

IN THE CONSISTORY COURT OF THE DIOCESE OF LONDON

RE: ST STEPHEN WALBROOK

Faculty Petition dated 1 May 2012

Faculty Ref: 2098

Proposed Disposal by sale of Benjamin West painting, 'Devout Men Taking the Body of St Stephen'

JUDGMENT

1. By a petition dated 1 May 2012 the Priest-in-Charge and churchwardens of St Stephen Walbrook and St Swithin London Stone with St Benet Sherehog and St Mary Bothaw with St Lawrence Pountney seek a faculty to authorise: "the disposal by sale of a painting by Benjamin West depicting 'Devout Men taking the body of St Stephen'". The proposal has the unanimous support of the Parochial Church Council but it is not recommended by the Diocesan Advisory Committee. General citation took place between 15 March and 18 April 2012 and no objections were received from parishioners or members of the public. No objections were received from English Heritage or the Local Planning Authority (who were both notified of the proposal). The Ancient Monument Society, although consulted and invited to attend the directions and subsequent hearings, indicated that it did not wish to be involved. Initially, the Church Buildings Council (CBC), having advised against the proposals and agreeing with the views of the DAC, stated that it would not wish formally to oppose the petition but it subsequently changed its mind and was given leave by me to become a Party Opponent out of time. The Georgian Group objected from the outset and, having initially indicated it wished to be a Party Opponent, subsequently agreed to its interests being represented at the hearing by the CBC.
2. The Statement of Significance discloses that reference was first made to the original church in 1096 and a later (fifteenth century) building was destroyed in the Great Fire of London in 1666, the church being rebuilt by Christopher Wren pursuant to the 1667 Rebuilding Act. The church was the subject of major re-ordering during the period 1978-87, at which time the painting was removed to storage. The Statement gives two main reasons for the proposed disposal of the picture:

- (i) It would not be appropriate or aesthetically satisfactory to re-introduce the picture into the re-ordered church;
 - (ii) The church has no endowments and the annual income of the church is used up entirely on paying the Common Fund and other current running costs. This leaves no provision for capital expenditure which has been identified and incorporated into a ten year fabric plan. The church has some handsome plate which it does try to use on special occasions and the West picture has been identified as the most appropriate asset to realise.
3. The DAC, in its certificate dated 9 December 2011, stated that it disagreed with the Petitioners' views about the aesthetic impact of the painting on the interior of the church. It also considered that the painting, having been commissioned as an altarpiece for the church and its subject being Saint Stephen, should remain as an asset in the ownership of the church, adding that to alienate it would be to the detriment of both the picture and the church. The DAC also did not consider that adequate research had been given to the practicalities of returning the painting to the church. Finally, the DAC expressed itself to be very mindful of the precedent it would be seen to set were it to recommend the disposal of this painting.
4. As I have already said, the CBC gave advice in a letter dated 1 March 2012. It noted that the painting had been given to the church in 1776 by the Incumbent, The Revd Dr Thomas Wilson, as an altarpiece which necessitated the bricking up of the east window. The picture was removed from that position to one on the north wall in 1847/8. The CBC notes that the east window was then unblocked and re-glazed (*but it was not re-glazed with clear glass as was the Wren original but with stained glass*). The CBC was of the opinion that the painting was a work of art by one of the leading artists of the period and was therefore undoubtedly of very considerable significance. It went on to say that it also has a close association with the history of St Stephen's. It also added that the painting certainly had an architectural and liturgical function and there is no other object in the church reflecting its patron saint.
5. The Georgian Group's initial response was contained in an email dated 3 October 2011 to the Secretary of the DAC. Its recommendation was that the painting should be

reinstated to its original position at the east end of the church. It goes on to say that, as it was designed for the church, it should be considered in listed building terms as part of the building's fixtures. It also considered that the parish's financial position was not such as to justify a sale. It continued to be the Georgian Group's position (as I suppose logically it would have to be) that its preferred option was that the picture should be returned to its original position at the east end, but in an email dated 14 February 2013, it stated that it would not oppose in principle a scheme for returning it to the north wall as proposed by the CBC and the DAC.

