

Margaret Florence Evelyn Mackenzie - - - - *Appellant*

v.

The Church Commissioners - - - - *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27th JULY 1979

Present at the Hearing:

LORD DIPLOCK
LORD EDMUND-DAVIES
LORD SCARMAN

[*Delivered by LORD DIPLOCK*]

This is an appeal against a relatively minor provision of a Pastoral Scheme for uniting in a single benefice to be called "The Benefice of Hambleden Valley" five separate adjoining benefices of Fawley, Fingest, Hambleden, Medmenham and Turville. These five parishes which are to remain distinct are in the diocese of Oxford. They are situated in the Chilterns to the north of Henley-on-Thames and are relatively sparsely populated. Hambleden is the most central of them and its parsonage house is to be the place of residence of the incumbent of the united benefice. He and an assistant curate will be the only stipendiary clergy serving the five parishes.

There is at present also a parsonage house at Fawley. It was built in 1956 in substitution for the old rectory. Hambleden and Fawley have been held in plurality since 1968, and the incumbent, with the assistance of a curate, has also had since 1971 the pastoral care of the other parishes, Fingest, Medmenham and Turville. As he resided in the parsonage house at Hambleden, the parsonage house at Fawley became vacant. Under an informal arrangement made by the incumbent, the Rev. B. W. Wilks, who is Chaplain of a boarding-school in the locality, Shiplake College, was permitted to live there rent-free in return for occasional clerical assistance at Fawley and elsewhere in the Hambleden Valley parishes.

The appellant, Miss Mackenzie, is the patron of the living of Fawley. She is a parishioner, she was born there, and has lived there throughout what is already a long life. It is naturally a disappointment to her that Fawley will no longer have a resident incumbent; but such has been the case since 1966 when the last separate Rector of Fawley resigned; and Miss Mackenzie recognises that in view of the demands upon the limited available manpower and resources of the Church of England churchgoers in rural parishes must be prepared to sacrifice their claim to be provided with pastoral care in such intensive form as they formerly enjoyed.

In Fawley, the absence of a resident incumbent has been mitigated by the fact that a clergyman, although he is in full-time employment elsewhere, has been living in the parsonage house and been available for occasional clerical assistance. Miss Mackenzie and other parishioners of Fawley, who support her, have been hoping against hope that after the benefices have been united, it will continue to be possible to find a clergyman who is retired or, like Mr. Wilks, has some other employment, and would be prepared to give part-time assistance in a clerical capacity in Fawley in return for rent-free accommodation in the parsonage house.

It was in this hope that Miss Mackenzie objected to the provision contained in clause 6(2) of the Pastoral Scheme. This clause deals with the disposal of parsonage houses and, so far as relevant, provides that the parsonage house at Fawley shall “be transferred to the Oxford Diocesan Board of Finance for disposal in accordance with the provisions of paragraph 9 of Schedule 3 to the Pastoral Measure 1968.” Miss Mackenzie, on the other hand, wanted it to be retained and kept available for rent-free occupation by a clergyman who might be willing to give unpaid part-time services to the parish.

Under Schedule 3, paragraph 9(1), of the Pastoral Measure 1968, where property has been transferred to the Diocesan Board of Finance for disposal, the Board has an unfettered discretion to postpone the sale of it for as long as they deem it right to do so. The Board have expressed their willingness to permit Mr. Wilks, so long as he remains the Chaplain of Shiplake College, to continue to occupy Fawley Rectory, and they have agreed that no steps will be taken in the meantime to dispose of it.

Their intention in this regard, however, does not appear to have been communicated to Miss Mackenzie until a statement to this effect appeared in the Church Commissioners’ Answer to Miss Mackenzie’s Petition to Her Majesty in Council. Their Lordships think that it is a pity that this was not said before, since Miss Mackenzie and her advisers appear to have thought that the Board intended to sell the parsonage house as soon as it had been transferred to them. Instead it was pointed out, correctly, to her legal advisers that, even if clause 6(2) were omitted from the Scheme, the Church Commissioners could still transfer the parsonage house to the Diocesan Board of Finance under section 32(1) of the Endowments and Glebe Measure 1976, in which case it would be held by the Board as part of the diocesan glebe land of the diocese which the Board would then have power to sell with the approval of the Church Commissioners under section 20(1) of that Measure. So that the same practical result would be achieved by this route even if clause 6(2) were deleted from the Pastoral Scheme.

The Pastoral Committee, the Bishop of Oxford, and the Church Commissioners are satisfied that the resources of clerical manpower likely to be at the disposal of the diocese do not permit of allocating more than two stipendiary clergy (one incumbent and one assistant curate) to the united Hambleton Valley benefice. Parsonage houses rendered superfluous by uniting rural benefices represent valuable realisable assets. It is not the policy of the diocese to permit such an asset to be sterilised for the future by keeping it available for occupation rent-free as a means of providing for a particular parish pastoral care additional to its fair share of the services of the stipendiary clergy allocated to the united benefice. Nevertheless in the short term and having regard to the fact that for the last ten years Mr. Wilks has occupied the parsonage house at Fawley and helped in providing clerical services, not only to that parish but to other parishes in the Hambleton Valley, the diocese is willing to allow this arrangement to continue so long as he continues in his employment as Chaplain of Shiplake College.

In view of this intention of the diocesan authorities, the Pastoral Scheme does little more than give *de jure* effect to arrangements for the pastoral care of the Hambleton Valley parishes which have been working successfully *de facto* since 1971. If Miss Mackenzie’s Petition were granted and clause 6(2) deleted from the Scheme, it would, as their Lordships have already pointed out, have no practical consequences, except to delay the confirmation of the Scheme.

Their Lordships are of opinion that the appeal should be dismissed. They have considered carefully whether the Church Commissioners’ costs of the appeal ought to be paid by Miss Mackenzie instead of falling upon the diocese. They would have so ordered if the intention of the diocesan authorities as to Mr. Wilks’ continued occupation of the parsonage house had been communicated to Miss Mackenzie before she lodged her appeal. But in the circumstances they will make no order as to costs. Their Lordships will humbly propose to Her Majesty that this appeal should be dismissed.



Pastoral Measure 1968

MARGARET FLORENCE EVELYN
MACKENZIE

†.

THE CHURCH COMMISSIONERS

DELIVERED BY LORD DIPLOCK