

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petitions of the Governing Body of Christ's Hospital and others against the Scheme of the Charity Commissioners for the Administration of Christ's Hospital, delivered 14th December 1889.

Present :

THE LORD CHANCELLOR.
THE EARL OF SELBORNE.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.

[*Delivered by the Lord Chancellor.*]

The scheme framed by the Charity Commissioners in this case has given rise to a great number of appeals, five of which have been argued before their Lordships. They are as follows:—

- A.—An appeal by the Governors of Christ's Hospital as constituted by Act of Parliament, 22 Geo. III cap. 77.
- B.—Nine appeals by Donation Governors of the Hospital, now heard as a single appeal.
- C.—An appeal by the Corporation of the City of London and by the Lord Mayor, Aldermen, and certain Common Councillors, members of the acting Governing Body of the Hospital.
- D.—An appeal by Guy's Hospital.
- E.—An appeal by the Fishmongers' Company.

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These appeals raise questions affecting the general character and objects of the Foundation as well as its Governing Body: and it will be convenient first to state the material parts of the instruments which determine those points.

In December 1547 King Henry VIII executed an Indenture and Letters Patent by which he granted to the Corporation of the City of London the Church of the late Grey Friars (thenceforth to be called Christ Church) and the site of their house and other property lately belonging to the Grey Friars and to the Hospital of St. Bartholomew. He also granted to them license to hold lands to the extent of 1,000 marks a year.

The King's motive for the grant is thus described in the recitals of the Indenture:—

“The Kinge consideringe the myserable estate of the poore aged sick sore and ympotent people as well men as women lyinge and goinge about begginge in the common streates of the saide Cittye of London and the Suburbes of the same to the greate paine and sorrow of the same poore aged sick and ympotent people to the greate infeccion hurte and noyance of his Grace's lovinge subjectes which of necessitie muste dailie goe and passe by the same poore sick sore and ympotent people beinge infected with divers greate and horrible sicknesses and diseases his highness of his moste bountifull goodness and charitable mynde mooved with greate pittye for and toward the reliefe aide succour and helpe of the said poore aged sick sore and impotent people and for thadvoydinge of the great daunger and infeccion which dailye dooth and maye ensue to his lovinge subjectes by reason of the greate sicknesses and horrible diseases of the same sick and sore people and for dyvers other good and godlie purposes and intentes.”

By the Indenture the Corporation covenanted

that they would maintain certain clergy and almspeople, with details not material for the present purpose; and that besides the specified objects, the whole profits of the lands then granted or to be taken under the license should go to the relief and sustentation of the poor.

In the month of June 1553 King Edward VI executed an Indenture and Letters Patent by which he granted to the Corporation of the City of London his Manor House of Bridewell, and all the possessions belonging to the late Hospital of the Savoy. He also granted to them power to hold lands to the yearly value of 4,000 marks "to the use and sustentation of the
 " poor of the new erected Hospital of Christ
 " Church in London for the time being, and to
 " the sustentation of the poor of the new erected
 " Hospital of St. Thomas in the borough of
 " Southwark in the county of Surrey for the
 " time being, and to the sustentation of the poor
 " from henceforth to be found and brought up in
 " the said Manor House or place of Bridewell."

The King's motive for the grant is thus stated in the Indenture:—"The King of his
 " mere mercy having pity and compassion on the
 " miserable estate of the poor fatherless and
 " motherless children and sick sore and im-
 " potent people and most graciously considering
 " the good and godly endeavours of his most
 " humble and obedient subjects the mayor and
 " commonalty and citizens of London who dili-
 " gently by all ways and means do travail for
 " the good provision of the said poor and every
 " sort of them and that by such sort and means
 " as neither the child in his infancy shall want
 " virtuous education and bringing up neither
 " when the same shall grow unto full age shall
 " lack matter whereon the same may virtuously
 " occupy himself in good occupation or science
 " profitable to the commonweal neither the sore

“ nor sick when they shall be healed shall be
 “ permitted nor suffered to wander as vagabonds
 “ in the commonweal but shall likewise be put
 “ to labour and good and wholesome exercise
 “ and so be made profitable members of the
 “ same.”

