. I had directed that the amenities bodies be contacted for their views. Because of the specialist nature of the advice required this substantially slowed progress of this application. I received a report from the Church Buildings Council in December 2016.
11. The proposal for the loan of the painting to Bristol was passed to the DAC in January 2017. The petitioners met with the Archdeacon in February 2017 and a draft loan agreement was sent to me some time later.
12. I called for and have now had the chance now to review the whole paper file for this petition as the electronic version was proving cumbersome and it appeared to me that the correspondence between all parties would be helpful. In particular I was interested to see the original petition that placed the painting in the church.

#### The history of the painting

13. The painting was sold in 1904 by Christies for £23 on behalf of the estate of the late Frank Deacon (of Williams Deacons Bank). It was described as being by Murillo and was, in the words of the auctioneer as being '*of course, of the highest quality*'. It was subsequently purchased in 1958 and donated anonymously to the Church in 1959. It was then valued at £250 by the same auctioneer. Rather curiously the 1959 petition for the introduction of the Painting to the Church values the Painting at £1,000 for insurance purposes. The insurance was 7/6 d per £100 for all risks '*including vermin and depreciation!*' (punctuation taken from the original petition). As a sign of the times the terms of security comprise the following:

- 'i        *The Church will now be locked at night.*
- ii       *The Painting is under glass and would be hung above a door. This will minimise the danger of vandalism.*
- iii      *We appreciate this Painting has had some publicity. However it is now known to the experts as the Bristol Art Gallery have a folio of photographs taken from its recent restoration. We are advised that this minimises the chances of a potential thief selling on the open market'*

14. Highly significantly the petition goes on to say 'General During the last century the Painting appeared in a number of exhibitions-including the Royal Academy. Subject to

*obvious safeguards of insurance and transport we would wish to share it if we are approached for a temporary loan.'* I will return to this part of the petition later.

15. It appears that in 2011 the PCC noticed that the condition of the painting was deteriorating. A decision was made to loan it to the Bristol Museum and Art Gallery. The Bristol Museum conservator noted active woodworm, blanching of the varnish, previous retouching and a water streak. The woodworm and blanching of the varnish indicated that the painting was suffering deterioration from a damp environment. The Museum, since the unlawful loan, has carried out some investigation as to provenance and attribution and has also undertaken some conservation work to stabilise the Painting and the frame. The painting is regarded as 'a work of art of national significance'. Its value, as with any work of art, cannot be precisely quantified, but is certainly in excess of £100,000.

#### The reasons for the loan

16. The reasons originally given by the PCC to lend the picture to the Museum were as follows:
  - a. The cold, damp climate in the church;
  - b. The uncertainty as to its current value and whether it would continue to be adequately insured under the church's current policy of insurance;
  - c. The limited security available at the church and the fact that the painting could therefore be viewed (at the Art Gallery) by the public in a way which would not be possible if it were to continue to be housed in the church; and
  - d. The fact that its current retention by the Museum will enable further work to be completed regarding its provenance which in turn will assist in ascertaining its true value.

#### The environment in the church

17. After an inspection by the Church Buildings Council, the Bristol Museum and Art Gallery, and enquiries made of the church's insurers these reasons were fleshed out. The temperature inside the church, I am told, drops to below 10 Centigrade during winter. On an inspection in October 2016 it was noticed that the relative humidity of the church was 70% with a temperature of 14C. An ideal temperature of 20C would have to be maintained for the painting to be kept there, along with tight control of humidity.
18. The costs of heating and removing the humidity from the church would be prohibitive I am informed, to this small church. The provision of a micro-climate box would, I am also informed, have the unfortunate effect in the fluctuating environmental conditions of exacerbating deterioration of the painting rather than preserving it.

### Insurance

19. If the painting was valued at over £100,000 Ecclesiastical would decline to cover the painting. A specialist art insurer would be beyond the financial means of the church.

### Security

20. It appears that the original security put in place in 1959 by placing the painting on a wall near a heater and a south west facing window may have, ironically, contributed to its deterioration. The Church has three entrances, none of them have locks other than those of any country church. The Church is in the middle of a churchyard not adjacent to any main road. The cost of a proper security system is also beyond the means of the church.

### Mission

21. The church maintain that their 'style of service does not use paintings and objects' as objects of devotion to bring people closer to our Lord. Nevertheless having noted the comments of the CBC the petitioners have agreed, if I grant the petition, to place a high quality copy of the painting in the church and to invite museum staff to talk about the painting and its conservation and invite local schools to use the materials in the church.

### The view of the CBC

22. The CBC was good enough to visit the church and to make a very full report on their findings. They conclude:

"In summary, the Council acknowledges that at this point in time the best place for the painting is on display at Bristol Museum and Art Gallery. It therefore advises that a 5 year loan agreement is arranged with the museum, and that a high quality copy is placed in the church.

The Council is disappointed that the parish is not willing to engage in the heritage potential of the painting if it were to return to the church, but acknowledges that the financial input required for its return and continued care would need a parish that is willing and able to care for the painting in the long term.

The Council recommends the parish to keep the link with the painting alive by organising a series of activities and events with the museum to be held at the church, involving the congregation and local community."

My decision

23. I must start by making it clear that I accept that all the parties in this case acted in complete good faith and with the best of intentions. The petitioners have apologised for their behaviour, which apology I accepts unreservedly.
24. I have borne in mind that the burden is upon the petitioners to establish good and sufficient ground for the granting of the faculty. I have taken into account all the very clear and cogent reasons why it would not be suitable for the painting to be kept in the Church. I note that the petitioners do not want to dispose of the picture, quite the reverse, they are keen that ownership should remain with the church and that the church connection should be made clear if the petition is allowed.
25. The overwhelming piece of evidence that allows me to grant this faculty however are the words of the original petition which specifically prayed:
- 'General During the last century the Painting appeared in a number of exhibitions-including the Royal Academy. Subject to obvious safeguards of insurance and transport we would wish to share it if we are approached for a temporary loan.'* (emphasis added)
26. It was clearly in the mind of my predecessor Chancellor that he should grant the original petition on that basis. In those circumstances taking that into account along with all the other reasons set out by the petitioners, I grant a faculty for the loan of the painting Ecce Homo attributed to Murillo to the Bristol Museum and Art gallery for a period of 5 years from the date of this Judgment. A high quality copy of the painting is to be provided in a suitable frame by the Museum. There is to be a plaque placed by the painting setting out a brief history of the painting. The Archdeacon is to decide if the quality of the reproduction is suitable to be installed in the church. The position of the installation is also to be determined by the Archdeacon having received representations from the petitioners. In the event of any disagreement with the Archdeacon I will decide what is to be installed and where.
27. I hope that the partnership with the Museum and the Church will be fruitful for the mission of the Church. In particular I hope that inspection of the reproduction of painting during the Triduum may bring focus to the worship of the Church.

22<sup>nd</sup> June 2017

  
Justin Gau  
Chancellor