

In the Matter of an Appeal against a Scheme for effecting the union of the benefices of All Saints, Clifton, Emmanuel, Clifton and St. Mary the Virgin, Tyndall's Park and for the alteration of the boundaries of certain parishes all in the Diocese of Bristol.

The Parochial Church Council of the Parish of Emmanuel, Clifton, Madeline Hodgson and Maurice Webster Wright and the Parochial Church Council of All Saints - - - - - *Appellants*

v.

The Church Commissioners - - - - - *Respondents*

**REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27th March, 1961**

Present at the Hearing

LORD TUCKER

LORD JENKINS

SIR JOHN BEAUMONT

[Delivered by LORD TUCKER]

This scheme for the union of the benefices of All Saints, Clifton, Emmanuel, Clifton, and St. Mary the Virgin, Tyndall's Park and for the alteration of the boundaries of certain parishes in the Diocese of Bristol duly certified by the Church Commissioners in May, 1958 was considered by their Lordships in June, 1959 on appeals by the Parochial Church Council of Emmanuel and Mr. Wright against that part of the scheme which seeks to unite the benefices of Emmanuel and All Saints and to the alteration of parish boundaries in so far as they affect the present boundaries of the parish of Emmanuel, and by Miss Hodgson against that part of the scheme which unites the benefices of All Saints, Emmanuel and St. Mary the Virgin.

Since the last hearing the Parochial Church Council of All Saints obtained leave to appear as appellants and were represented by counsel at the further hearing in February, 1961.

It will be convenient at this stage to repeat the passages in their Lordships' report of 27th July, 1959 outlining the salient features of the scheme and the contentions of Emmanuel.

“ The scheme is a complex one which involves not only the union of the benefices of All Saints, Emmanuel and St. Mary the Virgin and, subject to certain boundary adjustments, the union of the parishes of these benefices in one parish for ecclesiastical purposes, but also for certain alterations in the boundaries of the parishes of Christ Church, Clifton; St. Paul, Clifton; St. John the Evangelist, Clifton; St. Matthew, Kingsdown; St. Saviour, Woolcott Park, and St. Nathanael with St. Katherine, Bristol, and for certain patronage exchanges for which the necessary consents have been obtained.

“ It is to the parts of the scheme which most directly affect the parishes of All Saints and Emmanuel that their Lordships' consideration has been invited.

“ It should be stated at the outset that the two features of the case which stand out most prominently are (1) the parish church of All Saints was destroyed by enemy action and a large sum is expected to be obtained from the War Damage Commission in respect thereof. The figure mentioned was in the neighbourhood of £80,000. The Church Commissioners are of opinion that this sum should not be used for rebuilding All Saints on its original site or elsewhere in the parish but in building a church or churches in other parts of the diocese where recent development and increase in population require the provision of new churches.

(2) The churchmanship of All Saints and Emmanuel is admittedly widely different. All Saints was established as and has always been maintained as an Anglo-Catholic Church and is regarded as the diocesan centre for Anglo-Catholics attracting a large congregation, many of whom come from outside the parish. Emmanuel Church on the other hand was established and has always been maintained under the patronage of the Simeon Trustees for the purpose of providing an evangelical form of worship.

“The parishes of Emmanuel and All Saints adjoin and Emmanuel Church is situate only a few hundred yards from the site of the old All Saints. Both parishes are live centres for their different forms of worship and maintain themselves without outside financial aid. Emmanuel parish had a population of 984 according to the census of 1951 and All Saints 1,787. The respective electoral rolls in 1953 contained 161 and 448 names. The average Sunday morning congregation (including Holy Communion and Matins) at Emmanuel numbers approximately 200 and at All Saints (Low Mass, Sung Mass and High Mass) about 450–500. The services at All Saints are now conducted in temporary premises.

“The incumbency of Emmanuel is vacant and the parish is served by a priest-in-charge. Under the scheme Emmanuel Church is to become the parish church of the new united parish of All Saints. The greater part of the parish of Emmanuel is to be severed from the united parish and become annexed to Christ Church, Clifton, a small part is to be severed and annexed to St. Paul’s, Clifton. A narrow strip containing some 20–25 houses to the east of Clifton College is to be part of the new united parish of All Saints.

“On the one hand it is said that the scheme will involve the dismemberment of the present parish, the dispersal of the congregation and its destruction as a live and active body, the handing over of its church for use for a form of worship to which its founders and present congregation strongly object with the consequent removal of many of its memorials and furnishings and their replacement by those which will be transferred from All Saints.”

