

*Judgment of the Lords of the Judicial Committee of the Privy Council in the matter of the Scheme of the Charity Commissioners for the Administration of the Sutton Coldfield Grammar School, and in the matter of the Scheme for apportioning and applying for Educational purposes part of the Endowment of the Warden and Society of Sutton Coldfield; and in the matter of the Endowed Schools Acts, 1869, 1873, and 1874; delivered November 15th, 1881.*

Present:

SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.  
THE MASTER OF THE ROLLS.  
SIR RICHARD COUCH.  
SIR ARTHUR HOBHOUSE.

THIS is an Appeal of the Warden and Society of the Royal Town of Sutton Coldfield against two schemes of the Charity Commissioners, by which it is proposed to withdraw from that part of the funds of the Corporation which were applicable to educational purposes a sum equal to 15,000*l.*, to be applied as part of the foundation of the Sutton Coldfield Grammar School. There was a second appeal by the inhabitants of the locality; but that appeal, in conformity with a previous decision of their Lordships, could not be entertained, and may therefore be left out of consideration on the ground of the Petitioners' having no locus standi to present such an appeal.

With regard to the Corporation, it is entitled to appeal as being the body whose

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corporate funds are to be withdrawn; and the Appeal is presented, as their Lordships understand, in pursuance of the provisions of the 39th section of the Endowed Schools Act of 1869. They appeal, indeed, from two schemes, one being for the administration of Sutton Coldfield Grammar School, and the other for apportioning and applying for educational purposes part of the endowment of which the Corporation are trustees. But they have no ground of appeal from the former of these schemes, and are only bringing it into this discussion by way of showing the impropriety of the application made by the latter scheme.

The grounds of appeal which have been argued here are two. The first ground was that the scheme in question was not a final scheme as required by the Act, and therefore was not within the scope or terms of the Act.

Now that depends on the wording of the scheme. The objection cannot be quite understood without looking at what the scheme is. The scheme says:—"The part of this endowment applicable for educational purposes under this scheme shall, without prejudice to the application of any further part of this endowment for educational purposes under any future scheme, be such an amount," and so on; and the fourth section of the scheme is this:—"The Charity Commissioners may from time, in the exercise of their ordinary jurisdiction, frame schemes for the alteration of any portions of this scheme; provided that such schemes be not inconsistent with anything contained in the Endowed Schools Acts, 1869, 1873, and 1874." The result, of these declarations is this, that the scheme is without prejudice to a future scheme to be framed in accordance with the Acts of Parliament. Speaking not otherwise than respectfully of the Charity Commissioners,

it appears to their Lordships that those words are surplusage. The Acts of Parliament enable the Commissioners to make schemes from time to time. Nothing that could be done by the scheme could affect the statutory right to make future schemes. The words complained of cannot give the Commissioners any power which the statute does not confer upon them, nor can the omission of those words take away any power. The present scheme cannot either now or hereafter prejudice any future scheme. That being so, of course the whole of the argument that it is not final as regards this scheme falls to the ground. There is nothing said in the scheme as to the application of any future sum, but merely that a future scheme may be made. In other words, it appears to their Lordships that it merely expresses that which the Act of Parliament has already enacted: that a future scheme may be made.

It appears to their Lordships, therefore, that there is no want of finality in the scheme, and no valid objection to be raised to it on this ground.

The other objection was this:—It was said, That having regard to the provisions of the 11th section of the Act of 1869, as amended by the sixth section of the Act of 1873, the scheme was open to objection for not preserving, or rather for abolishing or modifying, the privileges or educational advantages to which persons of a particular class of life were entitled. Now the way the argument was put was this:—It was said, There are 12 elementary schools, as they may be called for the sake of distinction from the grammar school, and that if this scheme is carried out, and so large a sum as 15,000*l.* is taken away from the funds of the Corporation, there will not be sufficient income left to maintain these 12 schools in their present

state of efficiency, and also to provide for the other charities which the Corporation is liable to provide for, and for the other expenditure which it is under an obligation to make. The result, therefore, would be, that it would be necessary to make a school rate and to establish a school board while you are applying the funds to the support of a grammar school intended for the children of persons in a higher class of life than the poor persons whose children attend these elementary schools. Well, if that were so, and if it turned out that these persons were entitled to claim the benefit of the 11th section of the Act of 1869, modified in the way which has been mentioned, and that their existing educational advantages were wholly taken away or neglected in the new arrangements, of course the objection would prevail. But the first point to be considered is, what interests are protected by the Act. When you come to look at the 11th section it is plain that only what may be shortly termed vested interests are protected. It is:—"Any privileges or educational advantages to which a particular class of persons"—or (as extended by the later Act) persons in a particular class of life,—“are entitled,” that is, have a legal title. A person is not entitled simply because he has enjoyed, by the permission or the bounty of another, some benefit either for a longer or shorter period; and therefore the question is, whether the persons in this particular class of life are entitled to these educational advantages. Now, when we investigate the title, we shall find that the original charter gave no title at all to these particular persons, or persons in this particular class of life. The title really depends on a scheme which was sanctioned by the Court of Chancery in the year 1825; and that title is limited to three schools, two elementary schools

strictly so called, for children of poor people, who are to be educated and clothed, and a preparatory school for the like instruction. It is quite plain that the persons of the particular class of life there mentioned are poor people entitled to the benefit of these elementary schools; but the next thing to be considered is the extent of the title. When we look at the amount which was to be applied under that scheme, we shall find that it was the then surplus of the income of the Corporation, over and above certain sums which they were then liable to expend, which was distributed; and the amount allotted for the elementary schools was 215*l.* to be spent in education proper, and 429*l.* in clothing, making a total annual income of 644*l.* It appears by the accounts which were furnished that the average expenditure on these elementary schools has been 2,365*l.*; that is, on an average of three years. Therefore they had expended 1,721*l.* more than the 644*l.* to which a title is shown. It was conceded in argument that you could not take the annual income of 15,000*l.* as being more than 500*l.* a year. The result therefore is, that not only has there been left by the Commissioners all that these people are entitled to, but more than double what they are entitled to; and consequently the scheme is not obnoxious, in the opinion of their Lordships, to any objection on the ground that the provisions of the eleventh section have not been carried out.

For these reasons it appears to their Lordships that the objections fail; and that the Appeal ought to be dismissed without costs, the Commissioners not asking for costs.

