

~~North Walsham~~
IN THE MATTER of the Petition of the Vicar and Churchwardens of Saint Nicholas, North Walsham in the Diocese of Norwich

JUDGEMENT

Introduction

1. DURING recent times the parishioners of North Walsham have found themselves in serious dispute with one another. The bone of contention is the proposed re-ordering and furnishing of the large mediaeval parish Church of St. Nicholas, the second largest in the diocese.

2. THE contentions faculty suit was heard on the 27th 28th and 29th of September 1988. For the convenience of the parties and witnesses the Consistory Court sat in the Church. Judgement was reserved. That which I am now reading has been formulated as far as is practicable to deal with the various aspects of the case under separate chapters and headings.

The Principal Issues

3. BROADLY speaking in issue are first, the provision of a new large moveable altar in a central place at the junction of the chancel with the nave plus ancillaries such as a platform and new communion rails to be made with the wood from some of the existing pews and stalls: secondly, the removal of the mediaeval screen to make way for this altar, the screen to be divided up, one half being placed to act as a small screen for a chapel in the north aisle and the other half likewise in the south aisle and thirdly, the removal of the existing choir stalls and other pews and benches and their reconstruction to open up space in the chancel area. Although thus briefly described separately the three proposals are closely interlinked with another.

Background and previous proceedings

4. THERE is background which is on the Court record and an important part of the story of events. Some group, apparently called "a Re-ordering Committee", had been set up to consider the whole matter of changing the interior of the Church and to report to the Parochial Church Council with positive recommendations. That was done. Consequently during 1985 an architect Mr John Sennitt R.I.B.A was instructed to prepare drawings for a temporary scheme. He had been recommended by the Diocesan Advisory Committee.

5. BY a petition dated the 19th March 1986 faculty authority was sought to implement this scheme. The petitioners were the Vicar, the Reverend Mr Martin Smith J.P. B.D. and the Churchwardens Mr Russell Solly and Mr George James Knights. The proposals were to remove the rood screen and all the pews in the chancel and chancel aisles and store them for the time being in the north chancel aisle, to reposition the boy choir pews, to make a temporary platform with communion rail at the west end of the chancel and place a chancel altar behind that platform. The cost was estimated at £ 1,200.00 or thereabouts. It was all for the purpose of experiment. The petitioners expressed themselves thus:-

".....it is to avoid hasty decisions and unalterable mistakes to enter into a period of experiment in a simple and economic manner which will give us some ideas as to where we are heading we can use the Church in its new shape, make alterations, move furniture, adjust heights, get the feel of what is proposed and perhaps see some new ideas staring at us in the face which at the moment we cannot see"

6. THE Diocesan Advisory Committee which had previously been consulted and recommended the employment of the particular architect then recommended the scheme for faculty without any material comment or qualification save to underline that it was all experimental. To experiment over a matter of this size and extent was accepted by the Court as good common sense.

7. WHAT then transpired is best stated from extracts of the Chancellor's memorandum which are part of the Court record. That of the 31st July 1986 reads as follows:-

"..... (despite) the Diocesan Advisory Committee recommending the scheme for faculty I nevertheless hesitated whether inquiry ought to be made how precisely the screen was to be dismantled bearing in mind that the text books record it as being of great historical value. Cautley describes it as 15th Century with base paintings of the Apostles, Catharine, Barbara etc. But I let it go. It was also averred that at their meeting held on the 18th March 1986 the Parochial Church Council had approved the scheme unanimously, all members being present".

"The Court file reached the Chancellor on about the 2nd May and as everything seemed to be agreed on the 6th May I ordered citation."

"Suffice it to say it soon became clear that the scheme was far from agreeable. The parishioners are in serious dispute with one another. About 38 people seem to object. Some have entered brief appearances, some lengthy ones, the majority have made their voice known by simply signing a sort of 'petition' and an obscure number appear to have instructed Solicitors....."

"The letter from the parishioner , the Reverend Mr Hugh Palmer and a two page submission from another, Brigadier C J Wilkinson D.S.O. are so fulsome that I am ordering those to be deemed their sufficient Acts on Petition respectively. They need not plead further"

8. THE rest of the that Memorandum dealt with procedural and interlocutory matters designed to get the suit adequately pleaded and in proper shape. To save excessive paperwork, postage and costs in a case with so many opponents it was recommended that they try and group themselves under representatives acting for several or all instruct the same solicitor, following the procedural decision of this Court in Norfolk County Council -v- Knights of Others and the Caister on Sea Joint Burial Committee (1958) 1. All E.R. 394 at page 395. A full interlocutory Order was issued dated the 8th August 1986, times for pleadings being substantially extended as there was clearly no urgency and the summer holiday season had arrived.

9. HOWEVER within seven weeks by letter dated the 24th September the petitioners notified the Court that they no longer wished to pursue their petition. They expressed themselves thus:

"At a meeting of the P.C.C. last night the whole matter of our present faculty petition for some experimenting towards re-ordering was discussed. Whilst very much committed to the eventual re-ordering process it was thought that the way forward would be to make some compromise which would avoid the necessity of having a hearing of the Consistory Court. The main reason is that of expense and the controversy which would be aroused by such a hearing at this stage. The P.C.C. thought that an experiment could still be had without moving the screen, which is the principal objection of the opponents. Whilst this is obviously second best the P.C.C. has decided on this action to promote harmony and a spirit of honest compromise to try and find a way forward which will allow

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everyone to make a considered contribution to a final solution."

"To this end, the P.C.C. passed a resolution withdrawing the present application and on behalf of the Churchwardens and myself I now do so."

"A fresh application for a limited experiment with a nave altar forward of the screen will be presented in the next few days..."

10. IN a further memorandum of the Chancellor dated the 13th November leave to withdraw the petition was granted on usual terms that the petitioners pay the Court costs as assessed by the Registrar within 28 days of notice of the amount assessed. He raised the question of party costs. Having sat in this chair for over 3 decades I was bold enough to add the following observation:

"I see the petitioners propose a fresh petition within a few days. Without their pleadings we do not know what other objections the parties opponents were minded to raise in addition to the question of the screen. As Christmas is approaching would it not be better for the parish to have a pause, let the storm blow over, and take more time for local discussion before their next move? After all the P.C.C. can hardly be said to be in full touch with the parishioners if so many suddenly opposed this last scheme. I would have thought pastorally some caution and less speed advisable."

11. SHORTLY afterwards the Solicitors Purdy & Holley who by then were acting seemingly for most or all of the parties opponent gave notice that their clients would seek no order for party costs for work done to date, although if the matter proceeds as would appear to be indicated, they would reserve the right to ask for costs in any proceedings in future. On those notes those former proceedings and the year 1986 closed.

The Present proceedings.

12. THE next event was the Vicar and the same Churchwardens promoting the present faculty suit by their petition dated the 27th March 1987 filed in the Registry in early April. It was supported by seven plans or drawings of the architect Mr Sennitt together with his document marked No. 2 dated the 25th February 1987 listing a Schedule of proposed works and also one marked No. 3 dated the 23rd March 1987 signed by the three petitioners explaining in 17 short paragraphs their reasons why they contend that the proposals would be an aid to worship, enhance the beauty of the Church and rationalise the large amount of redundant furniture.

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The cost was estimated at about £ 32,000.00. Unanimous support of the Parochial Church Council was evidenced by its resolution of the same date.

13. BROADLY speaking in its essentials the scheme differed little from that proposed in the previous proceedings. In particular, the mediaeval screen was to be removed entirely, its halves being re-erected to act as small screens in the north and south aisles respectively: in the space released was to be set up a moveable altar in virtually the same central position as before, still called a chancel altar by the architect, but now labelled a nave altar by the Vicar and Diocesan Advisory Committee: and as before the chancel and chancel aisles to be cleared of all existing pews, choir stalls and box vestibules, their wood to be used to manufacture new choir stalls for men and pews for boys, the new altar, altar rails and so on. In short one was back to square one.

14. INTERPOSING here, the evidence from the agreed bundle of Parochial Church Council minutes put in at the hearing reveal the happenings. They reveal that the Vicar was disquieted about the contention within the parish, understandably so. At the meeting held on the 23rd September 1985 he was the initiator of compromise: "... (the original scheme) as well as being expressive would cause a lot of ill-feeling". "It was generally agreed that the compromise plan (produced by the Re-ordering Group) seemed to be the only answer and that if this were accepted it should be flexible". The compromise scheme was then approved by the whole Parochial Church Council save for two abstentions. But within two calendar months, at the meeting held on the 20th November 1986 the Vicar reported thus:

".....the compromise plan as put forward and approved at the last meeting was presented to the architect for a plan to be drawn up. However the architect has stated that he is not happy with the plan and could not give it his approval. The Re-ordering Committee have therefore decided to instruct the architect to draw up (the present plan) in final detail....."

15. ON the 19th March 1987 the present plans were put before the Parochial Church Council and approved. One is bound to comment of the cart-before-the-horse situation. The architect's function is surely to prepare a scheme as required by his clients - namely the compromise scheme, desirable as it would avoid pastoral and parochial dissension. The architect however seems to have been persuading the Parochial Church Council to a course which would inevitably re-new well known dissension. And unfortunately the Parochial Church Council were persuaded to that

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course. That same meeting agreed the closure of the Electoral Roll, which by removing twelve names was numerically fixed at 332 members.

16. THE very next day, the 24th March 1987 came the annual Parochial Church Meeting. With known dissension in the parish about proposals, which on any showing were substantial, surely this was a case if ever there was one for testing opinion of the parishioners as a whole by giving them notice and after debate taking a vote whether at a formal statutory annual meeting or an Extraordinary Meeting after notice held immediately afterwards is a technicality of no consequence. At all events the meeting seems to have been presented with a virtual fait accompli. Put tersely the 'horse had bolted from the stable'. The Vicar simply reported the Parochial Church Council's decision to withdraw all experiments and go ahead after "taking into account all the complaints". The faculty petition was then signed five days later.