6. I will begin by dealing with the painting's arrival in the church. First, it is relevant that the foundation stone of the present church was laid in 1672 and the building was finished in 1679. Therefore, for the first hundred years of its life, the church appeared as designed by Wren and without the West picture. Mr Melvyn Jeremiah, a parishioner and one of the petitioners, has most assiduously reviewed the historic parish papers relating to the West painting, in particular, the Vestry minute books, which are kept in the London Metropolitan Archives.
7. The first mention of the West painting comes in the minutes of the Vestry meeting of 10 April 1776 where it states:

“Mr Lynn having reported to this Vestry that the Paintings given by Dr Wilson to the Parish are now ready and will be delivered in a few weeks and it being necessary to brick up the large window at the East end of the Church in order to fix the said Picture, Ordered that the Churchwardens give directions that the said Window be bricked up and that the Churchwardens to provide all things necessary to fixing up the said Picture and that Mr Lynn be directed to inform the Churchwardens of St Benet Sherehog of the same also that the Glass of the Window be disposed of by the Churchwardens to such persons as shall be willing to purchase the same at 6d the foot. Also that the Iron Bars belonging to the said Window shall be sold for the most money that can be got for them.”

8. Mr Jeremiah's evidence was that there was no indication that anyone had previous knowledge of the Rector's intention to make this "gift". He went on to say "There was certainly no faculty applied for or granted for its installation in the church, neither was

the consent of the Vestry given in advance". Mr Jeremiah also discovered that the Rector in question, Dr Thomas Wilson, did not attend the Vestry meetings during his time there, 1737 – 1784. In fact he was an absentee Rector who normally lived in Bath, where for part of the time he shared a house with Mrs Catherine Macaulay and her daughter, whom it is said he adopted. He was also described in one contemporary account as being besotted with Mrs Macaulay; he even went so far as to install a marble statue of her in the church, again without any apparent faculty or reference to the Vestry.

9. Mr Jeremiah gave evidence about how there were records in the vestry minutes of votes of thanks for things people had done for the church, i.e. to Wren for building the church, thanks to vestry clerk etc but there was no vote of thanks to the Rector for the painting or to West for painting it. In cross-examination, Mr Jeremiah accepted that there had been no faculty for the statute and it had been removed and Mr Petchey, Counsel for the CBC, tried to get him to contrast that with the picture. Whilst he conceded that the faculty procedures were not always strictly followed at that time, he said that there were instances of faculties being recorded in the vestry books and certainly agreement or gratitude/approval from the Vestry for gifts, works etc.
10. In addition to Mr Jeremiah's evidence I received further submissions and documents on the subject of Dr West, his behaviour and attitudes and contemporary opinions of him. I have taken all this into consideration but I have not allowed myself to be sidetracked by it, nor to allow it to influence my judgement except and in so far as it bears on a matter I need to decide. I should say at the outset that I reject the bold submission made by the CBC that the circumstances of the introduction of the painting are of little or no importance. While they are not determinative of the position, they are of considerable significance in providing the context for consideration of any alleged subsequent unlawful actions and the approach to a contentious artefact in a church. To apply the full rigour of the Faculty Jurisdiction to the perceived illegal actions of the 1980s, whilst completely ignoring a potentially similar situation surrounding the introduction of the artefact, is applying double standards to an extent that no judicial authority should countenance.

11. As I have already mentioned, in order to install the painting, the original east window as designed by Wren was bricked up. After the painting was installed, two chandeliers had to be moved and a red curtain was installed around it. The painting was not in good condition by 1814 and the artist undertook the cleaning and varnishing of it, for which he received the Vestry's thanks for his "very handsome and liberal conduct on this occasion". This contrasts noticeably with the Vestry's complete lack of gratitude for the gift of the painting.
12. By 1848 the painting had been taken down from where it had been introduced and moved to the north wall. The east window was opened up again and filled with stained glass. There is a complimentary reference to the picture after its removal to the north wall in *London City Churches* 1896. However, earlier in 1864 in the *City Press*, the following view was expressed:

"The church is now in a very creditable state; a painting of West's - the Martyrdom of St Stephen - presented in 1790, by Dr Wilson, the Rector, and allowed most objectionably to block up the ancient altar window, was removed to the north wall; perhaps no loss would have been sustained had its removal proved absolute. The composition is indifferent, the story poorly told, and the details feeble in the extreme; yet this painting was once considered a "splendid" work of "high art"."

13. Nor was this the first time that negative views about the picture and its context had been expressed. In 1807 P Malcolm in *Londinum Redivivum* Volume IV said:

"Mr West's grand painting of the Stoning of St Stephen, or rather the friends of the Saint bearing him away after he had received his death wounds from stones, is surrounded by a rich gold frame and occasionally covered by a crimson curtain which, when withdrawn, forms the draping of a superb canopy.

