

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of the Governing Body of the Free Grammar School in Swansea against a Scheme framed by the Charity Commissioners for England and Wales in relation to that Foundation under the Welsh Intermediate Education Act, 1889; delivered 25th April, 1894.*

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Present :

THE LORD CHANCELLOR.

LORD HOBHOUSE.

LORD ASHBOURNE.

LORD MACNAGHTEN.

[*Delivered by the Lord Chancellor.*]

THE Petition before their Lordships relates to a scheme which has been framed by the Charity Commissioners under the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40). That Act provides that "It shall be the duty of the  
" Joint Education Committee . . . of every county  
" in Wales and of the county of Monmouth, to  
" submit to the Charity Commissioners a scheme  
" or schemes for the intermediate and technical  
" education of the inhabitants of their county,  
" . . . specifying in each scheme the educa-  
" tional endowments within their county which  
" in their opinion ought to be used for the  
" purpose of such scheme." Instead of submitting a scheme the Joint Education Committee may submit to the Charity Commissioners proposals for a scheme. Proposals for a scheme were submitted by the Committee, specifying the endowments of the Swansea Free Grammar School as endowments which, in the opinion of the committee, ought to be used for the purpose of the scheme, and the scheme under consideration

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was framed by the Charity Commissioners accordingly. By sect. 12 of the Act of 1889, An educational endowment within the county of a joint education committee means any educational endowment which is applied in the county or is appropriated for the benefit of the natives or inhabitants of the county, or of some of such natives or inhabitants, or their children." It is not disputed that the Swansea Free Grammar School was "an educational endowment" within the definition of sect. 12, and therefore one with which it was competent to deal in a scheme of this description.

The petitioners appeal to Her Majesty in Council against the scheme, as they are empowered to do, under sect. 39 of the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), which applies to schemes framed under the Welsh Intermediate Education Act. That section specifies certain grounds of objection to a scheme which may be the subject of appeal to Her Majesty in Council, and it is not within the power of their Lordships to entertain an appeal upon any other than those grounds. It is entirely beyond the scope of their duty to consider the policy of the scheme, and they have no power to determine that any modifications should be made in it, unless it is established to their satisfaction that the scheme is one which was not within the legal powers of its framers.

Three objections to the scheme have been taken by the petitioners. They say in the first place that the scheme ought to have provided for the instruction of children in religion according to the doctrine and formularies of the Established Church. That contention was not very strongly urged upon their Lordships, but so far as it has any foundation it must be rested upon the provisions of the 19th section of the Endowed Schools Act, 1869. The 2nd

sub-section of that section provides that there is excepted from the provisions respecting religious instruction contained in the earlier part of the Act—" Any educational endowment, " the scholars educated by which are, in the " opinion of the Commissioners (subject to " appeal to Her Majesty in Council as " mentioned in this Act), 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 present case does not come within the words of this section. There is no such direction in the original instrument of foundation, nor have any statutes or regulations been put in evidence, made by the founder or under his authority in his life-time or within 50 years after his death. Reliance was placed, and could only be placed, on the fact that at a comparatively recent period, namely in 1862, there was a bye-law or regulation of the school which required such instruction to be given to the scholars, and the suggestion was that inasmuch as this had been the practice for many years past it might be assumed that it had been the practice from the outset, having its origin in some regulation made by or with the authority of the founder. In reference to that contention it is not necessary to do more than repeat that which was said by the Earl of Selborne when delivering the judgment of their Lordships in the case of *The St. Leonard, Shoreditch Parochial Schools* (10 L.R. Ap. Cases, 304). His Lordship there said:—" It is impossible to read

the 19th clause of the Act of 1869 without being struck by the care and anxiety which the Legislature has exhibited there to prevent denominational restrictions from being applied to any school as to which there was not demonstrative evidence that the original founders of the school had not only formed, but expressed, an intention that the children should be instructed according to the doctrines or formularies of a particular church, sect, or denomination; or, in the added words of the later Act, should be members of a particular church, sect, or denomination. It is impossible not to be struck by the anxiety which the Legislature has displayed to exclude, not only every uncertain, but also every merely probable, implication from practice alone of such an intention." In that case the evidence of the practice went back to a much earlier date than in the present case—to a period of time much nearer the date of the gift; but their Lordships held that it was impossible properly to infer from any such practice the existence of an express direction, where there was no direct evidence of any document having existed containing such direction. That disposes of the first point.

