

In the Matter of a Scheme for effecting the Union of the
Benefices of Darley and South Darley both situate in
the Diocese of Derby.

Parochial Church Council of St. Mary's, South Darley - - *Appellants*

v.

The Church Commissioners - - - - - *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 22ND MARCH, 1955

Present at the Hearing :

LORD TUCKER
LORD SOMERVELL OF HARROW
SIR JOHN BEAUMONT

[*Delivered by* LORD TUCKER]

This is a Petition by way of appeal to Her Majesty in Council by the Parochial Church Council of the Parish of St. Mary-the-Virgin, South Darley, in the diocese of Derby objecting to a scheme for the union of the benefices of Darley and South Darley which has been duly certified by the Church Commissioners in pursuance of the Pastoral Reorganisation Measure 1949 and the Union of Benefices Measures 1923 to 1952.

The scheme provides for the Union of the two benefices under the style of "The United Benefice of Darley with South Darley" and for the appointment of the Reverend Ronald John Stanford, the present incumbent of the benefice of Darley, as the first incumbent of the united benefice. It further provides that the parsonage house at present belonging to the benefice of Darley shall be the residence of the incumbent of the united benefice and that the parsonage house at present belonging to the benefice of South Darley shall form part of the endowments of the united benefice and shall be used as a house of residence for the Curate referred to in Clause 4 of the scheme unless the Bishop of Derby for the time being shall at any time in writing otherwise direct.

Clause 4 of the scheme reads as follows :—

"Clerical or lay assistance. Upon the union taking effect the incumbent shall employ a curate or such other clerical or lay assistance to assist him in performing the duties of the united benefice as the Bishop of Derby may from time to time direct."

The scheme also provides that any excess of endowment income (calculated in accordance with the schedule) of the united benefice over and above an annual sum of £580 shall be paid to and held by the Church Commissioners for the benefit of the diocesan stipends fund of the diocese of Derby. The parish of Darley covers an area of some 5,000 acres with an estimated present population of about 6,000 persons, while the area of South Darley is some 2,000 acres with an estimated population of 900. The population of both parishes shows an increase since the 1931 Census, but whereas the increase in South Darley has been 23 per cent. the population of Darley has nearly doubled.

The two parishes are divided by the river Derwent except for a very small area of South Darley north of the river, which is used as a cricket ground. The only means of access between the two parishes is one road bridge over the river.

The parish Church of St. Helen, Darley, dates from Saxon times but the earliest parts of the present building are Norman. St. Mary the Virgin, South Darley, was built in 1843. The two churches are about $1\frac{1}{4}$ miles apart.

The history of the parishes is interesting and appears to have been as follows. At the time of the Conquest there was one parish for the two areas with one church and one priest. During the period 1301 to 1393 the rectory was divided into three portions and from 1393 to 1744 into two medieties, but on at least one occasion in the 17th Century the two medieties were held together by one person. Throughout the period of division there was only one church, viz., St. Helen's, north of the river. Before 1301 and after 1744 the rectory was undivided. The church of St. Mary-the-Virgin, as stated above, was built in 1843 and the present parish of South Darley was constituted a District Chapelry under the Church Buildings Acts in 1845 and later became a new parish under the New Parishes Act, 1856.

The objections to the scheme on behalf of the Parish Council of South Darley as set out in their petition are twofold.

1. It is said that the Commissioners have not sufficiently taken into account "respect for the traditions, needs and characteristics of individual parishes" as required by Section 3 (2) (b) of the Pastoral Reorganisation Measure 1949.

The "separateness" of the two parishes both geographically, as divided by the river and the adjacent flood area, and historically was stressed. Emphasis was very properly and naturally laid on the activity of Church life in South Darley with an electoral roll of 205, Christmas and Easter Communicants numbering 123 and 101, a Sunday school with a register of 80 scholars and a sound financial position. It was urged that the loss of its own incumbent giving his undivided attention to the needs of the parish will not be compensated by the provision of a curate who will necessarily have to give much of his time during the week to the area north of the river.

Their Lordships fully appreciate the apprehensions of the Church Councillors of South Darley with respect to these matters and do not doubt that it would be in the best interests of the parish of South Darley to preserve the existing benefice. But it is the duty of the Pastoral Committee under the Measure of 1949 "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". (Section 3 (1)). And in making their recommendations they have to take into account:—"the making of the best possible provision for the ministry of the Word and Sacraments in the diocese as a whole. . . ." (Section 3 (2) (a)). It is in the light of these requirements that their Lordships have to approach this scheme. There can be no question that the growing population of Darley (already 6,000 in number) cannot be adequately served by one clergyman. The ideal solution would, no doubt, be to retain the two benefices and appoint a curate to Darley, but in the present manpower position this is impracticable and it would seem inevitable that the services of two clergymen must be utilised so as to be available to both parishes while their independent parochial existence is preserved. Although it is calculated that the union will provide a surplus of endowment income of some £73 for the diocesan stipends fund it is not on financial grounds but for the better distribution of clerical manpower that the Commissioners seek to justify the scheme.

