

SPECIAL REFERENCE IN THE MATTER OF THE UNION OF THE  
BENEFICES OF WESTOE AND SOUTH SHIELDS, ST. HILDA  
(COUNTY OF DURHAM)

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 17TH JANUARY, 1939

---

*Present at the Hearing :*

THE LORD CHANCELLOR  
(LORD MAUGHAM).

LORD MACMILLAN.

LORD ROMER.

[*Delivered by* LORD ROMER]

---

This is an appeal to His Majesty in Council against a scheme framed by the Ecclesiastical Commissioners under the Union of Benefices Measures, 1923 to 1936, for the union of the benefices of Westoe and South Shields, St. Hilda in the County and Diocese of Durham, the appellants being the Parochial Church Council of Westoe.

The parishes in question are situate in South Shields. They are both industrial in character and are inhabited almost exclusively by persons of the wage-earning class.

The parish of Westoe has at the present time a population of approximately 5,000 persons and covers an area of 53 acres. The church of St. Thomas, the parish church, which has sittings for 570 persons, was built in the year 1875, largely through the generosity of a local churchman who contributed £2,600 to the building fund and presented the organ. It appears that before that time a chapel of ease had existed upon the site now occupied by the church. The parish has also its own parsonage house, which was built about the year 1898, and which contains some 14 rooms. It is rated at £72 per annum. The annual income of the benefice is £366 6s. 2d. in addition to fees and Easter offerings which amount to about £25 per annum. In the past the Ecclesiastical Commissioners have made a curate's grant of £120 per annum but that has not been fully claimed since the year 1933. An active and enthusiastic parish life exists in the parish. Eloquent testimony of this is to be found in the fact that, poor as the parishioners are, no less a sum than £850 has been raised by them during the past ten years and spent on beautifying and improving their parish church.

The adjoining parish of South Shields, St. Hilda is larger in area than that of Westoe, covering as it does approximately 130 acres. Its population, however, is rather smaller and consists of some 4,700 persons. It contains a church with sittings for 1,500 and a parsonage house rated at £62

per annum. The parish also contains a mission room which is used for services. The annual income of the benefice is £613 12s. 4d. consisting of rents of just over £180, and of £433 received from the Ecclesiastical Commissioners. There are in addition fees amounting to £42 per annum and the Commissioners make two grants of £120 per annum each for the stipends of an assistant curate and a woman worker.

In both parishes there is an ample provision of church services, and the average attendance at such services compares not unfavourably with that at other places of worship in urban and industrial districts.

In pursuance of the provisions of section 2 of the Union of Benefices Measure, 1923, the Lord Bishop of Durham caused a commission to be issued requiring five Commissioners nominated as provided by the Measure to inquire into and report upon the union of the two benefices.

The Commissioners held a public enquiry on the 27th February 1937. No one among the 120 or 130 persons appearing before the Commissioners on that occasion was in favour of the union, and it was apparent from the proceedings that the Parochial Church Council of Westoe and a large number of the Westoe parishioners were strongly opposed to it. And this is not surprising. For the proposal for the union which had originated with the Diocesan Committee was not due to any desire to improve the existing state of affairs in the two parishes but to a desire to remove the church and endowments of St. Thomas, Westoe, to one of the new housing districts that were springing up in the neighbourhood of South Shields and for which such a provision was sorely needed. It was, indeed, admitted by the learned Counsel for the Ecclesiastical Commissioners that no benefit of any kind would accrue to the two parishes themselves from the proposed union. The Commissioners, however, made a recommendation in favour of the union of the two benefices and parishes, the decision to do so being carried by three votes to two. The two dissentients were the Commissioners nominated by the patrons and Parochial Church Council of Westoe and South Shields, St. Hilda respectively. The other recommendations, upon which the Commissioners were unanimous (if the scheme were to be carried out), were so far as material as follows: (a) that St. Hilda's should be the parish church of the united benefice; (b) that the church of St. Thomas should be removed to one of the new housing districts; (c) that the incumbent of the united benefice should select which of the parsonage houses he prefers; (d) that

- (1) the other parsonage house;
- (2) the site of the church of St. Thomas;
- (3) the mission hall;

be sold and the proceeds utilised for the removal of St. Thomas Church and its re-erection in one of the new housing districts, and for the provision of a parsonage house and new hall in such district and that if there were any surplus it should be devoted to the benefice of the incumbent of the

transferred church; and (e) that the endowments of St. Thomas should be the endowments of the benefice of the transferred church.

The Lord Bishop of Durham in due course signified his approval of the report, and thereupon the Ecclesiastical Commissioners prepared a draft scheme for the purpose of giving effect to the recommendations therein contained, it being provided by the draft scheme that the new district to which the church of St. Thomas, Westoe, and its endowments were to be transferred should be a district in the Diocese of Durham to be selected by the Lord Bishop. The draft scheme further provided that the bells, organ and other furniture and fittings of the church of St. Thomas, Westoe, or such of them as the Lord Bishop should select should be removed to the parish church of the united benefice, and that any such articles not so removed should be appropriated for use in the proposed church of the new district or be removed to any other church or chapel within the diocese as therein mentioned. The draft scheme, however, differed from the report in that the mission hall of South Shields, St. Hilda, was allowed to remain. The draft scheme after its publication continued to meet with the most strenuous opposition on the part of the Parochial Church Council of Westoe. Their objections, however, met with no success and on the 16th December, 1937, the Ecclesiastical Commissioners certified the scheme under section 10 (2) of the Union of Benefices Measure, 1923. The Parish Council, accordingly, now present this petition of appeal to His Majesty in Council asking that the scheme may be disallowed.

