

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of certain Inhabitants and Ratepayers of the Chapelry of Haydon and Woodshields, county of Northumberland, against the scheme of the Charity Commissioners relating to the Endowed Schools at Haydon Bridge called the "Shaftoe's Charity;" delivered June 6th, 1878.*

Present:

LORD SELBORNE.

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that the preliminary objection taken to the hearing of this petition must prevail. By the 39th section of the Endowed Schools Act of 1869 the right of appeal against schemes settled by the Commissioners is defined and rather strictly limited. Of course it must be taken for granted that Parliament had good reason for those limitations; at all events it is not open to any tribunal to review those reasons or to consider whether they were expedient or otherwise. The provision of the section is that on certain specified grounds, of which there are four, there may be an appeal by petition to Her Majesty in Council against the scheme;—as to three of the grounds, by the governing body of the endowment or by any person or body corporate directly affected by the scheme, or, on the fourth ground, by the governing body alone. Whoever appeals under that clause is required to state in the petition to Her Majesty in Council the

grounds of the petition; and their Lordships take that to mean that he must show on the face of the petition that he appeals on one of the grounds expressly recognised by the clause, and is a person directly affected by that of which he complains.

Now these petitioners describe themselves in the course of their petition as "the undersigned inhabitants and ratepayers of the chapelry of Haydon and Woodshields;" and the only ground which they allege for their objection to the scheme, repeated indeed in various forms of expression several times over, is that by the founder's deed they have a right, and that all inhabitants and ratepayers of the chapelry in common with them have a right, to have their children taught free of expense in the school; and that this right will be taken away, or subjected to charges of which they complain, by the scheme. It was said at the bar that there might be other objections connected with a branch of the charity not educational, but their Lordships find in the petition no such ground alleged. There is no reference on the face of the petition to any objection whatever, except the loss of privileges in respect of education given to the inhabitants of this place by the founder's deed, and given to them evidently as a class. No individual complains that he has a child at the school whose status will be interfered with. Manifestly they come here as representing the class of inhabitants and ratepayers, and the general interest of that class in the benefit of this place of education under the founder's will. Their Lordships are of opinion, and would be of opinion even if there were no previous authority, that this is not an interest within the category of "vested interests" saved or required to be saved by the Act, and therefore that in respect of any vested interests

these petitioners are certainly not directly affected by this scheme. The class of vested interests to be provided for is expressly defined by the 13th section of the Act, and so far as relates to any matter connected with this complaint it is defined in a manner which excludes the subject of the complaint; being only "the interest of any boy or girl," (which their Lordships take to include the interest of the parent,) "who was at the time of the passing of this Act on the foundation of any endowed school." The case clearly, therefore, is not one falling under the second subsection of clause 39, in which there ought to be a saving of a vested interest or compensation for taking it away. Under which, then, of the other subsections can it fall? Certainly not under the first, because the thing complained of is not a decision of the Commissioners in a matter in which an appeal to Her Majesty in Council is expressly given by the Act. Does it fall under the third, "of the scheme, being one which is not within the scope of or made in conformity with the same?" Now their Lordships do not inquire, though they may be able perhaps to form an opinion, but they will not inquire whether the objections taken in this petition are of a nature which could have been brought within that division of the clause; but one thing is quite clear, that no one under the clause can complain upon that ground without showing that he is directly affected by that of which he complains. These petitioners, in the strict and natural sense of the word, are not "directly" interested; they have no present personal interests in this matter which are taken away; they have merely, as members of the class constituted by the inhabitants of a particular area, a general privilege or educational advantage; that is, the opportunity, if

from time to time they or their children should require it, of sending their children for education, free of charge, to this school. But the loss of such opportunities, so far as they are interfered with by the scheme, affects not directly and immediately, but indirectly and contingently, each of these individuals. That point does not rest merely upon any judgment which their Lordships might now form, if the case were free from decision, as to the meaning of the word "directly" in the clause. Three cases were referred to. Their Lordships have not satisfied themselves, on referring to the records of those cases, that more than one of them is certainly in point; but one of them, unquestionably, is so. That is the case of Harrow School, which was determined on the 17th of June 1874 at this Board, not, indeed, by the Judicial Committee, but by a special committee, which included among its members Lord Hatherley and Sir Montague Smith. The petition was by an inhabitant of Harrow, and it is at the present moment here; the objection to the scheme was, that the founder had, by his will, provided for the free admission and perpetual education and instruction of the children and youth of the parish of Harrow, and that the benefits given to the inhabitants of Harrow were practically taken away by the scheme. It was in substance the same objection that is made here; the only difference being, that the complaint was by one individual, and not by so many standing in the same situation as these petitioners. No doubt it was not under the same Act of Parliament—it was under the Public Schools Act, 31 & 32 Vict. cap. 118); but that Public Schools Act, in the 9th section, provided, that it should be lawful for the trustees of any scholarship, exhibition, or emolument to which any statute made under the powers of the Act might relate,

“ or for any person or body corporate directly  
“ affected thereby,” to petition Her Majesty  
in Council against such statute. The case,  
therefore, was exactly like the present, with  
this difference only, that in that Act there was  
not anything equivalent to sub-section 4 of this  
clause 39. Their Lordships will consider what  
difference that sub-section makes presently. This  
inhabitant of Harrow having petitioned that he,  
as an inhabitant of Harrow, was directly affected  
by statutes which took away the privileges  
of the inhabitants of Harrow, their Lordships  
made this minute of their decision after hearing  
the arguments: “The Lords of the Committee  
“ came to the conclusion that looking at the  
“ provisions of section 9 of the Public Schools  
“ Act, 1868, the petitioner was not directly  
“ affected by the new statutes for the govern-  
“ ment of Harrow School, and agreed to advise  
“ Her Majesty that it was desirable that those  
“ statutes should be approved and confirmed by  
“ Her Majesty.” It does not appear that in  
point of form the objection was taken as a  
preliminary objection; it was treated as substan-  
tially a question upon the merits; and their  
Lordships expressly determined that the peti-  
tioner had not an interest which was directly  
affected, and on that ground advised Her  
Majesty to confirm the statutes.

It appears to their Lordships that were it not  
for the more precise definition in this 39th section  
of the grounds on which a person directly affected  
may appeal, and were it not for the addition  
of the fourth sub-section, that would be an  
authority directly in point. What difference  
does the more precise definition and the fourth  
sub-section make? A difference not favourable,  
but unfavourable, to these petitioners; because,  
while none of the other grounds are such  
as tend to show that in the view of this

Act of Parliament these petitioners are directly affected, the fourth sub-section distinctly shows the reverse: because that precise class of interests, in respect of which these petitioners complain under this scheme, (that is to say, interests consisting in privileges or educational advantages to which a particular class of persons are entitled,—and it may be observed that the 11th section expressly adds, “whether as inhabitants of a particular area or otherwise,”)—that particular class of interests is distinctly dealt with, as one which cannot be directly affected by the scheme, and as to which therefore the right of appeal is given, not to “the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected by such scheme,” but to the governing body only. In this case, their Lordships do not know whether the governing body of the endowment has actively consented or not to the scheme; but certainly they have not appeared as petitioners against it: and it would be going against the plain intent of the Legislature, if in the face of that limitation of the right of appeal for such a cause to the governing body alone, their Lordships were to entertain the present appeal on the petition of the inhabitants and ratepayers, as if they were directly affected by the scheme.

Their Lordships will therefore humbly report to Her Majesty their opinion that this petition ought to be dismissed, the Charity Commissioners not asking for costs.