Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jones v. *Gough and others, from the Court of Arches; delivered 2nd February,* 1865.

Present:

LORD CRANWORTH.
LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

THE sole question in this case is, whether or not Leaton or any part of it remains a portion of the Parish of St. Mary's, Shrewsbury. No doubt a part of it once did belong to that parish, and the question, therefore, is whether it has ceased to belong to it. From 58 George III, cap. 45, downwards, there have been passed a number of Acts of Parliament authorizing Commissioners to create new Ecclesiastical Districts. The earliest authority given to them was that where parishes were populous and large they might take out of those populous and large parishes a district, and form it into a separate Ecclesiastical District. It was soon found that this power did not meet the whole evil it was meant to remedy. It might be inconvenient or impossible to take a district out of one parish and make a separate parish of it; but there might be several parishes lapping into one another, out of all of which a new district might conveniently be taken. Powers for this purpose were given by the 59 George III, cap. 134, and the new district so formed is in the Act called a Consolidated Chapelry.

The regulations by which these new districts when formed were to be governed, must have been intended to be the same whether they came out of one parish or out of several parishes, and whether they are designated as districts or chapelries.

That being so, their Lordships will now state what the enactment is on which it is contended that this district of Leaton has become a separate parish. In 19 & 20 Vict., cap. 104, sec. 14, it is enacted "That whenever the solemnization of marriages, churchings, and baptisms according to the Laws and Canons in force in this real mare authorized to be published and performed in any consecrated church or chapel to which a district shall belong——" We must here pause to say that by an Order in Council in 1860, a district taken out of the Parish of St. Mary's, Shrewsbury, and several adjoining parishes, was annexed to a consecrated chapel. There was undoubtedly, therefore, a district to which a consecrated chapel belonged. Then the section proceeds, "Such district not being at the time of the passing of this Act a separate and distinct parish for Ecclesiastical purposes, and the Incumbent of which is by such authority entitled for his own benefit to the entire fees arising from the performance of such offices without any reservation thereout, such district or place shall become and be a separate and distinct parish for ecclesiastical purposes." And by the next section it is provided that not only shall the new parish become a separate parish for all ecclesiastical purposes, but the inhabitants of that parish are to be for ecclesiastical purposes parishioners of that parish and of no other parish, and all the laws relating to ecclesiastical matters as to that parish are to apply to that parish and to no other.

The question, therefore, is whether the incumbent of this new consolidated chapelry has become entitled under such authority as mentioned in the Act to the fees arising from the performance of the ecclesiastical offices therein mentioned. There are two questions. Has he become entitled to these fees? and if so, has he become so entitled "by virtue of such authority," within the true meaning of those words as they are found in the 14th clause of the Act? The question whether he has become entitled to these fees depends upon this. He was not entitled simply by the constitution of the ecclesiastical district, *i.e.*, the consolidated chapelry, because by the laws in force previously to the 19th and 20th Vict., cap. 104, with reference to the constitution of such districts, the incumbent of the old parish continues to be entitled to them, unless some other arrange-

ment is made. But by this new Act a considerable change is made. The enactment on this subject is to be found in the 12th section of the Act, which enacts that from and after the next avoidance or the relinquishment of such fees by such incumbent, *i.e.*, the incumbent of the original parish, then the fees shall belong to the incumbent of the new district. We are clearly of opinion that in the case of a consolidated chapelry the words "such incumbent" must mean the incumbents of all the parishes out of which the chapelry has been formed. The question, therefore is, Have the fees belonging to St. Mary's, Shrewsbury, and the other two parishes, or have they not, been relinquished? That was a question of fact which the learned Judge below had to decide. There is no doubt it is a question of some nicety. Of the three incumbents one of them says, "I did expressly give them up:" the other two in substance say, "I made no formal resignation, but when I gave up the right to the parish which I was asked to give up and did give up, I considered that I gave up everything." Three years after this happened they are examined, and they do not pretend to say that they have been otherwise advised since. What takes place after the institution of the suit is of course no otherwise important than as affording evidence of what the witnesses meant to do at the time when the district was formed. But we think the learned Judge came to a reasonable conclusion; and even if there were more doubt about it than there is, it is a principle of every Court of Appeal upon a question of fact, that if a matter has been fairly and fully considered in the Court below, unless the Court of Appeal is able to say that the decision of the fact was clearly wrong, it should not be disturbed. Therefore, upon that question of fact we concur with the learned Judge below.

Then it was said that what was to be proved was not merely that the incumbent had become entitled for his own benefit to the fees, but that he had become so entitled "by such authority," that is, the authority referred to in the 14th section. All these Acts are, unfortunately, very loosely worded; but when we come to look at the clause we see that what must have been meant was the whole authority under which the district was constituted, including the 12th section of the Act, and by that section it

was expressly provided that the relinquishment of fees by the incumbent of the old parish should be one mode in which the incumbent of the new district should become entitled to them. We think, therefore, that the Judgment of the Court below must be affirmed, and the Appeal dismissed with costs.