One great error in this picture is the gigantic appearance of the figures. Mr West appears to have consulted the vast size of his canvas rather than the dimensions of the church. If the picture had been intended for a situation

twenty feet higher than the present the figures would have been reduced by their distance to the proper standard. It might be objected that St Stephen is not sufficiently marked with bruises and contusions but perhaps the painter wishes to avoid shocking the congregation by a ghastly and horrible object. The head is extremely fine and the fainting lines of languor excellently well preserved but the left arm is enormous and the blood on it, the drapery on the breast and the ground very bad; some of the stones are, besides, of too soft an appearance. The groups of surrounding friends are full of interest, the faces expressive of grief highly finished and nicely coloured. The artist must, however, be allowed to have committed a very great error in introducing a modern purple ensign on the battlements of a gateway.”

All of this is in the evidence given by Mr Jeremiah.

14. Appearing to give evidence for the CBC was Mr John Michael Burton, a registered architect whose extensive architectural qualifications are set out at page E68 of the Court bundle and whose evidence follows thereafter through to page E76. No doubt encouraged by the general attitude of the CBC he specifically declined, at paragraph 43 of his Witness Statement, to consider the painting in the context of the Wren designed church, although he had commented earlier in paragraph 23 to the light now flowing in through the east window, which of course it would have done through Wren’s original window but that, of course - as he notes without comment in paragraph 40 - was blocked up.
15. In answering questions before me, Mr Burton stressed the importance of the picture as part of the history of the church - which he stressed more than once - and that it should be returned. He accepted that the re-ordered focus was on the Moore altar in the centre under the dome and that Wren’s plans involved a circular central focus, although the focus at the time was eastward facing. He did not think that the painting on the north wall would be disruptive to worship; neither did he consider that the obscuring of the north oval window would lead to any significant loss of light. He thought the painting’s presence on the north wall would “strengthen the arms of the cross” aspect of the church’s design. Although he accepted in cross-examination that a characteristic of the Wren design was light and that in its original position the painting

did not enhance that concept, he saw it as part of the listed building aspect of the church. He also considered that returning it to the north wall would have an adverse effect on the building unless a picture of corresponding dimensions were introduced to the south wall in the light of his “arms of the cross” concept. This aspect of his evidence was not accepted as part of the CBC’s case, however.

16. I had decided, on the state of the evidence at the directions hearing, that the Court would be assisted by having Witnesses with qualifications in paintings and art history. I therefore called as Judge’s Witness Mr Andrew Wilton FSA: Visiting Research Fellow, Tate Gallery, since 2003 (Keeper and Senior Research Fellow, 1998-2002); Assistant Keeper: Walker Art Gallery, Liverpool, 1965; Dept of Prints and Drawings, BM, 1967; Curator of Prints and Drawings, Yale Center for British Art, 1976; Asst Keeper, Turner Collection, BM, 1981; Curator, Turner Collection, 1985-89, Keeper of British Art, 1989-98, Tate Gallery. Hon. Curator of Prints and Drawings, Royal Acad., 2003. Hon. Curator and Hon. Liveryman, Painter-Stainers’ Co., 2003. FRSA 1973; FSA 2000. Hon. RWS 1985. *Publications*: Turner in Switzerland (with John Russell), 1976; British Watercolours 1750-1850, 1977; The Wood Engravings of William Blake, 1977; The Life and Work of J. M. W. Turner, 1979; The Art of Alexander and John Robert Cozens, 1979; William Pars: journey through the Alps, 1979; Turner and the Sublime, 1980; Turner Abroad, 1982; Turner in his Time, 1987; Painting and Poetry, 1990; The Swagger Portrait, 1992; The Great Age of British Watercolour, 1992; (ed jtly) Grand Tour, 1996; (ed jtly) Pictures in the Garrick Club: a catalogue 1997; (ed jtly) The Age of Rossetti, Burne-Jones and Watts: symbolism in Britain, 1997; Five Centuries of British Painting, 2001; American Sublime, 2002; Turner as Draughtsman, 2006; contributions to arts magazines.

17. I also called as Judge’s Witness Mr Giles Waterfield, FSA: writer and curator Education Officer, Royal Pavilion, Art Gallery and Museums, Brighton, 1976-79; Dir, Dulwich Picture Gall., 1979-96; Jt Dir, Attingham Summer Sch., 1995-2003; Dir, Royal Collection Studies, 1995-. Consultant Curator, Compton Vemey, 1996-98. Heritage Advr, Esmee Fairbairn Foundn, 2002-07; Associate Lectr, Courtauld Inst. Of Art, 2002-; Schol., Getty Res. Inst., 2011. Mem., Museums Expert Panel, 1996-2000, Trustee, 2000-06, Heritage Lottery Fund. Mem. Exec. Cttee, London Library, 1997-

