

IN THE CONSISTORY COURT OF THE DIOCESE OF BRISTOL

In re Lacock, St Cyriac

Judgement

1. This is a petition that has a highly unusual, not to say unique, background. Between 1400-1450 a piece of silver was created for domestic use. Unsurprisingly for an object of such antiquity, its precise movements are obscured by the mists of time. At some stage, probably between 1621 and 1636 it was given to St Cyriac's church almost certainly by Sir Robert Baynard. It was described by the Victoria and Albert Museum in its catalogue for their exhibition of Gothic Art for England 1400-1547 as 'one of the most beautiful pieces of medieval plate' in existence and is anatomised as having 'a plain cover (that) sits on the simple hemispherical bowl, which is supported on a trumpet-shaped foot. Cast and gilt crestings of Gothic foliage with twisted ropework decorate the top and base of the foot and the rim of the cover, which is surmounted by a large spherical finial. This is decorated with gilt twisted ropework...it is of a type now extremely rare, but which was probably one of the most common forms in the Late Gothic period.' The piece survived the compendious destruction of church silver ware of the reformations in England in the 1540s and was adopted during or after the Reformation for use in Communion. It is commonly known, with Protestant simplicity, as 'the Lacock cup', and I shall style it as such in this Judgement.
2. The cup is clearly an item of wholly exceptional artistic and historic value and, as such is of national (if not international) as well as local significance.
3. It was used as a chalice in St Cyriac's from the early part of the seventeenth century to about 1962 when it was loaned by the Rector and PCC to the British Museum where, apart from unrecorded and periodic returns to the church at Christmas and Easter up to about 1981, and a brief sojourn in the Victoria and Albert Museum, it has remained ever since. It appears to have been felt that the value of the cup, and the attendant cost of providing adequate security and insurance cover precluded its return to the parish church even for those few services. The evidence for that long held and firm conclusion is hazy.
4. In 2006 it was discovered that the generous loan of the cup to the British Museum had in fact been made without the benefit of a faculty. A confirmatory faculty was granted by my distinguished predecessor, the Worshipful Dr James Behrens on 24th January 2008 permitting the church to loan the cup to the British Museum for a

period of up to ten years with the proviso that it be insured for a least £1.8 million. Within that judgement he raised the issue of the sale of the cup to the British Museum. It should be noted that he formed the view, at that stage, that the cost of providing adequate security and insurance to return the cup for use in the church was such as would prohibit its return even on an occasional basis. That view was never challenged at that time. I am urged however to form my own view as to the facts.

5. The British Museum have now confirmed that they would like to buy the cup for £1,300,000. It's estimated value under the Government indemnity scheme has risen to £2,200,000.
6. A faculty was applied for in December 2011 requesting that the chalice be sold and the proceeds invested in a charitable trust that would be made available to help fund the necessary repairs and maintenance to the fabric of St Cyriac's church.
7. The petitioners wrote to the residents of the parish indicating that the Church intended to apply for the petition and invited responses, issuing an open invitation to a public meeting to be chaired by the then Archdeacon of Malmesbury.
8. The PCC's statement of needs in summary were identified as threefold;
 - a. The need to preserve and protect the heritage value of the Lacock cup. They submit that it cannot economically or safely be returned to St Cyriac's for security reasons,
 - b. The preservation of the fabric of St Cyriac's as a centre for mission and ministry for the future,
 - c. The PCC are required under Charity law to manage valuable assets properly. Owning a valuable asset which has no practical use is not consistent with the PCC's duties.
9. These submissions were fleshed out in a very full and helpful document dated November 2011 appending details of recent expenditure over the last ten years on maintaining the fabric of the church and setting out the future works required to maintain the church. The petitioners also proposed, if the faculty is granted, to commission a replica of the cup for liturgical use and display purposes.
10. The submissions were refined before me in oral submission. The petitioners' case now is solely that the cup is redundant through its immense financial value that renders it impossible to bring back to the church, allied to the need for financial security to ensure the upkeep and restoration of the church.
11. The statement of needs identifies the fact that the total expenditure on fabric repair and restoration for St Cyriac's between 2001 and 2011 was £439,000, including

