

Special Reference in the Matter of the Union of the Benefices of Bolton le Moors, Saint Paul, Bolton le Moors, Christ Church, and Bolton le Moors, Emmanuel, Lancashire.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH MAY, 1933.

Present at the Hearing :

LORD BLANESBURGH.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal to His Majesty in Council against a scheme framed by the Ecclesiastical Commissioners under the powers of the Union of Benefices Measure, 1923.

Under its formal description the scheme is one for the Union of (1) the Benefice of Bolton le Moors, Saint Paul, with part of the Benefice of Bolton le Moors, Christ Church, and (2) the Benefice of Bolton le Moors, Emmanuel, with the remaining part of the said Benefice of Bolton le Moors, Christ Church, in the county of Lancaster and diocese of Manchester. More aptly it may with sufficient accuracy for present purposes be described as a scheme for the division of the parish of Christ Church in Bolton between the two adjoining parishes of St. Paul and Emmanuel and for the supersession of Christ Church as a separate parish.

The appellants are three members of the Parochial Church Council of Christ Church. They represent the whole Council in their opposition to the scheme.

The three parishes adjoin and they are situate in or near the centre of the town of Bolton. Christ Church was formed in 1844, partly out of Emmanuel. In 1866 St. Paul was constituted as a separate district and to the new parish there was transferred a considerable portion of the original Christ Church area. Since that year the three parishes have in the matter of boundaries remained unaltered. They are none of them very large. Christ Church in area is particularly small. Of the three, Emmanuel, with its 500 acres and a population of about 7,400, is the most extensive. Only a very small addition to it is proposed by the

scheme. St. Paul has an area of 220 acres with a population of over 3,000. Christ Church comprises 45 acres only, with no more than half of the area residential. It has a population of just over 2,800, of whom many are Roman Catholics.

The re-arrangements of 1844 and 1866 were doubtless meant to provide for the needs of an expanding population then in prospect. It is, however, now characteristic of all three parishes that the population has for many years been stationary with a tendency, especially strong in the cases of St. Paul and Emmanuel, to decline. In Bolton, as in other large towns, there is stated to be a steady drift from the centre towards the outskirts and the urban area is continually declining. As a result the existing church accommodation of the three parishes has become much more than adequate: it may almost be described as redundant. While the church of St. Paul has seating accommodation for 1,175 persons and Emmanuel for 640, the normal Sunday congregation at St. Paul is said to number about 250, and that at Emmanuel from 250 to 300. At Christ Church, with seating accommodation for 500, the normal attendance at Matins on Sundays is 50; at Evensong 70 to 80; at early Communion 20. The church of Christ Church stands midway between the churches of St. Paul and Emmanuel at a distance of about 700 yards from each. Both Emmanuel and St. Paul churches are thus within easy reach of every part of the parish of Christ Church. There is apparently no extreme of difference between the services at any of the three churches, but those at St. Paul are said to be definitely protestant in character. There are other churches at no great distance. On the other hand the spiritual needs of large populations in new districts outside Bolton are practically unprovided for.

Emmanuel has its own vicarage. St. Paul has none. As a vicarage fund the Ecclesiastical Commissioners hold a sum of £1,500, the income of which is enjoyed by the Vicar. There is a vicarage at Christ Church. It is attached to the church, which was originally a Primitive Methodist chapel and is stated to be of no architectural interest. The vicarage has no garden, and is otherwise inconvenient. It is proposed by the scheme that the church shall be pulled down and the site with the adjoining vicarage be sold. To this proposal, as a detail of the scheme, no objection is taken.

Christ Church has its own church schools. So too Emmanuel. At one time St. Paul had also its own schools, but these being deficient in educational requirements have been closed. The Christ Church schools are in that area of the parish which under the scheme is transferred to St. Paul. It is a provision of the scheme that the Christ Church schools shall become the schools of the extended parish of St. Paul.

St. Paul has a net annual income of approximately £344, together with £67 10s. per annum from the parsonage house fund already referred to. If only permanent endowment be considered the amount, apart from the £67 10s., is £210 only. The income

of Emmanuel is approximately £400; permanent endowment £350. The income of Christ Church is £400; permanent endowment £375.

The Martyrs Memorial Trustees are the patrons of St. Paul; the Vicar of Bolton is the patron of Emmanuel. The patronage of Christ Church is in the Crown and the Bishop of Manchester alternately. Both have agreed to the extinction of their patronage rights, so that the patrons of the existing benefices of St. Paul and Emmanuel may become patrons of the new extended benefices of St. Paul and Emmanuel respectively. By this concession on the part of the Crown and the Bishop difficulties on this matter foreseen by the Commissioners in their report have been adjusted as they desired.

It is with reference to these three parishes, as thus circumstanced, that the scheme is propounded. Under it the greater portion of the Christ Church area is transferred to St. Paul. As has already been said, only a small portion, and that conveniently contiguous, is transferred to Emmanuel. These two extended parishes retain their existing names: each will have its own church school, and each will be less inadequately endowed than at present. Under the scheme it is proposed that £200 a year out of the endowment of Christ Church shall be transferred to the new St. Paul parish and £100 a year to the new Emmanuel parish, bringing the annual income of the one up to £544, with £67 10s. in lieu of a parsonage house, and the annual income of the other up to £500. With regard to the remaining endowments of Christ Church the scheme proposes that the net proceeds of the sale of the church site and parsonage house shall be held and accumulated by the Ecclesiastical Commissioners for and towards the purchase of a suitable site and the erection of a new church for a district to be formed in or near Bolton and for or towards the endowment of such church and district and the provision of a parsonage house in connection therewith. It is further proposed that the residue of the annual endowment of Christ Church amounting approximately to £88 shall be held and accumulated towards the endowment of the same new district. The scheme has the support not only of the Bishop of the Diocese, but of the Parochial Church Councils and Vicars of St. Paul and Emmanuel and the patrons of all three benefices. It is opposed only by the Parochial Church Council representing, it must be agreed, the congregation of Christ Church.

