

In the matter of an Appeal against a scheme for the union of part of the benefice and parish of St. Philip with St. Luke, Nottingham, and St. Christopher, Sneinton; and a union of part of the benefice and parish of St. Philip with St. Luke, Nottingham, and St. Catharine, Nottingham, all situate in the Diocese of Southwell.

The Parochial Church Council of St. Philip with St. Luke - *Appellants*

and

The Church Commissioners - - - - - *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY, 1963

Present at the Hearing:

LORD EVERSHERD.

LORD MORRIS OF BORTH-Y-GEST.

LORD HODSON.

[*Delivered by* LORD EVERSHERD]

This is an appeal under section 10(5) of the Union of Benefices Measure 1923 on the part of the Parochial Church Council of the Parish of St. Philip with St. Luke in Nottingham against a scheme relating to that parish prepared by the Church Commissioners. The scheme has been duly recommended by the Pastoral Committee of the Diocese of Southwell. It has also duly been published and been certified by the Church Commissioners pursuant to the terms of the Pastoral Reorganisation Measure 1949.

The scheme is of some length and elaboration but its substantial purpose is that of putting an end to the parish of St. Philip with St. Luke as a separate parish or benefice and the uniting of its two component parts to other neighbouring benefices, followed by the demolition of the existing parish church of St. Philip. The parish in question consisted before 1924 of two separate parishes or benefices, those of St. Philip and St. Luke respectively; but in the year named these two parishes or benefices were united pursuant to the Union of Benefices Measure 1923 and the church of St. Philip, erected in the year 1879, then became the parish church of the united parish.

Having regard to the nature of the objections raised it will be sufficient for their Lordships to state that under the scheme (1) "that part of the benefice and parish of St. Philip with St. Luke . . . which coincides with the area of the parish of St. Philip . . . as it existed immediately before the Order of 1924 . . . shall be permanently united together" with the benefice and parish of St. Christopher, Sneinton, so as to "form one benefice with cure of souls and one parish for ecclesiastical purposes under the style of the United Benefice (or Parish) of St. Christopher with St. Philip, Sneinton", the present incumbent of St. Christopher's then acting (as he has agreed to do) as the incumbent of the united benefice and the church of St. Christopher then being the parish church of the united parish; (2) that part of the parish of St. Philip with St. Luke which before 1924 had formed the parish of St. Luke should be permanently united with the adjacent parish of St. Catharine so as to form together one benefice and parish for ecclesiastical purposes known as the United Benefice (or Parish) of St. Catharine, the present incumbent of St. Catharine's thereafter acting (as he has agreed to do) as incumbent of the new united benefice, and the parish church of St. Catharine thenceforth being the parish church of the united parish.

The scheme contains numerous other and consequential provisions relating to the taking down of the present church of St. Philip, the disposal of the church property within the parish of St. Philip with St. Luke, the distribution of endowments and the like; but since the objections of the petitioners are not specifically directed to any of these matters, their Lordships do not think it necessary to refer to them in detail.

The first point taken by Mr. Heald on behalf of the petitioners was that the scheme lay outside the scope of the 1949 measure by reason of the proposal, after division as already indicated of the existing benefice or parish of St. Philip with St. Luke, to unite the southern part, that which had before 1924 been the parish of St. Philip, with the parish of St. Christopher so as to form therewith one benefice and parish for ecclesiastical purposes, notwithstanding that the parts so to be united are not contiguous areas. So it was contended by Mr. Heald that this essential part of the scheme was directly in conflict with the language of paragraph (a) (iv) of section 3(1) of the Pastoral Reorganisation Measure 1949 and therefore rendered the whole scheme, in effect, *ultra vires*.