I am bound to say that had the Court known of this state of affairs it would have followed the usual practice in these cases of exercising its power to order the summoning on notice of an Extraordinary General Meeting. The Court would have settled the motions to be debated and voted upon, and likely also exercised its powers as on the authority of In re the Parish of Treddington to request the Archdeacon to attend and report in any event, and preferably for the Vicar to invite the Archdeacon to chair the meeting. That would have produced realistic evidence and avoided the difficulty of the Court, which I shall refer to later of assessing the views of the parishioners as a whole. But unfortunately that is now speaking with hind sight.

17. AS is routine the proposals went to the Diocesan Advisory Committee. During the following months there were discussions and correspondence between the Committee and the Vicar which it is unnecessary to refer to in depth. Suffice it to say that almost at once the Committee indicated its general support but was unhappy about numerous details and ancillary matters, such as the size of the proposed moveable altar, whether an existing one in the childrens' corner as suggested by the Vicar would suffice; the design of altar rails was not considered worthy; some fresh drawings were called for; the screening of the organ console was questioned, but no more need be said as that was abandoned; and so on. By late July agreement was reached and on that footing the Committee recommended the scheme, as varied, to the Court for faculty.

18. EARLY in August the papers came up the the Chancellor for the first time. For the purposes of drafting public citation a few more details were

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required including the architects document number 2 to be brought up to date incorporating the various matters agreed with the Diocesan Advisory Committee. These were requested on the 25th August and supplied on the 26th September.

19. PAUSING here, it is right to say that I was disquieted that there was still no reference during these months of correspondence to the screen itself, its historic value, apropos Cautley's statement, its present condition, whether it could be dismantled safely without risk of damage, by whom, and there was no specification for such particular works. I had myself raised these questions on the 31st July 1986. It had already become a primary issue in the previous proceedings. A Diocesan Advisory Committee is by its full title "for the care of Churches", and by statute, concerned with care, which includes the care of its historic valuable contents. Maybe it had all been investigated but that was not revealed on paper. However, I decided that aspect could be inquired into later. Priority by this time was to test opinions in the parish by public citation. That duly issued on the on the 9th October 1987 extended to 28 days including 4 Sundays because of the whole background to the story

The Parties and their pleaded cases

20. SOME 36 parishioners entered appearance by Solicitors Purdy & Holley of North Walsham acting on their behalf. Their appearance dated the 11th November included grounds of objection in six succinct paragraphs so much to the point that the Court deemed the document to be the Acts on Petition of the parties opponent without further pleading. I do not think there is any need to recite all their 36 names. First, they averred that they "are worshippers and communicants at the Parish Church". Secondly, that the removal of the screen and so much of the furniture would destroy the character of the interior of the Church. Thirdly, that the screen is of great aesthetic and historical interest and should not be divided up: Two of its panels had recently been restored by a well known ecclesiastical artist at considerable expense. Its removal and division would tend to reduce the number of visitors and income from donations. Fourthly, if £ 32,000.00 is apparently available it could be put to better use such as repair and maintenance for which funds have recently been scarce. Expenditure on an unnecessary scheme would discourage benefactors. Fifthly, the scheme would reduce seating by about 60. Whilst present capacity is normally adequate, it is insufficient for the larger attendances on special occasions such as the greater festivals and Remembrance Sunday, By the sixth paragraph it was in effect conceded that improvements and alterations to the seating in the two side chapels, the

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Lady and the Memorial Chapels were unobjectionable and even beneficial. That is to say replacing the pews there by chairs.

21. ONE notes that no objection is pleaded to the proposal to introduce a moveable altar in a central position.

22. BY a Memorandum and Order of the Chancellor dated the 1st December 1987 the petitioners were ordered to file their Replies. Having summarised the principal issues already apparent and quoted again the passage from Cautley, that Memorandum continued as follows:-

"I order that the petitioners and the parties opponent each file statements in the form of Further and Better Particulars of the screen stating each and every fact relied upon, its age, its former position, its history, its detailed description of panels etc., its state of repairs or restoration, done by whom, when and at what cost, and all other relevant matters.

This is an essential. On any showing a mediaeval screen is of importance and concern at levels far beyond the bounds of North Walsham. The Chancellor will have to decide whether to seek the opinions of such bodies as the Council for the Case of Churches, English Heritage and the Royal Fine Arts Commission. Under the Consistory Court, Faculty Jurisdiction (Amendment) Rules, before General Synod a few weeks ago, and due to be put before Parliament early in the new year, such bodies will in any event be entitled to be heard and have their say. This is the consequence of the recommendations contained in the Appellate Court's decision this year in re Banbury

A second issue raised is the merits of spending £ 32,000.00 on this scheme. The Petitioners are ordered to file and serve likewise "Further and Better Particulars of the name of the donor, date of donation its circumstances etc. etc."

Other interlocutory matters dealt with need not be mentioned here.

23. SOON afterwards the petitioners instructed Daynes Hill & Perks, solicitors of Norwich, to act on their behalf. These Solicitors duly filed Replies and the Particulars of the financial position. They can be summarised as follows. First, it is admitted that 18 parties opponent attend worship regularly, 5 occasionally, 2 receive Communion at their homes (presumably they are elderly and/or sick persons) but it is averred

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that "11 are not believed to attend Sunday worship in the Church". Secondly, the scheme will leave 488 seats which far exceeds all known demands even at the greater Festivals and Remembrance Sunday. Thirdly, in 1980 a donor conveyed a property on charitable trusts for the purpose of providing a home for the curate in the town. But that purpose failed because as a matter of policy the Diocesan Board of Finance had themselves undertaken all responsibility for accommodating curates. So the power of sale was exercised and by that time (the 12th February 1988) the total fund plus accumulated interest had reached £ 37,294.00. The Parochial Church Council have absolute discretion as to the user of the money, but have kept the donor informed, who approves expenditure on the scheme. The Donor wished to remain anonymous. Naturally, the Court will respect that wish. Otherwise the pleading in substance tends to re-iterate the case contained in the petition with four added points, that it will avoid further damage to the screen, that the congregation will have a better unobscured view of the High Altar and the proceedings at Worship, that it will "enable music and drama both sacred and secular to be performed in the Church", and lastly, that the scheme is "reversible" to the extent that if at some future time it is so required the screen can be re-constructed back into its existing position.

24. AFTER substantial extentions of time, which the learned Registrar rightly granted, the Further and Better Particulars of the screen were filed in a document dated the 29th March 1988 agreed by all parties and signed by both firms of Solicitors on their behalf. It is very long and comprehensive, I do not intend to read it aloud at this stage.

25. BY the time the suit came on for hearing there had occurred changes. Mr David Rogers Minns had become a Churchwarden and by virtue of that office a petitioner in place of Mr Solly. Two of the Parties opponent Mr Geoffrey Chappel and Mrs Hilda Rump had regrettably died reducing their number to 34.

The Conduct of the proceedings

26. MEANWHILE in the exercise of powers conferred by the Faculty Jurisdiction Rules the Chancellor had requested assistance of the Council for the Care of Churches and English Heritage, both of which duly made reports and named representatives available to give evidence based on their respective reports.

27. ON the 23rd June the learned Registrar issued a summons and after hearing the Solicitors Mr Colin Pordham for the petitioners and Mr

Seal-Coon for the parties opponent an Order of Directions for trial was made. That order dealt with procedural matters, how certain evidence would be admitted and so on. The representatives of the Council for the Care of Churches and English Heritage were deemed to be witnesses to be called by the Court of its own motion. This gave both sides freedom to cross-examine them.

28. AT the hearing the petitioners were represented by Mr Seed of Counsel and the parties opponent by Mr Lindquist of Counsel. They conducted their cases forceably, ably, but always with courtesy towards the Court and witnesses. I am grateful for their assistance. One is also grateful to the Solicitors who were responsible for the preparation of their clients' cases during the months prior to trial. They reached sensible agreements about facts and procedures. They "winnowed the chaff, which has blown away, from the wheat", which is the root of the matter, clearly identified for the decision of the Court. And that has saved time and saved the parties' much costs.

29. IT is my experience that so often in contentious proceedings, rather long drawn out as here, elements of acrimony and bitterness creep in. This case is happily the reverse. I noticed that parishioner witnesses held each other in respect and had understanding of the others point of view although they might not agree with them. And it did not escape my eye that in Court and after the Court rose in the evenings personal friendships were evident. Credit for this must go to the leadership of the parish, in particular the Vicar, his predecessor and the various Churchwardens over recent years. What has happened is simply that Christian men and women have strongly held honest views about the subject in question, the re-ordering of their Church. But they beg to differ. Then each side calls professional witnesses such as architects expert in their field of Church history and architecture yet holding manifestly diverse opinions. And for good measure we have statutory bodies at a difference with one another. So they come to the Court for decision what is to be done.

30. IF I have dealt with these preliminary matters in some detail it is because I have in mind the Parishioners as a whole. A large number, sometimes up to 80 or 100, attended Court daily to listen. They are entitled to know what has been going on, what people have been doing during the past nearly three years, and why. That is their right.

The Judge in the Consistory Court

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31. THE Consistory Court is a Court of the Realm and the Chancellor as Judge is one of the Queen's Judges. Just as some Courts have a jurisdiction over bankruptcy or company matters and others are family and matrimonial causes so this Court is allocated jurisdiction over ecclesiastical causes, and its faculty jurisdiction covers all matters involving changes in consecrated Churches and land. Where there is a head-on collision of opinion it is sometimes thought that the Chancellor may exercise a casting vote, so as to speak, according to his personal view of the matter. That is not so. Nowhere was the proper approach better stated than by Chancellor Chadwyck-Healey in St John the Evangelist Clevedon (1909) P.6.

