The Pastoral Reorganisation Measure 1949, the Union of Benefices Measures 1923 to 1952, and the Diocesan Stipends Funds Measure 1953

The Parochial Church Council of St. Martin, Lincoln – *Appellants*

v.

The Church Commissioners – – – – – – *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH NOVEMBER 1968

Present at the Hearing:

LORD HODSON
LORD UPJOHN
LORD DONOVAN

[*Delivered by* LORD HODSON]

This is an appeal to Her Majesty in Council by the Parochial Church Council of St. Martin's, Lincoln, against a Scheme prepared by the Church Commissioners.

The object of the Scheme is to effect the union of the benefice of St. Faith, Lincoln, with that of St. Mary-le-Wigford with Saint Martin, both situate in the diocese and city of Lincoln, for the union of the parishes of St. Martin and St. Faith, and thereafter to take down the Church of Saint Martin and to sell the site and materials. The proceeds of sale are intended to be applied towards the cost of providing a new church dedicated to St. Martin at Birchwood in the Parish of Skellingthorpe or such other place in the diocese as the Bishop may select.

The Scheme was recommended by the Pastoral Committee of the diocese, approved by the Bishop and certified by the Church Commissioners pursuant to the terms of the Pastoral Reorganisation Measure 1949.

The appellants pray that the Scheme may be dismissed or returned to the Commissioners for alteration or amendment.

The recommendations leading to the preparation of the Scheme were made by the Pastoral Committee under Section 3 of the Pastoral Reorganisation Measure 1949 which by Sub-section (1) provides (so far as material) as follows:

> "It shall be the duty of the Committee from time to time as may be directed by the Bishop to make a general survey of the diocese either as a whole or in sections, and after consultation so far as is practicable with the incumbents and parochial church councils concerned to make recommendations for the better provision for the cure of souls within the diocese or any part thereof. In particular the Committee may in relation to any two or more benefices or parishes recommend—
>
> (*a*) the exercise of any one or more of the powers contained in the Union of Benefices Measures, 1923 to 1936, including power—
>
> (i) to unite two or more benefices;
>
> . . . .
>
> (iv) to alter the boundaries of any parish by annexing thereto any contiguous area whether portion of another parish or extra-parochial; . . . ."

Sub-section (2) of the same Section provides as follows:

"In making their recommendations the Committee shall take into account each of the following matters—

(*a*) the making of the best possible provision for the ministry of the Word and Sacraments in the diocese as a whole, including the provision of appropriate spheres of work and conditions of service for all persons engaged in the cure of souls and the provision of reasonable remuneration for such persons;

(*b*) respect for the traditions, needs and characteristics of individual parishes; and

(*c*) the possibility of the use of the ministry of duly authorised laymen."

The appellants say that the Scheme should be dismissed since the recommendations were made without prior consultation with them as required by Section 3 (1) of the 1949 Measure.

They also pray that the Scheme may be dismissed on its merits or remitted to the Commissioners for amendment.

In order to appreciate the Scheme it is necessary to understand the situation in the diocese of Lincoln.

There are in the city and diocese of Lincoln the following parishes, churches and former parishes to which reference will be made:

(*a*) *St. Faith.* This parish was constituted in or about 1899, the present church having been built in or about 1895.

(*b*) *St. Mark.* This is an ancient parish of the city of Lincoln, the present church having been built in 1872.

(*c*) *St. Martin.* This is an ancient parish of the city of Lincoln. It is a prebend of Lincoln Cathedral.

In 1866 the existing church was destroyed by fire and in 1871 the present church was built. In 1931 the benefice and parish were united with another ancient parish of the city, St. Peter at Arches, of which the church was demolished, and with part of the ancient parish of St. Benedict.

In 1959 the benefices of St. Martin with St. Peter at Arches were united with the united benefice of St. Mary-le-Wigford and St. Benedict. Under the Scheme of Union there continued the two parochial Church Councils.

