

*Pastoral Measure 1968*

**R. E. Rogers and Others** - - - - - *Appellants*

v.

**The Church Commissioners**- - - - - *Respondents*

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 11TH FEBRUARY 1980

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*Present at the Hearing:*

LORD EDMUND-DAVIES

LORD SCARMAN

LORD LANE

[*Delivered by* LORD LANE]

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The task which faces their Lordships in exercising the appellate jurisdiction under section 8 of the Pastoral Measure 1968 is unenviable. There has been nothing in the nature of a judicial hearing or determination from which the appeal is made. Sections 3 to 7 of the Measure set out the steps which must be taken by the Pastoral Committee, the bishop and the Church Commissioners before any scheme for altering the arrangements for pastoral care and supervision in the diocese is submitted for confirmation by Her Majesty in Council. It is essentially an administrative decision which is the subject of appeal. The various people who have of necessity examined and formulated the scheme are *ex hypothesi* more experienced in matters ecclesiastical and pastoral than are their Lordships. However, section 8(4) of the Measure provides

“ . . . Her Majesty in Council may order that the appeal be heard by the Judicial Committee of the Privy Council, and the Judicial Committee shall make a report thereon and may propose to Her Majesty in Council that the appeal should be allowed or dismissed or that the scheme should be returned to the Commissioners for reconsideration . . .”.

It follows that the occasions when an appeal will be allowed are likely to be few. As has been repeated to the point of tedium, only where their Lordships are convinced by cogent reasons that the scheme is erroneous and does not meet the justice of the case will they take it upon themselves to exercise their powers to allow the appeal under section 8.

The scheme in the present case is dated 25th November 1977 and primarily concerns the church of St. Mary the Virgin, Burgh Heath. The scheme proposes that the church, being a chapel of ease in the parish of Tattenham Corner and Burgh Heath in the diocese of Guildford, should be declared redundant and that the area covered by that parish should be transferred as to one part to the parish of Banstead, as to a second part to the parish of St. Andrew, Kingswood, in the diocese of Southwark, and that the third section should remain in the parish as before but should look to the church of St. Mark's as the proper place of worship. This church, as will shortly appear, has only recently been built.

St. Mary's lies just to the east of the A.217 main Dorking to Banstead road. There has recently been extensive housing development to the west side of that road at Tattenham Corner. With a view to catering for the needs of the growing number of people in this area work was started in 1966 on the new church, St. Mark's, roughly in the centre of the Tattenham Corner development about half a mile away from St. Mary's, as the crow flies. St. Mark's was made the new parish church. St. Mary's became a chapel of ease. It is perhaps worthwhile to note that the parish raised no less than £24,025 towards the building of St. Mark's. The proponents of the scheme say that a choice must now be made between the two churches. Both, it is said, cannot continue to exist. One must be made redundant, and that must clearly be St. Mary's. The basis of those contentions, it is fair to say, is primarily financial.

The matter is put in this way in paragraph 8 of the respondents' Answer:

"In supporting the view . . . that St. Mary's should be declared redundant the Committee was motivated by considerations of mission and pastoral care and in particular for the need for missionary work amongst the new housing estates at Tattenham Corner and the need for the Vicar in his work to have the help of an assistant curate whose stipend might not be able to be found if a considerable part of the financial resources of the Parish had to be applied in the repair and maintenance of St. Mary's".

The appellants' case was presented with admirable clarity and economy of words by one of their number, Mr. R. E. Rogers. They believe, rightly or wrongly, that for very many years there has been amongst some of those who matter an ill-concealed wish for the end of St. Mary's. The start was certainly inauspicious. In 1962 the then incumbent, after only three months in that office and with little if any warning, applied to the Local Planning Authority for permission to develop the site by demolishing the church and erecting a petrol filling station and garage in its place. Permission was refused, but even at this early stage, a lack of enthusiasm (to say the least) about the continued survival of St. Mary's was all too apparent. Nevertheless in 1969 the Guildford Diocesan Pastoral Committee decided that St. Mary's had not become redundant despite the building of St. Mark's two years before.

St. Mary's has since then, and particularly from 1976, suffered from the blighting effect of threatened closure. For 12 months there was no curate—the Vicar was on his own. Services were of necessity fixed at awkward times, and inevitably congregations became smaller. There is however no doubt that there is an enthusiastic if small body of worshippers who would be seriously affected by any closure. Equally there is no doubt that if services were held regularly and at reasonable times they would draw good congregations. A not inconsiderable number of new houses have been built near St. Mary's, though not to compare with the number at Tattenham Corner.

It seems to their Lordships that if one were to pay regard to pastoral care alone both churches are undoubtedly required. What the respondents say is that the money for that course is not available. What Mr. Spencer Maurice described as a "stark choice" lies between churches and manpower. If both churches are retained there will not be enough money to provide a curate to assist the vicar; if St. Mary's is declared redundant that will release the funds to pay for such assistance. Either, he contends, one church and two clergy or two churches served by one parish priest.

That contention requires close examination. It is clear that when the matter was considered by the Parochial Church Council in 1975, they were under the impression that repairs and renewals to St. Mary's were

a matter of urgency and could be delayed no longer, that there would be a deficit in the parish accounts of some £1,000 by the end of the year, and that the situation was such that it would mean financial ruin if both churches were to be kept alive.

Those impressions were not correct. Both the urgency and the cost of repairs had clearly, albeit innocently, been exaggerated. There is now available from various sources some £5,620 for any work which requires to be done.

So far as the expected deficit was concerned, when the final accounts appeared in March 1976 so far from being a loss of £1,000 there was a credit balance of £2,000.

Moreover at the time of the meeting of the Parochial Church Council on 18th November 1975 when the Council voted to recommend the declaration for redundancy, the united parish was still paying off the debt for the building of St. Mark's. Only six weeks later the whole of that remaining debt had been discharged. That possibility does not seem to have been foreseen at the meeting.

Their Lordships appreciate that the way ahead may not be easy, but judging from what they have heard and read, there is a powerful and generous body of well-wishers who will make it their business to see that a revitalised St. Mary's will not lack the funds necessary for existence. Their Lordships do not believe that the dilemma posed by Mr. Spencer Maurice in reality exists. There is a real need for both churches and the continued existence of both will not impose any insurmountable financial burden.

Their Lordships have been convinced by the appellants that the scheme is not one which ought to be implemented and accordingly propose to Her Majesty in Council that the appeal should be allowed.

**In the Privy Council**

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**THE CHURCH COMMISSIONERS**

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DELIVERED BY  
LORD LANE