

**SPECIAL REFERENCE IN THE MATTER OF THE UNION OF  
THE BENEFICES OF WITTON WITH BRUNDALL AND  
BRADESTON (WHICH IS AT PRESENT PART OF THE  
BENEFICE OF STRUMPSHAW WITH BRADESTON) ALL IN  
THE COUNTY OF NORFOLK AND DIOCESE OF NORWICH**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 10TH JULY, 1950**

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*Present at the Hearing:*

LORD PORTER  
LORD OAKSEY  
LORD RADCLIFFE  
SIR JOHN BEAUMONT  
SIR LIONEL LEACH

[*Delivered by* LORD PORTER]

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The question submitted for the consideration of their Lordships of the Privy Council is raised in a petition of the Parochial Church Council of Bradeston, a parish in the County of Norfolk and Diocese of Norwich, who are appealing against a scheme for the union of that parish with the neighbouring parish of Brundall, which lies generally to the west of Bradeston and is situated in the same County and Diocese. This scheme was certified by the Church Commissioners and notice thereof was given and duly submitted to the petitioners on the 1st April, 1949.

The parish of Bradeston (or Braydeston) lies some six or seven miles east from Norwich in the Rural Deanery of Blofield and the Archdeaconry of Norwich. The church of St. Michael consists of a chancel, nave, north porch and a western tower containing one bell, and includes several features of architectural, historical, and local interest. For civil purposes Bradeston has for over 65 years been united with Brundall and for ecclesiastical purposes the benefice of Bradeston has for many years been united with that of Strumpshaw, a parish lying to the east, but has never previously been associated with Brundall for ecclesiastical purposes. The living of Bradeston is a rectory in the gift of the Bishop of Norwich. The living of Brundall is a rectory in the gift of the Reverend Charles Martin Chamberlin, M.A.

On the 10th July, 1948, the Bishop of Norwich issued a Commission to six persons in purported compliance with the provisions of section 3 of the Union of Benefices Measure, 1923, as amended by section 1 of the Union of Benefices (Amendment) Measure, 1936, to inquire into all the facts and circumstances of the benefices of Strumpshaw, Bradeston, Buckenham, Hassingham, Witton and Brundall relevant to the question of their union or other rearrangement and after considering the matters under inquiry in their relation to the interests of religion generally and to the

circumstances and claims of the said benefices to report to him whether such union should be made and to make recommendations as to the terms on which any union or other proposal in favour of which they reported should be carried into effect. It is admitted that five of these six persons were regularly and properly appointed but it was contended that the sixth, viz. : W. Ward of Strumpshaw had not been duly selected to be a member of the Commission and that accordingly the Commission's report and the subsequent scheme were invalid. It will be necessary for their Lordships to deal with this contention at a later stage.

The six commissioners held the requisite public inquiry at Brundall on the 20th August, 1948, and made a report to the Bishop of Norwich after which the scheme, now the subject of objection, was prepared. Out of the six parishes concerned no question is raised as to Buckenham or Hassingham and the recommendations in the scheme as regards Strumpshaw are only material as leading to its disunion from Bradeston for ecclesiastical purposes. To this suggestion no opposition is offered. The scheme, however, goes on to provide for the union of the parishes of Witton, Brundall and Bradeston.

The terms upon which a union can be recommended are to be found in section 6 (1) of the Union of Benefices Measure, 1923, and may take one of two alternative forms :—

“ Every Scheme for an union of benefices shall recommend that the benefices proposed to be united shall become permanently united together and form one benefice with cure of souls, and either—

(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, or

(b) that such parishes or places shall continue in all respects distinct subject to the express provisions of the Scheme.”

In the present instance the recommendation so far as is material to this appeal was in the following terms :—

*“ Witton and Brundall with Bradeston.*

(1) *Union of Benefices and Parishes.* Upon the day when any Order of Your Majesty in Council ratifying this Scheme is published in the London Gazette (a) the benefices of Witton and Brundall and Bradeston shall be permanently united together and form one benefice with cure of souls under the style of ‘The United Benefice of Witton and Brundall with Bradeston’ and (b) the Parish of Brundall and the Parish of Bradeston shall be united into one parish for ecclesiastical purposes under the style of ‘The United Parish of Brundall with Bradeston’ but the parish of Witton shall continue in all respects a separate parish for ecclesiastical purposes.

(2) *Parish Church.* The parish church of the parish of Brundall shall be the parish church of the united parish of Brundall with Bradeston.”

It is apparent therefore that in the case of the parishes of Brundall and Bradeston the first alternative was chosen and in the case of Witton the second.

The petitioners are not directly concerned with the position of Witton but are strongly opposed to the union of Bradeston and Brundall into one parish for ecclesiastical purposes. They would be content that all three parishes should be permanently united into one benefice for ecclesiastical purposes, provided that Bradeston should continue in all respects distinct, subject to the other express provisions of the scheme.