The next objection taken was, that the scheme was not in conformity with the Act of 1869, inasmuch as the Commissioners had not properly regarded the right of patronage of the Misses Talbot, the representatives of Mr. Bussy Mansell, who gave the site upon which the school was built. This right of patronage was vested by the terms of the original gift in Mr. Bussy Mansell in consideration of his having provided the site; and it was thereby provided that he was to appoint the schoolmaster, but that in case of a minority of any heir of his, the schoolmaster was to be appointed by the Bishop of St. David's. But the concluding words of sect. 13 of the

Act of 1869 only apply to "Rights of patronage  
 " which may be at the passing of this Act,  
 " exercised by any member of the Governing  
 " Body of such school in consequence of any  
 " gift or donation made by him." The present  
 case appears to their Lordships to be clearly not  
 within those words. The ladies in whom the  
 right of patronage was vested were not members  
 of the Governing Body, and such right of  
 patronage as they possessed was not in con-  
 sequence of a gift or donation made by them.

The only question which remains relates to the  
 fact that between the years 1872 and 1876, as  
 stated in the affidavit of Mr. Morris, a sum of  
 money amounting to 1,013*l.* was raised by sub-  
 scriptions, and applied in converting the crypt  
 under the dining hall of the school into a chapel;  
 and that the chapel was completed in 1874, and  
 has since been continually used for divine service  
 according to the rites of the Church of England  
 by the head master, who holds the license of the  
 bishop of the diocese to perform such service.  
 It was argued that the sum thus given was a  
 modern endowment within the meaning of the  
 Act of 1869. Section 25 of the Act of 1869  
 provides as follows:—"Where an endowment  
 " or part of an endowment originally given to  
 " charitable uses less than fifty years before the  
 " commencement of this Act has, by reason of  
 " having been spent on school buildings or  
 " teachers' residences, or playground or gardens  
 " attached to such buildings or residences,  
 " become so mixed with an old endowment  
 " given more than fifty years before the passing  
 " of this Act, that in the opinion of the Commis-  
 " sioners (subject to appeal to Her Majesty in  
 " Council), it cannot conveniently be separated  
 " from such old endowment, then the whole  
 " endowment shall for the purposes of this Act  
 " be deemed to be an endowment originally given

to charitable uses less than fifty years before the commencement of this Act has, by reason of having been spent on school buildings or teachers' residences, or playground or gardens attached to such buildings or residences, become so mixed with an old endowment given more than fifty years before the passing of this Act, that in the opinion of the Commissioners (subject to appeal to Her Majesty in Council) it cannot conveniently be separated from such old endowment, then the whole endowment shall for the purposes of this Act be deemed to be an endowment originally given to charitable uses more than fifty years before the commencement of this Act." The dividing line taken by the Act of 1869 between old and new endowments, the former being within and the other, speaking generally, being without the jurisdiction of the Charity Commissioners, was fifty years before the commencement of the Act. By the Welsh Intermediate Education Act, s. 13, the dividing line is made the date of the passing of the Act of 1869, and it is only endowments subsequent to the passing of that Act, which are not to be interfered with. The section provides further that the 25th and 26th sections of the Act of 1869 shall, for the purpose of a scheme under the Welsh Act, apply "as if the same .... were respectively in the said sections substituted for an endowment or part of an endowment originally given to charitable uses less or more than fifty years before the commencement of the said Act." Therefore, in order to make the gift in question a modern endowment, it has to be shewn that it was given since the Act of 1869. If it was so given, then the same question has to be considered under sect. 25 of the Act of 1869 as would have to be considered in the case of an endowment given within fifty years before the commencement of that Act.

The information which their Lordships have before them on the subject of the endowment in question is very meagre. Mr. Morris' affidavit only states that between August, 1872, and December, 1876, £1013 was raised by subscriptions, and applied to convert the crypt into a chapel. It is not stated that the subscriptions were given for that specific purpose, and there is nothing to shew precisely how the money was applied in converting the crypt into a chapel.

But what their Lordships have to consider is whether this money, taking it to be a modern

endowment, has become so mixed with the old endowment that it cannot conveniently be separated from it. Now, the modern endowment has simply been applied in fitting up a room under the school building, namely the crypt, as a chapel. No practical suggestion has been made to their Lordships, showing how it would be possible to separate this endowment from the old endowment. It is admitted that it was competent for the scheme to deal with the old endowment, consisting of the old building, including the crypt. How could the endowment, which consisted merely of fitting up that crypt in a manner suitable for a chapel, even supposing it were shown to have been given specifically for that purpose, be conveniently separated from the old endowment? In this case, surely, if in any, the new endowment has become so mixed with the old endowment that it cannot be conveniently separated therefrom.

For these reasons their Lordships will humbly advise Her Majesty that the petition be dismissed, but without costs.