2001; Mem. Adv. Cttee, Paul Mellon Centre for British Art; Mem., Arts Panel, Nat. Trust, 2006-, Vice-Pres., NADFAS, 1998-2006. Judge, Mus of the Year Awards, Nat. Heritage, 1999-2003. Trustee: Holburne Mus., Bath, 1999-2003; Edward James Foundn, 1999-2003; Charleston Trust, 2005- (Chm., 2006-10). Paul Mellon Lectr, London and Yale, 2007. *Publications*: Faces, 1983; (ed) Collection for a King (catalogue), 1985; Soane and After, 1987; Rich Summer of Art, 1988; (ed) Palaces of Art, 1991; (ed) Art for the People, 1994; (ed) Soane and Death, 1996; (contrib.) Art Treasures of England (catalogue), 1998; (contrib.) In Celebration: the art of the country house (catalogue), 1998; (ed jtly) Below Stairs (catalogue), 2003; (ed) Opening Doors: learning and the historic environment, 2004; The Artist's Studio (catalogue), 2009.

18. Mr Wilton's evidence is at D1-6 in the bundle where he sets out his views on West and this painting, considering it to be an excellent example of West's work at a high point in his career. However, for reasons he sets out he thought such a piece almost inappropriate by definition in a Protestant, particularly Anglican, church. His conclusion was that, not only would it constitute a diminution of the Wren idea if it were returned to the church as currently re-ordered but also it surely did so when it was first placed there. He went on to add in an Addendum to his written evidence: "If West's intention (following the incumbent Dr Wilson's wishes) was that it should be placed over the altar, that conflicted with Wren's scheme of illumination and sacrificed the blaze of light from three windows at the east end. Its transfer in the nineteenth century to the north wall reaffirmed Wren's orientation but resulted in an arbitrary repositioning of the picture, emphasising Wren's secondary axis. It clearly has no logical position in the scheme: although its dimensions correspond to certain spaces in the church, any placing will block some light and will be at odds with Wren's design. Art-historically interesting as the West undoubtedly is, it is not a work of art of the supreme value of the building itself."

19. In cross-examination Mr Wilton stressed that the primacy of St Stephen Walbrook is as a work of architecture. The Moore altar, the Victorian windows, the West painting, were each an interruption of the original scheme. The painting was not essential liturgically or architecturally. He considered the presence of such a classical painting anomalous. Wren did not conceive of anything so large interrupting the scheme.

Returning it to the north wall would provide only a sentimental remembrance of how it hung. It was his view that this painting has never had a natural home in this interior. It is as alien as the Moore altar, in Mr Wilton's view. However, as far as the altar is concerned, I am bound by the decision of the Court of Ecclesiastical Causes Reserved to allow the Moore sculpture to function as an altar in that position. Architectural integrity is the greatest issue according to Mr Wilton.

20. Mr Wilton was questioned about the significance of West and commented that few would regard him within the pantheon of great British artists. Mr Petchey put to Mr Wilton that West was a founder of the Royal Academy and president until his death but Mr Wilton pointed out that several founder members and past presidents have been forgotten. West was George III's favourite painter. However, Mr Wilton said that a West can be appreciated in any suitable context but is unsuitable for a Wren building. The picture in question is not one of the great works of British art and it is an intrusion into the church of 100 years later. When pressed by Mr Petchey he concluded that he was more than convinced that the West is dispensable. Mr Petchey had maintained that the painting has an historical link to the church but Mr Wilton said it should be displayed somewhere else in the City but not in St Stephen's.

21. Mr Waterfield's evidence is at D7 in the bundle. He also questioned the appropriateness at the time of the introduction of this painting, both on grounds of scale and style. He compared it unfavourably to the successful installation of the West altar piece in Greenwich Hospital. In cross-examination he re-iterated that this was an 18th century painting in a 17th century church and it was never clear how congruous they ever were. He accepted that there exists a strong case for retaining works in original contexts but present circumstances militated against a return to the church. Keeping the painting in storage for a future congregation to restore it to the building, within the context of the Moore scheme, is not desirable. The character of the painting would not be lost by display in a museum. Mr Waterfield also testified that West had sought commissions for St George's Chapel, Windsor, but there the pictures were not installed because of objections from the Queen and that commissions from St Paul's Cathedral were not installed because of objections from the Bishop of London. West did not universally delight his patrons. The context of this painting in this church was

originally as an altar-piece. Mr Waterfield concluded that, if the painting were moved to the north wall, it assumes the role of a painting in a side chapel in a Roman Catholic church and that this was not in keeping with this building.

