Present: Mr. Justice Wendt and Mr. Justice Middleton.

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CHANDRAWARNUM *et al. v.* THE PUBLIC SERVICE MUTUAL PROVIDENT ASSOCIATION, COLOMBO.

D. C., Colombo, 22,113.

Public Service Mutual Provident Association—Failure to pay monthly contributions—Ipso facto *ceasing to be a member—Subsequent payment, effect of—Rules of the Association—Resolution authorizing payment—Estoppel*—Ultra vires—*Evidence Act, s.* 115.

Rule 16 of the rules of the Public Service Mutual Provident Association enacts as follows:—

"Instalments due on account of loans and advances made under rules 12 and 14, and the interest due thereon as well as the calls falling due under rule 10, shall be deducted from the salaries of members on pay day by the Pay Clerk; but the responsibility of seeing that the amounts due on these accounts, as well as the monthly contributions, are duly deducted and remitted to the Treasurer shall nevertheless rest on the members themselves. Should any amount due by a member as monthly contribution or as instalment or interest on account of such loans or advances not be remitted to the Treasurer within fifteen days after it shall fall due, such member shall be liable to, and shall pay a fine not exceeding one-fourth of his monthly contribution for each default, and if he shall make default for three consecutive months, or neglect to pay the fine or fines imposed on him, he shall *ipso facto* cease to be a member of the Association, and shall absolutely forfeit all claim to the whole amount to his credit in the books of the Association, and such amount shall thereupon merge into the general fund."

Held, that this rule was not *ultra vires* of the Association.

Where a member of the Association was at the time of his death in arrears of fifteen monthly contributions and also of eleven calls for donations, but his name had not been removed from the books of the Association,—

Held, that he *ipso facto* ceased to be a member of the Association, notwithstanding that his name had not been removed from the books of the Association.

Where the Association at its annual general meeting passed a resolution authorizing the payment of the contribution and donation due, under the rules of the Association, to the family of the said member, but the Committee of Management subsequently refused to make such payment,—

Held, that the resolution passed at the general meeting was *ultra vires* and null and void, and did not estop the Association from refusing payment afterwards.

WENDT J.—The Association, being purely the creature of the Ordinance, is bound by the rules made in the manner prescribed by

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the Ordinance. It has no power to make a compassionate allowance or to grant anything to the widow or children of a person who had once been a member.

MIDDLETON J.—It is absolutely necessary that persons dealing with moneys of a Provident Association in a fiduciary capacity should do so strictly according to the law governing such Associations and should avoid being led into illegality by sentiment.

THIS was an action by the plaintiffs, the widow and children of the late Anthony Santiago Chandrawarnum, Mudaliyar, who died on 14th March, 1902, to recover from the defendant Association a sum of Rs. 1,536.89, to which, the plaintiffs alleged, they became entitled under the rules of the said Association on the death of the said Anthony Santiago Chandrawarnum, Mudaliyar. The plaintiffs further alleged that at the time of his death the said Anthony Santiago Chandrawarnum was a member of the said Association; that on 8th August, 1902, the Committee of Management of the Association acknowledged the said sum, less a sum of Rs. 20 which was to be deducted by way of fine, to be due to the plaintiffs, and informed the plaintiffs that the same would be paid, and that the defendant Association by its resolution of the 30th August, 1902, approved of the said action of the Committee of Management.

The defendant Association pleaded that at the time of his death the said Anthony Santiago Chandrawarnum, Mudaliyar, had ceased to be a member of the Association by reason of his failure to pay the monthly contributions for August, September, and October, 1900, according to the rules of the Association. It was admitted, however, by the defendant Association that the contributions for these months, as well as for the month of December, 1900, were paid and accepted by the Association on 2nd December, 1901. No other payments were made by the said Anthony Santiago Chandrawarnum, Mudaliyar, after that date. Among the issues framed at the trial was the following: Was Anthony Santiago Chandrawarnum a member of the Association at the date of his death?

The Acting District Judge (J. R. Weinman, Esq.) held as follows on this issue (20th March, 1906):

" The main issue in the case is: ' Was Mr. Santiago a member of the Public Service Mutual Provident Association at the time of his death? ' I shall first consider this issue. The Association was incorporated by Ordinance No. 5 of 1891. It consists of persons in the Public Service of the Colony and has for its object among other things the making of provision for their widows and children. The plaintiffs are the widow and children of Santiago. On the death of a member his widow becomes entitled to half of the contribution standing to his credit in the books and the children to the other

half. The Association also pays to the widow what is termed a donation made up of a rupee gift a head from the surviving members. The plaintiffs alleged that at the time of Santiago's death he was a member, and claimed the contribution and donation. The Association is empowered by section 14 of the Act to frame rules for the admission, withdrawal, or expulsion of members, for the imposition of fines and forefeitures, &c., and otherwise generally for the management of the affairs of the Corporation and the accomplishment of its objects. The rule the Court is concerned about is rule 16: 'Should any amount due by a member. . . . . be not remitted to the Treasurer within fifteen days after it shall fall due, such member shall be liable to and shall pay a fine. . . . . for each default, and if he shall make default for three consecutive months or neglect to pay a fine or fines imposed on him he shall *ipso facto* cease to be a member of the Association, and shall absolutely forfeit all claim to the whole amount to his credit on the books of the Association, and such amount shall thereupon merge into the general fund.' Admittedly Santiago was in default for over three months when he died. He was as a matter of fact in default for many months. The rule is quite clear, and there could be no doubt that the moment the three months' default is reached the member automatically ceases to be one, and his contributions pass on to the general fund. But Mr. Elliott contends that the Association is estopped from denying their liability by reason of certain acts of theirs during Santiago's lifetime and after his death. This could only mean that rule 16 ceased to be operative—was to be treated in fact as a nullity—in consequence of such acts. I shall examine them in detail. The Ordinance (section 11) provides that the Association shall keep a register of every member containing his age, address, occupation, &c., and the date at which any person ceased to be a member. Santiago's name was at the date of his death on the register; therefore it is said that he was a member at the date of his death. That is to say that the entry in the register is the sole and only evidence of membership, and further that such membership could only come to an end by the name being erased and not by non-payment of dues. I cannot support this contention. The register is kept for convenience of reference, and if the Association owing to carelessness or otherwise does not enter the date when the person ceased to be a member it does not follow that he did not so cease. Then it is said that the Association is estopped from denying liability by reason of (*a*) payment being accepted after the three months' default; (*b*) payment to other members who had been in default over three months at the time of death; and (*c*) a resolution by a

