

**In the matter of an Appeal against a Scheme for effecting the union of the benefices of Little Leigh and Lower Whitley both situate in the Diocese of Chester**

**The Parochial Church Council of the Parish of Little Leigh - *Appellants***

v.

**The Church Commissioners - - - - - *Respondents***

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**REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 2ND MAY, 1960**

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*Present at the Hearing*

LORD TUCKER  
LORD JENKINS  
SIR JOHN BEAUMONT

[*Delivered by LORD JENKINS*]

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1. This is an appeal to Her Majesty in Council by the Parochial Church Council of the parish of Little Leigh in the diocese of Chester against a Scheme prepared by the Church Commissioners under the above-mentioned Measures to give effect to recommendations made by the Pastoral Committee, and approved by the Bishop, for the union of the benefice of Little Leigh with the adjoining benefice of Lower Whitley in the same diocese, and for the provision of a new parsonage house for the incumbent of the united benefice. A copy of the Scheme is annexed to this Report.

2. The recommendations leading to the preparation of the Scheme were made by the Pastoral Committee under section 3 of the Pastoral Reorganisation Measure, 1949, which by sub-section (1) provides (so far as material for the purposes of this Report) as follows:—

“It shall be the duty of the Committee 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 for the better provision for the cure of souls within the diocese or any part thereof. In particular the Committee may in relation to any two or more benefices or parishes recommend—

(a) the exercise of any one or more of the powers contained in the Union of Benefices Measures, 1923 to 1936, including power—

(i) to unite two or more benefices ; . . .”

By sub-section (2) of the same section it is provided that:—

“In making their recommendations the Committee shall take into account each of the following matters—

(a) the making of the best possible provision for the ministry 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 ;

(b) respect for the traditions, needs and characteristics of individual parishes ; and

(c) the possibility of the use of the ministry of duly authorised laymen.

The approval by the Bishop of the recommendations was duly obtained as required by sub-section (4) of section 3, and the preparation of the Scheme by the Church Commissioners under the power conferred by section 4 (1) of the same Measure in due course ensued.

3. Their Lordships need not concern themselves further with matters of procedure, as it is not in dispute that the appellants having objected to the Scheme in due time and manner were entitled to bring the present appeal.

4. The Parochial Church Council of Lower Whitley, while professing strong disapproval of the Scheme, did not object to it in due time and manner, their explanation being that the Archdeacon of Chester (the Ven. R. V. H. Burne) was informed of their views and opposition, and that they understood that their views were to be represented to the Bishop by the Archdeacon. Be that as it may, having failed to object in due time and manner they have no *locus standi* to appeal to Her Majesty in Council, and have not sought to do so. The appellants have put in evidence (Ex. P.C.C.3) the text of certain resolutions passed at a meeting of the Parochial Church Council of Lower Whitley and purporting to record that Council's opposition to the Scheme and the reasons therefor.

5. At the outset of his argument before their Lordships in support of the Scheme Mr. Le Quesne submitted (in effect) that as it was not shown that the Pastoral Committee in making their recommendations or the Bishop in approving them had failed to take into account any of the matters set out in section 3 (2) of the Measure of 1949 or that the Committee, the Bishop, or the Church Commissioners had in any other respect failed to comply with the terms of the relevant legislation the appeal must be dismissed, their Lordships having no jurisdiction to interfere with such a Scheme unless it was shown to be vitiated by some such irregularity. Their Lordships have no hesitation in rejecting this argument. It appears to them that the right of appeal conferred by section 10 (3), and the jurisdiction with respect to appeals conferred by section 10 (5), of the Union of Benefices Measure 1923 are plainly wide enough to empower their Lordships to consider any Scheme submitted to them on appeal *de novo* and on its merits. This does not however mean that their Lordships should not be slow to dissent, save for the most cogent reasons, from the recommendations embodied in a Scheme regularly brought into existence with the concurrent approval of the Pastoral Committee, the Bishop, and the Church Commissioners, and with proper regard for the matters stated in section 3 (2) of the Measure of 1949.