The case for All Saints as presented by Miss Hodgson and now supported by the Parochial Church Council may be summarised as follows:—All Saints was and still is a live and flourishing centre of Anglo-Catholic worship attended by large numbers of persons from outside the parish boundaries. Its church has been virtually destroyed by enemy action, though there are some parts of the original structure which could be incorporated in a new building. They were informed in 1944 and again in 1952 by the diocesan authorities that it was intended to re-build All Saints and that it was included in the second category on the list of priorities for the reconstruction of bombed churches in the diocese. As a result a sum of £30,000 has been collected to assist in the re-building and re-furnishing of their church. In the meantime they have converted their parish hall for use as a temporary church. They claim that they have a right that any sum received from the War Damage Commission should be devoted primarily to the re-building of their church though they would have no objection to any balance being applied towards the provision of a new church in some other area. They strongly object to the proposal that their needs should be met by evicting their neighbours from Emmanuel (a church founded and used for a very different type of service) and by converting and adapting it for a type of worship repugnant to its founders and its congregation. This feeling is accentuated by the fact that despite their differences of churchmanship and tradition they are on very friendly terms with their neighbours who readily gave them temporary facilities for worship at their church when All Saints was bombed.

It should be stated that both Emmanuel and All Saints are financially self-supporting save for the sum of £213 per annum received from the Church Commissioners towards the stipend of the vicar of All Saints.

In reply to these contentions it was submitted by the Church Commissioners that it is the duty of the Committee under section 3 (2) (a) of the Pastoral Reorganisation Measure, 1949 to take into account "the making of the best possible provisions for the Ministry of the Word and Sacraments in the diocese as a whole" and to weigh these requirements against those of section 3 (2) (b). It was said that in these days a population of 1,000 in a diocese of the nature of Bristol cannot be justified and that the needs of the parishioners of Emmanuel will be sufficiently provided for by their inclusion in the parishes of St. Paul and Christ Church, while in the case of All Saints they will be provided with an existing church which can be adapted for their use and thus leave a large sum of money available for use in areas where there is greater need.

After the previous hearing their Lordships felt unable to make a final determination as to the merits of these rival contentions by reason of what they considered the lack of information put before them by the Church Commissioners with regard to the position as to the payment which might be expected from the War Damage Commission, and as to the site for the proposed new church to be built if and when any such sum might be received. Their Lordships accordingly proposed to Her Majesty that the scheme be returned to the Church Commissioners for re-consideration in the light of their report, but with liberty to restore the appeal and file further evidence should they decide after re-consideration not to propose any variation thereof or to withdraw it. An Order in Council giving effect to the above proposal was made on 28th July, 1959. The whole position therefore remained open. The Church Commissioners could have withdrawn the scheme or proposed a variation thereof, which might have gone some way to meeting the objections which had been put forward, and they were given the option of re-instating the appeal and filing further evidence. They did not avail themselves of either of the first two alternatives, but elected to restore the appeal and file further evidence.

Their Lordships feel bound to say that they do not consider that the Church Commissioners have taken full advantage of the unusual opportunity afforded them of placing before the Board their position in relation to their claim for war damage compensation. It would seem safe to assume that there must have been some correspondence between the church authorities and the War Damage Commission relating to the claim of All Saints. During the course of the second hearing their Lordships expressed the hope that before the conclusion they would be shown such correspondence. This was not done nor were they informed that no such correspondence existed. Their Lordships must therefore make such assumptions as appear justified by the material available to them.

Section 69 of the War Damage Act, 1943 gives to the War Damage Commission power with respect to hereditaments used for the advancement of religion or for ecclesiastical purposes which have suffered war damage to make a payment of such amount and to such person and subject to such conditions as they may in their discretion determine after consultation with such persons or bodies as may appear to them appropriate.

A committee was formed, containing representatives of most Christian denominations in the country, called the Churches Main Committee to work out with the War Damage Commission the general principles upon which payment for war damage to ecclesiastical buildings might be computed. Agreement was reached and is contained in letters dated 12th and 21st April, 1944 written respectively by the then Bishop of London on behalf of the Committee and the chairman of the War Damage Commission. The following extracts from the Bishop's letter are relevant for present purposes:—

"Accordingly, we submit that in each case of a war damaged church, whether the appropriate payment would otherwise have been a cost of works payment or a value payment, the Commission should award in lieu thereof one kind of payment (a "church payment") to be assessed as the smaller of the two following amounts:—

- (a) the reasonable cost of "plain repair" of the war damage;
- (b) the reasonable net cost of building a "plain substitute church"

.....