(*d*) *St. Mary-le-Wigford* (*otherwise St. Mary-below-Hill*). This is an ancient parish of the city of Lincoln. The church is a fine old building of architectural merit. In 1931 the parish and benefice of St. Mary-le-Wigford were united with the parish (part) and benefice of St. Benedict also an ancient parish of the city. The church of St. Benedict still stands, is not open for worship but is of historic and architectural interest.

In 1958 a special commission was appointed by the Lincoln Diocesan Pastoral Reorganisation Committee to enquire into the provision of Church buildings in the city of Lincoln with reference to whether:

(*a*) any of the parish churches, church halls or vicarages should be closed and the sites sold to produce money which would help in the provision of new churches elsewhere;

(*b*) any parish boundaries ought to be amended, or any existing parishes united;

(*c*) any new parishes and/or conventional districts should be formed in the outlying areas of the city, and what buildings should be provided in such districts and where.

The commission duly reported and found that the general situation was that 39,000 people in the centre of the city were being catered for at that time by 16 clergymen whereas on the outskirts 32,000 people were organised in four districts manned by only five clergymen and under

equipped in churches and everything else which goes to make a full parochial life. The solution proposed for the religious needs of the people on the outskirts of the city and for the sake of the Church as a whole was to close churches and to merge parishes in the centre of the city.

The Commission recommended that the parishes of St. Martin, St. Mary-le-Wigford and St. Benedict be united. (This has already been done as to benefices.) They also recommended that at the next vacancy of St. Mark the vacancy be not filled and the parish be united with St. Mary-le-Wigford, St. Martin and St. Benedict, and that on the union of the parishes the church of St. Mark be demolished and the site sold. Where possible the moneys from the sales of the sites and of certain church halls were to be applied to the building of new churches in the new areas. St. Mark's parish is small with a population of about 500 people. The church was said to be modern and with the exception of the spire of scant beauty. The site was one of the most valuable church sites in the city and the Commission was convinced that this church ought to be regarded as redundant and sold.

Since the report was published there was, in 1959, an extension of the city boundaries which led to the acquisition of some 1,389 acres for development as a residential neighbourhood and there has been some increase in the population of the old city.

The report of the Commission was published for consideration by church people but never formed the basis of any recommendations of the Pastoral Committee. It was however regarded as acceptable by the parishioners and congregation of St. Martin and formally approved by the appellant council on 14th February 1962.

In the same year, 1962, a vacancy occurred in the benefice of St. Faith and the Bishop considered whether this event presented an opportunity to suggest pastoral reorganisation affecting that benefice and parish, bearing in mind also some contemporary recommendations of the Town Development plan and the probability that the population of the area would become stabilised. He then considered the union of the parishes of St. Martin and St. Faith and the closing of St. Martin's Church.

These parishes adjoin one another. St. Faith's has a population of 4,929 while St. Martin's has a population of 2,470 and it is submitted in support of the Scheme that the combined population is manageable by one incumbent and that such an arrangement is justified by clear and urgent needs elsewhere in the diocese.

The joining of these parishes would be justified geographically by the presence of a proposed ring road to the east of St. Martin's parish; and the Church of St. Faith would occupy a central point in the united parish. St. Martin's has a seating capacity for 800 people and St. Faith's a capacity of 500. Little is to be learned from a comparison of the weekly attendances at these two churches if only because St. Martin's has had special difficulties in its incumbency and since the cession of the Reverend C. R. Evans in 1966 no incumbent has been instituted to the benefice. For the same reason little is to be gained by seeking to compare the vigour of the church life of the respective parishes. So far as the fabric is concerned both are modern churches, St. Martin's being the more pleasing to the eye externally whereas St. Faith's has the more pleasing interior and is more suited to the size of the parish as intended and to modern ideas of liturgical usage. The Council for the Care of Churches has raised no opposition to the demolition of St. Martin's, subject to the provision of accommodation for certain memorials. The relevant Ministries have also accepted the proposed demolition. If one or other of the two churches is to be demolished it is to be noted that the cost of maintenance and repairs would be much higher in the case of St. Martin's. There is a conflict of opinion as to whether St. Faith's is large enough to accommodate the congregations to be expected from the two parishes. Mr. Rollett, Church Warden of St. Martin's, expressed,

