

In the matter of a Scheme for the closure of the church of Holy Trinity in the  
Parish of Langley in the Diocese of Birmingham

G. Weston, M. L. Franks, S. E. Rutter and P. Gadd - - - *Appellants*  
(acting on behalf of the Friends of Holy Trinity Church,  
Langley)

v.

The Church Commissioners - - - - - *Respondents*

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 30TH MARCH 1965

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*Present at the Hearing:*

LORD UPJOHN

LORD WILBERFORCE

LORD PEARSON

(*Delivered by* LORD PEARSON)

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This is an appeal against a scheme, dated the 12th May 1964 and made by the respondents, providing for the closing of the church of Holy Trinity in the parish of Langley in the diocese of Birmingham. The appellants are four members of the congregation. They have appeared before their Lordships in person, and their case has been conducted with marked skill and moderation by one of them, Mr. Franks, with assistance from the others. Their Lordships have also had the valuable help of counsel appearing for the respondents.

The scheme was made under section 19 subsection (2) of the Union of Benefices Measure, 1923, as amended by section 1 of the Union of Benefices (Disused Churches) Measure, 1952. The material words of the subsection as amended are as follows:

“ Where . . . any church shall have ceased to be used or be no longer required for purposes of Divine Service, . . . the Church Commissioners after consultation with the Central Council of Diocesan Advisory Committees for the Care of Churches, the pastoral committee of the diocese appointed under the Pastoral Reorganisation Measure, 1949, and the patron and the incumbent of the benefice and the Parochial Church Council of the parish in which the church is situate may, with the consent of the bishop of the diocese, prepare and submit for affirmation to Her Majesty in Council, in manner and in accordance with the procedure authorised and directed by the Union of Benefices Measures, 1923 to 1936, a Scheme under those Measures providing (subject to the restrictions hereinafter contained) for any of the following matters:

. . .

(e) the closing of such church or any part thereof”.

The scheme has been published and certified under section 10 of the Union of Benefices Measure, 1923, and the appeal is brought under subsection (3) of that section, and the provisions as to the hearing are contained in subsection (5).

In the presentation of the arguments in the appeal the parties have been to some extent at cross purposes. Section 19 subsection (2) as amended states two grounds on which a scheme may be made, namely (1) that the church has ceased to be used for purposes of Divine Service or (2) that the church is no longer required for purposes of Divine Service. In fact there has been a suspension of the use of the church of Holy Trinity from November 1960 onwards. The appellants have attacked the suspension as invalid for reasons which will be mentioned later, and a large part of their evidence and argument has been directed to this point. Counsel for the respondents, however, has

expressly disclaimed any reliance on the actual cessation of the use of the church as justifying the scheme, and has elected to rely solely on the ground that the church is no longer required for purposes of Divine Service. Ultimately therefore that is the relevant issue—whether the church is no longer required for purposes of Divine Service. The act of suspension in November 1960 and the manner in which it was carried out and the subsequent developments form part of the history of the case; but they do not directly affect the determination of the relevant issue, unless it can be shown (as the appellants have contended) that the scheme put forward by the respondents in 1964 for the closing of the church is merely a proposed confirmation of the suspension of use from November 1960 onwards, and that therefore it is invalidated by the invalidity of the suspension.

The facts as they appear from the affidavits and the exhibited documents must be investigated. As the affidavits contain criticisms of the conduct of the incumbent, it should in fairness to him be borne in mind that he is not a party to this appeal nor represented in it, and the respondents and their counsel have naturally and properly been concerned to defend the validity of the scheme put forward by the respondents in 1964, which is in issue in this appeal, rather than the propriety of the incumbent's conduct in and after November 1960, which is not in issue in this appeal.