“ A damaged church structure, unless it is not required at all, either will be repaired or rebuilt on the same site (a reinstated church) or will be rebuilt on a different site (a replaced church). It would be convenient to deal separately with reinstated and with replaced churches:—

- (a) Reinstated churches. These churches will be those which after consultation with a representative body of the denomination concerned . . . the Commission determine ought to be repaired or rebuilt on the same site
- (b) Replaced churches. These will include any church rebuilt on another site to replace one or more churches which have suffered war damage.

.....

“ Our proposal is therefore that where the denomination desires, and the Commission agrees, that the damaged church should not be repaired or rebuilt on the same site, the amount of the church payment (after adjustment for site value) should be allowed to be utilised toward the cost of erecting a new church elsewhere, not only where the appropriate payment is the net cost of a plain substituted church but also where it is the cost of plain repair. For it would clearly be no less contrary to the public interest to restore a partially damaged church in the wrong place than to re-erect a totally destroyed church in the wrong place. It is hardly necessary for us to add that the request to expend a plain repair payment elsewhere would arise only where the conditions were such that replacement on another site was strongly desirable and the denomination was prepared to meet the considerable additional cost of a new building elsewhere. It is obvious that no such request should be made where the damage was slight.

“ We recognise that if this proposal is to be practicable, the Commission must be able to obtain disinterested advice from some authoritative body of the denomination, which can consider the matter from a wider point of view than the interests of the particular congregation affected and in the light of the denomination’s reorganisation plan, whether central or provincial. We are able to give the Commission, in general terms, the assurance that each representative body of a denomination will undertake to consider in all cases the needs and interests both of the denomination as a whole and of the particular congregation affected and to inform the Commission if local wishes are at variance with the central recommendation.”

In his reply the chairman of the War Damage Commission wrote:—

“ I am happy to say that the Commission have accepted the Committee’s proposals in toto and agree that a statement in terms of your letter, should be issued at an early date for the information and guidance of the churches. The Commission are glad to have the assurance given in paragraph 12 of your letter that each denomination will have a representative body which will undertake to consider the needs of the denomination as a whole and of the particular congregation affected and to inform the Commission if local wishes are at variance with the central recommendation. They entirely agree with the Committee that this is essential if the scheme is to be practicable.”

This important correspondence was not produced until the second hearing of these appeals.

The arrangement in terms provides that there must first be an agreement between the denomination and the War Damage Commission that the damaged church shall not be repaired or re-built on the same site. This at once prompts the enquiry whether any such agreement in fact exists, and if so what information was given to the Commission as to local wishes. It may well be the case that the Church Commissioners and/or the Commission await the result of these appeals. If so it would seem that some agreed statement to this effect could have been placed before their Lordships. If on the other hand no application of any kind has been made since the church

was destroyed twenty years ago and application will be made for the first time after the decision of these appeals it would seem that in the event of this scheme being approved in its present form the War Damage Commission would be presented with a *fait accompli* so far as the decision not to repair or re-build on the same site is concerned and would not be able to exercise the right which they have reserved to themselves to give or withhold their consent after consideration *inter alia* of local wishes. Moreover their Lordships have no means of knowing the re-actions of the War Damage Commission to an application to provide a sum in the neighbourhood of from £60,000-£85,000 (which are the approximate figures which have been suggested) at some indefinite future date towards the building of a church at some place not at present definitely decided upon, which is the present situation. There may be satisfactory answers to all the above questions, if so they could and should have been made known to the Board. It was not for their Lordships to indicate the precise nature of the evidence to be adduced by the respondents, it was for them, if they intended to rely on this war damage payment as a decisive factor, to outweigh the serious objections advanced by the appellants to this scheme so far as it affects All Saints and Emmanuel, to provide the required evidence.

Their Lordships will, however, now proceed to examine the situation on the assumption that if the scheme is approved the War Damage Commission will at some future date provide a substantial sum for building a church in one of the newly developed areas.

In 1956 the then Bishop of Bristol launched an appeal called the Church Development Appeal for funds to build churches and halls for the new communities in the re-housing areas in the diocese. This appeal contained the following paragraph:—

“The estimated cost of this essential work is £450,000. We have done everything in our power to reduce this by a wise use of War Damage payments, and by a deliberate policy of disposing of redundant sites and buildings, and of uniting parishes in cases in which this could be done without unfairness to the parishioners. By this means we have as we hope reduced the cost to something like £250,000. We hope to raise £50,000 of this sum from the parishes themselves and for the rest we would appeal to the generosity of our fellow citizens.”