generous grants from English Heritage, the sale of a wine taster and sums from other grant aiding bodies. The future works included in a ten-year plan total £391,126. Those figures and the necessity for any such works were not challenged substantially. Where they were challenged I have no hesitation in accepting the evidence of the inspecting architect, both as to their cost and their necessity. Whilst I am quite satisfied that there is no urgent or emergency financial need to necessitate the sale of the cup, I accept that the parish will be in deficit by the end of the year if it meets its quota and that in the church and churchyard there are clearly issues relating to the fabric which need to be dealt with sooner rather than later.

12. The cup, the petitioners point out, is covered for £2,200,000 under the Government Indemnity scheme and they claim that this valuation now renders the Cup liturgically redundant as there is no possibility of the parish being able to meet any of the attendant security measures which would be attached to insurance premiums in the event of the Cup being returned to them on a temporary or full time basis.
13. The sole opponent who wanted an oral hearing is Geoffrey Fox, who moved to the village about 40 years ago and is a former member of the PCC.
14. In the bundle of documents originally filed by Solicitors for Mr Fox were a series of pro-forma documents opposing the sale created by the party opponent and signed by local residents. The pro-forma included the assertion that the church intended to sell a valuable piece of plate "acquired by the village some 500 years (sic)". This assertion is incorrect as a matter of fact and law. Whilst it is correct that, technically, the moveable goods of a parish belong to the parishioners at large, that ownership and control is vested in the PCC as elected representatives of the parish. To give the impression somehow that the cup was the property of the 'village' and to imply that this was an asset owned by the village that was to be sold off by the church is wholly wrong and highly misleading. It is agreed on all sides that it is impossible for 'a village' to own anything as it has no legal personality.
15. Matters were not assisted by the party opponent stating in his witness statement of 27th September at paragraph 7 that "it is not part of our case that the cup belongs to the village rather than the church". I find that impossible to reconcile with the pro-forma that he produced and circulated widely.
16. I gave the party opponent 14 days to identify in writing what, if any, weight I should give this evidence, and indeed whether he wished me to take it into account at all. I am sorry to say that, in writing, they persisted in this submission and this was repeated orally. His submission, made enthusiastically by Mr Blackett-Ord was that I should interpret the Faculty Jurisdiction Rules widely, that the leaflets were admissible and that I should give weight to them. He accepted that they were not submitted in the appropriate way under Rule 16, but submitted that it would be quite wrong for me to ignore them, as they express the views of the parishioners. He

made the bold submission that the fact that the authors did not subsequently make submissions under Rule 16 does not mean that they had not changed their minds to oppose this sale.

17. The petitioners submitted that these were not admissible as it was impossible to say what particular objections any individual within this group of people had when they signed a misleading and broadly drafted document and indeed whether these individuals had changed their mind since the petition had been drafted and still wanted to be counted as expressing some sort of opposition to the sale.
18. In circumstances of such vagueness and inaccuracy I was not prepared to admit these into evidence. I do not accept the submission by Mr Blackett-Ord that these reflect some sort wide ranging popular opposition to the sale of the cup.
19. In my Judgement to give any of the documents signed as a pro forma petition any weight at all would be quite wrong. No effort has been made by the party opponent to correct the error and to clarify the true position with the signatories and so it would be fecklessly speculative to admit them as a true representation of their views. I am very disappointed that the party opponent has not, at any stage, attempted to correct the false impression that he gave those whom he circulated, either for the benefit of this court or to those whom he chose to circulate this document. Indeed, after he was alerted by the Registrar to the problems of the pro-forma he circulated a second flyer in an attempt, to use his own words to 'rally the village' against the sale. My inquiry that this may have caused divisions within the village and also between the village and the church appeared to cause him no concern. The pastoral damage that may have been caused to the parish church within the village by such divisive behaviour is in my judgement incalculable and very much to be regretted.