In their Lordships' opinion the point is not well founded. Section 3(1) provides that it shall be the duty of the Pastoral Committee in each diocese from time to time to make a general survey of the diocese and to make recommendations for the better provision for the cure of souls within the diocese or any part thereof. The sub-section continues:

“ In particular the Committee may in relation to any two or more benefices or parishes recommend—

- (a) the exercise of any one or more of the powers contained in the Union of Benefices Measures, 1923 to 1936, including power—
 - (i) to unite two or more benefices;
 - (ii) to divide any benefice and to unite all the several parts thereof to other benefices;
 - (iii) to sever from any benefice any part or parts thereof and to unite the part or parts so severed to any other benefice or to other benefices; or
 - (iv) to alter the boundaries of any parish by annexing thereto any contiguous area whether portion of another parish or extra-parochial: ”

In their Lordships' view the scheme here in question is founded upon paragraph (a) (ii) and not paragraph (a) (iv) of the subsection. Being so propounded, that part of the scheme challenged by Mr. Heald is derived from and justified by section 6 of the Union of Benefices Measure 1923 as expanded by section 34 of the same Measure—the powers and duties of that Measure being vested in the Pastoral Committee by the Measure of 1949. Section 6 of the 1923 Measure, so far as relevant, provides that every scheme for the union of benefices shall recommend that the benefices as proposed to be united shall become permanently united together and form one benefice and—

“ (a) that the parishes or places forming or comprised in the benefices proposed to be united or any two or more of them shall be united into one parish for ecclesiastical purposes,”

Section 34 provides that “ the provisions hereinbefore contained as to churches . . . and as to other matters arising in connection with a union of benefices shall where part only of a benefice is . . . proposed to be united to any other benefice . . . extend so far as applicable to such part of a benefice as if the same had been an entire benefice.”

Reading these two sections together, their Lordships cannot doubt that their effect is, where a scheme such as the present scheme proposes pursuant to paragraph (a) (ii) of section 3(1) of the 1949 Measure to divide a benefice and unite the divided parts to other benefices, to justify the provisions here challenged of uniting one divided part to another benefice so as to form “ one parish for ecclesiastical purposes ” though the areas so to be united

are not contiguous. In their Lordships' judgment such a proposal does not involve or require any invocation of the powers of paragraph (a) (iv) of section 3(1) of the 1949 Measure. In their Lordships' opinion paragraph (a) (iv) of the subsection is directed to a wholly different kind of proposal; for example, where it is desired without otherwise affecting the continuance of two adjoining benefices as separate benefices to adjust their common boundary by taking an area within one benefice and transferring it to the adjoining benefice; as might be appropriate where a substantially rural benefice adjoined a substantially residential or urban benefice by transferring to the latter a slice of the former upon the latter's boundary, the character of which slice had changed from rural to urban.

Their Lordships come then to what is the substance—to what indeed in justice may be called the merits—of the objections raised by the petitioners. In approaching this part of the case their Lordships have in mind the language which fell from Lord Jenkins in delivering the judgment of the Judicial Committee of the Privy Council in the case of the Parochial Church Council of the Parish of Little Leigh in 1960. The noble Lord said:

“At the outset of his argument before their Lordships in support of the Scheme Mr. Le Quesne submitted (in effect) that as it was not shown that the Pastoral Committee in making their recommendations or the Bishop in approving them had failed to take into account any of the matters set out in section 3(2) of the Measure of 1949 or that the Committee, the Bishop, or the Church Commissioners had in any other respect failed to comply with the terms of the relevant legislation the appeal must be dismissed, their Lordships having no jurisdiction to interfere with such a Scheme unless it was shown to be vitiated by some such irregularity. Their Lordships have no hesitation in rejecting this argument. It appears to them that the right of appeal conferred by section 10(3), and the jurisdiction with respect to appeals conferred by section 10(5), of the Union of Benefices Measure 1923 are plainly wide enough to empower their Lordships to consider any Scheme submitted to them on appeal *de novo* and on its merits. This does not however mean that their Lordships should not be slow to dissent, save for the most cogent reasons, from the recommendations embodied in a Scheme regularly brought into existence with the concurrent approval of the Pastoral Committee, the Bishop, and the Church Commissioners, and with proper regard for the matters stated in section 3(2) of the Measure of 1949.”

To this statement, and indeed by way of reinforcement of it, their Lordships add that in a case of this kind the Board, sitting as it is remote from the scene, must be under great difficulty in fairly assessing for itself the many aspects of the case including particularly the respective conditions and requirements of the various parishes directly involved and other parishes in the diocese. Fortunately in the present case there is no dispute as to facts; for Mr. Heald on behalf of the petitioners made it clear that he did not challenge, for example, any of the important statements made by the Lord Bishop of Southwell in his affidavit which is before their Lordships.