In support of their appeal the appellants call in aid the decision of this Board in the case of *In re Benefices of Great Massingham and Little Massingham* [1931] A.C. 328. In delivering the judgment of the Board in that case Lord Tomlin summed up the facts as follows:

“ Each of the parishes concerned is a complete unit, fully equipped with all that is necessary for parochial church life, including adequate emoluments for the incumbent, nor has there been in either parish any change of circumstances calling for a re-adjustment of conditions. It is admitted that the union must result in a measure of loss to the parishioners and no advantage from union can be indicated as likely to accrue to them.”

Every word of this is true of the two parishes the subject of the scheme now under consideration. In the earlier case, moreover, as in the present one, the object of the scheme was to take away a part of the joint endowments of the two benefices and apply it in endowing some other benefice. In these circumstances the Board reported to His Majesty in Council recommending that the scheme should be dismissed. It was held, to use the words of Lord Tomlin,

“ that to justify a union of two benefices it is not enough to show that one incumbent could serve the parishes affected, and that a union would therefore save man power and might also produce surplus income available for other benefices. The circumstances and interests of the parishes themselves must be regarded.”

At the time that this decision was given the principles to be observed by the Commissioners appointed to inquire and report upon a proposed union of benefices were enunciated in section 2, subsection (6) of the Union of Benefices Measure, 1923. The subsection was in these terms:

(6) The Commissioners shall in making any report under this Measure have full regard to the circumstances and interests of the parishes affected by their inquiry, and it shall be the duty of each and every of the Commissioners to consider the matters under inquiry in their relation to such circumstances and interests and to the interests of religion in England generally.

This subsection was repealed by the Union of Benefices (Amendment) Measure, 1936, and has been replaced by section 2, subsection (1) of that Measure, which is as follows:

2.—(1) The Commissioners to whom a commission under the principal Measure has issued shall have due regard to the interests of religion generally as well as to the circumstances and claims of the parishes affected by their inquiry and shall determine in their discretion the effect of all these considerations and shall report accordingly.

The alteration in the law thus effected would seem to be rather one of words than one of substance. The word "interests" in the repealed subsection is replaced by the word "claims" in the new one, but it is by no means apparent why this change was made or what effect, if any, it was intended to produce. The other change to be noticed is that of the things to be considered by the Commissioners the interests of religion generally are mentioned first in the new subsection whereas in the old subsection they were to be found at the end. It is possible that it was intended by this change to ensure that the interests of religion generally should be the first care of the Commissioners in making their report. But it is plain that those interests are not the only thing to be regarded. In the words of the subsection regard is to be paid to those interests "as well as to the circumstances and claims of the parishes." In the present case their Lordships find themselves unable to avoid the conclusion that sufficient regard has not been paid to those circumstances and claims. The joint income of the two benefices at the present time is £980 or thereabouts exclusive of fees and grants made by the Ecclesiastical Commissioners for curates' stipends. The income of the united benefice would be no more than £613 12s. 4d. The parishioners of Westoe, St. Thomas, would lose their parish church, upon which, as already stated, they have spent some £850 in the course of the last ten years. There is moreover in the present church a west window placed there as a memorial by the families of those in the parish who lost their lives in the Great War. The scheme, it is true, provides for the re-erection of the church in a new district and steps would no doubt be taken to have the window placed in the church when so re-erected. But this would be but a poor consolation to the parishioners who happen to have feelings of attachment to their church and to the relatives of those in whose memory the window was erected; especially in

view of the fact that the new district in which the church is to be re-erected is not even specified in the scheme and may in the end prove to be a mile or more distant from the parish. There is yet another circumstance connected with the two parishes which deserves the most careful consideration. The traditions of the parish of South Shields, St. Hilda, appear to be high church whereas the traditions of the parish of Westoe are low church, and there is grave reason to fear that many of the parishioners of Westoe would dislike the character of the services at St. Hilda's and would not care to attend them. It is said by the Ecclesiastical Commissioners in their answer to this complaint that services similar in character to those held in Westoe parish church are held in two neighbouring churches. But these churches appear to be situate at some distance from the church of St. Thomas, Westoe, and though they can be reached by omnibus the parishioners of Westoe who as already stated are of the working class must necessarily include some to whom even an omnibus fare is a matter of moment.

Their Lordships realise to the full that every union of two benefices must result in some deprivations and some inconveniences to many, or it may be to all of the residents in the two parishes. But these residents must be prepared to make some sacrifices in order to obtain the benefits accruing to them from the union. In the present case, unfortunately, though the sacrifices demanded are many, of benefits there are none.

The result is that their Lordships must humbly propose to His Majesty in Council that the scheme be dismissed

In the Privy Council.

---

SPECIAL REFERENCE IN THE MATTER  
OF THE UNION OF THE BENEFICES  
OF WESTOE AND SOUTH SHIELDS,  
ST. HILDA (COUNTY OF DURHAM)

---

DELIVERED BY LORD ROMER

Printed by His Majesty's Stationery Office Press,  
POCOCK STREET, S.E.1.

1939