very properly, his opinion that St. Faith's was too small for the combined populations, particularly at the Great Festivals of the Church and in view of the expectation which was the hope and prayer of all that there would be a growth in church attendances which would render St. Faith's inadequate. Reference was also made to the strong financial position of the parish of St. Martin's and the great efforts which had been made by the parishioners for many years to bring the church into good order structurally and to bring the organ into first class order.

The Parochial Church Council of St. Martin, having accepted the 1958 report as the best solution for the admitted problem of pastoral reorganisation, are strongly opposed to the change of direction envisaged by the Scheme under consideration.

They draw attention to the fact that, since the Scheme has been proposed, the benefice of St. Mark's has become vacant, for Canon Arthur Oswald Jones, incumbent since 1942, has recently died, so that there is an opportunity for further reconsideration of the whole position on the lines of the 1958 report.

On 30th January 1963 the Bishop paid a personal visit to the Parochial Church Council of St. Martin's in order to discuss with them what was in his mind.

This date marks the beginning of a period leading up to the recommendations which were finally made and the production of the Scheme to which the appellants object.

The first question is whether there was the necessary consultation before the recommendations were made upon which the Scheme is based.

" Consultation " is a word which has received judicial consideration in this context. It is sufficient to quote a passage from a judgment delivered by Lord Porter in *Derham and Stark v. The Church Commissioners for England* in the *Union of the Benefices of Whippingham and East Cowes, St. James* [1954] A.C. 245. In considering the words " Consultation so far as is practicable with the incumbents and parochial church councils concerned ", as they appear in Section 3 (1) of the 1949 Measure, it was said (see page 254)--

> " In case, however, a parochial church council should not fully appreciate that the views of its members were required, they think it would, as a rule, be desirable that whoever represents the Pastoral Committee in consulting the council should state in terms that he has been requested to see and consult the council to ascertain their views and report them to the committee. But in their Lordships' opinion, though advisable, so elaborate and meticulous a proceeding is not essential. A full and sufficient opportunity must be given to the members of the council to ask questions and to submit their opinions in any reasonable way, but that is all that is required."

Their Lordships now return to the history of the matter following on the pastoral visit of the Bishop in January 1963.

On 22nd March 1963 Canon Dalby, Rural Dean, informed Mr. Rollett that the Pastoral Committee had appointed a small fact finding committee on the situation in the West end of Lincoln. The small committee visited the parish on 4th April, Canon Dalby in his letter having emphasised, and the Reverend C. R. Evans, incumbent of St. Martin's, having in substance confirmed that this was not the official meeting of the Pastoral Committee at which representations could be made about the future of St. Martin's. It was made plain that these would come at a later date and that although the committee was a fact finding body purely, their findings would obviously have a good deal of influence with the Pastoral Committee.

The fact finding meeting which took place at St. Martin's Vestry on 4th April was attended by the Reverend C. R. Evans, the incumbent, Mr. Cooke, treasurer, Mr. Rollett, churchwarden, and Miss Mowberry, secretary of the Parochial Church Council. Minutes of the meeting were recorded but not submitted to the appellant council until recently, after

these proceedings were instituted, although, as appeared later, the Bishop was under the impression that copies had been sent to all church councils concerned.

In any event this meeting could not be described as a consultation for the purposes of the Measure and this had been made clear by the Rural Dean and by the Vicar.

Subsequently the Parochial Church Council of St. Martin's appealed to the Diocesan committee to withdraw the proposal to close St. Martin's church. This the committee agreed to do, and decided to appoint a working party under the chairmanship of the Archdeacon of Lincoln to prepare a new Scheme for a united benefice. This working party included representatives of the parishes affected.