It is also important to bear in mind the terms of section 3(2) of the Pastoral Reorganisation Measure 1949 which markedly differs in language from the corresponding terms in earlier Measures. Thus there can be no doubt upon the wording of the sub-section mentioned that it is the duty of the Pastoral Committee, enjoined by the section, from time to time to make a general survey of the diocese, to take into account primarily the making of the best possible provision for the ministry of the Word and Sacraments in the diocese as a whole . . . (see paragraph (a)) though they must also pay proper regard to respect for the traditions, needs and characteristics of individual parishes and to the possibility of the use of the ministry of duly authorised laymen (see paragraphs (b) and (c)).

In their Lordships' view there can be no doubt on the material before the Board that the Pastoral Committee of the diocese here concerned, in proposing the scheme which was accepted by the Church Commissioners, paid due regard to their duties and particularly paid careful regard to the

obligation in paragraph (a) already quoted. Put in a sentence, the justification of the scheme as propounded and accepted lies in this; first, that the parish of St. Philip with St. Luke is now regarded in all the circumstances and against the whole background of the requirements of the diocese as really redundant; second, that there is a pressing need in the diocese for new churches to serve the new areas of residents on the outskirts of Nottingham; and, third, that the proposal will provide for the best use of the limited personnel available to the Lord Bishop.

In his affidavit the Lord Bishop has stated that when the church which is now the parish church of the diocese of St. Philip with St. Luke was erected in 1879 the population of the parish was no less than 10,000. The population of the parish has now been reduced to no more than 2,300 and, in light of planning proposals as they have been disclosed, there seems little doubt that it will be further and appreciably reduced. Indeed the facts seem clearly to be, first, that the southern part of the parish (which was formerly the parish of St. Philip) has now but five dwellinghouses upon it and will, after the replanning takes effect, have no residences at all; and, second, that the northern part (formerly the parish of St. Luke) which now has 660 houses will itself be substantially reduced as a residential quarter since its southern half is designed hereafter for use for commercial purposes. It is also to be noted—and to this matter their Lordships attach no little importance—that as things are now and have been for the past few years there has in fact been but little support to the activity and work of the parish from its northern half, namely, that part which was formerly the parish of St. Luke. This last statement their Lordships derive from the report which was made to the Church Commissioners upon consideration of the objections made by the present petitioners with the support of a number of other persons to the proposed scheme. As appears from the report, the Commissioners had to assist them an administrative committee of five persons who visited the parishes concerned with the objectors and saw also the incumbents and representatives of both St. Christopher, Sneinton, and St. Catharine, Nottingham, and heard the views of the diocesan authorities. In light particularly of Mr. Heald's statement that he does not challenge the facts put forward in support of the scheme their Lordships attach no little importance to this report. In addition it clearly appears from it that in spite of the great energies displayed by the parish church council (none of whom, be it observed, is resident in the existing parish) the attendances at the church have been of a very slender character during many years. True it is that on certain special occasions, like harvest festivals, there have been congregations of upwards of 100 persons. But in the ordinary way it appears (for example), that at Holy Communion for many years not more than ten or fifteen persons on an average have attended the church.

In light of what is stated above and indeed of all that may be derived from the affidavit of the Lord Bishop and the report to which their Lordships have already alluded, a strong case is shown for the adoption of the scheme. And indeed, as already more than once indicated, apart from the legal point with which their Lordships have already dealt, the petitioners did not in substance at all challenge the nature of the scheme as such or the facts referred to. Their case put quite briefly is simply this, that in all the circumstances it is wrong to remove the existing church and put an end to the ministry connected with it.

It is impossible not greatly to admire and respect the work which the petitioners have done as the parish church council. There has in fact been no incumbent in the parish since the year 1959, the Lord Bishop having exercised his powers in that behalf not to appoint another incumbent upon the death of the last one in 1959, having regard to the view taken of the redundancy of the parish against the whole background of the requirements of his diocese. Notwithstanding, the petitioners have contrived to keep alive in a real sense the religious work and the spiritual influence in this parish, and not least they have succeeded in raising substantial (though, regrettably, inadequate) sums for the restoration of the church. There can be no doubt that the work of these persons of and in respect of the church

is very much a part of their lives and their Lordships must feel the greatest sympathy for the sense of loss which is anticipated by them through the removal of the church.