In this record (Joint App. A., Vol. I., pp. 87—103) are printed, under the head of “The Order of the Hospitals of King Henry VIII and King Edward VI, viz., St. Bartholomew’s, Christ’s, Bridewell, St. Thomas’s,” certain ordinances made by the Corporation of London as Governors of those Hospitals. It appears that they established a general body of Governors for the joint affairs of the four hospitals, with separate bodies for the separate affairs of each. And it is mentioned that in Christ’s Hospital here was a grammar school in which “suche of the children as be pregnant and very apt to learninge be reserved and kept . . . in hope of preferment to the universitie.” (See p. 91.)

As early as the year 1557 different objects of the foundations had been distributed to different houses, viz., education to Christ’s Hospital, the cure of sickness to St. Thomas’s, and correction of malefactors to Bridewell. This appears from a Minute of a General Court holden at Christ’s Hospital on the 27th September 1557, printed at p. 103 of the volume.

“And it is further ordered by this generall assemblie in consyderacon that as the good houses of Christ’s hospitall hathe bene erected for the vertuose bringinge vp of the miserable youth, and St. Thoms hospitall for the releuyng of the neadyne and deseased, and Bridewell for thenforcinge of the lewde and naughtie sorte to labo^r and worke So for asmoche as the afore-said Christ’s and St. Thoms hospitalls have hetherto had no perfeccon, that is to saye anye

directe or plaine order for the maintenaunce or either of the said hospitalls That therefore one generall Renter to be assigned shall yelde and paye vnto the Treasurer of St. Thoms hospitall for the furniture of the charges of the same all the whole reuenewes and profects that shall come of the lands and rents in any wyse belonginge to the said hospitall vntill other or further order shalbe taken for the same And that the Scruteners and gatherers of Legacies shall make an Accompte of all their collecions at all suche tymes as they shalbe called vnto any generall courte And that the treasurers and Scruteners of the said hospitalls shall receaue suche legacies and conteyne the same in their accomptes as from hensforth shalbe geuen to anye of the said hospitalls And that no Treasurer of any hospitall shall medle wth the legacie in any wyse that is bequethed to another.

“And also that Christ’s hospitall shall be stayed wth the monethlye collecion graunted of the citizens and of suche yssues as shall aryse and growe of thoffice of Blackwell hall.”

The distribution of functions and funds thus effected has never been disturbed. It does not appear that Christ’s Hospital retained any of the property granted by the charter to the Corporation of London except the site of its buildings. The bulk of its endowments is derived from subsequent donations.

The arrangements made in 1557 with respect to the government of the hospitals gave rise to disputes between the City of London as Governors of all the hospitals on the one hand, and the officers and Acting Governors of the several hospitals on the other; and in the year 1782 the Act 22 Geo. III, cap. 77, was passed for the purpose of giving validity to a settlement agreed on by the disputing parties. Thereby

was established a separate Governing Body for Christ's Hospital, with full powers of management over its possessions and affairs. That is the Body whose appeal comes first in the list, and raises the most important questions.

APPEAL A.

The main objection is one which strikes at the very root of the scheme, for it is contended that the emoluments which the Charity Commissioners have treated as educational endowments within the meaning of the Endowed Schools Act 1869, are not really such, but are either excluded from the Endowed Schools Act, or, on the view most favourable to the interests of education, are endowments of a mixed character, such as are dealt with by the 24th section of the Act. This contention is supported on two grounds.

First, it is pointed out that the grant of Henry VIII contemplates, not education specifically, but general eleemosynary objects; and that the grant of Edward VI, though it does contemplate education, does so only among other objects equally important. Therefore it is argued that the first Governors, the City of London, being entrusted with the application of these properties to various objects, might have applied the whole so as to exclude education; and so the endowments are, by the terms of Section 8 (4) of the Endowed Schools Act, excluded from its operation.

Their Lordships think that the answer to these arguments lies on the face of the instruments above cited. They do not agree that, under the grant of Edward VI, education could have been wholly neglected by the administrators of the funds. But passing by any question as to what the first Governors might in their discretion have done, they did in fact take the reasonable and wise course of separating, as regards locality and property and management,

the various public objects which they had to promote. This was done almost immediately after the foundation. Ever since that time the original site of Christ's Hospital and the large gifts made to it have been applied to education; and its Governing Body, acting separately from 1557 onwards, and placed separately upon an indubitably legal footing in 1782, has been concerned with educational funds. This long-continued application of these funds clearly brings them within Section 5 of the Act.

But then it is said that a large portion (and calculations are made to show that it is much the larger portion) of the funds have been expended on the physical sustenance of the boys admitted to the school; and it is argued that funds employed in maintenance or clothing are not within the Act unless according to the terms of Section 29 they are endowments attached to a school for that purpose.