The case for that Council was presented to their Lordships with clearness and candour by Mr. J. W. Stansfield. It was rested on the admitted existence of an active church life in the parish of Christ Church. The living has been vacant for over eighteen months and the last vicar was, at the time of his resignation, advanced in years. Yet the parish has remained highly organised with its church school, Sunday school, Mothers' Union, Boy Scouts and Girl Guides. It has contributed generously to local charities and to missions. On Easter Day there were 93 com-

municants at two celebrations. Their Lordships are greatly impressed by this record of Christ Church. In face of it they express the view with reluctance that the scheme is nevertheless just such a scheme as is contemplated by the Measure. It is true of almost every scheme thereunder that some individual or collective hardship attends the change. It seems to their Lordships that while in this case the hardship is, it may be hoped, only temporary, the advantages of the scheme are preponderant with a good prospect of being lasting. This is not a scheme affecting parishes with a long tradition of separate and unchanged independence upon which against similar schemes when put forward reliance is so frequently and so effectively placed. Within a period not remote the area covered by these three parishes has been twice apportioned to accord with contemporary need. Again, under existing conditions there is hardly room for three separate organisations in an area so small, while the endowments divided as they are have become inadequate for the appropriate support of any of the three incumbents. Their Lordships feel that the spiritual needs of a parish of such small extent as Christ Church should be amply and effectively met by its incorporation in the two adjoining parishes, and that there will be in the two united parishes, then not inadequately endowed, room for a fuller and more active life than has so far been possible in three. Nor are their Lordships insensible of the advantage to accrue to the large populations on the outskirts of Bolton at present totally unprovided for by the appropriation of the annual sum of £88 towards provision for their spiritual needs.

Their Lordships, however, before expressing any final conclusion on the scheme must refer to and dispose of a question which arises upon a passage in the report of the Inquiry Commissioners to the Bishop.

“There was some difference of opinion,” they say, “between the Commissioners on the main question. It was recognised by all that if the needs of outlying parts of Bolton were *not* to be taken into account it would be difficult to justify any interference with Christ Church and Mr. McCann [one of the Commissioners] was of opinion that a sufficient case had not been made out. The other Commissioners, however, were in favour of recommending the proposed unions.”

Now this statement must be read in connection with the Measure, the effect of which on this subject was expounded by Lord Tomlin in delivering the judgment of their Lordships in *re the Benefices of Great Massingham and Little Massingham* [1931] A.C. 328. In that judgment Lord Tomlin pointed out that there is no statement in the Measure of the principles which are to govern the union of benefices except in the provision in section 2 (6) to the effect that the Commissioners appointed to inquire and report shall have full regard to the circumstances and interests of the **parishes affected** by their inquiry, and that it shall be their duty to consider the matters under inquiry “in their relation to such circumstances and interests and to the interests of religion in England generally,” and he added that where a union of benefices is proposed the question of the diversion

of surplus revenue seems under Section 15 of the Measure to be for the consideration of the Ecclesiastical Commissioners not as one of the factors for determining whether there shall be union, but as a point for examination after a conclusion in favour of union has been reached.

When to that statement of Lord Tomlin's is added the further consideration that a report to the Bishop by the Commissioners against a scheme is decisive and final the question becomes important whether this avowal by the Commissioners that apart from their recommended diversion of surplus revenue—a matter beyond their cognisance—they would have found it difficult to justify any interference with Christ Church, should not have effect given to it in their Lordships' report to His Majesty. Having once reached that conclusion were not the Commissioners in duty bound, if properly advised, to report against the scheme? Must not their Lordships support a conclusion of the Commissioners which, if expressed as it should have been, would have been decisive against the scheme?

After full consideration their Lordships are satisfied that they are not required to make to His Majesty a report which on the scheme as a whole would accord neither with their own views nor with those of the majority of the Commissioners. The answer to the difficulty raised by the terms of the report is found they think in this, that it is as a whole that the scheme is recommended by the Commissioners. True, it is a condition of the scheme going forward at all that, as a result, it is recommended by them. But their actual report to the Bishop is personal to himself, and No. 19 of the rules made under the Measure provides that it shall not be obligatory on the Bishop or the Ecclesiastical Commissioners to disclose it to any party to the inquiry or any other person. The fact that in these cases the report is usually and properly attached by the Ecclesiastical Commissioners to their Answer in no way alters its character or prevents the Commissioners in a proper case from withholding it. In other words the report itself is not a document of title. It is the pronouncement therein for or against a scheme which is vital.

Their Lordships, however, need not pursue this matter further on these lines. They are relieved of difficulty in the present case by the consideration that while in this scheme the diversion of the surplus income of Christ Church must strictly be taken to result from the later action of the Ecclesiastical Commissioners, it follows the recommendation of the Inquiry Commissioners, and that recommendation in turn may be regarded as a recognition and fulfilment of the duty imposed upon them by the Measure to have regard to the interests of religion in England generally.

Their Lordships will accordingly report to His Majesty in Council that the scheme be affirmed.

In the Privy Council.

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DELIVERED BY LORD BLANESBURGH.

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