

Neutral Citation Number: [2025] ECC Swk 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF THE WISDOM OF GOD, LOWER KINGSWOOD

AND IN THE MATTER OF A PETITION BY REVD CHRISTINE COLTON, KEVIN
CHAMBERLAIN AND GRAEME HOPKINS

JUDGMENT IN RESPECT OF PRELIMINARY ISSUE

Introduction

1. This matter concerns a preliminary issue in respect of a petition by the then Priest in Charge (Revd Christine Colton) and the Churchwardens (Mr Kevin Chamberlain and Mr Graeme Hopkins) of the parish of St Andrew, Kingswood. The petition seeks authority for the sale of a 12th century Greek lectionary. The preliminary point that arises is whether such authority is necessary.

The facts

2. Kingswood is mentioned in the Domesday Book. It formed part of the parish of Ewell until the nineteenth century. However Ewell was five miles away and 1836 a new church, dedicated to St Andrew¹, was built to serve what became a new parish. Within the parish, the distinct settlement of Lower Kingswood lay to the south and in 1896 a new church was built there. This was the gift of two residents - Sir Cosmo Bonsor, Chairman of Watney's Brewery, and Dr Edwin Freshfield. Dr Freshfield was a partner in the firm of solicitors, which still bears his name². He had a lifetime interest in Greece³ and it was because of this that the architect, Sydney Barnsley, was commissioned to design a church in the Byzantine style. This remarkable church, dedicated to the Wisdom of God, is described by Sir Simon Jenkins in England's Thousand Best Churches (1999) as *a Byzantine shrine, somehow detached from Constantinople and dropped into the Home Counties*. It is listed Grade I.
3. The church was and is licensed for public worship within the parish but has never been consecrated. In legal terms it is vested in three trustees; its maintenance and management is organised and paid for by the PCC of the parish.
4. Dr Freshfield's son – Edwin Hanson Freshfield – became a partner in the firm but retired in 1921. He shared his father's interest in Greece and spent most of the rest of his life travelling there. When he died in 1948, his widow moved away from the parish and gave the lectionary to the church⁴. The plan was to display it in the church in a glass cabinet but there were practical difficulties in the way of this. Accordingly it was put in a bank vault, although there is a suggestion that it may have been brought out and displayed within the church on festival occasions. In 1968 it was lent to the British Library.
5. On 7 February 1990, the then Bishop of Southwark made an order as follows:

¹ The church proved too small and was replaced by the present St Andrew's Church (on a new site) in 1852.

² It had been established by his grandfather early in the nineteenth century. He became senior partner in 1918.

³ His doctorate was in respect of a treatise on the laws of the late Roman Empire.

⁴ There is a suggestion that it may have been loaned to the church by Edwin Hanson Freshfield before his death.

We Ronald by Divine Permission Bishop of Southwark do hereby direct and order that the building known as “the Church of the Holy Wisdom, Kingswood” situate within the parish of St Andrew Kingswood within our diocese and jurisdiction shall from the date hereof come under the faculty jurisdiction in accordance with the provisions of section 6 of the Faculty Jurisdiction Measure 1964.

6. I do not know what prompted the making of the order at this time but the exclusion of such a functioning church building from the faculty jurisdiction was evidently anomalous; and the parish may have preferred that the church was subject to the faculty jurisdiction (and not, as would otherwise have been the case, to the secular authority of the listed building regime).
7. In 2014 the loan to the British Library was renewed and I granted a faculty for this. In doing so, I pointed out that it was not entirely clear that a faculty was required. However the continuation of the loan seemed sensible and I was happy to grant a faculty on the basis that the jurisdiction did apply.
8. In 2019 the British Library informed the parish that it no longer wished to have the lectionary on loan⁵. While a long term solution is sought as to what is now to happen to it, it has been transferred to the care of Trinity College, Cambridge. In February 2024, the present petition was lodged. This gives rise to a consideration of the guidance about church treasures contained in the judgment of the Court of Arches in *Re St Lawrence, Wootton*⁶. The point that is being made to me is that if the choice is between an **indefinite loan** to an institution that will make it available to scholars and a **sale** to such an institution, there is no reason why a sale should not be preferred; the benefit of which will be the receipt of the sale price. In this judgment I need not go into the arguments arising.
9. If, of course, the faculty jurisdiction does not apply, the sale can go ahead without the consent of this court. This would make a sale much simpler⁷ and would avoid the possibility that the court might not give its consent. The question as to the application of the jurisdiction having arisen, I am now asked to decide it.

Consideration

10. Section 6 of the Faculty Jurisdiction Measure 1964 provided as follows:

- (1) *Where the Bishop has licensed a building for public worship and he considers that circumstances have arisen which make it desirable that such building should be subject to the faculty jurisdiction he may by order direct that such building shall be subject to the jurisdiction of the court of the diocese during such period as may be specified in the order.*
- (2) *Any building in respect of which an order is made shall, during the period specified in the order, be subject, together with its furnishings and contents, to the jurisdiction of the court specified in the order as though it were a consecrated church; but an order shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts⁸.*

⁵ In a review, curators identified the book as no longer being of sufficient benefit to the library’s users to justify its continued investment in its care.

⁶ [2015] Fam 27 (Ct of Arches).

⁷ In the circumstances that now arise if a sale is to proceed on the basis that the faculty jurisdiction does not apply, it is likely that the judgment of this court to that effect would be necessary in order to satisfy a buyer as to title.

⁸ This provision has since been repealed and re-enacted as section 59 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. It is not now in precisely the same form but, for present purposes, the differences are not material.

11. As will have been seen, the Bishop's order did not specify any period during which the building should be subject to the faculty jurisdiction; in the absence of express provision I would read the order as being made until further order. Although such a period is indeterminate I think that the Bishop did have jurisdiction to make an order in these terms; and no-one of course took any point at the time that he did not.
12. The question that arises is a simple one: did the lectionary in 1990 form part of the *contents* of the church? The answer is not quite so simple.
13. Although it never had a permanent home in the church, I think that in 1948 it would have been appropriately viewed as part of the contents of the church – it must have been given and received on the basis that it would be in some way be made available to be seen within the church. However, although the intention of the donor must be relevant to ascertaining the status of the lectionary, Mrs Freshfield's gift was not a conditional one and by 1968 it will have been apparent that the lectionary never was going to be displayed in the church. The loan was not in fact a permanent one but it was as good as such: in 1968 there were no envisaged circumstances in which it would come back to the church. Nonetheless even on the basis that it was a permanent loan, I think that it was still apt after 1968 to describe the lectionary as part of the contents of the church⁹. Against this interpretation, it can be urged (which is true) that it is not clear that the lectionary was ever once taken inside the building. I think that this is too narrow a way of looking at the matter – potentially making it turn on whether the lectionary was ever displayed on festivals. As I have explained, I think that the lectionary can still be described as part of the contents of the church even if its whereabouts were not physically inside the church. Accordingly in my judgment, it is necessary that, if the lectionary is to be sold, a faculty must be obtained.
14. I will give further directions as appropriate in the light of this ruling. I think (but this needs confirmation) that the current proposal is a sale at less than market value to Trinity College. On this basis, I will need an up to date valuation and to be told what the college are minded to pay; and then I shall need submissions that address the guidance given in *St Lawrence, Wootton*.

PHILIP PETCHEY

Chancellor

11 February 2025.

⁹ It is slightly misleading to describe an object lent to a museum or library as being on permanent loan. It must always be possible for the loan to come to an end in some way.