

Special Reference in the matter of a Scheme in pursuance of the Union of Benefices Acts, 1860 and 1898, for effecting the union of the Benefice of Saint Edmund the King with Saint Nicholas Acons, and the Benefice of All Hallows, Lombard Street, with Saint Benet Gracechurch, Saint Leonard Eastcheap and Saint Dionis Backchurch.

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REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 9TH FEBRUARY, 1937.

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*Present at the Hearing :*

VISCOUNT SANKEY.

LORD BLANESBURGH.

LORD ALNESS.

[*Delivered by* VISCOUNT SANKEY.]

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This is an appeal brought by the Mayor and Commonalty and the Citizens of the City of London of the first part, by the Royal Academy of Arts, The Society of Antiquaries of London, The Royal Institute of British Architects, The Society for the Protection of Ancient Buildings, The London Society, The London Survey Committee, The Metropolitan Public Gardens Association, The St. Paul's Ecclesiological Society, and The London and Middlesex Archaeological Society of the second part, and by Mr. Percy Alport Molteno, at one time a parishioner of All Hallows of the third part, against the above-mentioned Scheme which was made by the Ecclesiastical Commissioners for England on the 7th November, 1935, and which has since been certified to His Majesty in Council. The Scheme was made under the Union of Benefices Acts, 1860 and 1898, and the appeal is brought under the provisions of section 16 of the Act of 1860.

The Scheme proposes that the benefice of St. Edmund and the benefice of All Hallows, Lombard Street, shall be united into one benefice, and that upon such union taking effect the following provisions shall apply; that is to say (1) The Church of St. Edmund the King shall become the parish church of the united benefice and the church of All Hallows, Lombard Street, shall be finally closed and taken down. (2) The Font, Communion Table, Sacramental Plate and other furniture used in the church of All Hallows, if not required for use in the parish church of the united benefice shall be appropriated by the Bishop of London for use in a new church, proposed to be erected on some spot within the diocese of London, and that any articles not so appropriated may be transferred to any other church or churches within the said diocese which the Bishop may select. (3) The proceeds of the sale after providing for compensation to church servants and other matters, shall be applied (a) in providing a church and parsonage for a new Ecclesiastical District in the diocese of London to be called All Hallows; (b) in appropriating £24,000 towards two churches in two

new Ecclesiastical Districts; (c) in providing a sum of £8,000 towards the re-building of the hall of St. Dionis in the united benefice; (d) in providing other sums for similar purposes; (e) in appropriating such a sum as the Ecclesiastical Commissioners and the Bishop of London may approve towards the cost of providing new churches within the portions of the dioceses of Canterbury, Chelmsford, London, Rochester and Southwark which are situate within the metropolitan area.

The main question to be determined in the appeal is whether on the one hand the church of All Hallows ought to be demolished, its site sold, and its contents either appropriated to another church or other churches or sold, or disposed of, or whether on the other hand the church, together with its contents, ought to be retained in its present position and used as a church as heretofore. The reasons given by the appellants against the Scheme are as follows: they say (1) the carrying into effect of the Scheme would seriously and unnecessarily diminish the religious privileges and the historical, architectural, artistic and other amenities of the City of London. (2) The church of All Hallows and its furniture and fittings together constitute a priceless artistic and historical heritage and the value and interest of its component parts would be almost destroyed by their separation from each other and from the surroundings and neighbourhood which have formed their setting for nearly 250 years. (3) The church of All Hallows is still serving its original and proper function as a place of divine worship and though the character of its work may have changed it is still an active force in the spiritual life of the nation which can be further extended.

At the beginning of the hearing the learned counsel for the Ecclesiastical Commissioners took a preliminary point. While admitting that the City of London had a right to appear, he denied that the learned Societies had such a right, or that Mr. Molteno, who was no longer a parishioner, had such a right, on the ground that they had no *locus standi*. It was urged that by section 16 of the Union of Benefices Act of 1860, any person interested may show cause against the Scheme and that neither the learned Societies nor Mr. Molteno were persons interested. The course, however, which this case has taken preclude the Ecclesiastical Commissioners from relying upon this point. By an Order in Council of 28th May, 1936, it was provided as follows:—"His Majesty is pleased, in exercise of the powers conferred upon Him by the Union of Benefices Acts, 1860 and 1898, by and with the advice of His Privy Council, to order and direct that the said appeal, petition and objection be considered by the Judicial Committee of the Privy Council, who shall make report to His Majesty in Council thereupon as provided by the said Acts." The petition referred to in that Order is the petition of the Royal Academy and others against the Scheme, and the objection therein referred to is the objection of Mr. Molteno against the Scheme. Their Lordships are of opinion, therefore, that