Looking at the position of these two parishes as a whole and having regard to the similarity of churchmanship prevailing in each parish their Lordships feel no doubt that, provided a curate is appointed to reside

in the parsonage house at South Darley, the union of the two benefices will tend to make better provision for the Ministry.

2. The second objection raised in the petition was the alleged failure to comply with the provisions of Section 5 (4) of the Pastoral Reorganisation Measure 1949. This sub-section, however, applies only to cases of plurality and this point was not persisted in by the petitioners.

A further objection (not referred to in the petition) of a procedural nature was, however, put forward in argument. It was contended that there had not been sufficient "consultation" by the Pastoral Committee with the Parochial Church Council to satisfy the requirements of Section 3 (1) of the Pastoral Reorganisation Measure of 1949 which provides:—

"It shall be the duty of the Committee from time to time as may be directed by the bishop to make a general survey of the diocese either as a whole or in sections, and after consultation so far as is practicable with the incumbents and parochial church councils concerned to make recommendations for the better provision for the cure of souls within the diocese or any part thereof."

In the present case it was said that as the consultation was by a deputation on behalf of the Committee it did not fulfil the requirements of the section. As this point was not raised in the petition the Church Commissioners had not filed any evidence dealing with it and if their Lordships had thought that on the facts as known and admitted a case had been made out which called for some answer they would have been disposed to give the Commissioners an opportunity of producing further evidence. It appears, however, that both the Parochial Church Council and the Committee elected to be represented by deputations for the purpose of consulting together; that the views of the Church Council were fully placed before the deputation both verbally and in a document which was later considered by the full Committee and that no application was ever made by the Council that they should be heard by the full Committee.

In the case of *Whippingham and East Cowes* [1954] A.C. 245 at page 254 after stating that it is as a rule desirable that whoever represents the Pastoral Committee in consulting the Council should state in terms that he has been requested to see and consult the Council to ascertain their views and to report them to the Committee, the judgment of the Board proceeded:—

"But in their Lordships' opinion, though advisable, so elaborate and meticulous a proceeding is not essential. A full and sufficient opportunity must be given to the members of the Council to ask questions and to submit their opinions in any reasonable way, but that is all that is required. In reaching their conclusion their Lordships would point out that, whereas under the Measure of 1923 a public enquiry was enjoined, a much less formal procedure was prescribed in the Measure of 1949. The natural inference is that thereafter the strict and elaborate provisions contained in the earlier Measure were intended to be succeeded by a more elastic and flexible procedure in the future."

It is true that in the *Whippingham Case* the objection had been that what took place between the Council and the representative of the Committee did not amount to "consultation" and no point was made that the Committee had appeared by a single representative, but none the less what took place in that case was clearly regarded as sufficient compliance with the requirement that consultation "so far as practicable should take place." It would clearly not be practicable that the full Committee, consisting in this case of some 42 members, should be convened for the purpose of every consultation required by the section in the process of carrying out a survey of the diocese. It is clearly permissible for them to be represented by sub-committees or delegations appointed for the particular purpose provided that the results of such consultation are duly

considered by the full Committee before their recommendations are submitted to the bishop for approval.

Their Lordships accordingly do not consider that there has in this case been any failure to comply with the requirements of Section 3 with regard to consultation. Reference has been made above to the provision in the scheme for the appointment of a curate or "other clerical or lay assistance". The petitioners, while in no way questioning that it is the *bona fide* intention of the Commissioners to secure the appointment of a curate, point out that the scheme does not in terms so require but leaves it open to the incumbent with the approval of the bishop to employ lay assistance. They feel that the appointment of a curate in place of their incumbent should be secured for them as an essential part of the scheme.

Their Lordships are disposed to agree with this submission and were informed by counsel representing the Church Commissioners that there would be no objection on their part to a variation of the scheme by the omission of all reference to "other clerical or lay assistance" in Clause 4 and to "lay assistance" in Clause 5 (1) thereof. Their Lordships being of opinion for the reasons stated above that, save as regards the provisions of the scheme with respect to lay assistance, the objections of the petitioners cannot be sustained will humbly advise Her Majesty that the scheme certified by the Church Commissioners be returned to the said Commissioners for reconsideration to the extent indicated above.

In the Privy Council

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DARLEY BOTH SITUATE IN THE
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[DELIVERED BY LORD TUCKER]