

*Pastoral Measure 1968*

**Rev. Eric Rotherham**      -      -      -      -      -      -      *Appellant*

v.

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 25TH JUNE 1979

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*Present at the Hearing:*

LORD WILBERFORCE

LORD EDMUND-DAVIES

LORD KEITH OF KINKEL

[*Delivered by LORD WILBERFORCE*]

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This Scheme made by the Church Commissioners on 17 May 1978, under the Pastoral Measure 1968, relates to the benefice of Saint Paul, Warrington, in the diocese of Liverpool. It has been approved by the Bishop of Liverpool.

This Scheme provides for the dissolution of the benefice of St. Paul and for the parish Church to be declared redundant. A new benefice is to be created to be named the Benefice of St. Mark, Dallam, and a portion of the parish of Saint Paul is to be transferred to it. In addition this new parish is to include parts of the parishes of Saint Michael, Burtonwood, and of Winwick. Other portions of the parish of St. Paul are to be transferred to the parish of St. Barnabas, Bank Quay, Warrington, and to the parish of Holy Trinity, Warrington.

An unusual feature of the Scheme is that there is, in the benefice of St. Paul, a Vicar in office, the Reverend Eric Rotherham, who was instituted in 1972. The Vicar is opposed to the dissolution of the benefice and to the declaration of redundancy of the parish Church. As a matter of law, the Pastoral Measure 1968, s.24, permits a Scheme in such a case to be brought into operation without the assent of the incumbent but provision is made for compensation to be given. The Vicar is now appealing against the Scheme to Her Majesty in Council.

Their Lordships wish to say at once that they have great sympathy with the Vicar. The benefice became vacant in 1970, and with hindsight it can be seen reasonably clearly, that the wise course would have been to suspend appointment to the benefice pending a decision as to the future of the parish and to put in a priest in charge. Mr. Rotherham was approached in about 1971 and received what he took—and with reason—to be encouragement to accept the appointment from the

Chairman of the Patrons and the then Bishop of Warrington. He was instituted with full ceremony in February 1972, with the presence of the Bishop and the Archdeacon, yet soon after he was told by the then Bishop of Liverpool and the Rural Dean that his Church was going to be closed: the latter indeed said that parish reorganisation had been under consideration for many years.

The present Bishop of Liverpool (who was confirmed in June 1975) accepts that the appellant was encouraged, "perhaps strongly encouraged," to take the post, but adds that he has been informed by the Archdeacon of Warrington that the appellant was told before his appointment that there was some doubt as to the future of the parish.

This may be, but the appellant was clearly led into the belief that he was entering upon a freehold appointment, and that there was a constructive and useful future ahead of him in the parish. It is now clear that to have induced this belief was extremely unfortunate.

Their Lordships now have to consider the situation as it is in 1979, and in the light of the decisions made by the Church authorities on the pastoral merits. The present Bishop of Liverpool, shortly after confirmation, asked the Commissioners to hold up the Scheme so that a complete review of all the facts and arguments could be made.

This review was in fact carried out by the new Bishop of Warrington, Bishop Henshall, appointed in January 1976. Their Lordships find much reassurance in the action that was thus taken: they are satisfied, from the Bishop of Liverpool's affidavit, that the whole merits of the Scheme have been looked at with fresh minds. The conclusion reached by the Bishop of Liverpool is that the Scheme is the correct solution to the pastoral problems in this part of the diocese—a conclusion which he supports with detailed facts and reasoning. Their Lordships have no doubt that this conclusion must be supported, as one resting upon the judgment of those whose responsibility it is to decide upon parochial organisation, and that there are no grounds upon which they can differ from it.

Their Lordships will indicate some of the more important issues raised by the appellant, out of respect for his views. Their Lordships have no doubt as to their complete sincerity, and more than that, it may well be that some of the individual suggestions made by him have merit comparable with the conclusions behind the Scheme. He has, after all, been working the parish for over seven years, with, as is accepted, devotion and unremitting energy. But ultimate decisions on questions such as these depend upon complex judgments on a number of matters—financial, social, architectural and pastoral, all of which admit of genuine differences of view, based upon predictions and projections which must be fallible, as to population and development, responsibility for which has been entrusted to the Church Commissioners and the Bishop. They have also to take into account the available resources in manpower and finance in the Church as a whole and decide upon the best policy for allocating these where they are needed.

1. Consultation. The appellant makes a number of complaints as to lack of consultation between himself and the Parochial Church Council on the one hand, and the Diocesan Pastoral Committee and the Bishop on the other. Several letters by himself and his parishioners remained unanswered. These complaints are referred to and in part admitted by the Bishop of Liverpool. There seems indeed to have been some failure in communication, and difficulties in arranging meetings, but their Lordships are not able to attribute these to any desire to mislead the

appellant or to override local feelings. But the appellant may have received the impression that his views were not being given proper consideration—a natural enough impression where a number of committees and authorities are concerned with decision-making. But overall they accept the Bishop's view that fair consultation took place.

2. Another head of objection is concerned with the parish Church. St. Paul's is obviously a fine and conspicuous building dating from about 1830 and standing in a spacious churchyard. Holy Trinity, Warrington, though in some opinions of greater architectural merit, stands in a street and in the appellant's judgment lacks distinction. A good deal of work will be required to put Holy Trinity into proper repair, but the respondents say that the money needed (about £20,000) has been obtained and work has begun. Money needed for the repair of St. Paul's would need to be found. There is available information regarding the finances of St. Paul's, and as to the respective Diocesan Quotas and Stipend Assessments of St. Paul's, Holy Trinity, and St. Mark's, Dallam. The Bishop of Liverpool deals fully with these matters in his affidavit and in their Lordships' view no conclusion adverse to the Scheme can be extracted from these.

3. There are a number of population figures and projections, relied upon by both sides. This part of the diocese is undoubtedly passing through a state of transition and redevelopment which must naturally call for some adjustment of inner parish boundaries. Again their Lordships, while accepting that the appellant's figures and the conclusions he draws from them are in no way unreasonable, find themselves unable to dispute the wider view taken by the respondents.

4. A number of alternative boundary changes have been suggested by the appellant to those proposed by the Scheme. The appellant's intimate knowledge of the district makes these worthy of respect. The respondents in their answer say, and their Lordships accept, that various alternative solutions were considered. The choice between them—and reference to the map shows that there are many possible variants—is a matter of judgment. The respondents' assessment, on the available material, is not one which their Lordships are able to question.

There are a number of other detailed matters, very properly raised by the appellant, both in his petition and in his oral argument, which their Lordships will not attempt to canvass. They have given them careful consideration. As in the other matters, their view is that there is no lack of reason in them. But they have been considered, in the end fairly, by the respondents and the Bishop of Liverpool and have led to the conclusion which their Lordships can only endorse.

Their Lordships would only add, that no criticism whatever has been made of the appellant's ministry in the parish. He and his wife have quite evidently worked hard and well in the interest of their parishioners' spiritual and social needs, over a wide range of activities. Their Lordships are happy to know that this is appreciated by the Bishop who describes the appellant's work as considerable and praiseworthy. The Bishop expresses the sincere hope that a suitable appointment will be found for him. Their Lordships venture to join in this.

As to the appeal, their Lordships can only come to the conclusion that this Scheme must be confirmed and the appeal dismissed. They will humbly advise Her Majesty accordingly.

There will be no order as to costs.

**In the Privy Council**

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**REV. ERIC ROTHERHAM**

v.

**THE CHURCH COMMISSIONERS**

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DELIVERED BY  
**LORD WILBERFORCE**