they are bound to hear the petition and objection as well as the appeal of the City of London. At the same time it is unfortunate that owing to the course the case has taken the Ecclesiastical Commissioners have been prevented from relying upon their preliminary point. In future in cases of this character the Order in Council, in their Lordships' opinion, should make provision to enable a respondent to take a preliminary point should he so desire, and an opportunity should be afforded to the parties to have that preliminary point disposed of before the hearing of the main appeal. Otherwise a party, as in this case, would be put to the expense of preparing his case for the main appeal, only to find, perhaps, that on a preliminary objection, he was not entitled to be heard because he was not an interested party.

Before turning to the main question it is convenient to adopt the course followed by Mr. Vaisey, the learned counsel for the City of London, and to say a few words about the 1860 Act. It refers to the Metropolis only. The 1898 Act altered the Metropolitan Police District to a small extent, but the only Act to be considered in the present appeal is that of 1860.

It no doubt creates a difficult and distasteful jurisdiction. No one would desire to order a church to be demolished and its site to be sold, but the jurisdiction exists, and the Act of Parliament is an answer to those who contend that no church should ever be demolished and no consecrated site ever sold for secular use. As Mr. Vaisey very properly said: "I do not want it to be suggested for a moment by anything I say that the authors and supporters of this Scheme view with satisfaction and without regret the destruction of this church which is involved in their proposals. . . . I do not want to suggest for a moment that that Scheme has been put forward otherwise than with the most proper intentions and believing it is the best thing to be done in the circumstances." Indeed, it is to be gathered from a consideration of the 1860 Act that the legislature held very much the same opinion. While they gave permission for schemes to be made for the better provision of the union of contiguous benefices, they excepted certain well-known churches and provided that nothing should authorise the pulling down of the churches of St. Stephen's Walbrook, St. Martin's, Ludgate, St. Peter's, Cornhill and St. Swithin's, Cannon Street. Perhaps modern opinion would have induced Parliament to add other churches in the district to these four excepted churches. Parliament, however, possibly as a matter of protection, exacted a very complicated procedure to be gone through before a scheme could take effect. Numerous consents are required. The question has to be considered in its details by (1) the Bishop, (2) his Commission, (3) the patrons, (4) the vestries, (5) the Ecclesiastical Commissioners, (6) the churchwardens, (7) the House of Commons, (8) the House of Lords, (9) the King in Council, and in the event of an appeal (10) the Judicial Committee of the Privy Council. In the present

case all the necessary consents have been given. Although, therefore, the opposition to the Scheme is weighty and formidable—for no one would challenge the right and the desire of the City of London to protect the sites of the churches within their jurisdiction, and everybody in the community would be grateful to the members of those learned Societies who spend so much time and trouble in their endeavour to protect the ancient, artistic and historical monuments of our country, and no one could fail to have sympathy with Mr. Molteno, who, for so many years, has been connected with the parish—nevertheless it must be remembered that the support of the Scheme is also weighty and formidable. The Bishop of the Diocese is in favour of it; the Commission appointed by him to enquire into the matter was unanimous in favour of it; the rectors of both parishes concerned are in favour of it; all the churchwardens of both parishes are in favour of it; the parochial church council of All Hallows voted in favour of it by 10 votes to 2; the patrons are in favour of it; and in compliance with section 15 of the Act of 1860 the Scheme was laid before both Houses of Parliament for the space of two calendar months and no objection was taken. This, however, is not to say that the case of the present objectors should be lightly considered. On the contrary, their very important views deserve not only careful, but most anxious thought; indeed, it is impossible not to extend to them the sympathy which naturally those who are called upon to settle such a case, feel for its opponents.

It is now necessary to deal with the facts of the case, and their Lordships propose to do so in the following order: (1) to describe the parish; (2) to describe the church attendance; (3) to give the history of the parish; (4) to describe the church and its furniture; (5) to endeavour to weigh up the advantages and disadvantages of the Scheme.