The appeal gave particulars of work already done and of future estimated requirements up to 1960. These consisted of five permanent parish churches to replace temporary buildings, three existing churches to be enlarged, eight churches and/or halls in new areas, of houses for clergy, sites and contingencies. The sum required for this programme has now been obtained or promised and it is considered possible but not probable that there may be a balance which might be applied towards other projects the need for which has or is likely to arise in the near future. The diocesan authorities do not consider it is practicable to issue another public appeal for church buildings. It will therefore be observed that the overall picture in the year 1961 is very different to what it was in 1956 when the appeal was issued and in 1955 when the proposals contained in the scheme were put forward.

The respondents at the further hearing of these appeals relied upon an affidavit by the secretary of the Pastoral Committee of the Diocese of Bristol sworn on 4th January, 1960 in which the present requirements for new church buildings beyond those which have been met by the 1956 appeal are set out. They comprise four new churches at a total estimated cost of £110,000, twelve halls at £90,000 and two parsonages at £12,000 making a total of £212,000 towards which it is anticipated sums totalling £67,000 are available.

It will suffice to refer to the particulars set out in the affidavit of the secretary of the Pastoral Committee with regard to two of the four proposed new churches since these were relied upon as being the most urgently required

viz. Lawn, Swindon and Whitchurch, Bristol where there are at present no church buildings. They were as follows:—

“Lawn, Swindon. This is a growing housing estate with no church. The population is at present about 2,000. When the development is complete the population of the estate will probably be between 5,000 and 7,000. A new parish will then have to be formed and a church will be needed.

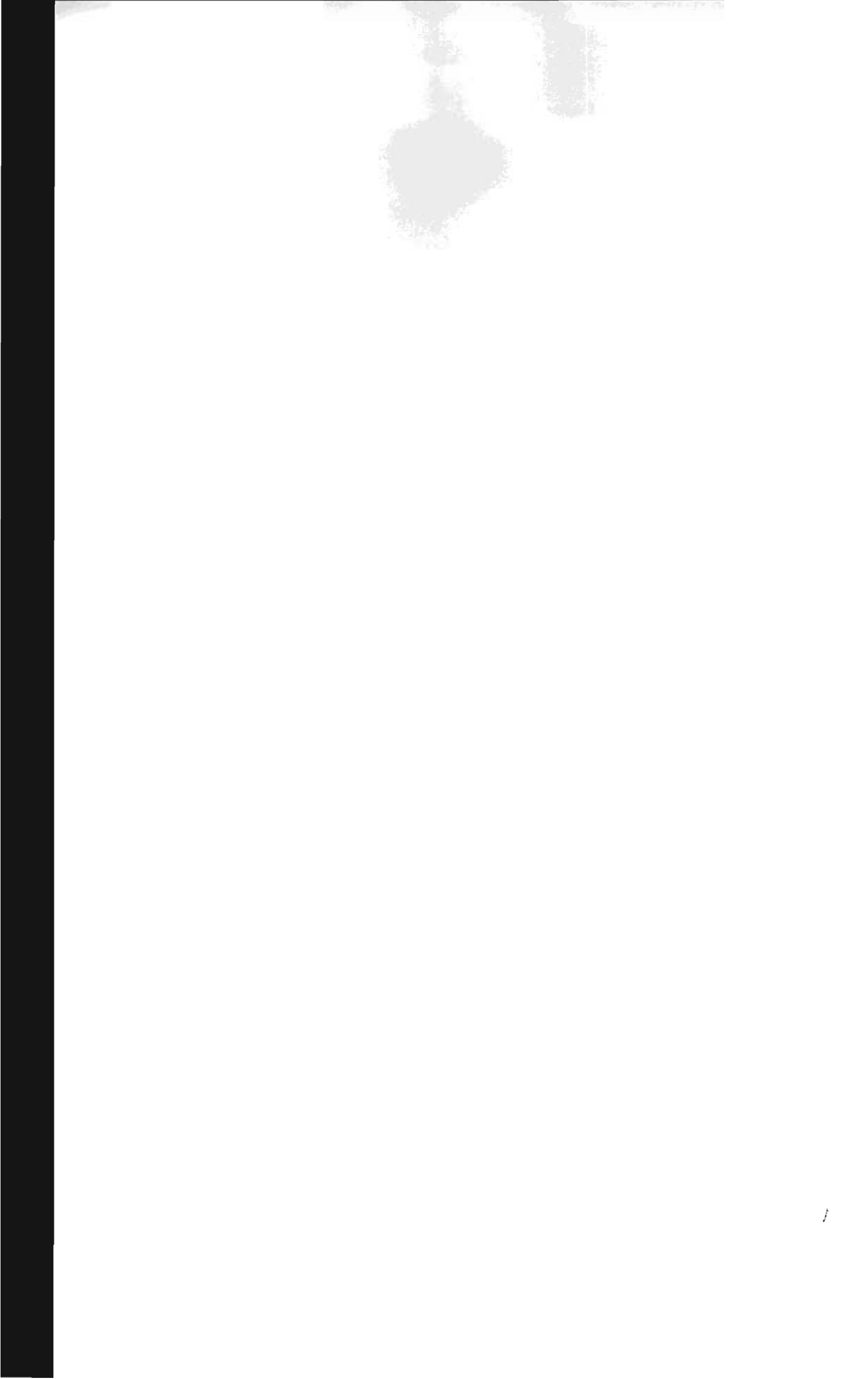
“Whitchurch, Bristol. This is the old airport which belongs to the Corporation of Bristol. I have been informed by an official of the Corporation that the Corporation has applied for compulsory powers to buy adjoining land, and their present plans provide for the building on the whole site of nearly 3,000 new dwellings. This means that the population would be between 10,000 and 12,000 so that a church will have to be built.”