6. The parish of Little Leigh is a roughly oblong area lying lengthways south-east to north-west, and comprises in its south-eastern part the township of Little Leigh and in its north-western part the township of Dutton. The parish of Lower Whitley lies immediately to the north-east of the parish of Little Leigh, and comprises the townships of Lower and Higher Whitley. The south-west boundary of the parish of Lower Whitley is almost co-extensive with the north-east boundary of the parish of Little Leigh. Both parishes consist for the most part of sparsely populated agricultural land. The two parishes taken together make up a reasonably compact rural area extending about four miles from north to south and about the same distance from east to west. The two churches are a little less than  $2\frac{1}{2}$  miles apart. Little Leigh Church is somewhat inconveniently situated in the south-east corner of the parish. Lower Whitley church is about half a mile to the north of the centre of the area constituted by the two parishes taken together. Little Leigh has near its church a dilapidated vicarage, of which more hereafter. The parish of Lower Whitley is adjoined on the north by the now mainly urban parish of Stretton and the parish of Little Leigh is adjoined on the south-east by the now mainly urban parish of Barnton. The parish

of Little Leigh is traversed by two main roads one running from Runcorn in the north-west to Northwich in the south-east, and the other from Warrington in the north to Tarporley and Whitchurch in the south, and passing through or close by Lower Whitley village. The Runcorn Northwich road passes some 500 yards to the north-east of Little Leigh church. The two roads intersect at a point slightly to the east of the middle of Little Leigh parish. There is a two-hourly omnibus service between Little Leigh and Lower Whitley villages, the journey taking about ten minutes.

7. The population of the two parishes of all religious denominations is:—

Township of Little Leigh	...	...	...	528
Township of Dutton	...	...	...	526
Total for parish of Little Leigh	...	...	...	1054
Parish of Lower Whitley	...	...	...	543
Total for the two parishes	...	...	...	1597

For comparative purposes it may be mentioned that the populations of Stretton and Barnton appear to be of the order of 2500 and 5000 respectively. It is to be noted that by no means all the inhabitants of Little Leigh and Lower Whitley included in the above figures of population are Anglicans, as there are substantial numbers of non-conformists and Roman Catholics. It should be noted further than the figure for the township of Dutton includes the patients in a hospital for the aged and chronically sick at the western extremity of the township numbering at the date of the last census 118, who may not have been parishioners. It is therefore a reasonable assumption that the number of Anglican inhabitants of the parish of Little Leigh is considerably less than 1000.

8. The two parishes were formerly part of the parish of Great Budworth but became separate parishes in 1833 and have since remained so. The parish of Stretton has a similar history in this respect.

9. The number of persons on the electoral roll in the two parishes is:— In Little Leigh 180 resident and 6 non-resident making a total of 186; and in Lower Whitley 85 resident and 22 non-resident; making a total of 107.

10. The position as to the clergy in the two parishes is thus stated in the Petition.

*Little Leigh.* The Reverend Charles Edward Chaloner Lindsey was incumbent from 1924 to 1938 and the Reverend Terence Hope Davenport was incumbent from 1938 to 1944. Mr. Davenport was succeeded by the Reverend William Llewellyn Wall who was Vicar from 1944 until the 24th March 1958 when he resigned. Since then the benefice has been kept vacant under the provisions of Section 7 of the Pastoral Reorganisation Measure 1949 and the spiritual needs of the parish have been ministered to by the Vicar of the adjoining parish of Barnton, the Reverend John Trevor Jones.

*Lower Whitley.* The Reverend Terence Hope Davenport was incumbent from 1949 to 1953. He was succeeded by the Reverend George Ockleston Hatton who is the present incumbent."

