

In The Matter of the Pastoral Reorganisation Measure, 1949; the Union of Benefices Measures, 1923 to 1936; and the Ecclesiastical Commissioners (Powers) Measure, 1938

AND

In The Matter of a Scheme for effecting the Union of the Benefices of Whippingham and East Cowes, Saint James, both situated in the Diocese of Portsmouth.

BETWEEN

Erl King Hammond Derham and Reginald Albert Stark - *Appellants*

AND

The Church Commissioners for England - - - - *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH MARCH, 1954

Present at the Hearing :

LORD PORTER
LORD TUCKER
SIR JOHN BEAUMONT

[*Delivered by* LORD PORTER]

Their Lordships have in this instance to determine what advice they shall tender to Her Majesty in the matter of a proposed scheme for the union of the benefices of Whippingham and East Cowes in the Isle of Wight—a scheme which has been objected to by the Parochial Church Council of the former parish.

The actual appellants are Mr. Erl King Hammond Derham who is secretary of the Council and Mr. Reginald Albert Stark who is a member and also a Churchwarden.

These two gentlemen now have the support of all the other members of this Council though at one time one at least was opposed to the prosecution of the appeal on the ground of expense.

Before coming to the grounds of opposition it is in their Lordships' opinion necessary to set out the procedure by which a scheme is prepared, certified and brought into operation.

The relevant provisions so far as is material to the first objection put forward on behalf of the appellants are to be found in section 3 of the Pastoral Reorganization Measure 1949 the opening words of the first subsection of which read as follows :—

“ 3 (1) It shall be the duty of the Committee (i.e. the Pastoral Committee appointed under section 1) from time to time as may be directed by the Bishop to make a general survey of the diocese either as a whole or in sections, and after consultation so far as is practicable with the incumbents and parochial Church Councils concerned to make recommendations . . .” etc.

For the purpose of this part of the appellants' submissions it is not necessary to quote further from the subsection. Upon that wording it is contended on behalf of the appellants that it is imperative before making a scheme that the Pastoral Committee should consult with the Parochial Church Council, that such consultation involves at least the knowledge of the Council that it is being consulted and asked for its views, that in the present instance no such consultation took place and that without such consultation the scheme is null and void.

The incidents to be considered took place some three years ago and not unnaturally there is a considerable divergence of recollection as to what actually took place.

The question of a union came under consideration some years ago when the Bishop of the diocese visited Whippingham in July 1950 and though it is apparent that a certain amount of discussion had already taken place in the parish, their Lordships do not think it necessary to trace the history of the case before that date.

Some of the objectors take the view that the Bishop on that occasion stated that an amalgamation with East Cowes would only be a temporary measure but on a careful reading of the minute of that meeting it is clear that the word "temporary" was used with reference to the appointment of the vicar of East Cowes as sequestrator and priest in charge of Whippingham until amalgamation or union took place. Obviously such an appointment must be a temporary measure whereas it is plainly impossible that a union of benefices should take that form and if any members of the Parochial Church Council thought that the Bishop's observations went beyond the intervening period, nothing was said from which such a conclusion could be drawn and indeed the minute itself shows that the Bishop continued his remarks by saying that the measure would be temporary until either an amalgamation or union took place or the appointment of another rector, of which he was doubtful.

During the next year the Pastoral Committee was engaged in preparing a provisional scheme and on the 4th September, 1951 after it was completed the Archdeacon of Portsmouth who is, *virtute officii*, a member of the Pastoral Committee visited the island accompanied by Mr. Ward who was Chairman of the Isle of Wight sub-committee of the Pastoral Committee of Portsmouth.

There they met the Rev. E. F. King who was vicar of East Cowes and priest in charge of Whippingham.

At that interview Mr. Ward went through and explained the scheme to Mr. King and the latter agreed to put it before the Councils of East Cowes and Whippingham at their next meetings. The Archdeacon, though he took the view that, if the provisions of the scheme were fully appreciated and understood and approved by the two Councils it would be unnecessary for him to visit them, yet thought it essential that he should come unless it was clear that they were fully satisfied and he so informed the vicar.

In fulfilment of his promise Mr. King at a meeting of the Parochial Church Council held on the 24th September, 1951 read out the provisional scheme and explained that the proposal involved a union of benefices, not of parishes.

The minutes of this meeting have been exhibited and end with the words:—"A discussion took place about the subject and the future status of the rectory, and it was decided to ask the Archdeacon to come over in the near future and make the subject plain to us."

It should be explained that the Council had expended a considerable sum on the repair and re-arrangement of the rectory, were proposing to spend more and were anxious that at least the two main rooms should be

left to be used for parish purposes and that at this meeting a discussion had already taken place on this subject before the union of benefices came up for consideration.