Langley is an urban parish, lying about six miles to the west of Birmingham, and is partly residential and partly industrial. It has a rather small area, irregular in shape, with a maximum length, running north and south, of slightly more than one and a half miles and a maximum width running east and west of slightly less than one mile. The north-eastern part of the area of the parish is occupied for industrial purposes, and towards the north-west there is a large tract used for the deposit of industrial refuse. The area is crossed by a canal and also by a railway, which approximately bisects the area. The central part of the area, lying north of the railway and on both sides of the canal, is used partly for industrial and partly for residential purposes. The southern part of the area is mainly used for residential purposes but has some open spaces.

The population of the parish is estimated by the County Planning Officer for Worcestershire at 7,800, and, as no substantial development of a residential nature is proposed for the future in this parish, he expects that figure to remain fairly static.

In the parish there are two churches. The church of Holy Trinity, situated in the northern part of the parish, was consecrated in 1852 and was the parish church for nearly forty years. Then in 1891 the new church of St. Michael and All Angels was completed and consecrated. This new church, being much larger than Holy Trinity and situated almost in the centre of the parish, just south of the railway line, became the parish church. The church of Holy Trinity was retained as a chapel of ease for the benefit of those residing in its vicinity. It was closed in 1945 or 1946 for about a year and was then reopened, and it remained open and in use for a period of about fourteen years up to November 1960.

In this period the church of Holy Trinity had its own congregation and its own services, its own choir, which attained a high standard, and its own Sunday School, which was well-attended. There were some divergences in the evidence, but the approximate average figures for attendances in the year 1959 were: at Holy Communion 32 (or 27), at Evensong 60 or more, and at Sunday School 50 or more children. The total of collections in the year was £460 6s. 1d. A bazaar was held in alternate years. There was a Ladies Class. The church and its congregation formed a real community. A former curate of the parish said in his affidavit that he had spent most of his time in and around Holy Trinity church, and that the people were most helpful, kind, faithful and considerate in every way, and that the services were inspiring and uplifting, showing the true Christian spirit and unity of the people.

The parish church, St. Michael's has larger attendances. The numbers given by Mr. Idoine, the Honorary Secretary of the Parochial Church Council, were 110 as the average number of weekly communicants, and 200 on special

Feast Days: and an average of 70 at matins and of 150 at Evensong. These figures were not accepted as wholly accurate by the appellants. The Parochial Organisations were, he said, the Mothers' Union, Women's Fellowship, Young Wives, Mens Group, Youth Club, Guides and Brownies.

The seating capacity of St. Michael's is 450.

On the financial side there was a separate Holy Trinity Churchwardens' Account. The church was in the period up to November 1960 substantially self-supporting, but was using up, quite properly, a maintenance fund, which had arisen from accumulated rents and proceeds of sale of a Trinity School which had belonged to the church. Eventually the maintenance fund would be exhausted and financial assistance from the parish as a whole would be required, unless some other special source of money could be found.

The church of Holy Trinity was at all material times in need of repairs. There was some difference of opinion as to the extent and cost of the necessary repairs, though it was alleged that some thousands of pounds would have to be spent to put the church into sound condition.

There is no parish hall in the parish, and the appellants agree with Mr. Idoine that a parish hall is badly needed.

The appellants have contended that there was an important difference between Holy Trinity and St. Michael's in respect of religious observance. The evidence, however, shows that at each there was a distinctively "low church" service, and the only differences were these: (1) on the Holy Table at Holy Trinity there was no candle, whereas at St. Michael's there were two brass candlesticks with candles, and (2) at St. Michael's a processional cross has been presented and is used, though only at greater Festivals. These differences do not make the services substantially different in character.

For a period of at any rate some years up to March 1961 there were two church councils in the parish. At each Annual Parish Meeting a separate council for Holy Trinity was elected by the members present from the congregation of Holy Trinity. There was also elected another council, which was called the Parochial Church Council, but it seems to have been elected, either solely or mainly, by members of the congregation of St. Michael's and to have belonged in effect to St. Michael's. At any rate during the period (including the year 1960) while the duality of councils persisted, the so-called Parochial Church Council could not reasonably be taken as adequately representing the interests of the congregation of Holy Trinity.