11. The usual Sunday services and the average attendances (where known) in the two parish churches are stated in the Petition as follows:—

"(a) *Little Leigh*

Service	Time	Average Attendance
Holy Communion	8.0 a.m.	12
Matins	11.0 a.m.	15-20
Holy Communion (twice a month)	After Matins	—
Evensong	6.30 p.m.	20-30

*(b) Lower Whitley*

<i>Service</i>	<i>Time</i>	<i>Average Attendance</i>
Holy Communion ... ..	8.30 a.m.	4
Matins ... ..	10.45 a.m.	20
Holy Communion (3rd and 5th Sundays in month) ... ..	After Matins	—
Evensong ... ..	6.45 p.m.	20 "

The figures given for Little Leigh cannot be regarded as affording a reliable guide to the position at the present time. The particulars also given in the Petition of the times of services held by the Reverend John Trevor Jones at Barnton are obviously incompatible with the times of the services stated to be held at Little Leigh. It would seem that the particulars given for Little Leigh must relate to some period anterior to the date when the benefice fell vacant. Be that as it may it is apparent from the figures given that neither church can be said to be particularly well attended. A licensed Lay Reader of the diocese frequently takes services at Little Leigh, and sometimes at Lower Whitley.

12. According to the appellants the incumbent who held the benefice of Little Leigh from 1944 to 1958, when he resigned, was an unfortunate choice, and owing to his shortcomings there was a marked decline in congregations and church activities. It is said that there was a decided increase in the congregations when the Rev. John Trevor Jones of Barnton took charge, but that the ground so gained was to some extent lost when the proposal to unite the two benefices under the scheme became known, though subsequent hopes of successful opposition to the scheme have done something to restore the position.

13. Apart from the sums which as hereinafter mentioned the appellants say they are able or hope to be able to contribute to the stipend of any incumbent of Little Leigh, the respondents claim that the cost to the Diocesan Stipends Fund of making up the stipends of two separate incumbents of Little Leigh and Lower Whitley to the prescribed minimum figure would be £329 as regards Little Leigh and £302 as regards Lower Whitley, making a total of £631, whereas the comparable figure payable in respect of the stipend of a single incumbent of the united benefice would be only £102, so that the scheme would effect an annual saving to the Diocesan Stipends Fund, in the event of the scheme taking effect, of over £500. The appellants have sought to off-set a substantial part of this saving by offering, if Little Leigh is allowed its own incumbent, to guarantee £135 per annum towards his stipend which they would hope to be able to make up to £250 by a further contribution of £115 per annum. But the respondents can hardly be expected to rely on good intentions, however sincere, in regard to the contribution of £115 per annum, while the "guaranteed" contribution of £135 would in fact be provided as to £128 by the permanent allocation to the augmentation of the incumbent's stipend of the entire income of a fund known as the Ashbrook Bequest, the income of which is payable to the Parochial Church Council for general parochial purposes. Assuming the propriety of making a permanent allocation of this income to the augmentation of the stipend attached to the benefice of Little Leigh, it is obvious that the money for normal parochial administration would be less by the amount of the income so appropriated and would have to be made up from other sources.

14. The Rev. George Ockleston Hatton who has consented to become, and is to be, the first incumbent of the united benefice under the scheme is (so their Lordships were informed) 55 years of age. He lives in his own house, and uses a motor-car of his own for parochial purposes. The parsonage house at Lower Whitley has been sold, and the respondents have in hand proceeds of such sale amounting to £2,345 available towards the cost of building a new parsonage house when required. This step will not, however, become necessary so long as Mr. Hatton continues as incumbent and lives in his own house as at present.

15. The old vicarage near the church at Little Leigh is in very bad repair and of antiquated design, and it appears that the cost of repairing and altering or re-constructing it so as to make it habitable as a parsonage house under modern conditions would be likely to amount to some £2,000. On the other hand it could probably be sold for about the same figure, in which case under the scheme the proceeds would go towards the cost of the new parsonage house, and with the proceeds of the sale already effected of the old parsonage house at Lower Whitley, a sum of £353 offered by the Lower Whitley Parochial Church Council, and a promised grant from the Church Commissioners would go far towards meeting such cost.