As a result of this intimation Mr. King wrote to the Archdeacon asking him to come to a meeting of the Parochial Church Council and explain the scheme.

In compliance with this request the Archdeacon went to Whippingham and attended a meeting of the Council on the 10th October, 1951. The minutes of this meeting have also been produced. It is stated to have been informal as indeed it may well have been since no written notice of it appears to have been given. But all its members knew of it and all attended except Mr. Foss, whose affidavit has been in evidence and who makes no complaint of ignorance that it was to be held. As the meeting was informal the minute was informal also and accordingly Mr. King, as Chairman, thought it should not be signed by him. It was therefore signed by Mr. Derham, but for some reason which was unexplained, the signature is dated the 10th October, 1951, the day on which the meeting took place and not at the next meeting at which Mr. King declined to sign. The material portion runs as follows:—

“ The Archdeacon explained the whole proposition as regards the living and rectory house. Questions were asked and answered by the Archdeacon who assured the Council that Whippingham would still have its own Churchwardens, Council and management of its own affairs under the new scheme and that the title would be the United Benefice of Whippingham and East Cowes and the Minister would be rector of Whippingham and vicar of East Cowes and would reside in the vicarage of East Cowes.”

To this minute there is attached an addendum signed on the 19th October by Mr. Derham, headed “Recorded as record only”, and containing the following words:—

“ The Archdeacon informed the Council that any objection of any nature could only be discussed after the official notice of union or amalgamation had been posted on the Church door.”

Mr. Derham whose affidavit has been filed states that he is sure this record is accurate, but does not explain why it was inserted after the minutes, why it is so dated, when he signed it or state whether it was shown to any of the members of the Council. So far as certain other portions of Mr. Derham's affidavit are concerned it appears that he either misunderstood the proposal, or not unnaturally, has forgotten the exact details. The Archdeacon could not, as Mr. Derham states, have said that any objection of any nature could only be discussed after the official notice had been posted, though no doubt as Mrs. Jolley says and Miss Harvey indicates, both of whom are members of the Council, he told them, and told them accurately, that formal objections must be made after the scheme had been published. Similarly Mr. Derham must be mistaken in supposing that the Archdeacon said the scheme was temporary or spoke of a five years period. The scheme was, of course, provisional until promulgated by the Church Commissioners but never was or could be temporary, nor could any question of five years arise. From both his and the affidavits of the other members of the Council, it is obvious that there was an underlying opposition to the scheme, but it is notable that no one says that the scheme was opposed—all that they say is that no one spoke in its favour. It is clear at least that the Archdeacon was fully and closely questioned, perhaps particularly as to the effect of the scheme on the use of the rectory.

— Mr. King stated that though he does not remember exactly in detail what took place at the meeting of the 24th September, yet he is positive that he read the scheme from beginning to end and explained to the members that their views were required.

The Archdeacon, on his part, whilst being doubtful of the sequence in which the matters were discussed has no doubt of his having gone through the scheme, talked about it and said that he was ready to answer questions and discuss and hear the views of the members of this Council.

On this evidence their Lordships are of opinion that the members had ample opportunity to state their views and should have known that their opinions were required. There was undoubtedly a full spate of questions and the opponents appear to have freely made enquiries about the scheme as a whole and the particular matters about which they were concerned.

Moreover, Mr. King and the Archdeacon were fully persuaded that the Council knew that their views were being asked in order that they might be reported to the Pastoral Committee.

It was put, however, to their Lordships that in order to constitute a consultation, (1) the members of a Council must know that they were being consulted, and even if their failure to recognize what was taking place was entirely due to their own mistake, no consultation such as is prescribed by the Measure could be held to have taken place unless they understood that their views were required; (2) the consultation must be with the Council and consequently the views of individual members even if freely and fully expressed were not sufficient compliance with the enactment. A vote of the Council itself was required.

Their Lordships cannot accept this argument. In case, however, a Parochial Church Council should not fully appreciate that the views of its members were required, they think it would, as a rule, be desirable that whoever represents the Pastoral Committee in consulting the Council should state in terms that he has been requested to see and consult the Council, to ascertain their views and to report them to the committee.

But in their Lordships' opinion, though advisable, so elaborate and meticulous a proceeding is not essential. A full and sufficient opportunity must be given to the members of the Council to ask questions and to submit their opinions in any reasonable way but that is all that is required.

In reaching their conclusion their Lordships would point out that, whereas under the Measure of 1923 a public enquiry was enjoined, a much less formal procedure was prescribed in the Measure of 1949. The natural inference is that thereafter the strict and elaborate provisions contained in the earlier Measure were intended to be succeeded by a more elastic and flexible procedure in the future.