The objections to the sale

20. The Church Buildings Council raised objections in the following broad terms;
 - a. They have a policy that church treasures are not to be disposed of unless in the most exceptional circumstances. Churchwardens are the temporary custodians of the moveable goods of a parish which belong to the parishioners at large.
 - b. The authority of *St Peter's, Draycott* sets out the principles about the disposal of movable property from churches as follows;
 - i. A good and sufficient ground must be proved,
 - ii. The onus of proof lies "fairly and squarely' on the petitioners,
 - iii. A relevant factor indicating no faculty should pass the seal is that the articles are part of the heritage and history not only of the church but also of all the people in the parish
 - iv. The jurisdiction should be exercised sparingly.

21. They agree that redundancy or some special reason is required to justify the granting of a faculty for sale. Financial emergency is such a reason. In the case of an item of artistic or historic value, a weightier reason is required to alter the status quo by granting a faculty for a sale. The council do not agree that this parish's financial situation can be described as 'an emergency'.
22. The Council are not wholly opposed to the sale of the cup however, identifying that the highly exceptional circumstances of the present petition amount to special considerations. These circumstances relate to the exceptional rarity and financial value of the cup. The Council recognise that I might find that there is no reasonable possibility of returning the cup to the parish from the British Museum, and in those circumstances they appear to accept that the cup has become liturgically redundant.
23. After the public meeting held on 23rd September 2009 and chaired by the Archdeacon of Malmesbury a variety of objectors wrote objecting to the sale of the cup and these documents are included in the bundle. From their date it is clear that many of these documents appear to have been drafted not just because of the meeting but as a result of the party opponent 'rallying the village' to use his own words, against the sale of the cup by means of the original pro formas I have dealt with above, accordingly I treat these documents with not a little caution.
24. It is plain that there appears to be some strong emotional attachment within parts of the village to the cup. I cannot make an accurate assessment of the emotions expressed for reasons that I have set out already. It is also clear that, over the years the parishioners have been more than generous in their giving to the Church, helping maintain it. I can, I hope, conclude that this indicates an attachment to the Church as institution rather than merely as a historically interesting building.
25. The party opponent has been robust in denouncing the petitioners for their desire to sell the cup. In evidence Dr Catchpole, a witness for the petitioners, has been accused inter alia, of misleading the PCC about the behaviour of the British Museum. The party opponent maintained that to say that the British Museum approached the PCC and inquired about purchasing the cup is wrong, and that it was he, Dr Catchpole who made the first approach and has effectively engineered this sale. He accuses Dr Catchpole of being the 'driving force' behind the sale and went on to imply that he had improperly assisted in the drafting of witness statements for other witnesses so that these did not reflect the true opinions and beliefs of these witnesses. He is accused of deliberately failing to investigate insurance possibilities as he was "determined to stop the cup coming back here". There appears to be some implication that because he does not live within the parish he neither reflects nor understands the feelings of the villagers about the cup.
26. Having seen Dr Catchpole give his evidence I have no hesitation in rejecting all of these criticisms of him and his behaviour. It is not correct to say that he misled the

PCC about the approach made by the British Museum and Mr Blackett Ord's attempt to interpret an e-mail from them to show that is incorrect in my view. I reject the idea that Dr Catchpole has some sort of unprincipled desire to force the sale of this cup at all costs. He struck me as being a thoughtful and helpful witness. He appeared to have an entirely realistic idea of what was possible in this case. The possibility of a sale to the British Museum, I have no doubt, was instigated by them and took him by surprise at the time. I reject any idea that the witness's statements were anything other than an accurate reflection of their own beliefs and recollections. The only person who may be guilty of misrepresenting the feelings of local people to this sale in my view is the party opponent. He did so by creating both a pro-forma and a poster to 'rally the village' against the sale of an object whose existence, as he himself offered in his evidence, was unknown to the overwhelming majority of residents.

