

circumstances justifying an exception from the principle of the finality of Christian burial and a faculty would issue.

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## Re St Thomas the Apostle, Killinghall

Leeds Consistory Court: Hill Ch, 13 December 2023

[2023] ECC Lee 4

*Sale of paintings – church treasures – disagreement between DAC and CBC*

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The petitioners sought a faculty for the disposal by sale of two damp-affected paintings. The DAC recommended the proposal. The court, out of an abundance of caution, directed consultation with the CBC pursuant to rule 9.6 of the Faculty Jurisdiction Rules 2015 (under which consultation with the CBC is mandatory on a petition for the conservation, alteration or disposal of an article of special historic, architectural, archaeological or artistic interest). The CBC preferred to see the conservation and retention of the paintings, there being a strong presumption against the sale of church treasures. The petitioners described the CBC's position as unrealistic, and the DAC noted that the paintings were of limited significance; they would continue to deteriorate if kept in the church; and the petitioners had neither the funds nor the inclination to seek them to fund their restoration.

The court, while noting the strong presumption against the disposal of church treasures, emphasised that care must be taken to distinguish between church treasures and church property generally. The CBC regarded the paintings as church treasures, given their connection to the church and their religious subject. They may have also been influenced in their view by the fact of the rule 9.6 reference itself, and/or a typographical error in the DAC's notification of advice which made it appear that the proposal was not recommended for approval.

However, although this was not determinative, the paintings had been valued at only £120–£150 each. The court considered that on reflection, its reference of the matter to the CBC under rule 9.6 was probably unjustified and inappropriate. While the court declined to criticise the CBC for its advice, it

noted that the better (although bolder) course would have been for the CBC to decline to give its advice on the basis that the gateway criterion for the engagement of rule 9.6 was not met. On the totality of the evidence, the pictures were not articles of special historic, architectural, archaeological or artistic merit, nor were they church treasures. The court preferred the DAC's advice, noting its local knowledge and pastoral concern over the CBC's more distant, desktop assessment. A faculty would issue as sought.

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