16. The evidence filed in opposition to the scheme includes affidavits by a number of old residents who strongly deprecate the proposed union of the two benefices. Amongst them are the two church wardens of Little Leigh (Messrs. Birkett and Harvey), Mr. Antwis, who has resided in the parish of Lower Whitley for 57 years, Mr. Massey, aged 76, who has resided in Little Leigh all his life and has been both Vicar's and People's Warden, and Mr. Stock, who has attended Little Leigh parish church since 1900 when he became a choir boy, and was a church warden from 1937 to 1941 and again from 1946 to 1950.

17. The effect of this evidence which is to a great extent directed to matters of opinion and argument rather than fact may be thus summarised:—

(i) During the fourteen years of the incumbency of Mr. Wall (which was the misfortune and not the fault of his parishioners) church attendances and church activities in the parish of Little Leigh reached a low ebb, but the position improved on the appointment of the Rev. John Trevor Jones to look after Little Leigh in conjunction with his own parish of Barnton, and would improve still further if Little Leigh was once more provided with a vicar to itself. Indeed there is good reason to think that the parish would soon be restored to the flourishing condition which it is claimed to have enjoyed in the time of Mr. Davenport (1938-1944).

(ii) There is no community of interest between the inhabitants of the two parishes who are kept apart by the belt of thinly populated agricultural land lying along the northern edge of Little Leigh parish and the southern edge of Lower Whitley parish, and also by the road system which tends to send them to different towns.

(iii) The combined area of the two parishes is such as to make it impracticable for one incumbent to cover the whole of it adequately, at all events without the aid of a motor-car.

(iv) If there is to be any union it would be better to combine Stretton with Lower Whitley, or Little Leigh with Barnton, in the latter alternative under a vicar assisted by a curate living at Little Leigh.

(v) The parsonage house should be at Little Leigh.

The evidence on the appellants' side also includes an affidavit by the Rev. T. H. Davenport (who as already mentioned, was Vicar of Lower Whitley from 1949 to 1953) in which he says that Little Leigh (where he was Vicar from 1938 to 1944) "was a flourishing parish" in his time and there is "no reason why it should not become one again". He goes on to say that the church was well attended in his time, giving particulars showing congregations which though not in themselves remarkable are better than those attributed to Little Leigh in the petition. He shares the views of other deponents as to the absence of any community of interest between the inhabitants of the two parishes, and (to put it shortly) expresses the opinion that the combined area of the two parishes and the poverty of public transport within it would make it "virtually impossible" for one incumbent to look after the whole area properly.

There is also an affidavit by the secretary of Lower Whitley Parochial Church Council in which he states the number of communicants after

Matins at Lower Whitley church to be 12, and exhibits the resolutions of his council already referred to. These resolutions (inter alia) express the view that the Vicar of Whitley "Is fully employed in his work in the parish and as chaplain to two hospitals at Dutton and the occasional duty in other parishes that he is required to take".

18. On the other side there is an affidavit by the Archdeacon, in which he describes meetings held on the subject of the proposed scheme with the two Parochial Church Councils, after which he reported to the Pastoral Committee the objections of both these Councils, and says that for the reasons set out in the Answer the Committee decided to recommend to the Bishop the union of the two benefices. The Archdeacon goes on to say that he knows the two parishes well and to express disagreement with the Rev. T. H. Davenport's view as to the area of the two parishes being excessive. The Archdeacon observes "The greatest distance whether from north to south or from east to west is about four miles. With the use of a car, or even of a bicycle, a clergyman would be well able to look after a parish of this size with a population of about 1,500".

19. There is also an affidavit by the Bishop in which he says "... I did not lightly decide to agree to a course which appeared to be strongly opposed by some of the inhabitants of Little Leigh. I considered their objections anxiously and should have been glad if I had felt able to meet them. At the same time I was obliged to weigh against these objections the opinion of the Pastoral Committee formed in the light of the needs of the diocese as a whole. Ultimately, in spite of my reluctance to take a decision which I knew would cause disappointment to some of the inhabitants of Little Leigh, I decided that it was my duty to make provisional proposals to the Church Commissioners for the union of the two benefices. This I did for the reasons set out in the Answer, a copy of which I have read".