"I wish it to be quite understood that I am not importing into the questions at issue any personal views or feelings of my own. I have no right at all to do that. I have simply to decide according to law, to interpret to the best of my ability the authorities that are binding on me, and to consider the decisions of courts of co-ordinate jurisdiction, which though not binding upon me are entitled to the respect which the Court properly pays to the decisions of another. I say this because it is frequently thought that the personal opinions of a Chancellor of a diocese may to some extent be permitted to influence his decision. That is a great mistake. He who occupies the position of a Judge is obliged to proceed judicially and to disregard any personal views."

The Law

32. BOTH Counsel agreed and submitted that the decision in this case involved simply the exercise of discretion. That has to be exercised on proper judicial principles, that is to say, having regard to the evidence, the facts, and all the surrounding circumstances of the case.

33. AS to the manner of exercise of discretion I must direct myself by the Law. There are many reported cases. I only propose to refer to a few which are most relevant. There is the leading case of Peek v Trower (1881) 7 PD 21. On an appeal from Dr Tristram sitting in the Consistory Court of London, Lord Penzance stated the principles thus:

"Two widely different principles present themselves. The Court might say this: If some of the Parishioners desire this change and there is a fund out of which it may be made without placing a burden on others, then, unless those who oppose it can shew

that it will work mischief, that it will impair the capacity, the fitness or the convenience of the Church for the purposes of public worship, it ought to receive the sanction of the Court. The objection to such a principle of decision is that it would open the door wide to all capricious changes - would give no heed to those feelings of attachment and regard with which tradition and long time are apt to invest old Churches in the eyes of those whose families have sometimes worshipped for generations in the same spot, under the same roof, and with the same surroundings. There are in these matters, as in most others of the kind, two classes of people - those who are prone to believe that all changes must be improvements and those who love the things that be, and who regard all changes, though they may be improvements, with reluctance and the vigilance of a jealous eye. To give unlimited indulgence to the caprices or whims of the one class would be to wound without need the feelings of the other. And then come questions of architectural beauty and the endless controversies of taste, which, although always subordinate to utility, have a fair place in the controversy when utility is not in question. A principle of decision such as I am now discussing would make short of all these. On the other hand, the Court might say this: All presumption is to be made in favour of things as they stand. If you and others propose to alter them, the burden is cast upon you to shew that you will make things better than they are - that the Church will be more convenient, more fit for the accommodation of the parishioners who worship there, more suitable, more appropriate or more adequate to its purposes than it was before; and if you cannot shew this to the Court, at least shew the Court that a majority of those for whose worship the Church exists desire the alterations which you propose. And this is, I think, the language which in substance the Court ought to hold. The burden of proof does, I think, properly devolve upon those who propose a change and unless that proof is clear and manifest as to the benefits to be obtained by such change, the Court ought to be satisfied that there is a general desire on the part of the Parishioners, or at least of the actual worshippers being parishioners, that the change should be made. In the present case all proof of this general desire is not only wanting, but such proof as the Court has before it is in the opposite direction."

Court of Ecclesiastical Causes Reserved in Re St Stephens Walbrook (1987) 2 All E.R. P. 578 at page 593 (per Sir Ralph Gibson). Peek v Trower was a suit brought by the Rector and Churchwardens supported by the Vestry to alter the internal arrangements of a Wren Church including lowering pews, refixing back to make them more comfortable. Opposition was from a patron and many ratepayers who contended that the works were wholly unnecessary. In point of time it was a period of much Church attendance when seating capacity would be a predominant question and ratepayers would be concerned about the liability falling upon them by Church rates. St Stephen Walbrook is another Wren Church where the issue was whether a modern work of sculpture ought to be introduced as a principal altar table in the centre part of the Church. Neither case involved interference with the Wren structure of the Church nor the removal of a mediaeval edifice like the present screen from the position it has been since virtually the building of the Church in the 14th century.

35. FOLLOWING Peek v Trower next in point of time came another decision of Lord Penzance in Nicholls v Briscoe (1892) P. 269 at page 283 also binding on me:

"The notion that the matter in question should be decided by the wishes of the majority of the parishioners proceeds in my opinion upon an entirely mistaken view of the law. The appellants have put forward their attachment to the old Church and its interesting connection with times gone by; but they seem to forget that the sacred edifice has a future as well as a past. It belongs not to any one generation, nor are its interests and condition the exclusive care of those who inhabit the parish at any one period of time. It is in entire conformity with this aspect of the parish Church that the law has been forbidden any structural alterations to be made in it, save those which are approved by a disinterested authority in the person of the Ordinary, whose deputed discretion and Judgement we are here to exercise today."

36. THAT decision was recently adopted and followed by the Court of Arches in In re St Marys Banbury (1987) 2. All E.R. 247. That was an appeal from Chancellor Boydell, Q.C., in the Oxford Consistory Court. It was about substantial re-ordering including the proposed removal of certain pews subject to pew rights provided by statute. The Oxford Court's refusal to grant a faculty to remove the pews was upheld and the appeal dismissed on grounds of law: "no faculty may destroy statutory rights created by statute."

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37. BUT the learned Dean of Arches Sir John Owen, went on to consider the situation had it been open for the exercise of discretion. The proposals had received the enthusiastic recommendation of the Oxford Diocesan Advisory Committee. But unfortunately it has got its historical facts wrong. It was not an unique baroque Church as that Committee believed and far from the pews being a mere later addition, the fact was that they were a necessary and integral part of the original Cockerell design of the Church. The Court for various reasons had not heard evidence from The Council for the Care of Churches, nor the Department of Environment (today it would be English Heritage) nor from various societies concerned about the matter. The learned Dean put it this way:

" The Rules require speedy amendment. If proper and informed decisions are to be made in such cases as this, where there are valid, concerned, yet conflicting interests, it is vital that the Department, the local planning authority and various splendid voluntary bodies should be able to give their evidence The Report of the Faculty Jurisdiction Commission of 1984 recommends a change in the Rules which would allow the reception of such evidence"

In fact the new Amendment Rules to which I have referred came into force last April during the course of this suit. The learned Dean continued:-

"It is accordingly apparent that a Chancellor cannot only consider the views - especially liturgical views which are notoriously subject to change - of the incumbent and congregation: he cannot only consider the view of conservationists. He is appointed by Law to be a disinterested but informed and committed guardian of all interests and he must consider all relevant factors. Then bearing in mind that the burden is on those who propose changes (per Lord Penzance, Dean of the Arches in Peek v Trower (1881) 7 PD 21,27, he must decide whether or not there should be a faculty for change.

The fact that there are three pew-holders whose rights would be gravely affected and others were in no doubt all considered by the Chancellor but in my opinion these are all minor when weighed against the fact that St. Mary's is a building of special architectural and historic interest and the removal of the pews,

which were an integral part of the design of the Church and which have been there since the Church was built, would gravely damage those interests.

That and the further fact that there is no clearly proved necessity for change, are sufficient to decide the second question against the appellant petitioners but it will be helpful to add a few general observations which will indicate the attitude of this Court to these problems when there is a conflict, as here, between the interests of worship and the interests of conservation. The following principles may act as guidelines:

(a) It must never be forgotten that a Church is a House of God and a place for worship. It does not belong to conservationists, to the State or to the congregation but to God;

(b) in deciding whether to allow a re-ordering the Court will not only have in mind the matters listed e.g. by Chancellor Spafford in Re Holy Innocents, Fallowfield (1982) WLR 666 but also there are other matters:

(i) the persons most concerned with the worship in a Church are those who worship there regularly although other members of the Church may also be concerned;

(ii) when a Church is listed as a building of special architectural or historic interest a faculty which would affect its character as such should only be granted in wholly exceptional circumstances, those circumstances clearly showing a necessity for such a change. When the Faculty Rules have been amended it should be possible to add "and should never be granted unless the evidence, oral or written, of every concerned body has been invited, and if tendered, considered".

A re-ordering of such a Church solely to accommodate a liturgical fashion is likely never to justify such a change;

(iii) whether a Church is so listed or not a Chancellor should always have in mind not only the religious interests but also the aesthetic, architectural and communal interests relevant to the Church in question;

(iv) although the Faculty Jurisdiction must look to the present as well as to the future needs of the worshipping community a change which is permanent and cannot be reversed is particularly to be avoided.

38. BUT in St Stephens Walbrook the Court of Ecclesiastical Causes Reserved disapproved one passage of the learned Dean's Judgement and held that although the fact that an ecclesiastical building is listed as being of special architectural or historic interest is a relevant consideration in deciding whether to grant a faculty permitting alterations to the building there is no rule that such a faculty should only be granted in cases of clearly proved necessity: (per Sir Ralph Gibson at page 599 et seq).

39. SUCH is the climate of authority today. I would only add that in my Judgement when deciding what weight or emphasis is to be given to various relevant considerations a Chancellor is entitled to take into account the knowledge of the situation or state of affairs which exists in the diocese and in the Church of England at the time; see, for example my decisions in this Court in re the Parish of South Creak (1959) 1.All E.R. P.197 at page 206H and in the Salisbury Consistory Court in Re the Parish of St Mary the Virgin, West Moors (1962) 3.All E.R. 722

40. SO much for the law, I now turn to the evidence.

The Evidence for the Petitioners

The Vicar and Mr Knights, as petitioners, gave evidence developing their case. In support they called Mr John Sennitt, the architect, and Sir Bernard Feilden C.B.E. also a well-known experienced architect. By agreement each read his proof being his evidence-in-chief. Copies were available for others. This procedure reduced time and saved the Judge and Counsel a great deal of note-taking. As I have already said an agreed bundle of extracts of Parochial Church Council minutes was put in. I do not intend to go through it all in detail. That would be repetition. I have absorbed it all. Suffice it to summarise the essential points to which they referred and rely upon.