But the objectors have also raised certain specific points with which their Lordships must deal; and in dealing shortly with them their Lordships hope that the petitioners will not think that the points, forceably put forward, have not been fully appreciated. In the first place, it is strongly urged that the former school building in the parish should and could be used in connection with church work as a youth club. This suggestion was in fact put forward a little time ago but rejected on the ground that at the time the premises were not in fact available. It is also true that some little time ago an appeal was made by the Archdeacon of the diocese for support for the establishment under church supervision of a youth club somewhere in this part of Nottingham. It is no doubt true that if sufficient support were obtained both from the parish and from neighbouring parishes in other parts of the diocese for the establishment of such a youth club it might well be possible for its situation to be within the present parish of St. Philip with St. Luke. But this is after all an aspiration for the future. Their Lordships do not disregard the enthusiasm which the petitioners would devote to it if such an institution were established. But, as their Lordships think, the scheme must be judged against the background as it is now seen and they have felt unable to found a rejection of the scheme upon the possibility that there might be established, as the petitioners suggest, such a youth club within the parish in question.

Similar observations apply, as their Lordships think, to the suggestion that the area of the present parish is particularly well sited in relation to certain industrial enterprises and particularly that of Boots Pure Drug Co. Ltd. so that the work of the ministry of the Word and Sacraments might very properly and very usefully be devoted within the present parish to the workers in those industries in their immediate neighbourhood. Again, their Lordships fully respect the aspiration of the petitioners in this respect, based as it is in some regard upon the history of the gentleman in memory of whom the present church was built. But, again, this is, their Lordships venture to think, an aspiration however noble for the future and it is their Lordships' duty to regard the scheme and reach their conclusion upon it against the background of things as they are at present shown to be.

Their Lordships have just referred to the gentleman Mr. Thomas Adams in whose memory the church was erected. It appears that the site of the church was given by some relative of Mr. Adams and the church erected thereon by public subscription in his memory. It seems clear from the evidence that Mr. Adams was himself a strong supporter of the church and contrived to bring to those whom he employed the advantage of religious instruction and assistance. On the other hand, it now seems that no member of Mr. Adams' family remains in the neighbourhood, the business which he formerly carried on having now been disposed of. In the circumstances it does not seem possible to say that the church should be preserved in order that Mr. Adams' memory may thereby be perpetuated in this particular parish. In this connection it is proper to add that from the evidence it seems quite clear that the church itself can in no sense be regarded as an architectural monument which of itself should be retained, and as their Lordships have earlier indicated, there are in fact substantial repairs requiring attention for which at the moment no sufficient funds appear to be available.

The final point taken by the petitioners is that the existing church is one having strong evangelical traditions, which are not reflected in any of the immediately adjoining parishes and, particularly, in that of St. Catharine to the north which is High Church in principle. This is no doubt true. On the other hand there is more than one other church within a radius of half a mile (including that of St. Christopher, Sneinton), which is evangelical in character. In the circumstances and having regard to the relatively small number of parishioners who support the present church of St. Philip—

particularly in its northern part—their Lordships cannot regard this point as sufficient to outweigh the general circumstances and requirements of the diocese as a whole.

Reviewing the whole matter, therefore, and approaching their duty as laid down in the passage quoted from Lord Jenkins, their Lordships feel compelled against the background of the needs of the whole diocese to accept the submission on the part of the scheme which is indeed its basis that this parish should now be regarded in present circumstances as redundant in Nottingham and for that reason their Lordships therefore propose to Her Majesty that the scheme be affirmed.



In the Privy Council

In the matter of an Appeal against a scheme for the union of part of the benefice and parish of St. Philip with St. Luke, Nottingham, and St. Christopher, Sneinton; and a union of part of the benefice and parish of St. Philip with St. Luke, Nottingham, and St. Catharine, Nottingham, all situate in the Diocese of Southwell.

v.

The Parochial Church Council of St. Philip with
St. Luke—Appellants

and

The Church Commissioners—Respondents

DELIVERED BY LORD EVERSHED