It appears to their Lordships that this argument attributes to Section 29 an effect precisely the reverse of what was intended. If a donor has given property for no other purpose than that of maintenance or clothing, there might be a doubt whether it should be taken as a purely educational endowment under Section 5, though it be attached to a school. Section 29 is adapted to remove this doubt, but not to cut down the definition of educational endowments given in Section 5. It certainly would be a strange result if it were found that the Act treats endowments for maintenance of scholars as being general educational endowments if only they are attached to a school, and yet treats general educational endowments as being mixed if in fact they have been applied in maintaining as well as teaching the scholars. Their Lordships think that no such anomaly is to be found in the Act. In their judgment funds are applied

for the purposes of education at school within the meaning of Section 5, whether the system followed be that of teaching only, or that of taking in the scholars and maintaining as well as teaching them.

Their Lordships therefore are of opinion, with reference to the first objection of the Governors, that the scheme is right in treating all the general endowments of Christ's Hospital as educational within the meaning of Section 5 of the Act, and in treating those which have been given to it for maintenance of scholars as educational under the terms of Section 29.

Some objections have been made to the mode in which the Commissioners have dealt with recent endowments, or endowments given subsequently to the 2nd of August 1819, which by Section 14 (1) of the Act are excluded from the operation of schemes except with the assent of the Governing Body. Some of these objections were abandoned in the course of the argument, because it was found that the principles contended for by the Appellants would not yield results more favourable to them than those adopted by the Commissioners. But Mr. Rigby still contended that where recent endowments had been spent in improving or maintaining the old property the amount spent should be ascertained and removed from the operation of the scheme.

To this contention their Lordships cannot assent. It may be that some gifts have been taken by the Governors and brought into the year's expenditure, part of which has been devoted to the maintenance of the hospital property. But the accounts to which their Lordships have been referred in p. 258 and in pp. 300 to 307 of the Appendix A, Vol. I., do not show, and there is nothing else in the record to show, that the Governors have done anything except to apply

in the maintenance of their property funds lawfully applicable for that purpose, as any other wise and prudent landowner might do. The accounts are not very clear upon this point, and probably were not made out with any such thought in the accountant's mind; but assuming that general legacies have been brought in to aid the year's income, and have not been funded or kept to any separate account, the result is that the money has been spent, and spent in legitimate ways, to trace such money would be impossible, and, if possible, would be wrong.

Another important objection taken to the scheme rests on what are commonly called the conscience clauses of the Act, Sections 15 to 18. The scheme embodies them with a modification to be mentioned presently. The Governors contend that their Foundation is one of those which, by force of Section 19, are partially excepted from the provisions of the preceding sections, being, as they say, specially attached to the Established Church. Section 19 excepts any educational endowment the scholars educated by which are "required by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death (which terms have been observed down to the commencement of this Act), to learn or to be instructed according to the doctrines or formularies of any particular church, sect, or denomination."

The instruments of foundation contain no directions on the subjects to be taught. To bring the case within Section 19, the Governors rely first on an injunction issued by Edward VI to all schoolmasters of youth commanding them to teach in their schools the catechism of a certain godly and learned man, probably John Day; but this injunction, whatever its validity,

is not a statute or regulation for Christ's Hospital, nor is Day's Catechism a formulary of the Church of England. The Governors next rely on a number of minutes entered in their books, and recording orders made by them from time to time. From these it appears that in the year 1570 the children were furnished with Dean Nowell's Catechism, that a person was appointed to give them instruction in "the Catechisme," and that attendance at the catechetical lessons was required of the officers of the house and of two Governors. Nowell's Catechism never was a formulary of the Church of England. It is doubtful whether orders of the kind produced, for appointing an officer, for providing books, for prescribing the places and times of instruction and the persons to attend thereat, are statutes or regulations of the kind contemplated by Section 19. It is certain that we cannot find in them any such express terms for requiring instruction in the doctrines and formularies of the Church of England as are necessary to fulfil the requirements of that section.