27. The party opponent initially accused the petitioners in written submissions of making "every effort... to avoid finding out the true extent and nature of local feeling against" the sale of the cup. In oral submissions Mr Blackett Ord was only prepared to remove the word 'every' from that submission.
28. I reject that proposition as well. They have been scrupulous in doing all that was required of them by the Rules. It was unfortunate that one copy of the application was headed "In confidence" when it was displayed in church, but there is no evidence that the applications were not displayed and indeed, in my Judgement to display them within the church at Christmas time was to ensure that by far the largest number of people should see them, rather than to ensure that fewer people either saw them or had time to make submissions about them.
29. The party opponent has accused the petitioners of having little or no 'liturgical taste' for the return of the cup, stating that they regard it as "an embarrassment". I reject this argument as it stands. From any analysis of the evidence, including the unchallenged evidence of the team Rector, there are Eucharistic services on a regular basis within the parish. I do not accept that there is something liturgically significant in the use of a particular chalice at a Eucharist. Indeed, as the petitioners point out, it may seem both distasteful and wrong for the object of significance at the Eucharist to be the vessel and not the elements. I shall expand on this later in my judgement.
30. In relation to the economic impossibility of returning the cup to the parish, the petitioners submitted evidence from their insurers that showed that the insurers required the PCC to put forward a proposal for security whilst the cup is used/displayed in the church. The insurers do not stipulate any conditions or requirements due to the high value of the cup. They state that their preference is for it not to be used/displayed at the church.
31. The insurers go on to say that they would only insure the cup in that eventuality if there were additional security measures such as a "24hr manned alarmed glass

display case". However, they say, they are unable to guarantee that even this will then be an acceptable alternative. The petitioners established that a glass display case would cost at least £4,000. In his witness statement Dr Catchpole indicated that he interpreted the phrase "24hr manned alarmed glass display case" to mean that some sort of security guard would be required round the clock to protect a case that had some sort of alarm fitted. In cross-examination he conceded that it might not mean that, that it was the alarm that was to be manned and not the case. In my view either interpretation may be correct. If it is Dr Catchpole's first interpretation then the cost of protection of the cup would be vast. If it is the latter then the petitioners submit that no insurance company would permit the cup's return bearing in mind the rural location of the church with the nearest police station being approximately 5 miles away. They point to the fact that there have been acts of theft and vandalism in the recent past and I have been invited to use my own experience to judge the utility or otherwise of an alarm fitted to a church. There have been, they say, occasions when even a roof alarm has not stopped the theft of lead from a church in this area. I accept that submission

32. The petitioners have been strongly criticised by the party opponent for not getting precise details of the cost of insurance stating that if I find there is insufficient evidence to establish redundancy then the faculty should not be granted as an appeal will succeed. It is unfortunate that there is an ambiguity in the insurance details, but I can conclude to my satisfaction that the cost of returning the cup to the church even on a temporary basis would cost many thousands of pounds. It is plain that the parish do not have this sort of money at their disposal. I am invited by the petitioners to conclude also that this would be an irresponsible use of church funds.
33. In his first statement the objector proposed that the British Museum should keep the cup and return it once a year, or that the cup be displayed in the cathedral, or there should be sponsorship of the safe keeping of the cup. He expanded on this in his evidence, comparing the ability of St John's church in Cirencester to display the 'Anne Boleyn cup' as a way forward for the church to display the cup on the occasions when it is returned from the British Museum. He gave evidence that he had received a quotation for insurance cover of the cup for £3,500. This would be to return the cup to the parish for a week. He could not assist however with what the 'security arrangements' required by these insurers were. It is inconceivable, in my view that it could be any less than that required by the petitioners insurers.
34. Mr Blackett Ord invites me to say that insuring the cup for full value would be pointless and wrong in law and cites *In re St Helen's, Brant Broughton* [1974] Fam 16 at 22. I am content that I can distinguish the facts of that case with this. To quote the then Dean of the Arches that was a case dealing with the insurance of a painting given by a donor which was in situ as "the centrepiece of an architectural scheme in which he took a great personal interest...many parishioners regard the painting with affection, some as a devotional aid" he contrasts the facts starkly by comparing that

case by saying “this is not a case of redundant church plate kept in a bank, with the donor’s intentions already frustrated” (P 23 D). I am satisfied that this case is more akin to that exception than to the example of the painting. There it was pointed out that security matters were easily fitted, that a copy of the painting could be replaced at a small cost leaving the parish with monies outstanding. It is plain that the painting in the *St Helen’s* case should be retained within the church. That does not of course apply to this case.