On 13th May 1964 the Secretary of the Pastoral Committee informed Miss Mowberry by letter that the working party would make recommendations and that full opportunity for consultation with the Pastoral Committee would be offered.

On 20th May 1964 the Church Commissioners informed Miss Mowberry by letter that they agreed to withdrawal of the draft Scheme which included the demolition of St. Martin's church making it clear that it was open to the Bishop and the Pastoral Committee to present fresh proposals.

On 21st June 1964 the working party met at the Old Palace, Lincoln, but no agreement was reached by the representatives of the Parishes themselves. It was left for the Pastoral Committee to prepare fresh proposals for consideration by the parishes and by the Church Commissioners.

On 11th September 1964 Miss Mowberry was informed that consultation with the Parochial Church Council would be held as soon as possible so that proposals might be drafted for presenting the new Scheme to the Church Commissioners. On 2nd November 1964 the Parochial Church Council of St. Martin were invited to meet the Pastoral Committee for consultation on 1st December 1964 and was told that fresh proposals were in course of preparation. On 11th November 1964 the Secretary of the Pastoral Committee sent to Miss Mowberry a letter in the following terms:

> "The Pastoral Committee at its July meeting, and at three subsequent meetings, has been carefully considering the Report of the working party which met on the 21st June, 1964, a copy of the Minutes of which has already been sent to you.
>
> I am now directed to inform you that by a unanimous vote the Committee has decided to recommend a union of the parishes of St. Martin and St. Faith, and that St. Martin's Church be declared redundant and taken down, the site to be sold by the Church Commissioners, with the proviso that the net proceeds of such sale shall be applied towards the cost of erecting a church dedicated to St. Martin in a new housing area in Lincoln.
>
> It is the recommendation of the Committee that the new church should incorporate such of the materials and furnishings and fittings as the Bishop, in consultation with the Pastoral Committee and the Parochial Church Council of the new United Parish, and with the church people at the new site, shall agree and direct.
>
> This recommendation has been arrived at after the most careful and lengthy consideration, and I should be glad if you would kindly bring it to the notice of your Parochial Church Council and invite all the members (or their duly authorised representatives of that Council) to attend a meeting for consultation with the Pastoral Committee on Saturday morning, the 28th November next, at 11 o'clock, in the Lecture Room of the Lincoln Theological College in Drury Lane, Lincoln. This letter, of course, cancels the previous invitation to a meeting on the 1st December."

This letter was not happily phrased in that it appeared from its language that the decision to recommend the demolition of the church was final and that any consultation contemplated related solely to matters of detail.

This impression was not improved by an announcement in the Lincolnshire Echo on 12th November 1964 emanating from the Diocesan Information Office which referred to the decision taken as if it were final and the fight to keep St. Martin's open might have failed.

The meeting summoned for 1st December took place on the altered date, 28th November 1964, presided over by the Bishop. The three parishes of St. Martin, St. Faith and St. Mary-le-Wigford were represented. The Bishop announced that the Pastoral Committee had made certain proposals now before the meeting and that the occasion was a formal and legal consultation with the representatives of the Parochial Councils.

Mr. Rollett made a formal protest that, in view of the contents of the letter of 11th November 1964, the Parochial Church Council of St. Martin's felt very strongly that the day's meeting could not be regarded by any stretch of the imagination as consultation as that word is officially understood. The manner in which the meeting had been convened and the adverse publicity given in the Press were strongly deprecated, and the members of his Council, he said, were attending without prejudice to their legal rights.

This was not an auspicious beginning to the meeting which was recorded verbatim on a recording machine.

Thereafter the Bishop continued his address in which he endeavoured to explain the position as he saw it. He did in the course of his address use language which suggested that the consultation was a legal formality saying " we shall take note of what you say though of course it is clear that the Pastoral Committee has had the matter before it for some 18 months and has its own mind and judgment in these things ". He added " After Tuesday the proposals will go to the Church Commissioners."

