

Captain Geoffrey Hargreaves and Others - - - *Appellants*

v.

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 12TH APRIL 1983

Present at the Hearing :

LORD KEITH OF KINKEL

LORD SCARMAN

LORD BRIGHTMAN

[*Delivered by* LORD SCARMAN]

The Pastoral Scheme against which this appeal is brought was made by the Church Commissioners on 2nd June 1981 and relates to the two parishes and benefices of Saint Mary, North Eling (otherwise known and now generally referred to as Copythorne) and Minstead in the diocese of Winchester. The scheme provides for the union of the two benefices but the two parishes "shall continue distinct". The new benefice is to be named "The Benefice of Copythorne and Minstead". The scheme further provides that the parsonage house of Minstead shall be the place of residence of the incumbent of the new benefice and that the parsonage house of Copythorne shall be transferred to the Diocesan Board of Finance for disposal.

Petitions of appeal against the scheme have been duly lodged with the Clerk of the Privy Council by Captain Geoffrey Hargreaves, Mr. Ted Puntis, Mr. David Hornsby and Mr. Roy Farmers acting on behalf of themselves and some 400 other parishioners of Copythorne. They petition not that the scheme shall be of no effect but only that Her Majesty be graciously pleased to return it to the Commissioners for reconsideration. Their real objection is to that part of the scheme wherein it is proposed that the incumbent of the new benefice shall reside not in Copythorne but at Minstead.

Much of the very full and carefully prepared evidence presented by the appellants to the Board is, however, concerned with other matters, which plainly have caused concern among some of the parishioners of Copythorne. Protest has been voiced and a campaign "Save the Parish of St. Mary's" was developed against the union of the benefices. The fact that the two parishes are to remain distinct has not dissuaded some from believing that the parish of St. Mary, Copythorne is in danger of extinction. But this is now in the past. Wisely, albeit reluctantly, the appellants accept the union of the two benefices. Their Lordships do not, therefore, review the arguments for and against the union.

A very considerable volume of evidence and argument has been directed to the proposition that there has been on the part of the Church authorities inadequate consultation between them and the parishioners of Copythorne. Their Lordships are, for the reasons which they will briefly outline, satisfied that the Church authorities have complied with the requirements of the Pastoral Measure 1968: indeed, they have done more than the minimum required by the Measure.

Under the Measure it is the duty of the Diocesan Pastoral Committee from time to time to review the arrangements for pastoral supervision and to make recommendations to the bishop: section 2(1). Before deciding to make recommendations, the Committee shall "so far as may be practicable ascertain the views of the interested parties": section 3(1). The interested parties are: the incumbents of any benefices affected, the patrons, the parochial church councils affected, the archdeacon, the rural dean and the local planning authority: section 3(2). This was done. Before the Committee made its recommendations, the Bishop of Southampton and the Archdeacon of Winchester met the Copythorne Parochial Church Council on 24th April 1980. On 24th July 1980 a sub-committee of the Diocesan Pastoral Committee met the Copythorne Parochial Church Council when two votes were taken which at the very least revealed that a majority of the Council (as then constituted) objected neither to the union of the benefices nor to the residence of the incumbent being at Minstead. The figures of the two votes were:—

(a) Union of the benefices—

11 in favour (or, at least, not objecting); 4 against; 1 abstention.

(b) Incumbent at Minstead—

10 in favour; 4 against; 2 abstentions.

When, therefore, the Bishop of Winchester submitted his proposals, based on the Committee's recommendations, to the Commissioners on 19th September 1980, the requirement of section 3 of the Measure that the Committee do ascertain the view of the parochial church council of Copythorne had been met.

The Church Commissioners accepted the Bishop's proposals and published the draft of the scheme on 24th October 1980. A campaign to oppose it was organised and attracted considerable support. One of the victories of the campaign was to secure a majority on the Parochial Church Council against it. Undoubtedly many believe or were persuaded into thinking that the future of St. Mary's as a parish was in danger. And there was a powerfully voiced opposition to the new vicar residing in Minstead. On 24th November 1980 the campaign committee submitted to the Commissioners its "Original Case", a formidable document covering with its annexures 27 pages. It was the duty of the Commissioners to consider the representations contained in this document: section 5(4). They also had the power, though there was no obligation, to afford an opportunity to its signatories and also to other persons to make oral representations to them: section 5(4). This they did in March 1981 when a sub-committee of the Diocesan Pastoral Committee attended an open meeting at Copythorne Parish Hall and later met the parochial church councils of the two parishes affected by the draft Scheme. Their Lordships do not doubt the Commissioners were fully informed and well aware of the arguments of the appellants and their supporters in the parish of Copythorne before they made the scheme, which they did on 2nd June 1981. Any conceivable doubt that there could have been on this score was, or ought to have been, dispelled by their very full written statement of 1st June 1981 in which they gave their reasons for making the scheme.

Accordingly their Lordships reject the submission that there was inadequate consultation before the scheme was made.