35. It was clearly within the intention of the party opponent to have the cup insured at full value if it were to be returned. No quotation for an alternative insurance value has been put before me.
36. It may be that the issue of insurance is one that I do not need to consider in any great detail however.

Redundancy

37. The petitioners submit I should take a plain view of ‘redundancy’, that I should use an interpretation analogous to employment law and say that it is ‘excess to need and cannot be afforded’. The party opponent states, inter alia, that it is hard to see how a chalice could ever be ‘redundant’ and that, in effect, a cup is always a cup.
38. It is agreed on both sides that the cup has not been returned to the parish for at least thirty years. There is no evidence about what it was returned for. Indeed the only evidence I have about the last time it was used for the Eucharist is a letter from a Mr Murray who no longer lives in the parish who remembers using it to take communion “in the mid 1960’s”, that is almost fifty years ago.
39. An attendant issue arises from that. I sought to explore how it was that the cup would ever return to the parish for any service. It appears that at no time since the 1980’s has anybody made any request to have the cup returned to the parish. This is in the context of the fact that Eucharistic services are held regularly and faithfully within the parish.
40. The question of whether a chalice can, of itself, ever be redundant is in my Judgement of central importance in this case. There has been a great deal of evidence about the possible cost of returning the cup to Lacock for occasional services and how it might be displayed. The position appears to be that the party opponent would like the cup to be returned so that it can be viewed in a locked and sealed glass case either free standing or somehow inserted securely into the wall of the church, or retained in a museum nearby. All the evidence and cross-examination before me was to the effect of how the cup might be so safely and securely displayed. I have heard no evidence from either party about how the cup might safely and securely be used during a service and having read all the evidence before me and heard submissions it

does not appear to be in the contemplation of either party that it should or could ever be so used, merely that it should be present and be seen before, during and after a service. For instance, no questions were put to the team Rector about how he or any other sacred ministers might deal with using a chalice of such extraordinary value, what security measures might be required or what would happen if one of them was reluctant or unhappy to handle a piece of silver that might be the target of unscrupulous thieves. It appears never to have been in the contemplation of the party opponent or indeed anybody connected with this litigation that the cup should be used at a Eucharist. Indeed, there is a useful quotation that assists my view within an unsigned letter from a Mrs Bywater, who opposed the sale of the cup where she states: "Yes I know that I shall never drink from it again, but that does not mean we have to sell it."

41. This, it seems to me goes to the heart of any argument about the redundancy or otherwise of the cup. Upon the particular facts it is clear that it is not in the contemplation of anybody that the cup should be returned to the parish to be used during a service. Indeed as Mr Blackett Ord asked when he reached the acme of his cross examination of Dr Catchpole; 'Do you accept that the chalice is part of the heritage of this church and all who have taken the sacrament from it?' Neither Dr Catchpole nor any witness was asked about the future of the chalice and its role in the sacraments.
42. The cup is redundant in the sense that it is no longer to be used as a cup, merely as an ornament that has a long standing association with the village. Mr Blackett Ord accepted in his most helpful written submissions to me that usable parish silver is unlikely to held redundant quoting *St Mary the Virgin Burton Latimer* unreported 10 October 1995 at paragraph 6, but conceded that it may be otherwise if the silver is merely ornamental, and it is agreed to be redundant as a matter of fact: *St John the Baptist, Stainton by Longworth* (2006). He does not, of course agree that the cup is redundant. He does so on the basis, to quote his written submissions; "it is difficult to see how a chalice can ever be redundant save perhaps where the parish has other 'better' ones". I am not sure what Mr Blackett Ord meant by the phrase "'better' chalices", and he did not expand on this in his oral submissions. In my Judgement a 'better' chalice than the cup is one that can actually be used liturgically rather than admired as an object of beauty or historical interest.
43. I form that view on a reading of the last Supper which I hope is uncontroversial. Our Lord commanded: 'Do this in memory of me', not 'admire this in memory of me'. The possibility during the Eucharist that the container rather than contents is more important is one, I hope, that would be repugnant to right minded Christians.