22. Mr Rupert Featherstone, Director of the Hamilton Kerr Institute in the University of Cambridge whose qualifications and experience are set out at E60 in the bundle and his evidence follows thereafter to page E67, gave evidence on behalf of the CBC. The purpose of his evidence was as a conservator and was directed to the cost of restoration of the painting and its re-introduction to the church, although he did give some background evidence about the importance and significance of the painting. He accepted that he was not an art historian and would defer to the Court's Witnesses on that aspect. He accepted that the painting has no real relationship with Wren and that it was part of the neo-classical style which does not reflect the classical order of Wren's church.
23. After the CBC had received the evidence of the Court's Witnesses it instructed Dr James Bettley, a member of the paintings committee of the Church Buildings Council, whose Statement I admitted, notwithstanding its very late service. He sets out his qualifications in paragraph 1 of his Statement. He describes himself as an architectural historian. I have considered his evidence with great care. He supplements the details about Dr Wilson with some more charitable facts, but I considered that the overall effect of his evidence was to press the CBC's case rather than give an impartial assessment to assist me in the way Mr Wilton and Mr Waterfield did and in so far as his evidence conflicts with theirs I prefer their evidence.
24. In cross-examination Dr Bettley repeated that Dr Wilson's attitude towards church decoration was that it would have a positive and beneficial effect on the congregation. I am prepared to accept that as a fact but not necessarily to Dr Wilson's credit. I consider it is further evidence of his high handed and patronising attitude. He accepted that it was no part of the CBC's case that it should return to the east end as an altar-piece. Replacing the painting on the north wall would be an acceptable compromise, justified by its former presence on the east wall. He accepted that there was no positive evidence of the congregation ever wanting the painting in the first place, or its return

now. [In fact the evidence before me is that the congregation unanimously does not want the painting returned].

25. My findings of fact on this evidence on this aspect of the case are as follows:

- (i) On the balance of probabilities the painting was introduced into the church without a faculty;
- (ii) Even if I am wrong about that I am satisfied it was introduced into the church without the consent of the Vestry (which in turn leads me to conclude that a faculty could not have been properly issued);
- (iii) The introduction of the painting severely compromised the integrity of the Wren building in scale, visual appearance and by the damage to the original fabric in taking out and bricking up of the East window;
- (iv) Furthermore, I am satisfied that, had there been a petition for a faculty for the painting's introduction in the manner it was carried out, no reasonable Chancellor properly directing himself would have granted such a faculty. (I also believe but do not make it part of my finding, or allow it to influence my judgement, that, had they existed at the time, no DAC or Amenity Society, other than perhaps the Benjamin West appreciation society, would have recommended it);
- (v) In addition, the evidence clearly establishes - and I so find - that Dr Wilson commissioned the work to hang above the altar (the term "altar piece" would not have been used at the time) and West painted it to hang there; so not only did the painting compromise the Wren concept, but the painting's own concept was compromised when it was moved to the north wall just 45 years after it had been cleaned and restored by the artist. That move, I find as a fact, was because the worshipping community did not want it where it had been installed, or at all - I infer - but did not feel they could get rid of it altogether as they had done with the statue of Mrs Macaulay.
- (vi) I should also add at this point that I accept the evidence of Mr Wilton and Mr Waterfield that, whatever the merits of this painting or Benjamin West as an artist, Benjamin West is better known and appreciated and has a higher reputation and profile in the United States of America than he does in the United Kingdom notwithstanding that he left America early in his life and did virtually all of his painting in Europe.

26. I turn now to the removal of the painting. As I have already said, even if the painting had been unlawfully introduced, as I have found that it was, that would not be determinative of whether or not it should be re-introduced. Nor would it have justified its removal without a faculty at the time of the re-ordering. I do not propose to go into detail about that because, after much research and debate, the Petitioners accepted that there never was a faculty for its removal even on a temporary basis and therefore its removal was unlawful. Furthermore, that of itself is not determinative of whether it should be returned to the church now. However, I consider that, on that issue, I should attach greater weight to its more recent unlawful removal than I should to its original unlawful introduction and I do so in approaching the question of its return.

27. Both the Archdeacon Emeritus and Mr Seagrim gave evidence that there is nothing in the PCC records about the removal of the painting, other than a withdrawn petition for its sale. Mr Petchey questioned whether anyone had asked Lord Palumbo, who was a churchwarden at the time, but it appeared no one had. In fact what was perfectly clear, from the virtually unspoken nature of the fact, was that it was the then incumbent on his own initiative who had procured the removal of the painting from the church and placed it into the custody of Sotheby's with a view to its sale. It has remained in storage ever since, at continuing expense to the parish.