20. There is also an affidavit by the Rev. John Trevor Jones, in which he points out the far greater difficulty of looking after Little Leigh with Barnton (together comprising some 6,000 souls) than Little Leigh with Lower Whitley (together comprising not more than 1,500 souls) and that "The Vicar of the proposed united benefice of Little Leigh and Whitley would be able to do much more for the parishioners of Little Leigh than I should".

21. No weight can in their Lordships' opinion be attached to the petition against the union addressed to the Bishop and purporting to have been "signed" by "423 members of the Church of England who were accustomed to worship at Little Leigh" (see petition paragraph 20). The number is obviously far greater than can be justified by reference to the actual attendances at Little Leigh church; many so-called "signatures" are in fact written by the same hand; and it is probable that many of the people who signed merely did as they were asked without giving the matter any serious consideration.

22. Their Lordships have every sympathy for the old residents in the parish of Little Leigh who over the years have faithfully supported their church and now are naturally anxious that the vacant benefice should be filled by a vicar of their own who would give his whole time and attention to their parish. The inhabitants of the parish of Lower Whitley would for their part doubtless prefer to continue as at present with a vicar of their own. But the question is whether these natural preferences can be gratified consistently with the duty laid upon the Pastoral Committee and the Bishop under section 3 of the Measure of 1949 in regard to the making and approving of recommendations for the better provision for the cure of souls in the diocese, and in so doing of taking into account "The making of the best possible provision for the ministry of the Word and Sacrament 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 services". The matter has obviously been the subject of most careful consideration by the Pastoral Committee and the Bishop, and they

have taken the view, concurred in by the respondents, that under present conditions it would be inconsistent with this duty to allow a separate incumbent for each of these two small parishes comprising in the case of Little Leigh less than 1,000 and in the case of Lower Whitley less than 500 Anglican inhabitants. They consider that one incumbent serving both churches would be well able to provide for the spiritual needs of the combined Anglican population of the two parishes numbering (say) 1,500 and that the area of the two parishes is not so large as to make this impracticable. It may be observed at this point that, as the Rev John Trevor Jones says in his affidavit above referred to, the parishioners of Little Leigh should be better off under an incumbent serving that parish in conjunction with Lower Whitley with its 500 inhabitants than they have been under Rev. John Trevor Jones who has been serving Little Leigh in what time he can spare from his busy urban parish of Barnton with its 5,000 inhabitants. The parish of Little Leigh might no doubt do still better under a separate incumbent, but that would depend largely on the man, and it cannot in their Lordships' view in all the circumstances of the case be held that the proposal for the union of Little Leigh and Lower Whitley benefices fails to pay proper regard to the spiritual needs of Little Leigh. So far as Lower Whitley is concerned, Mr. Hatton, the first incumbent of the united benefice, will continue to live in or near Lower Whitley as at present, and (although this is not mentioned in the scheme) it is intended that the new parsonage house when provided will be in that locality. It is in their Lordships' view reasonably plain that the Anglican population of Lower Whitley of only 500 cannot provide full-time employment for Mr. Hatton as vicar, and it appears that in addition to his work in that capacity he does duties elsewhere from time to time and also acts as chaplain to the two hospitals at Dutton. Accordingly in their Lordships' view the parish of Lower Whitley will under the scheme have less ground for dissatisfaction than the parish of Little Leigh. Their Lordships consider that the alternative suggestions made by the appellants to the effect that the benefice of Lower Whitley should be united with that of Stretton, or that of Little Leigh with that of Barnton, have been rightly rejected, on the ground of numbers, and also on the ground that in either case the union would involve the linking of a large urban benefice with a small agricultural one. Moreover so far as Barnton and Little Leigh are concerned, there would admittedly have to be a curate at Little Leigh, which would prevent the saving of manpower which it is one of the objects of the scheme to effect. As to communications, the appellants have, as their Lordships think, exaggerated the difficulties. Mr. Hatton uses his own car, so that there will be no difficulty so long as he remains. Moreover, having regard to the position in the extreme south-east corner of Little Leigh parish comparable difficulties would have to be overcome by a separate incumbent of that benefice. There must be few country parishes in which the incumbent is able to do his work without some means of transport.