41. THE Vicar was priested in 1965. He holds the degree of Bachelor of Divinity and is an Associate of Kings College. After 4 years missionary work in Malaysia he was 14 years Vicar of St. Mark's Lakenham in Norwich until 3 years ago when appointed Vicar of North Walsham. He is a Justice of the Peace on the Norwich City Magistrates' Bench.

42. HE approached the subject in these words:

"Churches have not been fixed monuments to a static faith, but the outward changing focus of a dynamic developing religion In every era the Christian religion has sought to express its faith in the manner and form of its worship the place of public worship so arranged that it reflected the belief of the Church, the building itself becoming the expression of the worshipping community's relationship with God through the liturgy of Word and Sacrament"

Few would disagree with that as a very general proposition. He continued by suggesting the possible stages of change over the years at North Walsham. Originally the distant High Altar would have been glimpsed through the doors of the screen bearing the rood cross emphasising the glory of God and essential mystery of the Sacrament of the Eucharist. Then the 16th century would have brought fresh ideas, "the screen largely removed" (as he put it), a more open and accessible altar, and a pulpit emphasising the importance of the ministry of the Word. Then came the Commonwealth with it all traces of Catholic teaching removed. Then the 18th Century period of neglect followed by the 19th century period of restoration of Churches consequent on the work of the Oxford Movement. Finally there were the changes and re-ordering in the 1860's.

43. HIS contention is that today the arrangement of the interior of the Church has remained static virtually as it was in the 1860's, whereas the form of worship has during the last three decades radically changed. Matins has given place to Family Communion as the principal Sunday service. The hierarchial view of priesthood has given place to Eucharistic action of the worshipping community, and the present ordering is unsuited to that. Put shortly he was saying that the circumstances of ordering and the circumstances in the manner of worship have been diverging instead of changing to move hand in hand. And that is the problem which has been facing the Parochial Church Council for nearly ten years.

44. THE Vicar's evidence was that the average attendances at Parish Communion is about 250 with up to 190 being communicants. I have already noted that the strength of the Electoral Roll is down to 322. So the Vicar concluded that "..... after many plans and ideas were tried the bold but reversible stroke was hit upon of moving the remains of the screen aside and placing a moveable altar on the small platform where the screen now stands" with the advantage that " the setting of the

liturgy would allow full freedom of worship in dignity, circulation problems during administration would be avoided sight lines improved and the present barrier between clergy and choir and the congregation also removed"

45. AS the high altar would be untouched and the choir remain in virtually the same position and the shell of the fabric unaltered the Vicar described the proposals as modest. Modesty is a matter of degree. The parties opponent mentioned the word 'revolutionary'. Perhaps adjectively it falls somewhere between the two. I think the word substantial is more apt and £ 32,000.00 plus in cost is certainly substantial.

46. MR Knights holds degrees of Bachelor of Arts and Master of Education. He is an experienced schoolmaster, presently deputy headmaster of Broadland High School at Hoveton. He is a Reader licensed to North Walsham Church. He came to the parish in about 1980, was elected to the Parochial Church Council in 1983 and Churchwarden the following year 1984. Much of his evidence dealt with the historical build-up to the present faculty petition. I have already remarked on that aspect available to me from the Court record and documents. But he drew attention to the project having started in the time of the former Vicar, the Reverend Mr Steele, when a former architect Mr Codling had been instructed to prepare plans. I know not what they involved but he described those of Mr Sennitt as "more modified". Using different words he generally supported the contentions of the Vicar that the present lay-out of the interior thwarted the proper and convenient administration of the Eucharist. For example,

"..... the physical separation of the congregation from the celebrant at the focal point the consecration of the bread and wine causes great distress to the vast majority of the congregation and to enhance feeling of participation and involvement the need for much larger space is recognised".

47. HE gave more emphasis than the Vicar on the need to accommodate musicians for concerts and dramatic presentations, the Church being required to serve the community as a whole beyond the requirements for sacred worship. He was speaking of the cultural aspects and needs of the North Walsham people. Apparently there was an occasion when an orchestra rejected North Walsham Church as physically unsuitable and preferred Cromer Parish Church for its performance.

Mr Knight spoke of the failure of the party opponent Mrs Utting to be

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elected to the Parochial Church Council at the most recent Annual Parochial Church Meeting held on the 19th April last. I will refer to that hereafter.

48. MR Sennitt is a Chartered Architect with 19 years experience which extends to work on and in historic buildings. Much of his evidence consisted of formally producing his several plans and he helpfully explained some details. He spoke of his commissioning by the Vicar and then Churchwardens in November 1985. His brief was:

"to open up the Church to the east of the screen, making provision for a nave altar, re-arranging choir seating, removing chancel pews and re-seating the Lady and Memorial Chapels. The task would involve re-siting the base of the said screen. The aim was to make the Church fit for modern liturgical purposes while conserving the general character of the Church and as much of its contents as possible"

49. HE spoke of the proposal to place the nave altar in the nave proper in front of the screen but it was rejected for two reasons. First it would be contrary to the intention of the brief which was to create space and encourage a feeling of involvement and it would reduce the seating capacity of the Church. Throughout his evidence the aspect of greater involvement was emphasised and it governed his planning. He considered that splitting the screen to form two screens for the two chapels had merits, that they could still function as screens visible from the nave, keep their present format and be easily cared for. The scheme is flexible and reversible.

50. SIR Bernard Feilden is an architect with some 40 years experience and of considerable renown both in England and abroad. With no disrespect to him I do not think it necessary to recite all his various honours, University doctorates, fellowships and memberships of various learned societies and other bodies and authorship of text books. They are very many and reflect his deep learning and wide experience. He is a past architect of Norwich Cathedral and past Surveyor of St. Paul's Cathedral and York Minster. Today he practices as a Consultant from his Norfolk home in association with the firm of Feilden and Mawson which he founded. His evidence is to be treated by the Court as that of an independent expert witness.

51. HE supports the petitioner's case in its entirety, underlining the Vicar's words that the Church is a living institution and that the

re-ordering of Churches is an historical process. I doubt whether anyone challenges that general proposition. After referring to the remarkable architecture of this Church where there is no chancel arch and no clerestory, and the exceptional height of the arcades and span of the roof, and that the nave and chancel run into each other, he concludes that the retention of the screen in its present position is an anachronism. That robust and rather harsh noun is defined by the Oxford Dictionary as "an thing existing out-of-date" or "a thing out of harmony with the present". He recognised that the screen has an undoubted art historical value. It is not the screen itself which he criticises but it is its existing position which he considers to be an anachronism.

52. SIR Bernard had apparently been able to study the intended proof of evidence of Professor Martindale and reports from English Heritage and the Council for the Care of Churches. He expressed surprise that they should hold diametrically opposite views about moving the screen. He put it thus:

"Reading the submissions of English Heritage and Professor Martindale one is almost convinced that the remains of the screens should remain where they are - that is until one visits the Church and examines the sightlines and the alternative positions proposed. However, their point of view is narrowly art historical and does not take into account holistic, architectural, functional and social values to site the nave altar in front of the screen ignores the function of liturgy, takes no account of the architectural spatial problems because there would be insufficient links between the nave altar and the high altar it would do nothing to improve the sightlines and look and feel like a bad compromise in my opinion .."

53. FINALLY, he remarked that if the Court were to decide that the screen should be moved, in his opinion that would present no great difficulty in lifting and removing without damage but the Church architect should be required to make detailed designs for new joinery and adaptation of that existing - and in effect draw and submit detailed specification for the works.

The Evidence for the Parties Opponent

54. BRIGADIER Claude James Wilkinson D.S.O. was the principal witness for himself and spokesman for the other parties opponent. As is wont for a gentleman of that retired military rank his testimony was terse and much

to the point but devoid of any unkindliness or arrogance. His written proof of evidence comprised only one half sheet of typed foolscap although he expanded orally on several aspects. He has been a parishioner, regular worshipper and communicant for the past 34 years, for 18 of which he was a member of the Parochial Church Council and for part of that time its Vice-Chairman. Since retirement from the Army he has been engaged in farming at Heath Farm. In summary his evidence amounted to this:

"I object to this scheme In North Walsham, over the years, we have had a succession of incumbents. All have naturally introduced changes in the pattern of services as they considered appropriate for the parish. Generally the congregation has largely supported these changes. But they have been made without pulling the Church to pieces. Changing the services in one thing. Changing the Church is quite another We oppose this re-ordering because experience shows it to be quite unnecessary. During the three years he has been Vicar Martin Smith has managed to conduct the 10.00 a.m. Holy Communion Service very satisfactorily in the Church with only minor alteration to the lay-out of the furniture. The Service is well and enthusiastically attended and for this I am glad to commend him".

The threat now is that a modern, perhaps temporary, religious fashion is given as the reason for the wholesale mutilation of features of our Church which are of concern far beyond the bounds of North Walsham, such as the division and removal of the mediaeval screen, re-siting (in two halves) in a way that makes no architectural sense one half (would) obscure and irreparably damage a row of heraldic ledger slabs, and the sale of some of the chancel furniture and carving up of the remainder to make other things. (As to reversibility) how can you ever restore back if much is destroyed or sold"

He said that the parties opponent further objected on the grounds of cost

"How can the expenditure of £ 30 to £ 40,000.00 be justified on a project which is unnecessary and largely unwanted?"

Finally, Brigadier Wilkinson added that those who oppose this re-ordering are generally the older members of the congregation, men and women whose families have worshipped in this Church for generations and know

and love their Church. Those in favour are generally younger members and those who have only more recently come to the parish.

Under cross-examination he made two points, that originally there was a proper lectern in the Church but it was removed without faculty authority, and that in the time of the Reverend Mr Maurice the Family Communion was always followed by an abridged Morning Prayer."