28. The CBC had originally sought a Restoration Order pursuant to section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 but subsequently made its case on the basis that such a course was in fact statute barred by section 13(8). However, even if that has not been accepted, I rule that such an Order is so barred, as the painting must have been removed by 1988, so the six year period has long since expired. Even if it were to be said that there had been deliberate concealment given the manner of its removal, so that Section 13(9) were to be engaged, I find as a fact that there was no deliberate concealment, but I shall deal with the manner of the removal in due course, as the then Archdeacon and my predecessor as Chancellor were clearly aware of the situation and so the matter would still be statute barred.

29. Before I go on to consider the arguments and evidence on the return of the painting I should say that, as a matter of law, based on my rulings on the subject of a Restoration Order, I have no power to order the return of the painting, either to a

specific location or to the church generally, nor do I have such a discretionary power. However, I agree with Mr Petchey's submission during evidence and in his closing submissions, that if I were to rule against the Petitioners and dismiss the petition for sale and express an opinion that the proper place for this painting is in St Stephen Walbrook, then the Petitioners would be morally or honourably, even if not legally, bound to return the painting into the church in a situation of my choosing on the basis of the evidence I have accepted.

30. It is the case for the petitioners - and evidence was given on the subject principally by the Archdeacon Emeritus - that because of the nature of the re-ordering the return of the painting would have a negative impact both on the appearance and layout of the church and on its worship, in particular, the Eucharist, as the central altar brings things together under the central dome. I have already set out what the Court's witnesses and the CBC's expert witness said on the subject of the return of the painting to the church, or at least where their written evidence which I have considered is to be found.
31. Mrs Anne Sloman, the Chair of the Church Buildings Council since 2009, also gave evidence on the CBC's behalf. Her experience and evidence are set out at E35-E59 of the bundle. She set out the Council's policy on "church treasures" generally and specifically in this case and in the context of the Council's Guidance Notes. Mrs Sloman accepted in her oral evidence that this guidance is not binding on me in the way that sentencing guidelines are when I sit in the criminal jurisdiction; I am not even obliged to take them into account but I make it clear that I have done so in reaching my decision. One of the points Mrs Sloman made and to which Mr Petchey made reference, was that the current petitioners (or the parish, I think they really meant), should not be allowed to "get away" with the illegal act of the removal of the painting from the church as I have described above.
32. Whilst I could understand why the CBC might think in this way, I nevertheless find it an unattractive way of thinking. I sympathise entirely and utterly agree with the proposition that people should not be allowed to get away with illegal actions. However, these petitioners have done nothing illegal, indeed they have behaved entirely properly *vis-à-vis* this painting. The current parishioners are the double victims of the high handed and unlawful behaviour of previous incumbents. This case, if nothing else, is an object lesson of the consequences of incumbents behaving as

though the church building is a sort of personal doll's house for them to play with, without reference to the parishioners (who, of course, own the goods and ornaments within) or the authority of the Ordinary, exercised in this respect by the Chancellor. Unfortunately, this attitude was not restricted to the eighteenth or twentieth centuries and is still held by certain incumbents today. However, eventually, as in this case, the pigeons come home to roost and subsequent generations have to bear the consequences and meet the costs. Insofar as the Court can deal with these situations the CBC can rest assured that in the Diocese of London it will.

33. It is equally wrong, however, even for innocent parties to benefit from the illegal acts of others. However, in this case, the CBC is also seeking to benefit from an illegal act as I have found the introduction of the painting to be. I accept that a link has been established between this painting and the church and I accept, as Mrs Sloman has pointed out, that this painting is doctrinally sound and that it is the only depiction of St Stephen, the dedicatee of the church (apart from a blown out or removed stained glass window and a Victorian mosaic representation of the saint's head and shoulders displayed by the entrance staircase), there has been in the church. Notwithstanding that, for the reasons set out above, I consider the original introduction of the painting was to the detriment of the interior and so would its re-introduction be. I should add that I have taken into account the hardening of the DAC's position on this issue, as was set out in the evidence before me, moving from a seven to five with two abstentions majority in favour of return, then subsequently to a greater majority but still not a unanimous view. I must not of course replace the DAC's aesthetic view with my own but on the basis of the evidence I have heard and accepted, I reject the DAC's view as I am entitled to do.

