Special Reference in the matter of the Union of the Benefices of Thelnetham and Hinderclay (St. Edmundsbury and Ipswich).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1933.

Present at the Hearing:

LORD ATKIN.
LORD TOMLIN.
LORD THANKERTON.

[*Delivered by* LORD TOMLIN.]

The two benefices in question comprise two adjoining parishes about 13 miles north of Stowmarket in a remote and thinly populated part of the county of Suffolk. The two churches are about 1½ miles apart.

The net annual incomes of the two benefices (calculated according to the Pluralities Acts) are approximately as follows :—

Thelnetham, £535.
Hinderclay, £389.

There is an active church life in both parishes. Upon the evidence there is no reason to think that there would be, on a vacancy in either benefice, any difficulty in finding a suitable incumbent therefor.

The commission appointed to enquire into the matter under sections 2 and 3 of the Union of Benefices Measure, 1923, consisted of four persons, namely, the Archdeacon of Sudbury nominated by the Bishop, a nominee of the patron and parochial church council of each of the benefices, and a chairman nominated by the Ecclesiastical Commissioners.

The commission presented a report which was a majority report in the sense that the nominees of the patrons and parochial church councils voted against any union of benefices, while the chairman and the Archdeacon were in favour of a union of benefices, and the recommendations of the report were carried by the casting vote of the chairman. These recommendations included (*inter alia*) recommendations (1) for the union of the benefices,

but not of the parishes ; (2) for the Thelnetham rectory to become the parsonage house of the united benefices and for the Hinderclay rectory to be sold ; and (3) that the endowment of the incumbent of the united benefices should be not less than £750 per annum and that the balance should be set aside to pay the stipend of a lay reader or deaconess and to defray the cost of clerical assistance at festivals.

The scheme prepared by the Ecclesiastical Commissioners differed from the recommendations of the report in that it affected to charge all the endowments other than glebe belonging to the united benefice with four several sums of £50 each in favour of four other benefices in the same diocese, three of such charges to take effect from the date of union and one to take effect from the first avoidance of the united benefice.

The rector of Hinderclay and the patrons and the parishioners of both parishes appear to be unanimous in opposing the union. The rector of Thelnetham supports the union.

Their Lordships are unable to see that in the circumstances of this case there is any benefit accruing to either parish from the proposed scheme.

The only parishes which will benefit if the scheme is approved are those in whose favour parts of the endowments are to be alienated.

In their Lordships' opinion the principles indicated in the *Gussage All Saints and Gussage St. Michael* case, 69 Sol. J. 493, and in the *Great Massingham and Little Massingham* case, [1931] A.C. 328, apply, and the scheme ought to be dismissed.

A point of importance however arises in the present case. The scheme purports to create a charge on the endowments in favour of other benefices, so that if there is any diminution in the future in the endowments the loss will be borne by the united benefice.

In their Lordships' judgment the scheme in this respect is not justified. The power conferred by section 15 of the Measure is a power to dispose of surplus revenue after competent provision has been made for the united benefice. The effect of the scheme might be that hereafter in the event of a diminution of the endowments there would not remain competent provision for the united benefice after the rent charges had been satisfied.

It is true that under section 16 there is power to create a rentcharge, but that power cannot in their Lordships' judgment be utilised to alter the character of the operation which is permitted to be carried out under section 15.

Their Lordships will humbly report to His Majesty in Council that this appeal should be allowed and that the scheme for the union of the two benefices be dismissed.

In the Privy Council.

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DELIVERED BY LORD TOMLIN.

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