That would be up until 1979. I am aware that Mr Maurice was Vicar for the 9 years from 1970 to 1979 when he was succeeded by the Reverend Mr Steele.

55. MR Anthony Sherwood Brooke New was called. He is an architect of many years experience. As with Sir Bernard Feilden with no dis-respect to Mr New, I do not propose to detail all his many qualifications, fellowships and memberships of learned societies and associations. They include Antiquaries, Structural Engineers, Cathedral Architects and ecclesiastical architects. He is an Officer of the Order of St. John of Jerusalem. For 23 of his 37 years in architectural practice he was a partner of the well-known firm of Seely and Paget. I did not ask him, but assume therefore that he would have worked as a junior partner with the architect Mr Paul Paget who was for many years chairman of our Norwich Diocesan Advisory Committee. Presently, Mr New is architect to Derby Cathedral and a number of Wren and other London Churches. Although holding no appointment in Norfolk he said that during 40 years he has visited, photographed and sketched no less than 350 of our Norfolk Churches. His evidence is also to be treated by the Court of that of an independent expert witness. He had studied all the available drawings and descriptions and papers in this case.

56. MR New first remarked on the presence of three screens in the Church. The two separate parclose screens have also been amputated but be considered them of considerable interest by reason of their carving and painting, and regretted their relegation to the side walls of the aisles indicating a lack of appreciation of their value. But no more need be said as they are not the subject of these faculty proceedings.

57. HE then described the main screen in some detail. Originally its two halves would have been linked by a doorway and a rood loft along the top supported with traceried openings enabling an almost uninterrupted view through of the chancel from the nave. Only the dado survives, each half being about 13 feet 4 inches long with maximum height of 5 feet 1 inch the top 10 inches comprising a 19th century cresting obviously designed to

hide the stumps of the former upper part and provide a more seemly termination. What Mr New considered is abundantly clear is that the screen has either never been removed from its original correct place or if when it was re-discovered elsewhere in 1844 then it was replaced back in its present original mediaeval position. The cresting was probably added at the time of the restoration in the 1800's, so also the buttresses which are of standard pattern fitted to the original bases that project from the mediaeval sole plate. Most of the framing is mediaeval although in places skilful repair with newer wood has taken place. The stalls added on the eastern side are probably not unlike the originals. Small trap doors have been inserted under the stalls to allow for inspection. Past insect infestation is certainly no longer active.

58. MR New described the figure painting on the 20 plans which as is customary include the Twelve Apostles and other saints and subjects. Six Apostles are on each side of the centre opening with 4 other panels at each end. Two are blank, prepared for but never painted. One panel at the moment stands out rather vividly by reason of its recent restoration in 1980 by Miss Pauline Plummer. He said that the importance of this particular screen in its historical context is brought out in Howard and Crossley's standard work "English Church Woodwork" where one reads:

"The last step, the abandonment of the chancel arch, was taken in North Walsham in Norfolk as early as 1380 but did not come into general use until the end of the 15th Century. In this case the screen forms the only division between the people's nave and the rector's chancel and the plan resembles that of the early basilican Churches of Italy."

59. MR New expressed his opinion that the proposals were quite unacceptable in certain respects for the following reasons:

- (a) The screen even in its now reduced form is far too important in the history of English mediaeval architecture for its removal from its present position to the contemplated. It is an intrinsic part of this Church.
- (b) It would be even more wrong to separate the two parts as proposed. Their correct relationship to each other would be flouted. The layout of the paintings with six Apostles on each side of the central opening would become meaningless. In the proposed position each half would not even be in alignment.
- (c) The half screen in its new position proposed at the back of the North Chapel would rest on or be affixed to a part of the line of splendid

heraldic ledger slabs extending across the Church below the communion step. These would be possibly destroyed and in any event no longer be properly seen.

- (d) The use of pew-ends as terminations for communion kneelers is inappropriate. They are too high, must not be cut down. They would quickly be damaged when the kneelers are stored on occasions of music, drama or other events. Moreover the proposed rectangular framing with arches and large crispings would be out of scale and character.
- (e) The assertion that the screen forms a "barrier" between nave and chancel is wrong. Experiment and photographs produced show that from a normal sitting position in the centre of the Church, and standing at the West end, the top of the principal altar is not hidden. It is quite visible and would be even more so if the cresting on the screen was removed.
- (f) The screen is not a barrier but a punctuation in what is otherwise a very large and comparatively featureless space. The folly of removing such a punctuation has been fully recognised of recent years in such buildings as Hereford and Salisbury Cathedrals where what were meant to be architecturally separate spaces of nave and quire are now thrown open to one another

The builders of North Walsham Church conceived the notion of omitting a chancel arch and they relied upon (as Howard and Crossley's reminds one) woodwork instead of masonry to achieve this sense of dividing and at the same time uniting spaces. It is the parish's good fortune that so much of their work has survived in situ.

60. SO much for Mr New's opinion adverse to these proposals. But he stated his support to the extent of moving the pulpit and removing the lectern and its replacement by something of lighter design which would all open up the view and better appreciation of the screen and the removing and substitution of a less obtrusive termination that the present cresting and simplification of the choir furniture.

61. MR New was cross-examined at some length. He conceded that the new position of the screen halves would make them more visible but emphasised that they would be less significant and not meaningful. Significance and meaning is the crux. He stood firm in his opinion that the Church was originally conceived with a screen in place: the stairs to the loft were built at the time for that purpose and the concept of the screen being added at a later date was but a remote unlikely possibility. He refused to accept that the screen is a barrier. "I call it a proper

separation between chancel and nave, as originally conceived and as ought to be".

62. MR Joseph Calvert Davies was called. Unfortunately, by reason of complete deafness since early age and a consequential speech problem it was agreed that Counsel should read his proof of evidence. Additional questions in-chief and in cross-examination proceeded by written questions and answers. Despite his disability he is an Associate of the Institute of Woodwork Science and a Fellow and a co-founder with William Morris of the Society of Design Craftsmen. He has been involved in work on Ecclesiastical wood furniture for 38 years, first in Yorkshire and for the past 20 years in Norfolk where he lives. He had very recently

"repaired the screen at Morston Church and I have been engaged this week with its replacement with a view to having it back in place this Sunday"

I noted that move and replacement was involved for that is a 15th Century screen of great value bearing paintings of Evangelists and Latin Doctors. Mr Davies said that he is frequently consulted by the Council for the Care of Churches when advice is required about various problems. In this case he had been approached by Miss Pauline Plummer and had read the report of Professor Martindale. His evidence was lengthy and of a highly technical character coming from an obvious expert practitioner in this specialised field of work. No purpose would be served by detailing it here. It involved the problems of joints, movements, age of wood, the strength and weakness of glues, damp-proof courses, conditions of stability, shocks, the use of cradles, steel attachments, and so on. His opinion is that the lifting of this screen would be a complex operation which could not rightly even be entertained without first examination and consultation with an archaeologist and the whole operation of moving and re-siting it in the proposed new position carried very serious risks for its preservation and avoiding loss and damage. In view of his detailed evidence in chief his answer to a written question in cross-examination struck me an understatement thus:

"I am saying that the screens could be moved - but with much difficulty - I would expect there to be timber losses on the floor and after that".

63. FINALLY, the parties opponent called Miss Pauline Plummer. She is a Bachelor or Arts, Fellow of the International Institute for Conservation of Historic and Artistic Works, a well-known specialist in the cleaning and

repair and restoration of paintings, who gave addresses at Richmond and also Honing Common, North Walsham. No-one could doubt that Miss Plummer is an expert practitioner and with deep learning in this field of work. She first reported on this screen in 1977, and then, instructed by the Parochial Church Council she restored the panel of St. Paul between November 1978 and January 1980 at the then cost of £ 500.00. As a result of later closer inspection she was satisfied that the whole wainscot, screen and all is original, not just the panels, inner framework and tracery. The mouldings, top cresting and buttresses applied to the front of the muntins are the only 19th Century additions. In her opinion the original painting was of the highest quality by the same school as the group headed by Ranworth. As regards the order of the panels this screen is one of 17 sets of Twelve Apostles on screens in Norfolk and the order of the saints is different in every case. She then analysed the various correspondences with the others.

64. MISS Plummer's conclusions were expressed in quite pungent language. First, she is of the opinion that the screen must now be in its original position. Secondly, to remove it and re-site the two halves separated in side chapels would make a nonsense of the whole scheme. Thirdly, she found it hard to believe that anyone could wish to cut up and damage existing mediaeval furniture or destroy well made 19th Century work in order to make moveable communion rails. "It would be pure vandalism". Lastly, in so far as it is proposed to extend the chancel westwards in effect, with a carved step and these communion rails. "It sounds horribly reminiscent of the monstrosity erected in the centre of St. Margaret's, Kings Lynn".

65. MAY I add this comment with some humility. St. Margaret's was also a contentious case heard in open Court. One has to admit that the decision to grant a faculty has been the subject of some vociferous criticism from many quarters over the years ever since which continues seemingly unabated. Us Judges do our best according to the evidence and opinions tendered. But no-one is infallible. Perhaps with distant hindsight it was a pity that decision was not tested by appeal.

The Evidence of Witnesses called by the Court

66. PROFESSOR Andrew Henry Robert Martindale gave evidence on behalf of the Council for the Care of Churches. The background was that following the Court's request for assistance Mr Nicholas Corbin F.R.I.C.S. a Chartered Surveyor and a member of the Council's Executive Committee visited the Church on the 28th December 1987. A fortnight later on the

13th January 1988 another visit was made by Professor Martindale together with Mr Donald Finlay who is the Council's Statutory Casework Officer. Both delegations had the available plans and were received by the Vicar who was able to expand and discuss the proposals with them on site. Immediately afterwards by letter dated the 18th January Professor Martindale wrote his conclusions to Mr Finlay, who no doubt added his own, and their combined conclusions were endorsed by the Executive Committee of the Council at its meeting held on the 28th January. Its report to the Court was made by Mr Finlay's letter of the 23rd February, copies being sent to the Solicitors of both parties. Put shortly, since that date all concerned have been aware of the Council's conclusion and intended evidence, adverse to the petitioners proposals.