At about the end of the year 1959 the incumbent ceased to have the assistance of a curate. Obviously it would thereafter be more difficult for the incumbent, single-handed, to give proper attention to the two separate congregations.

In November 1960 the incumbent, with the consent of the Bishop of Birmingham, suspended the use of the church of Holy Trinity.

The appellants' evidence, not effectively countered in these respects by evidence from the respondents, shows that:

- (1) there was no consultation with the council for Holy Trinity as to the impending suspension of the use of the church;
- (2) although he had previously given assurances that the church would remain open and in use, the incumbent abruptly announced the cessation of services in a week's time by means of copies of a letter or notice left in the pews on Sunday 6th November 1960;
- (3) on the following Sunday 13th November 1960 there was a new lock on the door excluding the congregation, and police were in attendance;
- (4) the incumbent had made no preparations for integrating the congregation and the Sunday School of Holy Trinity with those of St. Michael's.

On the 22nd November 1960 a petition with a large number of signatures was sent to the Bishop of Birmingham. On the 9th December 1960 he issued a statement to the Birmingham Post in these terms:

“ The closing of a church is a technical or legal term, and in that sense Holy Trinity, Langley has not been closed. What has happened is that services have been suspended for the time being. This is largely due to the shortage of Clergy and the decision to suspend the services was made with the consents of the Vicar, the Churchwardens and the P.C.C.

“ The Parish Church of Langley is St. Michael's and Holy Trinity is a Chapel of Ease only half a mile away. I have received a petition against the suspending of the services and I am examining every aspect of the situation. But for the time being I have authorised the incumbent to discontinue services in the Chapel of Ease if he and the P.C.C. consider it best for the well being of the Parish.”

The appellants have pointed out that the Bishop in that notice was placing some reliance on the consent given by the so-called Parochial Church Council, and on their future consideration of the question of the discontinuance of the services in Holy Trinity church. As there were two church councils in the parish and the council for Holy Trinity church had not been consulted, the consent of the so-called Parochial Church Council was not adequate in the circumstances, and there is force in the appellants' criticism. But soon afterwards the duality of councils was abolished and a truly representative Parochial Church Council came into being.

On the 11th December 1960 there was sent to the Archdeacon of Birmingham a petition from members of the congregation of Holy Trinity requesting that a special parish meeting should be called forthwith, and complaining of the absence of any truly representative Parochial Church Council. The Archdeacon after consulting his legal adviser replied on the 2nd February 1961 that a special meeting was not required as the Annual Parish Meeting would be held in a short time. On the 6th March 1961 he wrote a letter to the incumbent, saying “ In view of the fact that there was not only a Parochial Church Council at St. Michael's but a Church Committee at Holy Trinity which acted as a Parochial Church Council, and that these were elected separately, I think it would be wise to make very clear to the Annual Meeting that the elections are for the whole parish, and that you should elect a completely new Parochial Church Council . . . ” The Archdeacon sent a copy of that letter to Mr. Franks. In accordance with the advice given in the letter, a completely new Parochial Church Council for the whole parish was elected at the Annual Parish Meeting on the 20th March 1961. The appellants have conceded that from that time onwards there has been a duly constituted Parochial Church Council for the parish.

In June 1961, as appears from the appellants' petition of appeal, a sub-committee of the Diocesan Pastoral Committee was appointed under the chairmanship of the Archdeacon of Birmingham to investigate the position in the parish and to report to the Bishop. Members of the congregation of Holy Trinity appeared before this sub-committee on the 18th July and 9th October 1961.