Before turning to the real issue between the parties their Lordships think it may be helpful to review the relevant law. A right of appeal against a pastoral scheme is given by section 8(2) of the Measure to any person who has made written representations. The exercise of the right leads to a genuine appeal process: that is to say, it is not to be compared with judicial review under R.S.C. Order 53, notwithstanding certain superficial similarities. It follows that an appellant is entitled to have his appeal heard on its merits. Their Lordships would repeat, and respectfully endorse, what Lord Wilberforce, delivering the opinion of the Board, said in *Pim v. The Church Commissioners* (20th March 1975):—

“ If objections are genuinely brought forward and supported by factual evidence, their Lordships must take them into account. They will not lose sight of the fact, as underlined above, that the Scheme has the support of responsible bodies within the Church of England, which, in some cases, may well have considered the very objections now urged and weighed them up. But it is not enough, their Lordships would venture to state, for the Church Commissioners to rest upon general assertions in the face of specific objections, where these seem to be of a concrete and relevant character.”

Nevertheless, the elaborate process of making a scheme set out in sections 3 to 7 of the Measure, a process which begins with a review by the Pastoral Committee of the diocese, requires the approval by the bishop of the Committee's recommendations, and the decision of the Church Commissioners first to prepare a draft scheme and later, after considering any written representations made to them, to make the scheme itself, underlines the very careful consideration demanded of the Church authorities throughout all its stages. By the time a scheme is brought to the attention of the Judicial Committee on appeal it will represent, unless there has been some irregularity or departure from the statutory process, the fully considered view of those charged by law with providing for the cure of souls in the diocese and with protecting, so far as practicable, the traditions, needs and characteristics of individual parishes, which are the two matters to which the Measure requires the Pastoral Committee to have regard “ at all times ”: section 2(2). In this process the Bishop of the diocese has the vital role: no scheme can go forward without his approval.

It is not surprising, therefore, that successive Boards have emphasised the importance to be attached to the view of the Church authorities. In *Elphick v. The Church Commissioners* [1974] A. C. 562, 566, Lord Diplock, delivering the opinion of the Board, quoted with approval the warning given in an earlier case under the legislation which preceded the Pastoral Measure of 1968:—

“ This does not, however, mean that their Lordships should not 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, . . . ”:

Little Leigh Parochial Church Council v. The Church Commissioners [1960] 1 W.L.R. 567, 568.

The adjective “ cogent ” has assuredly become part of the case law in this field; “ repeated to the point of tedium ” according to Lord Lane in *Rogers v. The Church Commissioners* (11th February 1980). But important though the word is, it should not be allowed to mask the truth, namely that appeal to the Judicial Committee is an appeal on the merits. And in some contexts it can be misleading. For instance, frequent reference is made in the cases to a dictum to be found in the Board's opinion in the *Parochial Church Council of the Parish of Holy Trinity, Birkenhead v. The Church Commissioners* (6th May 1974) to the effect

that their Lordships will not refuse to confirm a scheme "unless for irregularity of procedure, for excess of jurisdiction, or on cogent evidence of erroneous judgment". This is helpful, so far as it goes. But it is not, nor no doubt was it intended to be, a complete statement of the law. Change of circumstances, or the emergence of fresh evidence, can in a proper case constitute grounds for allowing an appeal, even though there was no question of any erroneous judgment by the Church authorities at the time they made the scheme. *Rogers' case*, (supra) was one in which there was shown to have been a sufficiently significant change of circumstance (the provision by voluntary contributions of the finance necessary to maintain a second church, which the scheme had declared redundant). And, if the appellants are right, it must be part of their case that the gathering of evidence and the growth of hostile parish opinion since the publication of the draft scheme should cause the Church Commissioners, if the scheme be returned to them, to consider it afresh so far as the residence of the incumbent is concerned.

The appellants argued their case in person. Captain Hargreaves accepted the suggestion put to him by one of their Lordships that the most effective formulation of their case was that they were able to show that, in selecting Minstead Rectory as the place of residence of the new incumbent, the Church authorities had made a serious error of judgment and that this view was strongly reinforced by the evidence which, after publication of the draft scheme, the campaign committee had succeeded in gathering together. It is not, however, enough to show that a reasonable person, or body of people, could reasonably have reached the conclusion that Copythorne Vicarage was better suited than Minstead Rectory as the residence of the vicar of the two parishes. If there is room for two reasonable opinions, the fact that the Church authorities have adopted one will almost always be decisive against the other. In the present case their Lordships accept that two views were and are possible. There is a reasonable case, as will emerge when their Lordships outline the facts, for selecting Copythorne: but is the evidence such as to ground an inference that it would be an error of judgment to select Minstead? That is the true issue. The appeal cannot succeed unless it can be shown either that it was an error of ecclesiastical judgment to choose Minstead or that circumstances have changed so significantly since Minstead was chosen that the Commissioners and the Bishop ought to reconsider this part of the scheme.