34. I have visited the church many times prior to the hearing and was present in it for significant parts of the day for five consecutive days during the course of the hearing. Although I spent all of my time sitting facing west, I regularly contemplated the alignment from all directions and I am impressed by the way the re-ordering and the central altar has nevertheless preserved the Wren east-west alignment. In my judgement it would disrupt this alignment to an unacceptable degree if this painting were to be hung on the north wall. I am reinforced in this view by Mr Burton who gave evidence for the CBC that, if the painting were to be located there, it would be

necessary to introduce a picture of similar dimensions in the corresponding position on the south wall to preserve the integrity of the building

35. I turn now to the financial considerations. The Venerable Peter Delaney, Archdeacon Emeritus and Priest-in-Charge, gave evidence about the whole question of the long term need for funding to keep this iconic building maintained and in good repair. Recent repair, he said, had been funded by a number of sources including the congregation. The City Churches Fund has been a major supporter of the preservation of St Stephen, Walbrook but the amount of money required over the next ten years to maintain and modernise the building, including the crypt, will take more than this Fund can continue to give to the church as a part of its commitment to all the City of London churches. The roof, health and safety requirements, boiler and other critical facilities will need significant expenditure to take forward the ministry and mission of the church. Calling on his experience as a former Archdeacon of London, the Archdeacon Emeritus went on to say that there is a myth that the City churches are sitting on substantial reserves, that this is simply not true and that to raise money for a church in the City of London is a tall order. On the one hand, many of the local businesses are in foreign ownership; if they happen to be from the United States the funding of religious communities is not undertaken. Although such institutions might respond to a building appeal, such an appeal is unlikely to produce the sums required in the time scale needed. From my own experience as Chancellor of the Diocese and dealing with City of London churches especially, in these financially uncertain times I accept what he says as a true and accurate picture.

36. The Archdeacon Emeritus was cross-examined about this by Mr Petchey, in particular on the position of the church in terms of its proximity to the Mansion House and its connections to the Lord Mayor and City of London Corporation. He said that this was part of the fallacy of the wealth of City churches. As far as St Stephen's is concerned, he gives his services free; he is on his Archdeacon's pension and that is what enables there to be full-time ministry at the church. He said the opening of the church to visitors was dependent on volunteers. He said the potential peak footfall is outside the building's opening hours as the church is on one of the main arteries between Cannon Street and Bank Stations but there is no staff to open earlier than 10am. He accepted

that the Church ought to be open for a longer period each day but without paying for it that was not possible.

37. Mr Petchey suggested that the position of City of London churches is different from 'ordinary' parish ministry, in terms of Sunday congregations, money, etc. and that the parish would have received payments for interference of rights to light from Rothschilds. He asked the Archdeacon Emeritus if there is a financial emergency. The Archdeacon Emeritus answered by reference to the long-term future and the fact that the parish needs to raise considerable funds to keep going. He said the parish was insecure in so far as its financial future was concerned and there is a problem with receiving contributions. Roof repairs were currently draining the funds and the church/parish was currently financially unviable. I accept this evidence.
38. Mr John Seagrim, the Church's Honorary Treasurer, also gave evidence. He stated that St Stephen Walbrook does not have an endowment fund and although the church has financial assets (which at the beginning of 1998, when he was first appointed churchwarden, totalled £200,000) they have never been large enough to generate a viable income. Furthermore these financial assets have been drawn down over the last 15 years to meet various shortfalls in the church's annual budget, such that as of the end of 2012 it was left with £81,000, (£54,000 in an investment Fund and £27,000 in the church's bank accounts). Of this, £15,000 had already been spent on the essential repairs to the north east clerestory walls and there are repairs that are still required on the clerestory walls of the remaining three quadrants.
39. At the time of Mr Seagrim's statement last year the church was operationally solvent and he gave a brief summary of the current running costs. However, for the future, as responsible custodians of the building, the parish has a capital expenditure programme for imperative works, none of which currently has any available funding:
- a) Clerestory Walls estimated remaining cost £35,000
 - b) Insulation of the front entrance £55,000
 - c) Vestry restoration £80,000
 - d) Roof £26,000
 - e) Crypt £110,000
 - f) Disabled access £50,000

g) Organ refurbishment £50,000

h) Bell refurbishment £15,000

In addition, works are needed to the a heating system to include a boiler conforming to current environmental requirements, major internal cleaning and redecoration, a fire and smoke detection system and refurbishment of the tower, the costs of all of which have yet to be estimated. Although it is obvious to me that the church is lovingly cleaned and cared for on a day to day basis, it was equally obvious to me that most, if not all of these works needed to be undertaken sooner rather than later (the Quinquennial Report and other finance documents are at C117 et seq of the bundle).