The union is designed to achieve reasonably full employment for the incumbent of the combined benefices at an improved stipend, while at the same time effecting a saving of over £500 to the Diocesan Stipends Fund, and making available for use elsewhere in the diocese of clergyman who would otherwise have to be found to fill the vacant benefice of Little Leigh. It appears to their Lordships that it should achieve these results, while at the same time making due provision for the spiritual needs of the Anglican inhabitants of the two parishes.

The appellants have made much of the alleged lack of common interests between the inhabitants of the two parishes. Their Lordships cannot help thinking that this has been exaggerated, and agree with the respondents that the point is met by the fact that what is proposed is a union of benefices, not parishes.

There remains the question of the parsonage house. The fact that the union will mean that only one parsonage house will be needed instead of two is an additional financial advantage of the scheme. But it is intended

(though not prescribed by the scheme) that the new parsonage house shall be at Lower Whitley, not Little Leigh. The appellants would naturally much prefer that it should be at Little Leigh, and claim that the most economical way of providing it would be to renovate the existing vicarage. There is force in the appellants' claim that the parsonage house should be at Little Leigh, inasmuch as the parishioners of Little Leigh are twice as many as those of Lower Whitley, and the parsonage house is, as it were, a focus of church activities. But it appears to their Lordships that this is ruled out by geographical considerations. A parsonage house at Lower Whitley would be far more centrally placed in relation to, and accessible from, the combined area of the two parishes than would a parsonage house at Little Leigh in the extreme south-east corner of the area.

For all these reasons their Lordships will humbly propose to Her Majesty that the scheme be affirmed.

#### SCHEME

1. *Union of Benefices.* The benefice of Little Leigh and the benefice of Lower Whitley shall be permanently united together and form one benefice with cure of souls under the style of "The United Benefice of Little Leigh and Lower Whitley" but the parishes of the said benefices shall continue in all respects distinct.

2. *Taking effect of union.* Upon the day when any Order of Your Majesty in Council affirming this Scheme is published in the London Gazette the union shall forthwith take effect and the Reverend George Ockleston Hatton if he is then incumbent of the said benefice of Lower Whitley shall, with his consent (testified by his signature hereto) be the first incumbent of the united benefice.

3. *Parsonage House.*

(a) After the union has taken effect and upon the provision of a house approved by us as suitable to be the residence house for the incumbent of the united benefice such house as aforesaid shall be the house of residence of the incumbent of the united benefice.

(b) The parsonage house at present belonging to the benefice of Little Leigh and the site and appurtenances thereof and the grounds heretofore usually occupied and enjoyed therewith shall as soon as conveniently may be, be sold and disposed of by us at such time or times and in such manner in all respects as to us shall seem expedient.

(c) So much of the net proceeds of such sale or sales as we, after consultation with the bishop for the time being of the said diocese, shall deem sufficient shall be applied by us towards the cost of providing a house of residence as aforesaid, and the balance (if any) of the said net proceeds shall be placed to the credit of the Expenses Fund of the said diocese established pursuant to the 32nd Section of the Union of Benefices Measure, 1923.

4. *Patronage.* After the union has taken effect the right of presentation to the united benefice shall be exercised by the patrons of the two benefices alternately, the patron of the benefice of Little Leigh having the first presentation to the united benefice to be made after the union.



**In the Privy Council**

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**THE PAROCHIAL CHURCH COUNCIL  
OF THE PARISH OF LITTLE LEIGH**

v.

**THE CHURCH COMMISSIONERS**

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**DELIVERED BY LORD JENKINS**

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