3.2.81

Memorial in Church

COURT OF ARCHES

Re. ST. MARGARET, EARTHAM

The Dean of the Arches (J.A.D. Owen, Q.C.)

This is an appeal from the Judgment of Chancellor Quentin Edwards given on the 5th July, 1980. By his Judgment the Chancellor refused to grant a confirmatory Faculty sought by the Petitioners, to allow a memorial wall tablet to remain affixed to a wall of the Church of St.Margaret in the Parish of Eartham in the Diocese of Chichester. The tablet which was placed in the Church without any lawful authority, for which appropriate apologies have been made by and on behalf of the Rev. H.R St.G.Gray, the Vicar, commemorates the life of Annie Hawkins who died in 1979 and was the wife of Leonard Hawkins who is, and has been for many years, a Churchwarden of Eartham Church and is one of the Petitioners.

It is now submitted to me on behalf of the Appellant that the Chancellor exercised his discretion on a basis which was an erroneous evaluation of the facts taken as a whole. If I am satisfied that this submission is correct I shall allow this Appeal: see In Re St.Edburga's Abberton (1962) P.10.

The history of the matter makes it necessary for me to emphasise that a Faculty is always necessary before a memorial tablet is placed in a Church. Failure to realise this is likely to lead to hardship, heartache and financial waste as no doubt has happened in this case. Incumbents have a responsibility to prevent breaches of this rule.

Neither the Incumbent, nor the PCC nor the Diocesan Advisory Committee has any power to grant a Faculty. A Faculty can initially only be granted or refused by the Chancellor of the Diocese. He is the person appointed to consider all the relevant and available

evidence and argument and then to decide. He will, of course, consider the recommendations of the Incumbent, the PCC, the Diocesan Advisory Committee and any other interested bodies before applying the law and making his decision.

How should he come to this decision ? The law requires him to exercise a judicial discretion and in so doing to bear in mind:

(i) Faculties for memorials cannot be freely or extensively granted for,if they were,the walls of a Church might soon become so crowded as seriously to detract from the Church's appearance.

(ii) A Faculty for a memorial should be regarded as a special privilege reserved for very exceptional cases - see Re St.Nicholas, Brockenhurst (1977) 3 AER 1027, a decision of Chancellor Phillips, with which I fully agree. The reasoning of that case requires the Chancellor to ask himself the questions (a) is this case so exceptional that the special privilege of a Faculty could properly be granted ? and (b) if so, are the circumstances such that a Faculty should be granted ?

(iii) Factors which may show exceptionality are for example the character of, or outstanding service to Church, country or to mankind by, the person to be commemorated by the memorial, a desire to record by the memorial some important or significant aspect of local or national history and some family history or tradition of such memorials especially, but not necessarily, if any future application based on the family connection would be impossible.

(iv) The burden of showing that the case is exceptional and that a Faculty should be granted is on the Petitioner. The Chancellor will need clear evidence and, of necessity, will need to rely greatly on the submissions of the Incumbent, the PCC and

the Diocesan Advisory Committee. Whatever the grounds of exceptionality claimed, in future they should be stated in the Petition for the benefit of the Chancellor, and those supporting the Petition should also explain why the case is considered exceptional and why it is claimed that the special privilege of a faculty should be granted.

(v) Even when exceptionality to an extent which could justify a Faculty is shown, such a Faculty will not be granted as a matter of course as Petitioners should be warned by Incumbents and Registrars. Factors which may persuade a Chancellor not to grant a Faculty despite the exceptional nature of the case would include for example the character of the Church, the number of memorials already in the Church, the inappropriate design of the proposed memorial tablet and any lack of support or, a fortiori, opposition in the Parish, the PCC, the Diocesan Advisory Committee or other interested bodies.

No doubt if the grounds of exceptionality were the character or service to the local Church and community of the person to be commemorated a Chancellor would find it difficult to reject the joint opinion of the Incumbent, the PCC and the Diocesan Advisory Committee, provided that he could be sure that the answers given by these bodies were only given after consideration of the questions which I have set out above.

In this case, the Chancellor was given information of the views of the Incumbent, the PCC and the Diocesan Advisory Committee, but he could not be sure that the right questions had been asked before their support was tendered. I am in no better position.

However, I am satisfied (a) that Mrs. together with Mr. Hawkins has given quite exceptional and outstanding service to the village and Church of Eartham. As examples of their beneficent

actions I cite their bringing water and electricity into the village, setting up an Endowment Fund to provide for the maintenance of Halnaker Mill, a local landmark, restoring and endowing the Village Hall, paying for repairs to the Church over many years, providing heating for the Church and providing considerable other financial support for the Church.

I am also satisfied that the provision of a memorial to Annie Hawkins, who with her husband at one time lived at Eartham House, will be in accordance with a tradition of memorials to the occupants of Eartham House, extending over some 200 years, the last 75 of which have seen members of Mr.Hawkins family occupying the house. Mr. and Mrs.Hawkins have no descendants, Eartham House is now a school and there is no apparent possibility of a similar future family application.

In view of my findings set out above, I am quite satisfied that this case is so exceptional that the special privilege of a Faculty permitting the memorial tablet could be granted.

I am told and accept that the Incumbent, the PCC, the village and the Diocesan Advisory Committee all favour and support the Petition. Although I do not know whether they asked the appropriate questions before giving their support, it is clear that such support should be a factor in this case even if only to convince me that whilst the Chancellor apparently considered the Church to be already overcrowded with memorial tablets, the Incumbent, the PCC and the Diocesan Advisory Committee do not appear to have had any such reservations.

On the evidence and the arguments addressed to me I have been convinced that in this case the Chancellor made an erroneous evaluation of the facts taken as a whole and it was upon this evaluation that he exercised his discretion. I have also come to the clear decision that not only could a faculty have been granted but it should have been granted. Accordingly I allow this appeal.

JOHN OWEN

3.2.81.