(1) As to the parish, the church of All Hallows, Lombard Street, in addition to its own parish at present serves three other parishes, each of which had formerly its own church; St. Leonard, Eastcheap, St. Benet, Gracechurch, and St. Dionis, Backchurch. The church of St. Edmund the King, in addition to its own parish also serves that of St. Nicholas Acons, the church of which was not rebuilt after the Great Fire. The present extent of the parish of All Hallows is about 11·6 acres; the present extent of the parish of St. Edmund the King is about 3·9 acres, so that the united parishes would have an area of about 15·5 acres. The site itself is supposed by some to have been the Forum of the ancient Roman City of London. There is, naturally, no proof of this, but, at any rate, the site is certainly in the heart of the present City of London.

(2) As to church attendance it is common knowledge now that although speaking generally the night population of the parishes in the City of London is almost negligible, the number of those who visit the various churches for spiritual rest or refreshment in daytime is considerable. The small number of

residents in the parish of All Hallows in 1926 has dwindled still further and in the affidavit of the rector of All Hallows, the Rev. Canon Tissington Tatlow, their Lordships are told that he doubts whether there are more than 50, almost all caretakers. "So far as I know," he says, "the only parishioner who attends the church is Mrs. Thomas, who is employed as verger, although there are members of four families of caretakers who occasionally come to the church." He continues, "At the Sunday Communion there are a few communicants, all members of the choir or staff." The church record book of 1935 shows a total number of 5,869 attendances on Sundays for the year and 1,279 on weekdays. The church has in recent years been used particularly by the rector, who has taken an interest in the Christian Student Movement, as a centre for students from London University, to which, later on, reference will be made. There is no parsonage house attached to the church. With regard to the other church, that of St. Edmund the King, it is only 70 yds. away from the church of All Hallows, and the rector, the Rev. the Hon. G. J. Adderley, states in his affidavit that the resident population of that parish is now about 25, and no parishioner, as far as he is aware, attends the church. He continues that at the Sunday morning service the average congregation, omitting the choir, is about eight, and that at the evening service some 20 to 30 of whom not more than 10 are regular attendants. He continues, "There is no parochial duty in the ordinary sense in either of the two parishes it is proposed to unite." On the other hand there is a very valuable hall, St. Dionis hall close to the church of St. Edmund, which can be used with great advantage for church purposes. So much for the description of the parish and the present condition of attendance at the two churches.

(3) Their Lordships now turn to the history of the parish.

In the reign of King Edward the Confessor it appears probable that the church of All Hallows was the private chapel of the family of one Brithmer, a Senator or Alderman of London. It seems that this family was then living in the parish of St. Benet Gracechurch, and it was by them that the church of All Hallows was first endowed. By an agreement made in the year 1053 Brithmer gave his house and the said church of All Hallows to the convent of Christchurch at Canterbury. The Prior and Chapter of Canterbury continued to be the patrons of the church of All Hallows until the dissolution of the monasteries, when the advowson of the said church was transferred to the Dean and Chapter of Canterbury to whom it still belongs. In the case of the City of London most interesting documents are set out, prepared by the City Churches Preservation Society which give a number of details about the church itself. It is impossible, in a short judgment, to refer to all of them.

The church appears to have been a church of a separate parish before the end of the 12th century. The original church was gradually enlarged, a new chapel being added

in 1349, and the North Chapel before 1544. The church was probably rebuilt about the end of the 15th century. The Worshipful Company of Pewterers are still connected with it, having held an annual service therein for many years. The Great Fire of London destroyed the church, but did not destroy the steeple, which was still standing in 1679. Temporary accommodation was provided for the parishioners in a tabernacle erected in the churchyard about 1669, and between the years 1686 and 1694 the present church was built by Sir Christopher Wren at a cost of £8,058 15s. 6d. One other point of historical interest is that All Hallows is noteworthy as being the church in which the Rev. John Wesley preached his first extempore sermon in 1735.