67. PROFESSOR Martindale's proof of evidence was basically his letter of the 18th January supplemented by a further proof in manuscript comprising his comments on the evidence given by the petitioners witnesses as he had heard them whilst sitting in Court. He is a Master of Arts of Oxford University with a degree in History. He wished to emphasise history being his first subject, rather to rebut Sir Bernard Feilden's suggestion that his approach was characterised as being purely art-historian. He denied that. He holds a Diploma in the History of Art at London University, is a Fellow of the Society of Antiquaries and of the Royal School of Arts. Presently he holds the chair of Professor of Visual Arts at East Anglia University. He is on the Arts Sub-Committee of the University Grants Committee, as is a member of the Conservation Committee for the Council for the Care of Churches and Chairman of its Paintings on Wood and Canvas Sub-Committee. Again his evidence is received as that of an independent expert witness. He lives nearby at Aylsham.

68. PUT shortly, Professor Martindale expressed fundamental disagreement with the opinion of the Vicar and Sir Bernard Feilden on virtually all the major issues. I do not propose to lengthen an already long judgement by going through it all again in detail. Using different words much of the substance was similar to that expressed by Mr New and Miss Plummer. His main points are as follows. The greater probability is that the screen as its base part now remains has never been moved and is situated in its original 15th Century position. It should be looked upon as an object of exceptional rarity. He felt that this is not always appreciated in East Anglia which with Devon has the greatest concentration of mediaeval screens in England, and of these the number of painted 15th Century screens in timber is limited. Cautley records that 202 screens in all remain in Norfolk. Any attempt to move such a screen introduces considerable dangers, as it is axiomatic that any movement subjects painted

surfaces to damaging vibrations and opens up joints where these exist. Movement also changes the atmospheric environment, a relevant factor when such things are moved from gallery to gallery and relevant here in the context of the Church's central heating. Were the stiffening given by the Victorian return stalls temporarily taken away the whole mediaeval structure might well collapse if an attempt were made to move it. A proposed separation of the St Peter and Apostles half St Paul and the other half would destroy the iconographical programme.

69. HE contended that, if there is a liturgical need for a centrally placed altar it should be in the nave proper. Traditionally, before the introduction of fixed seating the people's nave was an open flexible and informal space. No traditionalist would probably argue against returning it in a real sense to parish use. The Eucharist could then be administered against the background of the figures of the saints on the screen, an historic, decorous, and attractive background to the liturgy at the new nave altar. The Professor remarked that the history of change was accepted. Images come and go: vestments come and go and are changed: some periods have liked incense and bells, others pulpits and concentrated on preaching. But the present proposed change is of a different dimension. The mediaeval designer of this Church would not have thought of its whole space as a unity. It was intended to be divided into chancel and nave. Observing the Chancellor's chair and table situated in the crucial position Professor Martindale added "You, Sir, are sitting on one of the oldest divisions in the history of Christendom". He drew attention to the prefatory rubrics in every prayer book since 1552 "And the chancels shall remain as they have in times past".

70. MR Richard Halsey gave evidence on behalf of English Heritage, the short colloquial title for the Historic Buildings and Monuments Commission. An agreed bundle of correspondence was produced. There was this background. By 1981 the Church was in need of certain fabric repairs and application was made for State Aid, that is for a grant from the Department of Environment. It is not entirely clear from the correspondence but my impression is that Mr Andrew Anderson was then the architect employed by the Parochial Church Council and Mr Peter Field Phillips of the firm of Seely and Paget as the architect acting as agent on behalf of the Department in negotiating the matter. The grant was offered to the Vicar Mr Steele on the 10th February 1982 subject to express conditions in common form. The Vicar in his capacity as owner of the building accepted the grant and conditions by letter dated the 18th March 1982 written in the special formula required in all grant-aided cases. I have not checked but assume a faculty was sought and obtained as this is

a requirement in all grant aided cases where the Court issues a special citation extended to 28 days to bring to the notice of all the parishioners at large the event of conditions thereafter to affect their Church in perpetuity. The relevant condition is "(f) Proposals for future works (except for maintenance and minor repairs and works carried out for liturgical purposes which are compatible with the history, character and appearance of the building and are reversible) must be submitted to the Department for approval before they are carried out". It seems that something about the present proposals appeared in the Church Times in September 1987 which put English Heritage, the successor to the Department of Environment in these matters, on guard. In the correspondence which followed one had the surprising situation of the present Vicar saying that he was quite unaware of the previous grant aid involvement. Further he contended that the present proposals were liturgical only and reversible so fell within the exception. On one view the wording of the exception is perhaps imprecise as here, for example, whether the proposals are purely liturgical or reversible begs the principle question in issue. Be that as it may, water has since flowed under the bridge. After Banbury the Court had to consider whether English Heritage should be informed and invited to express its opinions, and as I have said, since the 1st April 1988 English Heritage have had the statutory right and power to intervene fully in any case and make themselves a party to a faculty suit.

71. MR Halsey holds the degree of Bachelor of Arts at East Anglia University his subject being the History of Art. His appointment or rank is Principal Officer in the Commission and he is head of the Division responsible for grants in South-East England. His position is in effect an adviser to the Secretary of State who, put pithily, extracts the money for grant from the Treasury, and in turn from the tax payers. The bulk of his proof of evidence covered the details of history of restoration of this Church during the period 1862 - 1888. A new chancel roof was provided in 1874 and new aisle roof in 1881. He gave the history of this screen as obtained by research from documents, such as G K Blyth's letters to the Archaeological Journal and White's Norfolk Directory of 1845 and further edition of 1883. Much of his evidence of factual matters has already been covered by other witnesses so need not be repeated. But in summary English Heritage's conclusions are:

- (1) In aesthetic terms the re-ordering offers little in return for the loss of the historic fittings and the result would be a wide expanse of concrete pavements which are visually unattractive and quite inappropriate in the setting of a grand mediaeval Church it is

so damaging to the historic character of this fine Church as to make them unacceptable.

- (2) The benches are of good quality but unremarkable except for the choir stalls with their fine carved poppyheads which may perhaps be retained but the breaking up of the complete ensemble of 19th Century fittings will have a profound effect on the character of the interior.
- (3) As policy English Heritage has never wished to obstruct re-ordering of grant aided Churches to meet modern liturgical requirements except in most exceptional circumstances. Subject to more appropriate flooring than that proposed there would be no objection to the installation of a moveable altar in the nave forwards of the screen, and no objection to the removal of the benches in the chancel aisle or front pews in the nave to facilitate a scheme. But strong objection is taken to any disturbance of the screen or any disposal or cutting up of benches with mediaeval bench ends or poppyheads.
- (4) The four benches and frontals with mediaeval bench ends in the side chapels should be retained and repositioned elsewhere, possibly lining the chancel aisle walls.
- (5) The parclose screens should be utilised in something akin to their original use, defining the limits of side chapels.

72. THE last witness was the Reverend Canon David Harold Bishop speaking on behalf of the Diocesan Advisory Committee. He has been its chairman for some years past. His proof of evidence comprised that Committee's report dated the 4th July 1988 sent to the Court, both Solicitors, the Council for the Care of Churches and English Heritage. The report does not state anything about himself. From my knowledge he is a qualified architect, a Fellow of the Royal Society of Arts and presently is a Canon of Norwich, Vice-Dean and Custos of Norwich Cathedral. He has had many years experience in the field of Church architecture and matters of art. One mentions in passing that he was called as a witness in the London Consistory Court at the trial of the St Stephen Walbrook case to give opinion evidence on the merits of the Henry Moore sculpture proposed to be introduced as a central altar in that Wren Church.

73. I HAVE already mentioned my anxiety at the interlocutory stages at the absence of any detailed information regarding the screen itself, its history, quality and so on. I was concerned about the extent to which the Committee had addressed their minds to that aspect. The report does not touch on that subject at all. Perhaps it does not matter now as it has been overtaken by the Further and Better Particulars and the evidence of

many expert witnesses.

74. CANON Bishop stated that he was brought into the matter personally at an early stage and, after discussions with the Vicar and Mr Sennitt, the architect, first reported on the matter at the Committee's meeting on the 14th April 1987. Canon Bishop summarised the position thus:

- (a) It was considered that the proposed scheme would free an overcrowded chancel for a variety of forms of worship. It linked the nave and chancel successfully and opinion was that it used imaginatively the existing furnishings, especially the remains of the mediaeval screen. It was recognised that what was left of the screen was extremely important and valuable so should be treated with care and respect. But as so much had gone, its character had changed completely and its original function had disappeared. To move its halves to the chapels was imaginative, and as far as possible that would guarantee its continued use and care.
- (b) The Committee were unhappy about the design and planning of the seats for the liturgical participants and also about the altar rails and put the parish to choice between fixed rails and housing benches, and the latter were chosen. Further drawings were called for, and after discussion at several meetings the Committee finally approved the whole scheme on the 21st July 1987 and made their recommendation for faculty to the Court.

75. UNDER cross-examination Canon Bishop said that the question of putting the altar forward of the screen had not seemingly been considered as an alternative for two reasons, the Vicar was concerned that that would reduce the seating capacity in the nave too much, and the altar would be too near the pulpit and lectern, and all three would be in an undesirable line.