Their Lordships do not doubt that in all probability it may become very desirable to provide churches and halls for these and similar areas at some future date, but the particulars set out above are extremely vague and dependent upon future events which cannot be anticipated with certainty and estimates which may or may not be accurate. In short the totality of the evidence with regard to future requirements in the opinion of the Board amounts to no more than that the diocesan authorities will have no difficulty in making good use of any sum which they may receive from the War Damage Commission by providing churches and halls in areas where development is taking place or is reasonably to be anticipated. But does this justify depriving the parish and congregation of All Saints of the right to have their church re-built on its old site and the eviction of the congregation of Emmanuel from their church and the dismemberment of their parish? Their Lordships have given most careful and anxious consideration to the contentions which have been advanced for and against this scheme in so far as it affects Emmanuel and All Saints and have reached the conclusion that the question posed above must be answered in the negative. To quote from the language of the Bishop's appeal of 1956 they do not consider that this is a union which could be effected “without unfairness to the parishioners” of Emmanuel and All Saints, or that respect for the “traditions, needs and characteristics” of these individual parishes has been sufficiently taken into account as required by section 3 (2) (b) of the Pastoral Reorganisation Measure, 1949.

Their Lordships are reluctant to arrive at conclusions on such issues as these which conflict with the views of the ecclesiastical authorities charged with the duty of implementing the Measure of 1949, but the present case has certain very unusual features. It is not concerned with the re-building of a church which is redundant in the sense that the religious life of the parish was moribund. It is depriving a large, active and devoted congregation of their right to have their church, which had been destroyed by enemy action, re-built in their midst out of funds made available by Parliament in order to obtain money which can be used at some future date to build a church on a site not yet definitely selected to meet the anticipated needs of one of several areas with growing populations.

Their Lordships have not overlooked the question of the saving of manpower which might result from the union of the benefices of All Saints and Emmanuel. This consideration was not put in the forefront of the respondents' case and on the evidence before them they do not consider in all the circumstances of this case it could be regarded as a decisive factor in favour of the scheme which really depends upon the purpose for which the war damage compensation should be used.

For the reasons stated above their Lordships will humbly propose to Her Majesty that these appeals be allowed and that the scheme be returned for re-consideration by the Church Commissioners on the basis that the provisions therein for the union of the benefice of All Saints, Clifton, the benefice of Emmanuel, Clifton, and the benefice of St. Mary the Virgin, Tyndall's Park and the creation of a new united parish of All Saints and all other provisions, including the alteration of parish boundaries, consequential on such union and new united parish, be omitted therefrom.



In the Privy Council

THE PAROCHIAL CHURCH COUNCIL OF
THE PARISH OF EMMANUEL, AND
OTHERS

v.

THE CHURCH COMMISSIONERS

DELIVERED BY LORD TUCKER

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
HARROW
1961