(4) Their Lordships now turn to the church and its furniture. Although All Hallows was designed and erected under the supervision of Sir Christopher Wren, one of the greatest architects of our race, it is not one of his best examples. It affords sitting accommodation for about 300 persons, the church of St. Edmund the King, its near neighbour, affording accommodation for 350. The real beauty of the church consists in its internal fittings. The woodwork is of great beauty. It was executed by London craftsmen at the time of the rebuilding of the church by Sir Christopher Wren and was ordered and paid for by the parishioners; the organ is a fine example of the work of Renatus Harris and cost the parishioners about £1,000; the reredos, the pulpit and the door cases at the west end are all beautiful pieces of 17th century carved woodwork. The font is thought to be the work of Grinling Gibbons. It is not suggested that the church externally is of striking architectural merit. Mr. Humphrey King, who appeared on behalf of the Royal Academy and other artistic Societies, said: "My clients do not regard the fabric of this church in itself as being a matter of outstanding architectural importance, they regard it as a perfectly plain rectangle; an excellent casket in which to place the beautiful fittings of the interior." Unfortunately, the church, from time to time, has fallen into disrepair. The walls are like those which Wren designed for so many of his churches, including that of the Cathedral of St. Paul's, that is to say they are brick or stone with a core of dry rubble, which has, from time to time, given anxiety to those responsible for maintaining its repair. It is not necessary to refer to the occasions upon which sums have been spent upon the structure. It is sufficient to say that matters got so bad that on the 14th August, 1934, a dangerous structure order was made in respect of it, and it was ordered before the Court of Summary Jurisdiction, sitting at the Mansion House Justice Room, that the owner of the said structure (that is the church of All Hallows) do take down or secure the east wall where cracked out of upright or otherwise defective or repair to the satisfaction of the surveyor within the space of 21 days of the date thereof. In the report of Messrs. Caroe & Passmore, the architects of the Ecclesiastical Commissioners, dated 18th September, 1936, it is stated that an expenditure

of about £1,000 had been incurred in taking down the east wall and carrying out the necessary works to comply with the order of the Court in connection with the dangerous structure notice. In the same report it is further stated that the dangerous structure notice was served on the incumbent in respect of the east wall, and this wall, together with portions of the north and south walls and the vault and roof above was taken down to the floor level. The end of the building has been filled in with a temporary structure and the remaining portion of the north and south walls of the sanctuary tied back to the piers at the east end of the nave with iron straps. The report refers to various other matters of non-repair and adds "we estimate that the cost of the repairs indicated will amount to about £10,000." Other estimates put the cost of repairs at either £5,000 or £15,000, but it was suggested that the sum of £5,000 only referred to the east wall of the church. It may, however, be taken as certain that a very considerable sum would be required to put the church into proper repair, and, unfortunately, it has not been found possible to raise the necessary amount. Their Lordships were told that the most that had been promised was the sum of £300. It was in this position that the Bishop of London, having regard to the small attendance at the two churches, the state of repair of All Hallows, issued his Commission which has led to the present hearing.

(5) Their Lordships now endeavour to weigh the advantages and the disadvantages of the Scheme. The opinion of those more immediately concerned with the church has already been referred to. The rector of the church of All Hallows says, "Both I and the parochial church council who have been giving long consideration to the proposed union have felt that the essence of the situation is that the church is not needed as a parish church and that everything at present being done for the spiritual welfare of the students and the workers in the parish can be better done if the Scheme is adopted, and that it is the more desirable in that it will make large funds which are at present sterile available for the religious needs of the newly populated districts outside London to which the former population has moved and from which many of the workers in the City come." The rector of St. Edmunds says, after pointing out as above-mentioned that there is no parochial duty in the ordinary sense in either of the two parishes continues: "So far as the activities in other directions of All Hallows are concerned there will be no difficulty in carrying them on here together with the lectures and recitals which I have established. In fact they will supplement each other and give a fuller religious life to the united parishes. St. Dionis Hall, if improved as it is intended to be, will be a great boon to this parish which has nothing of the kind. Both I and the Parochial Church Council are in favour of the Scheme and believe it will be for the benefit of both parishes as well as in the general interests of religion." With regard to the St. Dionis Hall, no doubt many persons are accustomed to think of the City of London as a place where

enormously wealthy interests are collected. That is true, but those activities are not carried on without employing all sorts of people from the highest to the lowest. In St. Dionis Hall there is carried on a work for the errand boy, the office boy, the boy who leaves a secondary school or the boy who leaves an elementary school and goes straight into the City as a boy and draws some small remuneration and who travels to and from his work. One of the great advantages of this Scheme is that it will enable this work to be carried on to a greater advantage. There is yet another point. The Ecclesiastical authorities find it difficult to justify the amounts paid for the stipends in these two parishes. This is not surprising. The stipends of £1,834 per annum for All Hallows and £1,222 for St. Edmund, total £3,056. An annual sum of £400 for church expenses and £70 for repairs to the fabric is paid to All Hallows by the City Parochial Foundation, and annual sums totalling £590 are paid to St. Edmunds for the like purposes.