In order that their Lordships might be fully informed of the relative positions of the three parishes and the location of their churches a map of the district has been provided. In addition particulars were given of the size and population of the three parishes, of the church services now held and of the respective distances of one village from the others.

From these particulars it appears that Witton and Brundall are rather larger in acreage than Bradeston but Bradeston has the largest population containing about 600 souls as opposed to about 500 in Brundall and 139 in Witton.

Of the three churches Brundall is undoubtedly the most central. Bradeston is apparently not so easy of approach, but it is distant only about five-eighths of a mile from its village. The number of sittings in each of these parishes is: Witton 80; Brundall 100; and Bradeston estimated on the part of the Ecclesiastical Commissioners at 80, but of the petitioners at 120. Brundall alone of the three parish churches concerned now holds the statutory services of Matins and Evensong. In the case of Witton there is Evensong only and in Bradeston Matins alternating with Holy Communion but no evening service. It is difficult to see how, without an increase in the number of clergy, this result could be avoided. Attendance at Brundall is about double that at Bradeston. Witton has a very small attendance indeed but it is an isolated village with its population grouped round the church and is said to have an active church life. In any case no objection is made to the recommendation in the scheme that it should continue to remain distinct subject to the provisions of the scheme.

As their Lordships have indicated, objection has been taken to the constitution of the body of commissioners on the ground that Mr. W. Ward was not validly appointed.

The constitution of the commissioners is dealt with in section 3 of the Measure of 1923 and the particular portion with which their Lordships are concerned is to be found in sub-section 1 (b) which provides that:

“The commission shall be constituted and the commissioners shall be nominated as follows, namely:—

One commissioner shall be nominated jointly by the patron and the Parochial Church Council of each benefice affected, or, if in any benefice there are two or more separate Parochial Church Councils, then jointly by the patron and both or all of the Parochial Church Councils.”

The commissioner representing the combined benefices of Strumpshaw and Bradeston should therefore (subject to one modification) have been chosen jointly by the patrons of these two livings and the Parochial Church Councils of each. The modification referred to is to be found in sub-section (2) of section 3 by the terms of which the Bishop as patron of Bradeston could take no part in the nomination of the commissioner.

By what method any two parishes and their patrons or patron are to arrive at their joint choice is not very clear, but in any case a separate choice of two persons, one by each parish, is not warranted. What actually occurred is set out in paragraph 4 of the Answer of the Church Commissioners to the Petition in the following words:—

“In the first instance the said W. Ward was nominated as a Commissioner by the Parochial Church Council of Strumpshaw and Mr. W. J. Spooner of Broadlands Brundall was nominated as a Commissioner by the Parochial Church Council of Bradeston, but by virtue of section 3 (1) (b) of the Union of Benefices Measure, 1923, the two said Parochial Church Councils being in a single benefice were entitled to nominate jointly one Commissioner only. Mr. C. B. Bolingbroke, Legal Secretary to the Bishop of Norwich, who made the preliminary local arrangements for the Commission, informed the Reverend William Reginald Devenish, then incumbent of the benefice of Strumpshaw with Bradeston and as such the Chairman of the said two Councils, that the said two Councils were only entitled to nominate one Commissioner. According to the recollection of the said C. B. Bolingbroke, the Reverend William Reginald Devenish replied that the said W. Ward should be the Commissioner.”

At the prescribed inquiry Mr. Ward, in accordance with Mr. Devenish's suggestion, acted as one of the commissioners. Mr. Spooner, on the other hand, attended merely as a parishioner and made a statement. Some conflict of evidence as to what Mr. Spooner said on this occasion is to be found in the evidence contained in various affidavits which have been exhibited in the course of the proceedings. He was understood by the commissioners themselves and those supporting the scheme to say that his Parochial Church Council had no objection to the union of the parishes or to Brundall church being the parish church of the united parish. Mr. Spooner is himself of opinion that he was only asked about a union of the two benefices, a union to which he and those whom he represented had no objection. That his intention was to go no further derives some support from his words as recorded in the commission's report of the inquiry in which he is said to have stated that there appeared to be no objection to the proposed union "provided there was co-operation with and not absorption by Witton and Brundall."

Clearly the commissioners thought him to have gone further but their Lordships do not think that a layman would necessarily appreciate the exact implication of the expressions used. Even however if he had supported the scheme, and their Lordships are by no means persuaded that he intended to do so, his Parochial Church Council so far from taking a favourable view sent, a few days later after a meeting of the Council, a notice of protest apparently drafted by Mr. Spooner as secretary. This protest was followed a month later by a strongly-worded letter of objection. In spite of this opposition the Church Commissioners were of opinion that sufficient cause had not been shown for modifying the proposals and so informed the objectors by letter of the 20th June, 1949.