But this part of the scheme (Section 80) contains a provision which, so far as their Lordships know, is quite novel. It provides that when exemption from attendance on religious worship or teaching has been claimed for a scholar in the way prescribed by Section 16 of the Act, every person in charge of a boarding-house of any school of the Foundation shall allow such exemption. To this the Governors object, and their Lordships think that it is not warranted by the Act. In Section 16 it is enacted that (when Section 19 does not apply) "in every scheme . . . the Commissioners shall provide that if the parent . . . of any scholar who is about to attend such school, and who but for this section could only be admitted as a boarder, desires the exemption of such

“scholar . . . but the persons in charge of
 “the boarding-house of such school are not
 “willing to allow such exemption, then it shall
 “be the duty of the Governing Body of such
 “school to make proper provisions for enabling
 “the scholar to attend the school, and have such
 “exemption as a day scholar.” The Commis-
 sioners are here ordered to insert in their scheme
 the exact provisions of the section. If exemption
 is claimed for a boarder, and the persons in
 charge of the boarding-house are not willing to
 allow it, what is to be done? The Act says that
 provision shall be made “for enabling the scholar
 “to attend the school, and have such exemption
 “as a day scholar.” The scheme says that the
 persons in charge of the boarding-house shall
 be bound to allow the exemption. These two
 directions are contradictory of one another, and
 in this respect their Lordships are of opinion
 that the scheme is erroneous.

APPEAL B.

The case of the Donation Governors is that at
 the passing of the Act of 1869 they were entitled
 to the right of presenting children for adoption
 into the hospital in rotation with other Governors ;
 and that opportunities for presentation occurred,
 on an average, every 3½ years. Section 93 of the
 scheme materially curtails this privilege, for it pro-
 vides that a Donation Governor shall not present
 a child as long as there is on the foundation any
 child presented by him ; and also that one third
 of the presentees shall be girls. The Donation
 Governors therefore object that the scheme is
 not in conformity with the Act because it has
 not had regard to their patronage as directed by
 Section 13.

Their Lordships agree with the Appellants
 that they are persons directly affected by the
 scheme, and are therefore entitled to be heard

on the question whether the scheme is or is not in conformity with the Act, Section 39 (3); but on that question the decision must be against the appeal. It is impossible to deny that regard, and substantial regard, to the patronage in question has been paid in framing the scheme. The Appellants contend that it is not sufficient regard; but they have not in their case or through their counsel suggested any measure of the regard that should be paid, except that the patronage should be left wholly untouched, or that a full equivalent should be given in exchange for it.

Their Lordships cannot put such a construction on the Act. Section 11 enacts that, when a scheme abolishes or modifies the educational advantages of any class of persons, the Commissioners shall have due regard to the educational interests of that class; and Section 39 is careful to provide an appeal to Her Majesty in Council by the Governing Body on that very point. Section 13 first enacts that the Commissioners shall save or make due compensation for certain vested interests; and Section 39 expressly provides an appeal on that very point by the persons directly affected. Those vested interests do not include the rights of patronage claimed by the Donation Governors. They are dealt with by a separate sentence in Section 13, which directs the Commissioners to have regard to them, and no express mention of them is made in Section 39. If the Legislature intended what the Donation Governors allege, rights of patronage should simply have been set down in Section 13 as one of the vested interests to be saved or duly compensated. But they are dealt with in different terms, and are clearly placed on a different footing both from vested interests and from those educational interests to which due regard is to be had. Their Lordships hold that this scheme, which pays regard, not illusory but substantial, to the

rights of patronage in question, cannot be successfully impeached as not being in conformity with the Act in that respect.

APPEAL C.

The position of the Appellants in this case is a little complicated. They are a portion of the Governing Body established by the Act of 1782. They represent especially the Corporation of the City of London, which was the original grantee of the endowments of Henry VIII and Edward VI, and, as their Lordships understand, is still legally seized of the estates of the Hospital, though without any powers of management. The City has made gifts to the Hospital, and there have been accorded to the Governors who specially represent it certain privileges of presenting children who are received upon the Foundation. They now complain of the scheme because it has not due regard to their rights of patronage. But they also assume the position of a Governing Body, and take objections to the scheme of the same character as have been dealt with in Appeal A, and the additional objection that the scheme has not due regard to the educational interests of the destitute poor of certain localities.

So far as regards rights of patronage, the case stands on the same footing as the case of the Appellants in Appeal B, and the appeal must be rejected for the reasons there assigned.