Facts admitted or found and other matters to be taken into consideration

The Parish

76. AFTER so much evidence on architectural and artistic matters it might seem as if the circumstances of the parish have taken only second place. Far from it. I have had this much in mind but the evidence tendered has been limited. It is clear that at least since the 1970's when Mr Maurice was Vicar this parish has moved in what is normally labelled the Anglo-Catholic direction. It seems to have been more accelerated of recent times and there is no reason to think that it is likely to change in the

near future. The current usage at the principal Sunday Service is Rite A from the Alternative Service Book 1980. The petitioners' Counsel made the point in his opening address that this direction comes not just from the Vicar but is the wish of the congregation. That is so. The average attendance is about 250 of which 190 are communicants. Brigadier Wilkinson did not challenge that but offered a word of congratulation to the Vicar. But the electoral roll is down to 322 only. It is they who elect the Parochial Church Council, and the smaller the number the less the choice. Councillors do not represent just the immediate congregation. They should represent all the parishioners who may give support to the Church in one way or another, although many may not necessarily attend the particular Eucharist service. In every largish parish there will be some who are more traditionally inclined and prefer the sung Matins to which they have been brought up. Or they may accept the regular Eucharist but do not want the Church specially re-ordered for that purpose. One must be concerned at the growing gap between all the parishioners and the members of the electoral roll. I am aware from records that during the 1950's and throughout the 1960's the parish made its regular returns to the diocese showing an electoral roll well over 500 out of a then population of 4,700 approximately. Soon after Mr Maurice became Vicar there was a noticeable adverse change. A rising population up to 6,500 then 7,000 but a roll dropping to about 350 plus or minus about 20 variously. Soon after the present Vicar had come the population was recorded as 9,000 but the roll dropped back to 308 rising to 342 last year and back to 332 this year. One makes every allowance for ups and downs, inaccuracies in records and so on. Isolated statistics are not reliable. But it is the broad pattern which must cause concern. The introduction of Rite 'A' as the principal and only main morning Service, well attended though it may be, seems to have done nothing to halt this disturbing trend. The strength of the Church of England has always been its ability to cater for all tastes and forms of worship. Brigadier Wilkinson mentioned with obvious regret the cessation of the additional matins following the Eucharist. To hold an alternative or additional main service at least once a month if not more regularly is a well recognised practice to cater for minorities. The Vicar said that morning prayer was read. But I could see nothing about that on the list of services on the Church notice board and it is hardly the same as its being sung periodically for the benefit of all those probably the more elderly who have been brought up over the years to obtain spiritual comfort from that service. In a large City these things matter less as where there are several parishes and Churches worshippers can go to that of their choice. But in a town with only a single parish catering for minorities is obviously important. Of course this Court has no jurisdiction whatsoever on what

services are held or not held. I have only reflected on the subject as part of my search for the degree of division in a parish so obviously divided about the preservation and re-ordering of their Church following the comparatively recent introduction of this new liturgy. The bald fact is that having no voice in the Parochial Church Council so many are prepared to go to law about it. Mr Knights referred to Mrs Utting's non-election to the Parochial Church Council. There could be many reasons for that. She was then a known party opponent and if 14 out of a 100 members of the congregation said to be present voted for her it might indicate that that was the percentage strength of opposition among the congregation. The word congregation was used not parishioners on the electoral roll present. But it would be very dangerous to draw inferences from one isolated happening particularly when people were then enjoined in litigation. At the end all I can determine and hold is that the opposition is a minority one but the minority is a substantial one.

Change

77. AS I indicated no-one would probably dispute the broad generality of the Vicar's evidence on the subject of change, that Churches are not fixed monuments to a static faith and every era has brought change in arrangement of the interior reflecting the beliefs of the Church. But the general statement calls for some qualifications. The principal change in this Church in the last century was obviously the increase in seating capacity. It was happening all over England. Three factors were probably operating here as elsewhere. First, the very large increase in population brought about by the industrial revolution. Secondly, improved road communications and then the railway building era which brought people out from the congestion of the big cities into suburbs and nearby towns of which North Walsham was probably typical. And thirdly, the period was marked for its increase in actual Church going. No doubt the latter was to some extent stimulated by the Oxford Movement starting with Keble's famous sermon in 1832. Spiritually, a rather turbulent time followed with the divisions within the Church caused by such incidents as "Tract 90" and the Gorham Judgement of the Privy Council. In 1845 and again in 1850 some left the Church of England and went over to Rome. But there is no evidence before me and I am unaware of any particular liturgical change affecting North Walsham Church at that period. To accommodate the increase new aisles were often added to Churches. Here the seating was greatly expanded, with special provision for grammar school boys and so on.

The Chancellor had no advisers in those days. He had to accept the

designs of the particular architect and builders chosen. His concern was primarily to be satisfied that the seating was as sufficient as could be to accommodate the increased numbers and that the scheme was financially viable having regard to the impact of the Church rate levied on the parishioners, whether they be church-goers or not. A study of the faculties of the 1850's to 1880's demonstrates this pattern of events.

78. BUT now we have a new element of change. There was concern that the system had led to great damage being done to old and mediaeval Churches. By 1913 the Government sought to bring such Churches within the control of the Ancient Monuments Acts. The Archbishops' undertakings eventually prevented that. Advisory Committees were set up, informal at first, by 1938 made statutory. The Archdeacon, an ex-officio member of the Advisory Committee, was for the first time given locus standi to intervene in any faculty suit in any parish. Now today the wheel has turned even further. Local Planning Authorities, English Heritage and Statutory Amenity Societies all have since April 1988 been given locus standi to intervene as parties to proceedings. All these statutory provisions come from the initiative of the Church's own parliament, first the Church Assembly, now General Synod working together with the Central Parliament. Put shortly, no longer are the wishes of the congregation in and about re-ordering vis-a-vis liturgical changes of such dominating consideration as in the past. It is now also concern to such other authorities. Professor Martindale made the point in his evidence:-

"Concern for the preservation of the past and in equal measure as regards the needs of the present is a characteristic of the 20th Century. The resources devoted to restoration, both scientific and administrative are greater than ever before, and that would not happen if nobody wanted it it is mistaken to think that those who oppose change are out of step with the times"

The Screen

The task of a Judge is not an easy one when so many eminent persons of learning and with expertise and experience are in profound disagreement with one another. It is even less easy when advisers such as the Diocesan Advisory Committee and its parent body, so as to speak, the Council for the Care of Churches are also at a difference. The Diocesan Advisory Committee expresses the view that because so much of the original screen has gone, therefore its character has changed completely and its

original function has disappeared. I am unable to accept that view. It strikes me as illogical. Many are the works and artifacts which have been destroyed or reduced in the course of history, as in the Commonwealth period, or by unfortunate fires or bombs in the war, or otherwise. One does not discard what remains. On the contrary it is a matter of thanksgiving that some substantial part has survived. In this case it is unfortunate that the upper wooden parts bearing the rood have gone but what remains is the part which contains the spiritual inspiration, the complete set of the paintings of the 12 Apostles of which only 16 other sets survive in Norfolk, which ancient paintings in the hands of such as Miss Plummer or other skilled craftsmen are capable of restoration. Moreover the function of the screen has not disappeared. Its function is to identify the division between the chancel and the nave and it continues to perform that function today. What will cause its function to disappear and its character to change is its removal and splitting with separate halves in diverse positions elsewhere in the Church

79. ON the evidence the overwhelming balance of probabilities are that the screen today is in its original position, placed there at the time or very shortly after this church was built; and it follows that its present position is where it has been for about 500 years past. There is always a possibility that for some reason many years ago it was temporarily removed elsewhere. If so one would have expected experts to identify positive visual evidence of the dismantling and reconstruction that would have been involved. I view that possibility as remote and improbable, but if it did happen I am satisfied it was returned to its original position or within millimetres of it.

Conclusions and Decisions

80. FIRST, I am satisfied that the petitioners have sufficiently proved their case justifying the introduction of a nave altar. The parties opponents' argument that because the Sunday morning service has for quite a long while been well and enthusiastically attended therefore such an introduction is unnecessary is a powerful one. Nevertheless I am sure that the quality of the particular liturgical exercise involved now will be much enhanced by the use of a nave altar rather than the service being conducted from the far distant high altar. The wish of the majority of the active congregation and the Vicar should prevail on that aspect.

81. MOREOVER as I have said one must take into account ones knowledge of the state of affairs in the Church generally. A nave altar has become an accepted development in many Cathedrals and large parish Churches,

particularly those with long chancels, where one of the principal services is of an Eucharistic character; for example, Norwich Cathedral, Salisbury Cathedral, York Minster and I add St. George's Chapel, Windsor which is a Royal Peculiar outside diocesan control and where the principal Sunday service is Sung Matins with sermon, and the sung Eucharist only follows afterwards.

82. SECONDLY, however, the prayer in the petition in so far as it is proposed to site such an altar at the junction of the nave and the chancel and remove the screen for that purpose must be rejected. Having regard to the evidence this Court cannot allow any interference with the screen. However one looks at the matter it would be wrong. In the absence of any chancel arch it comprises the traditional division between the Rector's chancel and the People's nave. To eradicate it and have in the result a huge open building with no division whatsoever would in the circumstances and history be tantamount to changing the basic nature of this ancient Church. I am, with respect to him, unable to share Sir Bernard Feilden's opinion that its position after 500 years has suddenly become an anachronism. I prefer the opinions of Mr New, Mr Halsey and Miss Plummer and Professor Martindale on that aspect.

83. I LOOK at the scale of time. The particular liturgy Rite A is comparatively modern. It is speculative how long it will stand the test of time in a Church where liturgical variations are many and fluid. Brigadier Wilkinson, with courtesy, drew attention to the comparatively short time of involvement of those who seek this drastic change. Mr Steele and the present Vicar only cover 9 years together. Mr Knights whose enthusiasm and integrity one also respects has only been a parishioner for 8 years and Churchwarden 4 of them. When weighed against the 5 centuries since this Church was built with the screen such fundamental change is out of proportion. Moreover only 8 years ago the then Parochial Church Council recognised the value of the screen sufficiently to spend a large sum of money on what one hopes was only the first stage of its restoration by commissioning Miss Plummer. I am very sure that when the present members of the Parochial Church Council voted to support these proposals they did so without having anywhere near the amount of information in and about the screen as they will now have gathered after listening to all the evidence in this case.

