

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Boyer (Clerk) v. the Bishop of Norwich, from the Arches Court of Canterbury; delivered 28th May 1892.*

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Present :

THE LORD CHANCELLOR.  
THE EARL OF SELBORNE.  
LORD WATSON.  
LORD HERSCHELL.  
LORD SHAND.

*Ecclesiastical Assessors.*

THE ARCHBISHOP OF CANTERBURY.  
THE BISHOP OF GLOUCESTER AND BRISTOL.  
THE BISHOP OF HEREFORD.

[*Delivered by the Earl of Selborne.*]

The question in this appeal is, whether the presentation of the Appellant to the benefice of Brantham, in the diocese of Norwich, made by the Master, Fellows, and Scholars of Emmanuel College, Cambridge, on the 22nd November 1890, was void under the Statute of the 13th year of Queen Anne, chapter 13. If so, the Respondent, the Bishop of Norwich, was not only justified in his refusal to act upon it, but he had no option to do otherwise; for not only any presentation, but any admission, institution, and induction to be made thereon, is by the Statute (in the cases to which it applies) rendered "utterly void and of no effect, to all intents, constructions, and purposes whatsoever."

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The Statute makes "every Papist, or person making profession of the Popish religion," and every "mortgagee, trustee, or person anyways intrusted, directly or indirectly, mediately or immediately, by or for any such Papist or person . . . . incapable to present, collate, or nominate, to any benefice, prebend, or ecclesiastical living, school, hospital, or donative;" and it gives his right of presentation, &c., to one of the Universities of Oxford and Cambridge. The presentation of the 22nd November 1890 appears, on the face of it, to have been "on the nomination of Sir Alexander Beaumont Churchill Dixie, baronet," who (though it does not so appear on the face of that instrument) is admitted to have been a Roman Catholic. He was heir of Sir Wolstan Dixie, the founder of certain Fellowships and Scholarships in the College; and, as such heir, he would have been entitled, under a decree made by Lord Keeper Wright, to certain rights of nomination to those Fellowships and Scholarships, or Exhibitions (or some of them), and to some of the benefices in the gift of the College, if new Statutes had not been made, by the authority of Parliament, for the College and for the Dixie Foundation, in the year 1880. By those new Statutes, all the prior rights of the heir of Sir Wolstan Dixie were abolished, with the reservation only (contained in the third clause) to the heir for the time being, of "the perpetual right of nominating to the College a fit person" to each of three rectories, of which Brantham was one, subject to provisoes, (1) that each person so nominated should be a graduate of Emmanuel College, who should either be of the kin of Sir Wolstan Dixie, or have been educated at Market Bosworth School; and (2) that the nomination should be communicated in an attested form to the Master of the College within three calendar months of the voidance of the benefice to which it referred.

If there should be no such nomination within three calendar months, the benefice, for that turn, was to be subject to the rules of nomination and presentation which applied to the benefices in the general patronage of the College.

The Rectory of Brantham became vacant in June 1890, and in the following month Sir Alexander Beaumont Churchill Dixie, by writing under his hand (duly communicated to the Master of the College), nominated the Appellant, to be presented by the College to the benefice so vacant. The Appellant was a fit person, and had the qualifications required by the Statutes of 1880.

The question of the nature of the right of Sir Wolstan Dixie's heir must be determined in the same way as if he had not been a Roman Catholic, in order to see whether it does or does not come within the provisions of the Act of Queen Anne. So considered, it was, upon the nomination in due time of a person properly qualified, an absolute legal right, to which the College (but for the Statute) would have been absolutely bound to give effect, excluding all exercise of discretion on their part. If there had been no conditions, the case would have been, in their Lordships' judgment, undistinguishable from those cited by Sir Walter Phillimore, in one of which an advowson was vested in an Abbot and Convent, subject to the right of a stranger to the Convent and his heirs to nominate the clerk to be presented; and in the other in a lay rector, holding under a Crown grant made on the dissolution of the monasteries, subject to a similar right of nomination. The person who had such a right of nomination was held to be the real patron, and those in whom the legal title to the advowson was vested were held to have no more than a ministerial duty to perform; a doctrine in

accordance with good sense and the substance of the case, and recognized by modern authorities on ecclesiastical law. In their Lordships' judgment, it makes no difference in principle that the presentee must have (besides the ordinary qualification of fitness) some special qualification, and that the nomination must be made within a limited time, leaving the right of presentation absolute in the College, if this is not done. If the conditions are complied with within due time, the right of the nominator to have his nominee presented is not less absolute, than if it had been from the first unconditional. The Act of Queen Anne operates upon the rights to which it is applicable, in favour, not of any patron, but of one or other of the Universities of Oxford and Cambridge.

Their Lordships agree with the learned Dean of Arches, that this is a right upon which the Statute does operate. It was argued, that in the earlier Acts of 3 James I., cap. 5, and 1 William and Mary, cap. 26, the only rights of "nomination" struck at, *eo nomine*, were rights "to nominate to any free school, hospital, or donative whatsoever"; which would not apply to such a case as this; and that the same words in the Act of Queen Anne (in *pari materia*, referring to the earlier Statutes, and expressed to be in furtherance of the same policy) ought to receive an equally limited construction. If it had appeared to their Lordships that the decision of the present appeal ought to depend upon the words "*nomin*-  
"*nate*" and "*nomination*," as used in the Act of Queen Anne, they might probably have desired to hear that point fully argued on both sides before coming to a conclusion upon it. But there are other words in the Act of Queen Anne (not found in the earlier Acts), which go directly to the presentation by the College, and not merely to the nomination by the heir

of Sir Wolstan Dixie. If the Master, Fellows, and Scholars of Emmanuel College were, as to the presentation to the benefice of Brantham under the circumstances of this case, "intrusted, "directly or indirectly, mediately or immediately," for Sir Alexander Beaumont Churchill Dixie, *they* were (as long as that obligation continued, or would have continued if Sir Alexander had not been a Roman Catholic) incapacitated to present. Their Lordships are of opinion that the College was so "intrusted" within the meaning of the Statute.

It is no part of their Lordships' duty, to enter into any question which may arise between the University of Cambridge (to whom the Act of Queen Anne gave the right of patronage from the exercise of which, directly or indirectly through the College, the Roman Catholic heir of Sir Wolstan Dixie was disabled) and Emmanuel College. It must be understood that, if any such question should arise, its decision (except so far as depends upon the application of the Statute to this case, and the consequent avoidance of the presentation which has been made) is to be regarded as unprejudiced by anything which has been said.

There was a contention (of which their Lordships may shortly dispose) that the presentation of the 22nd November 1890, having been made after the lapse of three months from the occurrence of the vacancy in the benefice of Brantham, ought to be taken as made by the College in its own right, and not in right of Sir Alexander Beaumont Churchill Dixie. Their Lordships think it unnecessary to enter into any question which that argument might possibly raise, beyond what appears on the face of the presentation itself. That presentation, on the face of it, is made on the nomination of Sir Alexander Beaumont Churchill Dixie, and there-

fore not by the College as in its own right. If the absolute right of patronage had become vested in the College for want of a nomination by any person entitled to nominate within three months from the vacancy, their right would have been to present, not on the nomination of Sir Alexander Beaumont Churchill Dixie, but in accordance with "the same rules of nomination and presentation as apply to the benefices in the general patronage of the College." This, it is clear, they have not done.

Their Lordships will humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss the appeal with costs.

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