They do not find themselves able to lay down the rule that some exact wording should be used or specific statements made. It is enough as they think that the substance of the requirement should be complied with. In the present case they are not satisfied that a failure to consult the Parochial Church Council has been made out. The result is that a valid scheme has been put forward and approved by the Church Commissioners. They would add that it is not necessary that a vote should be taken. It would have been easy to require a resolution of the Council if that was intended, whereas the more informal word "consultation" is used.

There is no direct decision under the Union of Benefices Measures but attention was called to the decision of Morris J (1947) 2 A.E.R. 488 and of the Court of Appeal (1948) 1 A.E.R. 13 in the case of *Rollo v. Minister of Town and Country Planning*.

The observations in that case relied upon by the present appellants are best exemplified by a quotation from the judgment of Bucknill L.J. which runs as follows :—

"Consultation in the subsection means that on the one hand, the Minister must supply sufficient information to the local authority to enable them to tender advice, and on the other hand a sufficient

opportunity must be given to the local authority to tender that advice."

The scheme, its objects and the provisions for bringing it into force differ in the case of the Measure now under consideration from those of the Town and Country Planning Act, but even if the Lord Justice's words be given their full significance, their Lordships are of opinion that his injunction was carried out in the present instance.

There remains however the further question whether the scheme itself is one which in the words of the Measure makes the best possible provision for the ministering of the Word and Sacraments in the diocese as a whole, including the provision of appropriate spheres of work and conditions of service for all persons engaged in the cure of souls and the provision of reasonable remuneration for such persons.

In the course of the hearing before their Lordships' Board certain cases by which it was urged that their decision should be guided were brought to their notice. One of them viz.:—*Benefices of Great Massingham and Little Massingham* [1931] A.C. 328 was decided under section 2 (6) of the Measure of 1923 and the other viz.:—*Benefices of Westoe and South Shields St. Hilda* [1939] A.C. 269 under that Measure as amended in 1936. In the latter it was held that the amendment did not affect the construction of the earlier subsection and though their Lordships have in fact carefully taken into consideration the circumstances and interest of the parishes affected they would point out that in the Measure of 1949 particular stress is laid upon the interest of the diocese as a whole or in part whereas no such provision is contained in the earlier Measure. It follows that, under the later Measure, the advantages of the individual parishes must be considered in connection with that wider outlook.

In their petition the opponents of the scheme point out that the two parishes differ in type, Whippingham being in the main agricultural whereas East Cowes is industrial: that the latter parish was originally carved out of the former, which is an ancient parish and, having had and having still a royal pew and chapel reserved for the Princess Beatrice, attracts a large number of visitors: that it has a vigorous church life and that they fear a starvation of the spiritual life of the parish if the two benefices are united. In their submission the result would be that the attention of the incumbent and a curate would be centred too much in East Cowes and that for that parish alone there is need of a parish priest free from other duties. Moreover they maintain that Whippingham is increasing in population and itself requires an independent incumbent.

Their Lordships appreciate and have considerable sympathy with the feelings of the opponents of the scheme. Nevertheless they feel constrained humbly to advise Her Majesty to affirm it.

To some extent no doubt the type of parishioner in the one parish varies from the type of parishioner in the other and Whippingham is becoming more populous but the two parishes are still to retain their identity and the increase in the numbers of Whippingham is taking place on the border of East Cowes and constitutes if anything an addition to the urban rather than to the agricultural population.

If the suggestions were that the two parishes should be united their Lordships would have grave doubts as to the propriety of the step, but each keeps its identity and institutions and the real question is whether the union of benefices and consequent provision of an incumbent and a curate form an adequate provision for the supervision of the Church life of the parish of Whippingham and for the conduct of its services.