Now, on the first point, the interests of religion, their Lordships think that on balance it is in the interests of religion that the Scheme should go forward. The position is that the population has gone from the centre of London to the outskirts, and whereas some of the churches in the centre of London have an attendance which is almost negligible, many districts on the outskirts of London have no church at all. Since the War at least 500,000 people have settled in the new districts of London. To give two typical examples: In the parish of Greenford there is an ancient parish church with accommodation for 170; in 1914 the population was 800 and the parish extended over three miles in one direction and two miles in the other. In 1921 the population was 1,150; to-day the population is at least 30,000. From this parish two districts have been separated as conventional districts, and a third district has been provided with a Hall to be worked under the mother parish. Take Kenton, in 1914 this was an agricultural district, in the parishes of St. Mary, Harrow, and St. John, Greenhill, and the population was under 200; to-day the population is 25,000 and is still rising. It must not be imagined that the Diocese of London has done nothing to remedy this state of affairs, on the contrary, apart from local effort, £410,000 in round figures has been spent on the work of providing new churches, of which £140,000 only came from the proceeds of the Union of Benefices Scheme. Nor must it be forgotten that the longer you put off building churches in new districts the more expensive it will be to acquire sites. It was urged upon their Lordships that it is not wise (to repeat the word used) to "spoonfeed" the residents of the new parishes, and that they ought to provide the money themselves. The population of these parishes consists of clerks and artisans. Although such population could find money for the maintenance of the church and other parochial activities, it would be quite impossible for them to find the large capital sum necessary for building a church, together with a church hall and, if possible, a vicarage.



Their Lordships, therefore, on balance, have come to the conclusion that from a religious point of view the advantages of this Scheme are very great. Indeed, no one would challenge the purposes to which the money derived under it would be devoted. The matter, however, does not stop there, for the case made by Mr. Humphrey King on behalf of the Royal Academy and other learned Societies demands careful scrutiny. Now, their main case was this, that the church itself from an architectural point of view is of no great value, but it is, as it were, a casket which enshrined fittings of a most beautiful character which ought not to be separated. They urged that the contents of the church taken together are of infinitely more value and importance than any of them separately, and that they derive that importance because they are contained in a casket designed to hold them. This argument has had great weight with their Lordships. It would be extremely difficult to justify the dispersal of these beautiful fittings here, there and everywhere. The learned counsel for the Royal Academy, Mr. Humphrey King, was asked what would be the view of his clients if all these beautiful articles could be placed in an existing empty City church; he replied: "If the whole of this furniture could be placed in an existing empty City church there would be, I would not say no objection, but very little objection on the part of my clients, because that would be treating artistic things in a reverent and archaeologically justified manner." The Ecclesiastical Commissioners were prepared to give an undertaking in the following words:—

"That, subject to section 14 of the Union of Benefices Act, 1860, all fittings now in the church which they are advised by competent authority to be worthy of preservation shall, if suitable for the new church of All Hallows, be placed therein, and no such fittings though unsuitable for that church shall be sold."

Section 14 in the undertaking referred to gives a right to St. Edmund's church to certain of the fittings if they so desire it. Their Lordships are of opinion that this is a very satisfactory solution of the difficulty raised by the Royal Academy and other learned Societies. Mr. Humphrey King said: "I do not want to say here and now, or to dictate to anybody what is worthy of preservation, but I am anxious that anything which is worthy of preservation shall be taken all to the same church and put there." Mr. Wrottesley, the learned counsel for the Commissioners replied: "That is our object, and I am willing to give any reasonable undertaking."

Their Lordships think, therefore (1) that in the interests of religion, the Scheme should go forward; (2) that the point raised by the learned Societies is sufficiently met by the undertaking that has now been given, and (3) that other minor points are matters which have to be carefully

weighed by their Lordships, but Parliament has not said that these should be conclusive nor are they conclusive against granting the Scheme. On balancing all the circumstances and all the considerations their Lordships decide that the Scheme, subject to the undertaking given by the Commissioners, ought to be affirmed, and they will humbly advise His Majesty accordingly.

for the King's Council

1701

For the King's Council

1701

In the Privy Council.

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DELIVERED BY VISCOUNT SANKEY

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