40. Mr Seagrim was also cross-examined to the effect that there was easy access to City or Corporation money. He also confirmed that this was not his experience at St Stephen's. He said that almost all the church's income was from the (voluntary) church rate which was charged to businesses and it was very difficult to raise funds from elsewhere. He also agreed that there is not a financial emergency at the moment but that the current position was not sustainable. Various potential sources for the development fund were put to him but I considered these to be speculative. I accept that this money will have to be found in the immediate future and currently the only potential way is by means of an appeal.

41. Mrs Margaret Davies, the Inspecting Architect of the church and Vice-Chair of the DAC, also gave evidence (C41-42 in the bundle) in support of the petition and in particular on the subject of the physicalities and expense of returning the painting to the church (C130-133 in the bundle). Mr Featherstone gave evidence on this for the CBC. Given my primary finding of facts as well as my ruling that the painting should not be rehung in the church, I do not need to consider this matter but for the record I have. I concluded that Mr Featherstone had not considered this matter to the detailed extent that the petitioners and those instructed on their behalf had. I am satisfied that the painting could not safely be brought in through the west door. The only way in would be through a window at the east end. I inspected the exterior with that in mind and concluded that the difficulties would be much greater than Mr Featherstone supposed, would be fraught with danger for the painting and damaging to the fabric of the church itself.

42. I should add that I heard evidence from Mr Mark Kirby, a Wren expert, on behalf of the DAC. I also heard from the Archdeacon of London who had originally agreed with the majority of the DAC members but, during the currency of these proceedings and in the light of the submitted evidence, had changed his mind. He made a Statement to that effect and he supported the petitioners both on aesthetic and financial grounds.

43. Mr Seagrim gave evidence about the very thorough search for an alternative location for the painting which the petitioners had carried out, including St Paul's Cathedral, as suggested by Mr Wilton. However, I am satisfied that there is no location available within the City of London. Mr Ben Elwes gave evidence about the proposed sale of the painting for proposed display in the Museum of Fine Arts in Boston, USA. Mr Wilton and Mr Waterfield are also familiar with this institution and its international reputation. They were both satisfied that it would be a fitting place for the painting to be displayed and I am satisfied that it would be seen and appreciated by more people there than it would in St Stephen Walbrook. I am also satisfied that from a curatorial point of view a picture would be better cared for and maintained there than in the church.

44. Very little evidence was adduced by either party on the subject of precedent, even though that was an important part of the CBC's case as based on the DAC's reasoning. I am of the view that that is a matter for me and that each case depends on its own facts and merits. This case could certainly be said to be exceptional. In any event, I would not be setting a precedent because the only evidence before me on this subject was that, as a result of this painting (described as an "altarpiece for St Stephen Walbrook"), West procured a commission from Winchester Cathedral to paint "The Raising of Lazarus" in 1780. This hung behind the altar in Winchester Cathedral until 1900 when it was sold to Wadsworth Atheneum, Hartford, Connecticut. Thus the precedent of an English church selling a religious picture by West to an American art institution was set then and not by me now.

45. The CBC's case seems to be that I should ignore the fact that the worshipping community of the parish is unanimous in not wanting this painting returned to the church or that this is trumped by the case of *re St Gregory Treddington* [1972] Fam 236. However I am mindful of what Sir Ralph Gibson said in *re St Stephen's*

Walbrook [1987] Fam 146 (indeed I am mindful of all the Judgments in that case in reaching my decision) and I am satisfied, as I have already indicated, that the balance of artistic opinion also comes down in the petitioners' favour in this case.

46. I have also considered re St Gregory, Treddington (qv), a decision of this Court in re St Margaret Lothbury (Newsom Ch 29 April 1988), paragraph 7.103 and the cases in the footnote thereto of Hill on *Ecclesiastical Law* (third edition), as well as the decision of Chancellor Hill in re St Michael and All Angels Withyam (2011 13 Ecc LJ 380) plus the other cases cited to me in argument, including: re Escot Church (1979 Fam 125), Halliday and Phillips (1891 A C 228), LTSS Print and Supply Services Ltd v. Hackney LBC [1976] 1 QB 663, Young v Secretary of State for the Environment [1983] 2 AC 662. I am satisfied that the petitioners have made out the necessary financial need to dispose of this painting, that any connection it may be said to have had to the parish was illegally established and to the aesthetic detriment of the church and that it should be sold to be displayed in the Museum of Fine Arts in Boston. However, the parish should not be entitled to the entire proceeds of sale and I will hear further submissions after the sale has been agreed as to how the proceeds might be used for the benefit of the wider Church as well as safeguarding the future of this particular church. The faculty prayed for may therefore issue.

His Honour Judge Seed Q.C.,
Chancellor

10 July 2013