In the following year, at the Annual Parish Meeting of the 2nd April 1962, there was an agreement or proposal or at any rate suggestion that Holy Trinity Church should be used as a social centre during the week and for Evensong and Sunday School on Sundays, and that an Advisory Committee, containing representatives of each congregation, should be set up to consider the arrangements to be made. On the 26th April 1962 Mr. Franks on behalf of the Holy Trinity Members' Committee sent to the incumbent nominations of Mr. Franks and three others to represent the Holy Trinity congregation on the proposed Advisory Committee. Mr. Franks and the other nominated persons heard no more from the incumbent on the subject of the Advisory Committee. What happened in fact now appears from the incumbent's affidavit, which was by leave put in evidence in draft form by the respondents' counsel in the course of the hearing of this appeal. Advice was sought from the Oldbury Borough Surveyor and from a builder. Because of the structure

of the church, the presence of burials and the absence of a water supply and other facilities, it was not deemed practicable to proceed with the project. It is remarkable that the advice received and the resulting decision were not communicated to Mr. Franks or any of the other persons nominated to represent the congregation of Holy Trinity on the Advisory Committee.

It should also be mentioned, for the sake of completeness, that at a later stage, in 1964, there was an angry and unsuitable letter written by the incumbent to one of the appellants, for which the Bishop very properly thought it right to make a sincere apology when it was brought to his notice. Such matters, added to the others, explain the sense of grievance felt by the appellants, but have not much, if any, bearing on the relevant issue. The evidence does not show what incidents led up to the letter.

The Bishop of Birmingham gave an interview to the solicitor instructed by the appellants in June 1962, and (as the Bishop says in his affidavit, though this is not accepted by the appellants) he interviewed other representatives of the appellants or the congregation of Holy Trinity on two other occasions, when he heard all their grounds of objection to the closing of the church. Also the respondents have met the appellants and heard their views. In August 1963 there were two petitions to the respondents, objecting to the draft scheme and asking for the resumption of Services and Sunday School in the church.

Thus the views and wishes of the appellants and other members of the congregation of the church of Holy Trinity were made known to the ecclesiastical authorities on a number of occasions, and there is no reason to doubt that they received proper consideration.

The Bishop of Birmingham himself requested the respondents to prepare the scheme. The Parochial Church Council, duly constituted after 20th March 1961 and including about five members who formerly belonged to the congregation of Holy Trinity, have unanimously supported the scheme. The Central Committee of Diocesan Advisory Committees for the Care of Churches, the pastoral committee of the diocese, the patron and the incumbent have been consulted as required by the subsection (set out above) under which the scheme has been prepared. From the absence of any evidence or suggestion to the contrary it must be inferred that these committees and persons supported or at any rate accepted the scheme.

The appellants sought to rely upon section 3(2)(b) of the Pastoral Reorganisation Measure 1949, whereby the pastoral committee, in making their recommendations for the better provision for the cure of souls within the diocese or any part thereof, are to take into account, among other matters, "respect for the traditions, needs and characteristics of individual parishes". Assuming, without deciding, that to be relevant when considering closure under Section 19 of the Union of Benefices Measure, 1923, as amended, their Lordships see no reason to suppose that respect for the traditions, needs and characteristics of the parish of Langley was absent from the minds of the pastoral committee and the other persons who were consulted about the proposed scheme.

In the circumstances it is impossible to regard the present scheme for closing the church as a mere confirmation of the suspension of use from November 1960 onwards. Since November 1960 the question of what ought to be done with Holy Trinity church has been investigated, considered and decided anew by the appropriate ecclesiastical authorities, and their decision—apparently a unanimous decision—has been embodied in the scheme. If the suspension in 1960 was in some way invalid, that would not invalidate the present scheme. In any case, it is difficult to see how the suspension of the use of a chapel of ease by the incumbent with the consent of the bishop of the diocese, or by the bishop with the consent of the incumbent, could be invalid. However, as this point raises a question of ecclesiastical law which has not been fully argued on the appellants' side, their Lordships do not propose to express an opinion on it.