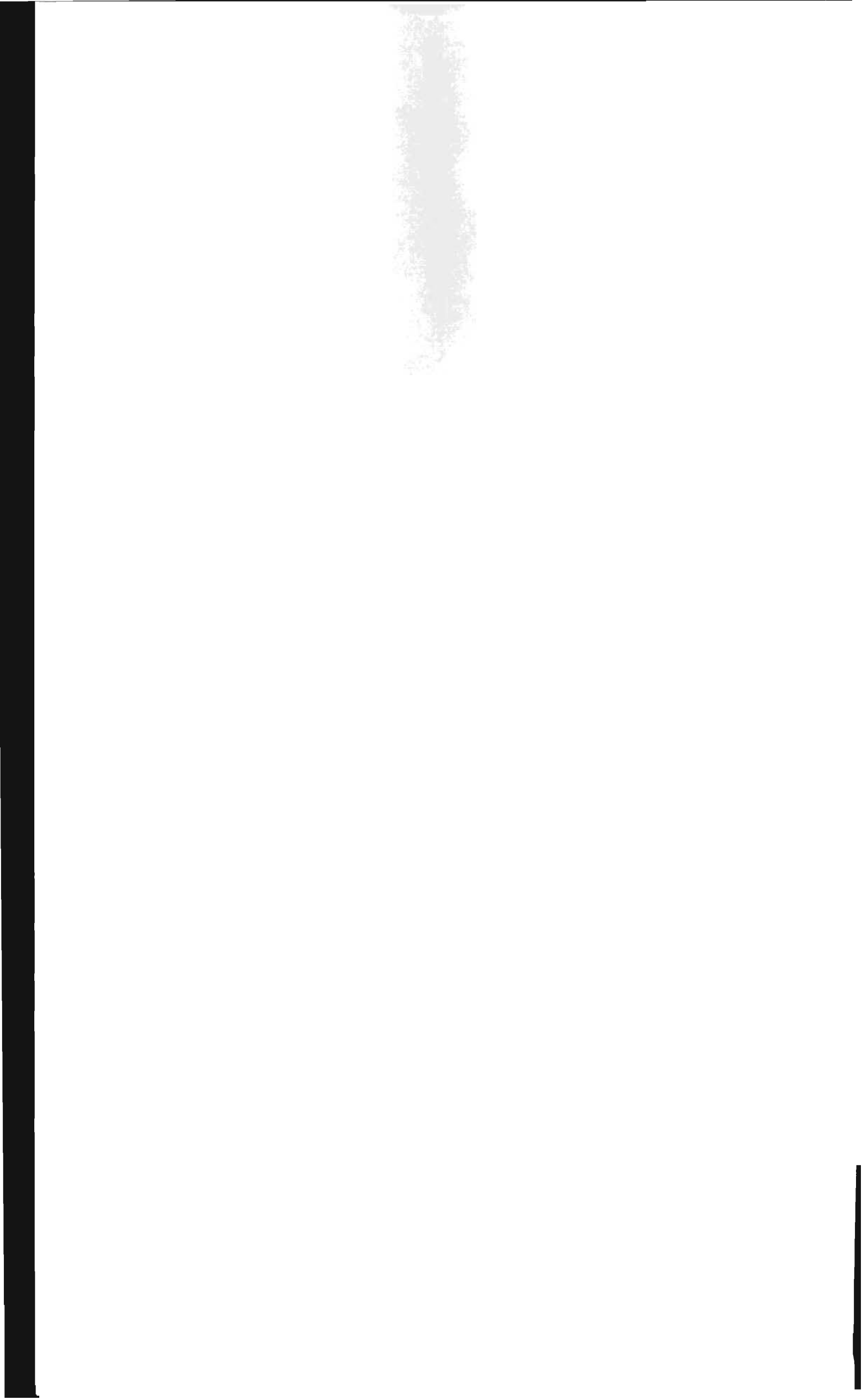
No doubt if there were ample resources and an abundant supply of clergy, the two benefices might with advantage remain separate. But

their Lordships, like the Pastoral Committee, are obliged to take into consideration not only the individual parishes but also the diocese as a whole and the provision of reasonable remuneration.

No suggestion is made by the petitioners for the provision of any further endowment for East Cowes, apart from the scheme, and though two clergy may still be required, one will be a curate and together they can work the two parishes more efficiently than if each is left to the exertions of its own parish priest.

It was at one time apparently feared that under the scheme Whippingham would lose its parsonage house, but this is not so, and it has now been assured that the Church Commissioners will offer the Rectory to the Diocesan Board of Finance at a nominal figure so that the Rectory may be used at the Board's discretion for parochial purposes.

For these reasons their Lordships do not think that the petitioners have shown sufficient grounds to lead them to reject the scheme and accordingly they will humbly advise Her Majesty to affirm it.



In the Privy Council

IN THE MATTER OF THE PASTORAL
REORGANISATION MEASURE, 1949; THE
UNION OF BENEFICES MEASURES, 1923
TO 1936; AND THE ECCLESIASTICAL
COMMISSIONERS (POWERS) MEASURE,
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AND

IN THE MATTER OF A SCHEME FOR
EFFECTING THE UNION OF THE
BENEFICES OF WHIPPINGHAM AND EAST
COWES, SAINT JAMES, BOTH SITUATE
IN THE DIOCESE OF PORTSMOUTH.

BETWEEN

ERL KING HAMMOND DERHAM
AND REGINALD ALBERT STARK

AND

THE CHURCH COMMISSIONERS FOR
ENGLAND

DELIVERED BY LORD PORTER