The petitioners then obtained the signatures of some 200 parishioners of Bradeston over 16 years of age, in opposition to the proposed scheme, and these signatures and the fact that they were freely obtained has since been verified by affidavit. They also obtained support from resolutions of objection by the Brundall Parish Council and the Brundall Parochial Church Council and from an affidavit of the Reverend William Reginald Devenish, until lately incumbent of the united benefices of Strumpshaw with Bradeston. It is true that the original objection put forward by the petitioners on the 11th April, 1949, rested upon the contention that baptisms, burials and weddings should continue to take place as theretofore in Bradeston church and that, as the Church Commissioners answer, the fact that Bradeston church had become a chapel of ease would not prevent baptisms being held there, that the right of interment was preserved so long as the churchyard remains open for burial by section 11 of the Union of Benefices (Amendment) Measure, 1936, and that under section 20 of the Marriage Act, 1949, the Bishop of Norwich could authorize the publication of banns and the solemnisation of marriage in the church. No doubt in practice this would generally be a solution of the difficulties but it has to be remembered that the right to demand baptisms would be gone, the right of marriage could on proper notice be withdrawn or not renewed and there might be more difficulty in enlarging the churchyard of a chapel of ease, if enlargement was required, than of a parish church. Moreover, the petitioners were desirous of retaining their own churchwardens and Parochial Church Council. It is true that the annual parochial church meeting could, if this scheme were approved, under Rule 13 (4) of the Rules for the Representation of the laity frame a scheme for securing due representation of the congregation of Bradeston in the Parochial Church Council of the united parishes and the duties performable by churchwardens at Bradeston church could be suitably provided for, but all this is problematical and leaves the parishioners of Bradeston under the control of the united parish instead of their own.

Ultimately the only matter in issue between the Church Commissioners and the petitioners is as to whether the union of benefices should be effected under 6 (1) (a) of the Union of Benefices Measure, 1923, thereby creating one parish and depriving Bradeston church of its position as a parish church or under 6 (1) (b) leaving Bradeston a distinct parish.

The main advantage of the former course would, as their Lordships think, be to leave the determination of the number of services to be conducted at Bradeston to the discretion of the Bishop of Norwich and to dispense with the statutory duty of conducting Matins and Evensong. In their Lordships' view the achievement of this result is not a sufficient reason for the suggested change in the face of the opposition offered not only by the Parochial Church Council of Bradeston but also by that of Brundall as well as of the Brundall Parish Council. They therefore consider that the true solution is to unite Bradeston like Witton with Brundall under 6 (1) (b) and to leave it distinct, subject to the other provisions of the scheme.

The only further matter which their Lordships need mention is the validity or invalidity of the constitution of the Commission of Enquiry consequent upon the appointment and presence of Mr. Ward. Plainly Mr. Ward was not duly elected; he was chosen by the Parochial Church Council of Strumpshaw and its patron and not jointly by the patron of Strumpshaw and the two councils of Strumpshaw and Bradeston. This irregularity in their Lordships' opinion was not cured by the intervention of the Reverend William Reginald Devenish, nor by the fact that the commission had the requisite quorum of members without him. He sat, voted and had a say in the proceedings. It would not be right to speculate as to what effect his presence had on the result. It was sought however to establish on behalf of the respondents that the petitioners' right of objection had come to an end. It must be inferred, they said, that the Bishop had requested the petitioners in writing to nominate a commissioner more than thirty days before their objection was made; that they had failed to agree as to the person to be nominated; and that under section 3 (5) of the Measure of 1923 their right to nominate had accordingly lapsed. No request in writing was proved and their Lordships do not feel themselves justified in drawing any such inference, but in any case, as they have said, in their view Mr. Ward's participation in the proceedings is an irregularity which, unless cured, would be a bar to the recognition of the result of the commissioners' deliberation. Nevertheless the duty of their Lordships under section 12 (5) of the Measure of 1923, as amended by section 6 (1) of the Measure of 1936, is to make a report to His Majesty in Council and one of the proposals which they may make is to return the scheme for reconsideration to the Church Commissioners who by sections 1 and 2 of the Church Commissioners Measure, 1947, have been substituted as the authority concerned in the place of the Ecclesiastical Commissioners who were formerly the appropriate body. They would point out that if after reconsideration by the Church Commissioners the scheme is ultimately affirmed by an Order in Council duly gazetted, such scheme under section 11 (3) of the Measure of 1923 is valid and of full force and effect notwithstanding any previous non-compliance with any of the requirements of the Measure or any omissions in regard thereto and notwithstanding any variations between such scheme and the proposals on which the same was based. Their Lordships understand that the scheme with the variation proposed by them would satisfy the wishes of both the petitioners and the Church Commissioners and would be preferred to its rejection.

If then a scheme acceptable to both parties was framed by the Church Commissioners and thereafter affirmed by an Order in Council duly gazetted, the irregularity of the inclusion of Mr. Ward amongst the members of the Commission would not affect the validity of the amended scheme.

Their Lordships therefore in making their report to His Majesty in Council humbly suggest that the scheme certified by the Church Commissioners be returned to them for reconsideration in the light of the Board's proposals. Each party should bear his own costs of the proceedings.

In the Privy Council

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