If a wrong impression was created by this statement it was corrected by the Bishop of Grimsby who referred to Mr. Rollett's statement that this was in no way a consultation. He said it did seem an important fact that " whilst the Pastoral Committee on the evidence it had was maintaining its own view, this is a real consultation in the sense that if there is any new argument or any re-presentation of an old argument the Pastoral Committee is still listening and still able to change its mind. It would be quite wrong for us to say we have made up our minds and simply let you talk. As a member of the Pastoral Committee may I say we want to hear what is being said. There may be something fresh . . .". Later he added " You are asked to attend a meeting for consultation and consultation means consultation, not just listening and going away, we are not closed in mind." The record shows that opportunity was given to ask questions in search of information and that the representatives of St. Martin's who were present together with their legal representatives took advantage of the opportunity given.

In these circumstances it is impossible to say that there was no consultation on 28th November 1964. There had been no consultation beforehand but the history of the matter which appears from the correspondence shows clearly that on the 28th there was consultation and it is not correct to say that, since in effect a decision had been taken, the meeting on that date was meaningless. It is impracticable in a situation of this kind to hold consultations without the Pastoral Committee having arrived at some previous decision as to what recommendations they intend to submit to the incumbents and councils with whom it is their bounden duty to consult in order to obtain their views before reaching a final decision. Mr. Rollett's not unnatural misunderstanding of the phraseology of the letter of 11th November must have been a strong factor in causing him to make a protest on behalf of himself and the other members of his Council but that is not

to say that the decision was immutable. Finally, at the meeting of 28th November, great care was taken, in particular by the Bishop of Grimsby, to make sure that his hearers understood that they were attending a meeting for the purpose of being consulted by those who still had open minds. Thereafter members of the Parochial Church Council asked their questions and put forward their objections.

Some complaint was made that, contrary to the Bishop's belief, no copy of the minutes of the earlier fact-finding meeting was sent to the Parochial Church Councils at the time. These minutes were those of the Pastoral Committee and would not normally be circulated widely. No doubt the fact that they were not disclosed at once exacerbated the situation but there is no reason to infer any sinister motive or an intent to keep the Parochial Church Councils in the dark as to what was going on.

On the merits of the case their Lordships will always be slow to dissent, save for the most cogent reasons, from the recommendations embodied in a Scheme regularly brought into existence with the concurrent approval of the Pastoral Committee, the Bishop and the Church Commissioners and with proper regard for the matters contained in Section 3 (2).

Great emphasis was laid by the appellants on the superior position and size of St. Martin's Church as compared with that of St. Faith's which is small and less attractively sited but the fact remains that St. Faith's occupies a central position in the proposed new parish whereas St. Martin's is at its eastern edge, although this disadvantage may be counterbalanced by improvements in the layout adjacent to the proposed Ring road.

The lower maintenance costs at St. Faith's cannot be ignored.

The appellants also criticised the Scheme on the ground that it was an attempt to deal with the large problems covered by the 1958 report in a piecemeal fashion. Although the Scheme is permissible within the terms of Section 3 of the 1949 Measure which contemplates survey in sections of a diocese and recommendations for the better provision of the cure of souls in any part of the diocese the appellants contended that Lincoln as a whole is the section which ought to be surveyed and they would prefer to implement the 1958 report which they had already accepted in its entirety. In particular they refer to the position of St. Mark's which was recommended for demolition and the sale of its site. It so happens that St. Mark's has been vacant since the Vicar died in January 1967 and reconsideration of the whole position can now take place. Their Lordships recognise that the vacancy in St. Mark's parish does make a difference but they feel unable on this ground to reject the Scheme or to remit it. The Scheme must be considered as it stands, on its merits, unaffected by the fact that another living has become vacant since its presentation.

Reviewing the whole matter their Lordships feel compelled, against the background of the needs of the diocese as a whole, humbly to propose to Her Majesty that the Scheme be affirmed.

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In the Privy Council

THE PAROCHIAL CHURCH COUNCIL OF ST. MARTIN, LINCOLN

v.

THE CHURCH COMMISSIONERS

DELIVERED BY

LORD HODSON

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