As regards the other objections, their Lordships consider that the Appellants are not in those matters directly affected by the scheme, and are not the Governing Body to which by Section 39 the right of appeal in such matters is confined. It is true that the expression "Governing Body" is by Section 7 of the Act defined in wide terms, which, though not strictly

grammatical, may include persons who have the right of holding any endowment dealt with by the scheme. And it may be that in some Foundations there are more bodies than one who for different purposes of the Act have to be considered as Governing Bodies. But no such question arises now. In Section 7 the meaning given to the term Governing Body is expressly stated to be "unless the context otherwise requires," and by Section 39 the Governing Body which is invested with the important power of appealing on several grounds of general interest to the objects of the Foundation, must be that Body alone which is charged with the power and the duty of general management. These Appellants therefore have no *locus standi* to be heard on appeal, except as regards their rights of patronage.

APPEAL D.

The appeal of Guy's Hospital has relation to a gift made in the year 1724 by Thomas Guy, the founder of that Hospital, to Christ's Hospital. By that gift the funds of Guy's Hospital were charged with the payment of 400*l.* a year to Christ's Hospital upon condition that Guy's Hospital should have liberty to put into Christ's Hospital every year four poor children, with a preference to founder's kin.

From that time to the present the annual payment of 400*l.* has been made, and every year four children of Guy's family have been appointed to Christ's Hospital by Guy's Hospital. In the year 1830 Christ's Hospital, finding that the charge of maintaining and teaching Guy's children exceeded the value of the annuity, endeavoured to renounce it, but was compelled to continue it by a decree of the Court of Chancery.

The annuity has been carried into, and administered as part of, the ordinary income of Christ's Hospital, and as such is operated on by the scheme. Guy's Hospital now complains of certain clauses of the scheme, viz., of Section 85, which restricts the benefits of the Foundation to such as stand in need of assistance, and requires contributions of those whose parents are able to contribute substantially; of Section 86, which imposes certain conditions as to the character and health of the children; and more especially of Section 99, by which only eight places on the Foundation are reserved for Guy's family, and those only for the period of 20 years from the date of the scheme. Guy's Hospital claims to be a Governing Body of Christ's Hospital, so far as regards the endowment in question, and therefore to have the right of appealing under Section 39 (4) of the Endowed Schools Act on behalf of Guy's family.

The claim to be a Governing Body within the meaning of Section 39 of the Act is inconsistent with the construction above placed on that section. Guy's Hospital is under an obligation to pay 400*l.* a year to Christ's Hospital, upon the conditions of Guy's will. But the Governors of Christ's Hospital are the general managers of that sum as of the other revenues of their Hospital. What remedy Guy's Hospital may have against a breach of the conditions of Guy's will by Christ's Hospital is a question of law which can only be decided in a suit properly constituted for the purpose. For the purpose of this appeal Guy's Hospital can only be considered as a body corporate directly affected by the scheme, and objecting to it as not being in conformity with the Act because it does not pay regard to the rights of patronage. So far as that consideration goes their Lordships think

that this case does not substantially differ from that of the Donation Governors, and that the objection to the scheme cannot be sustained. As regards the educational interests of Guy's children, Guy's Hospital have no *locus standi* under Section 39. The right of appeal on this point is given to the Governors of Christ's Hospital alone.

APPEAL E.

The appeal of the Fishmongers' Company relates to a gift made by Mark Quested in the year 1642, and to a compromise between the Company and Christ's Hospital in the year 1683. Under the compromise the Company paid to Christ's Hospital the sum of 200*l.*, and Christ's Hospital became bound to receive forthwith six poor children on the appointment of the Company. It was also arranged that the Company should be entitled to have six nominees always in Christ's Hospital, paying the sum of 4*l.* 3*s.* 4*d.* a year for each. This arrangement has continued up to the present time. The Company object to the scheme on the ground that it does not pay proper regard to the rights of the Company or to the educational interests of their nominees.

Probably the considerations which would govern this appeal on its merits are substantially the same as apply to Appeal D. But their Lordships are precluded from entering into such considerations, because the 42nd section of the Endowed Schools Act forbids appeals having relation only to endowments which during the three years preceding the commencement of the Act have had an average annual gross income of not more than 100*l.*

AS TO ALL THE APPEALS.

The general result is that in their Lordships' opinion all the petitions of appeal should be dismissed except the petition of the Governors of Christ's Hospital. Upon that petition their Lordships think that the proper course will be to remit the scheme to the Charity Commissioners, with a declaration that it is erroneous so far as it fails to embody the provisions required by Section 16 of the Endowed Schools Act, 1869, and so far as it requires persons in charge of a boarding-house to allow exemptions from prayers and religious worship.

They will humbly advise Her Majesty accordingly.