Their Lordships propose now to outline the salient features of the appellants' factual case. Copythorne is a parish of scattered settlements in a rural setting lying close to the northern perambulation of the New Forest and only a few miles west of the centre of Southampton. Its eastern boundary is adjacent to the largely suburban Totton. The parish is divided into two parts by the motorway M27. North of the motorway the parish consists of farm and park land and two villages, Newbridge and Ower (with Wigley). South of the motorway are the townships of Cadnam and Bartley, which grew up as a ribbon development along the A336. St. Mary's Church and, at a little distance from it, Copythorne Vicarage, are somewhat isolated, being a mile or so to the north-east of Cadnam. The south-west boundary of the parish marches with the perambulation of the New Forest. The population of Copythorne is about 2,700 and growing.

Minstead is a small parish adjacent to the south-west boundary of Copythorne. Part of the New Forest lies between Cadnam and Bartley in Copythorne, and Minstead village where the church (a historic and beautiful building) and the Rectory are to be found. The distance between the village and the developed area of Copythorne is between $2\frac{1}{2}$ and 3 miles. The parish's population is 710 and static (or diminishing).

The two parishes are very different in character, in size and in the age structure of their populations. Minstead tends to be elderly: but it is admitted to be a compact little community supportive of its church and vicar. And the Rectory is close to the historic church, which in summer attracts many visitors.

Copythorne parish, particularly south of the motorway, is an active bustling place. Community activities, with clubs for young and old, abound. There is a vigorous scout movement. There are two good Church of England schools. The church is well supported: and the Vicarage was built some 13 years ago with the aid of voluntary contributions. Some parishioners feel this gives them a claim on it for meetings. Although this cannot be so, it is the fact that it has been the practice of the vicar until recently to allow it to be used for church and other meetings.

The foregoing is the barest summary of the very full and helpful evidence prepared by the appellant, Mr. Hornsby, himself a professional surveyor. The evidence justifies his conclusion that the great preponderance—he put a figure on it of 90 to 95%—of activity, business, industrial, social and religious of the new benefice will be in the parish of Copythorne. He thought it totally illogical that the vicar should reside elsewhere than in the parish and at the Copythorne Vicarage. This short, and by no means complete, outline of the facts presented to their Lordships by the appellants is certainly sufficient to show that there exists a reasonable case for selecting Copythorne as the place of residence of the new incumbent.

The Church authorities, however, rejected it. They accepted the differences in structure and population of the two parishes. Of the parish of Minstead they said, correctly, that it contains a homogeneous village of which the church and the parsonage house form an integral part. Copythorne they described, also accurately, as consisting of six scattered settlements with no identifiable centre. They were satisfied that one priest, whether his residence be at Minstead or Copythorne, would not have too difficult a task in ministering to two parishes consisting of some seven settlements. They concluded (and this was the firm opinion of the Bishop of the diocese) that the incumbent should be housed at Minstead where there was a supportive community and where he would be able to carry out his ministry efficiently and contentedly.

In their Lordships' view it cannot be said that the Church authorities were guilty of any error of judgment. They plainly weighed up the respective merits of the two places of residence and chose Minstead for reasons which their Lordships think were cogent. Inevitably the new incumbent will have to travel daily if he is to minister effectually to the scattered inhabitants of the two parishes. It will make little difference to the time and money spent on travel whether his home be at the Copythorne Vicarage or the Minstead Rectory. Both are some distance from the centres of habitation, though Copythorne is nearer. It is, however, very important that the incumbent should be housed agreeably so that he may minister to his parishioners "efficiently and contentedly". The Copythorne house is, no doubt, entirely suitable. But the Minstead house has the edge for the reasons given by the Bishop of Winchester. In his affidavit he listed four reasons:

- (a) the Parsonages Committee thought Minstead was marginally the "nicer" house:
- (b) the Minstead house is more pleasantly situated:
- (c) the Copythorne house is "rather isolated", whereas the house at Minstead is next door to the church, with which and the village it forms a compact entity:

(d) the Minstead church attracts many visitors who, though the duty owed to parishioners comes first, represent an opportunity for extending the incumbent's ministry.

The Bishop concluded this part of his evidence with these words:—

“I regard it as of considerable importance that any Incumbent should have in the place where he resides a friendly and supportive community amongst whom he and his family feel happy.”

In their Lordships' view the Bishop is not to be criticised for bearing in mind the welfare of his clergy as well as that of the inhabitants of his diocese or for his reasons in choosing Minstead.

Their Lordships fully understand the feelings of the appellants and their supporters. They have shown that genuine grounds for wishing their vicar to be in Copythorne exist. It is not an unreasonable view. But they have shown no error of judgment on the part of the Church authorities. Had the two opposing views been evenly balanced, their Lordships would have thought it right to uphold the view of the Church authorities for the reasons earlier developed. But the balance is, in their Lordships' considered opinion, in favour of the Bishop's firmly expressed choice of Minstead.

Accordingly, their Lordships will humbly advise Her Majesty that the appeal should be dismissed and the scheme confirmed. The Commissioners have, very properly, withdrawn their claim to costs. There will, therefore, be no order as to costs.

In the Privy Council

**CAPTAIN GEOFFREY HARGREAVES
AND OTHERS**

v.

THE CHURCH COMMISSIONERS

DELIVERED BY
LORD SCARMAN