The appropriate church authorities have given their decision on the ultimately relevant issue. They have decided, apparently unanimously, that the church of Holy Trinity is no longer required for purposes of Divine

Service. The question is one for decision by them, and their Lordships would be reluctant to set aside their decision, unless it appears that they have made some error in principle or that their decision is manifestly wrong. That is in effect the test to be applied to the reasons given in the affidavits on which the respondents rely, which are primarily the affidavit of the Bishop of Birmingham and the affidavit of Mr. Idoine, the Honorary Secretary of the Parochial Church Council, although of course their affidavits have to be seen against the background of the evidence as a whole. Their Lordships think this evidence may be summarised as follows:

(i) It is not disputed that Holy Trinity church is correctly described as a chapel of ease, i.e. a chapel for the convenience in prayer and preaching of parishioners who live far from the parish church. Mr. Idoine in his affidavit refers to adequate roads and adequate bus services being available, and to arrangements recently introduced for cars to be available for conveying elderly or infirm worshippers to and from all services held in St. Michael's. In the considered opinion of the Bishop the church is not required for the purposes of Divine Service. He says "While there may have been some justification for the presence of Holy Trinity as a Chapel of Ease in 1891, due to a residential area to the north of Holy Trinity and greater difficulty in communications at that time, the present system of roads, the ease of communications and the absence of any residential area to the north of Holy Trinity Church do not seem to me to justify its retention as a Chapel of Ease". Clearly that is on the facts a tenable view.

(ii) The Bishop took into account (a) the facts that it was pastorally unjustifiable to appoint a curate to this parish at the expense of others where they are needed and that to call on the incumbent to carry out his duties in two churches would place on him an unnecessary additional burden and would be pastorally unjustifiable; (b) that the parish had a real need for a parish hall and the parish could not properly consider raising funds for such a hall while it might still be liable to carry the financial burden of the upkeep and maintenance of two churches.

Their Lordships have given much anxious consideration to the question whether, when it is said that a church is no longer required for the purposes of divine service, it is proper to take these matters into consideration. Their Lordships are of the opinion that in relation to the closure of a chapel of ease these matters are elements which the Respondents and the Bishop may properly have in mind though their importance may be not very great when compared to other considerations.

However, it does not seem to their Lordships that the Bishop or the Respondents gave any undue weight to these considerations.

(iii) In paragraph 8 of his affidavit the Bishop has dealt with what seems to be really the crucial conflict of views and wishes in this case. Having referred to interviews with representatives of the appellants, he says "I have formed the opinion that their grounds of objection were not based on the need for keeping the Church as a Chapel of Ease but were based on keeping Holy Trinity Church as a separate entity almost independent of the Parish Church rather than as subordinate to their Parish Church. While I have every sympathy for their views, which are obviously sincere, and much appreciate their work for Holy Trinity Church in the past, the very division of loyalties within the parish is a cause of disunity which has contributed to the present dissension. This confirms my view that there is a pastoral necessity for closing this Church".

(iv) Finally he says in paragraph 9 of his affidavit: "For the above reasons I do not think that Holy Trinity Church is now required for the purpose of Divine Service and submit that the present scheme be affirmed".

It is only too clear from the arguments in this appeal that there are two strongly held and opposing views. The appellants hold with deep feeling the opinion that Holy Trinity church should be reopened and used for providing services for its congregation in the church to which they are accustomed. Sympathy is due to the appellants and the other members of the congregation

who have lost their church. Nevertheless there are strong reasons—good practical reasons—for the view held by the Bishop and supported by the approval or acceptance of the scheme by the other ecclesiastical authorities who were consulted. There is no error of principle or wrong decision. On all the facts of the case, as revealed by the evidence, Holy Trinity Church is not required for the purposes of Divine Service.

Accordingly for the reasons that have been given their Lordships will humbly propose to Her Majesty that the scheme be affirmed.

In the Privy Council

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