The Law

44. The leading authority in the field of redundancy is *In re St Peter's Draycott* [2009] Fam 93 when considering the disposal of a font as a moveable object of value the following principles were set down;
- a. A good and sufficient ground must be proved, a "special reason";
 - b. The onus of proof lies fairly and squarely on the petitioners;
 - c. A relevant fact indicating that there should be no faculty may be that the articles are part of the heritage and history not only of the parish but also of the people, present and future, of the parish; and
 - d. The jurisdiction should be sparingly exercised.

I shall come to those matters later.

45. In my Judgement this case can be distinguished from *St Mary the virgin, Burton Latimer* (above) where it was held that the Chancellor had no evidence upon which to conclude that the parish silver was redundant. I have clear evidence that this cup is redundant liturgically speaking. I am also satisfied that there is no reasonable possibility of returning the cup to the parish from the British Museum due to the cost.
46. In my Judgement, whilst applying the principles, I can distinguish the facts in this case from the facts in *In re St Peter's, Draycott* (above). In that case the font that was the object of the petition was still in use, had been given expressly for the administration of the sacrament of Holy Baptism, had been in use continuously for that purpose since 1861 and it was a fundamental feature and principle asset of a fine church. In this case the cup is not in use for a sacrament, has not been for many years, and is not intended by any parties to be so used in the future. It is a secular vessel that has had a long tradition for being used in the Eucharist, although there is no clear evidence before me that it was originally intended for that use and it cannot be described as a fundamental feature and principle asset of this Grade 1 listed church.
47. I accept that the standard of proof applicable differs from case to case using the 'gradation of proof' identified by Collier Ch in *In re St John the Baptist, Stainton-by-Longworth* (2006) 9 Ecc L J 144 where he said;

'Quite clearly the more valuable the plate, particularly having regard to its artistic and historic value the weightier will need to be the reason before the court in its discretion concludes that it is a sufficient reason in all the circumstances to allow a sale'

I am satisfied that the unique and exceptional circumstances of this case are sufficient reason to justify the sale. The cup is liturgically redundant, the cost of returning it to the parish would be prohibitive bearing in mind the competing

demands on the parish resources which would be better used, in my view, for the repair and restoration of the church.

48. Whereas I accept that there is a long and close connection between the cup and the parish, it appears to be a connection hitherto almost completely unknown to the majority of residents of the village until this application. I am satisfied that the identification of the village of Lacock and the church of St Cyriac as the provenance of the cup will carry on as it has before. No evidence has been put before me that the Museum would wish to alter that, nor would it make any sense. It is precisely because of this object's unique history that it is of such historical interest to the museum.
49. I direct that a faculty pass the seal permitting the sale of this cup. I make it a condition of the sale that it is only to be sold to the British Museum, I direct that a photographic record of the cup be made, along with a short history and that it should be displayed as appropriately. I direct that a copy of the cup be made for liturgical use, the cost of which is not to exceed £5,000.
50. I further direct that the proceeds of sale shall be used to form a charitable trust the objects of which are limited to help fund necessary repairs and maintenance to the fabric of St Cyriac's. I require submissions to be made as to the precise terms of the trust including the make up of trustees.
51. Can I thank both parties for their helpful submissions, the team Rector, the church and parishioners for their hospitality which was at least warm in spirit if not so warm in the flesh and, on a personal note the Archdeacon of Malmesbury for all her assistance.
52. On a final note, may I urge reconciliation within the parish? I fear that this litigation may have caused divisions, as litigation often will. It would be a profound irony if a disagreement over the sacred vessels of the Eucharist caused ill feeling. It would also be a deep sadness. At the Lord's table of the sacrifice of the last supper all are welcome, differences evaporate, divisions are healed and enemies reconcile. My decision will be used, I hope and pray, to promote the Christian mission of the church in this village and beyond and that should start with the peaceful reconciliation of the competing sides in this case.

Justin Gau, Chancellor
4th December 2012