84. I AM satisfied that artistically and aesthetically the screen in its present historical position is a very valuable work of art, a treasure possessed by this parish, and manifestly accepted as such far beyond the bounds of North Walsham, and it is no less so because unfortunately the

upper structure without paintings disappeared in past circumstances unknown. Its removal might satisfy immediate transient comforts of those who presently attend the Sunday Eucharist but it would cause grave hurt to many within and without this parish leading to continuing argument and resentments for years ahead. I would rather not adopt the word 'vandalism' which appeared in the evidence as it is an emotive word. Suffice it to say that I believe North Walsham might become a 'cause celebre' among all those many at national level whom in the present climate doubt the ability of the Church to recognise and look after its inherited treasures properly.

85. FINALLY, I am far from convinced by the evidence that the screen could physically be removed and re-constructed in two halves elsewhere without risk of serious damage to the structure and paintings. But I am convinced that the purpose and meaning would be lost were it split and its halves separated and erected elsewhere out of alignment. Practically and realistically I cannot view that as a "reversible" proposition.

86. THE consequence is that that part of the prayer in the petition fails and no faculty can be decreed based on the present plans involving removal of the screen and the erection of an altar at that place. But after hearing so much evidence and argument it would obviously be helpful if the Court gave some indication for the future. Having held that in principle the petitioners may have a central altar if they wish the only question is where should it go. The Court would look favourably on a scheme for a nave altar proper, situated as is usual in the nave. What the Vicar had in mind when he wrote the letter of the 13th November 1986 in the previous proceedings seems obviously to be the best approach. It would involve moving out rather more pews at the head of the nave to make space but nobody has raised serious objection to that, and if the Vicar is correct there will still be ample seating capacity, or if there is doubt a few of the pews could be replaced at the back of the nave where there is ample space. The screen would comprise the background to the nave altar arrangements which is typical of the arrangements in some of the Cathedrals I have mentioned and in other large churches where there is a screen. I know of some cases where the front aisle pews have been angled in at 45° towards the nave altar. That might be considered at least. I should be surprised if the Diocesan Advisory Committee did not support such a scheme in principle. As I understand Professor Martindale's and Mr Halsey's evidence both the Council for the Care of Churches and English Heritage would support such an arrangement or at least not oppose it. In the context of events in late 1986 this sort of scheme was labelled a compromise. It should be looked upon as a proper

scheme in its own right. All re-ordering however advantageous raises as few possible disadvantages. For example, Canon Bishop was worried lest the pulpit, nave altar and lectern be all in one transverse alignment. I view that as a very limited disadvantage in the larger context. It is a matter of adjustment. Anyway the present so-called lectern will go. Much was said about sightlines. In my judgement that complaint has been much overstated. One must take a reasonably robust view. In any church of whatever design and content there will always be some who from some particular position will not be able to see absolutely clearly what someone else is doing in another position. As to the view of the High Altar, I commented that the cross seemed to be at a rather low level having regard to the proportion of the building. Elevating that cross a small amount might well be considered. Plans and designs will necessarily have to be drawn. Some better floor arrangement or material ought to be considered as advised by Mr Halsey. The Court would undoubtedly impose a condition that such scheme incorporates proper protection of the screen. Some moveable protection, maybe perspex sections or what have you.

It was disquieting to hear that the screen has been at risk from children roaming around and people moving furniture. One hopes that parents or others in charge can control children in a church. I had to protest at one incident during the hearing. At all events this screen is valuable and its paintings should be protected when necessary.

87. AS regards the pulpit, its move to a new position is approved. Its present position is plainly unsatisfactory. It obscures the northerly panels of the screen and it will be in the way of any nave altar arrangements.

88. THE removal of the so-called lectern is approved. Again it obscures the southerly panels of the screen and I agree it is altogether too cumbersome, As soon as proposals for its disposal to somewhere suitable have been brought in together with proposals for an alternative lectern of lighter design have been submitted and approved by the Diocesan Advisory Committee the necessary citation with faculty nisi will be ordered.

89. THE re-construction of the choir stalls and pews for boys will be approved. But any positioning of these in the chancel ought to be left open for the time being as that may likely interlock with the nave altar arrangements.

90. THE proposed re-arrangements for the seating in the two side chapels is non-controversial and indeed supported by the Parties Opponent. A

faculty will therefore be decreed for that conditional upon any mediaeval pews or benches or others with poppyheads being retained somewhere in the church for the time being until further order.

91. THAT leads lastly to the question of furniture generally. The petitioners have satisfied me that the chancel part of the church is presently rather too congested with pews and benches and some limited reduction is justified. Some of these I observed stand on top of interesting floor monuments which cannot easily be read. On the other hand that may be a good thing if it protects them from the wear and tear of people walking on them. But the reduction must be modest and not drastic. It would be very undesirable to produce an aspect or feeling of emptiness in the chancel. Clearly, a reasonable amount of seating in the chancel must be retained. The Vicar said the High Altar would continue to be used. I assume weddings may take place there. I have no evidence about the actual musical life of the parish but assume there will be occasions when great choral works are performed for which the normal choir will be substantially augmented. Sometimes several choirs from different churches gather together and need to be seated together to perform these choral works. But in so far as there will be some surplus pews and benches I think it only common sense to allow their refabrication for the choir accommodation and if there are enough then for the nave altar rails or housings also.

I take the Parties Opponents point that this would be an irreversible process. But I am satisfied that it is justified providing it is on a strictly limited scale. In any event, no mediaeval pews or benches and none with poppyheads or other carvings may be cut up for any purpose. Only a limited number of the plain less interesting ones may be so used. I have outlined the principle. It is obviously impracticable in this judgement to go into details of individual pews or benches or their exact position or number. Architects will know which falls in the category of mediaeval and which ought to be retained and where, and which few may reasonably be used for re-fabrication. The best course is for the two sides' architects, Mr Sennitt and Mr New to identify these and work out I hope an agreed seating plan for the chancel which can then be approved in chambers. I am of course assuming that the petitioners will in due course submit an alternative scheme for a nave altar proper.

92. I HAVE considered the procedural consequence of this judgement. Apart from the matter of re-seating of the two side chapels where I have granted a conditional faculty I think it best to take the remainder of this suit back into chambers. If the petitioners bring in proposals for a nave

altar proper as I assume they will it should be in a separate fresh petition which can be consolidated conveniently. The paperwork on the present petition is too physically bulky to enable alternative matters to be dealt with by amendment. But I now should like to hear any submissions about this and the question of costs.

AFTER HEARING SUBMISSIONS

THERE is an obvious difficulty in looking into the future. The petitioners will need time to consider the consequences of the judgment. I have offered certain guidelines as to what may be acceptable in future, that is to say, a nave altar proper, in the nave, not involving the screen except as desirable background to a nave altar arrangement. It would be undesirable now to make orders about ancillary matters which might thwart the petitioners developing such a scheme if they are so minded. For example, any such scheme might well require treatment of the choir accommodation and its positioning rather different to that in these present proposals. And also, the removal of the lectern involves disposal arrangements and hangs on the provision of an alternative lectern the design and positioning of which has at present not even been thought through. And pews or benches have yet to be identified as those to be retained as mediaeval concern and those few which might be refabricated. It is best for the petitioners and the parishioners to keep these things open for the time being. Manifestly to bring pastoral harmony the petitioners will wish to discuss future plans with the parties opponent so all work together. These things take time. My decision therefore is to confine positive orders today to the minimum essentials. I therefore make the following Orders only:

1. Order that the prayer on the petition for the present proposals in so far as it concerns the removal of the screen and placing an altar with ancillaries at the proposed site is dismissed.
2. Order that a faculty be decreed and issued to the petitioners, and by consent, authorising the replacement of pews or benches by chairs in both the Lady Chapel and the Memorial Chapel in accordance with the plans, conditional upon any such pews or benches being of a mediaeval origin or bearing poppy-heads being retained within the church in a convenient safe place Until Further Order
3. Order that a faculty be decreed and issued to the petitioners, authorising the moving of the pulpit in a north or north-westerly direction in accordance with the plans to open up a full view of the northerly panels of the screen and to make way for any future proposed nave altar scheme, or otherwise Until Further Order
4. Order that all other matters be adjourned back into chambers for further consideration and Further Order.

- 5. Order that if the petitioners decide to bring before the Court alternative proposals to a nave altar scheme the same shall proceed on a separate new petition for faculty which will be consolidated with this suit.

On the question of costs, it is beyond dispute that the petitioners have failed and the parties opponent succeeded on the principal issues being those which have occupied something like 95% of effort and Court time both before and at trial. The parties opponent ask for their costs. There is no evidence that they have caused unnecessary delays, or adopted unreasonable tactics causing procedural delays to the prejudice of the petitioners. In this case I must decide that justice requires costs to follow the event. The Orders will therefore be:-

- 6. Order that the petitioners' Solicitors Daynes Hill & Perks do pay the Court costs as assessed by the Registrar down to the foot of this Order within 28 days of his notice of assessment.
- 7. Order that the petitioners do pay the party costs of the parties opponent down to the foot of this Order in quantum as agreed between the parties or in default of agreement as taxed by the Registrar. It is certified that the case is fit for Counsel.
- 8. Further Order that all parties do have liberty to apply and liberty to restore for directions or Further Order.

By way of postscript I add my awareness that the parties opponent are parishioners whom one presumes from time to time contribute to Parish Church Council funds. The extent to which they decide to enforce the Order for their party costs which is judicially in their favour is best left to their discretion.

Approved - JOHN ELLISON.

Ch.