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majority at the annual general meeting that the plaintiffs should be paid in spite of the default. There is no doubt that all this was done, and there could be no doubt that all this was absolutely illegal. The Treasurer of the Association said that cases of default did occur, and that if the defaulters paid up they were allowed to 'continue.' They were only struck off if their default was persistent or contumacious. I appreciate the good intention of the Association. But there is no question of 'continuing.' *Ipso facto* the man ceased to be a member, and any receipt of arrears after he ceased to be a member is illegal. Neither the Secretary nor the Committee nor even the unanimous vote of the general meeting could stop the operation of the rule. If others have been treated as members, though they ceased to be such by reason of their default, and paid, those responsible for the payment will be personally liable for what has been paid out. These rules and regulations are the Charter of the Association. You cannot with the best of benevolent intentions go counter to them. You cannot ignore these rules, still less can you set them aside and frame new rules. If every member of the Association was present at a specially convened general meeting for the purpose, and unanimously passed a resolution that a member who had ceased to be a member should be paid, such a resolution would be, I will not use the word 'illegal,' but *ultra vires*. I may join the Association to-morrow and as a member I would have certain rights to and interest in the general fund, and I may question the legality of payments so made, and demand that those responsible for the illegal payment should make it good. I see no reason to hold that rule 16 was *ultra vires* of the Association. Mr. Elliott here advanced a very ingenious argument. Even assuming the rule was not *ultra vires* he contended that it was the member who forfeited all claims to his contribution, but not the widow and children; *their* rights were not affected, and the object of the Ordinance was not to make provision for the member but for his widow and children. I appreciate the force of Mr. Elliott's reasoning. But then, as Mr. Alvis has pointed out, the plaintiffs sue on the footing of Santiago having been a member at the time of his death, and they would be entitled to the fund only if he was a member. And further the rule not only says 'he shall forfeit all claim to the whole amount,' but also 'and such amount shall thereupon merge into the general fund.' I hold therefore that Santiago was not a member at the date of his death, that he *ipso facto* ceased to be one the moment he was three months in arrears, and that the plaintiffs are not entitled to the relief they seek."

The plaintiffs appealed.

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Ramanathan, K.C. (with him *Elliott* and *Samarawickreme*), for the plaintiffs, appellants.

Van Langenberg, for the defendant, respondent.

Cur. adv. vult.

29th August, 1906. WENDT J.—

I have had the advantage of reading my brother Middleton's judgment, and I agree to the conclusion at which he has arrived. The first question is, whether according to the true interpretation of the rules of the Provident Association the plaintiffs as the widow and children of the deceased Santiago Mudaliyar are entitled to his "contributions," and whether the widow is entitled to a "donation" equivalent to Re. 1 per head of the members. The former claim is based on rule 8, and the latter on rule 9. Rule 8 enacts that "in the event of the death of a member" his contributions shall be paid to his widow and lawful children; and rule 9, that in addition to such payment the Committee shall pay "to the widow of a deceased member" a certain donation. Was, then, Mr. Santiago's death "the death of a member"? In other words, was he a member of the Association at the time of his death? That is the crucial question upon which plaintiffs' claims depend. The defendant Association plead, and the learned District Judge has held, that by the operation of rule 16 Mr. Santiago had ceased to be a member some time before his death. The plaintiffs admit that at the time of his death he was in default, within the meaning of that rule, for considerably more than three consecutive months. In that case the rule enacts that the defaulting member "shall *ipso facto* cease to be a member of the Association, and shall absolutely forfeit all claim to the whole amount to his credit in the books of the Association, and such amount shall thereupon merge into the general fund." It is perfectly clear that in accordance with this enactment Mr. Santiago had long prior to his death ceased to be a member and had forfeited all claim to his contributions; indeed this was scarcely denied. But it was argued, first, that this did not mean that the ex-member's widow and children forfeited their rights, they having (it was said) a vested and indefeasible interest in the contributions; and secondly, that if it did mean that, then rule 16 was *ultra vires* of the Association.

As to the first contention, the incorporating Ordinance and the rules in my opinion give it no countenance. The widow and children stand merely in the position of "legal representatives" in respect of the Association's debt to the deceased member. As under the general law, so in the law of the Association, the "representatives"

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are contained in the member and can have no existence or recognition independent of him. The rules in no way recognize the widow and children during the member's lifetime. There is no provision for giving them notice that their " bread-winner " (to use the term employed by appellants' counsel) is making default in his contributions to the fund which he is supposed to be accumulating for them, nor is there any contemplation of the possibility of their coming forward to purge his default and secure his continuance in membership. I am therefore against the contention under consideration.

As to the second contention, I will assume that it is open to the Court to entertain the question of *ultra vires* notwithstanding the provision in section 14 of the Ordinance (No. 5 of 1891) that the rules of the Association, when made, confirmed, and published as in that section directed, " shall be as valid and effectual as if they had been herein enacted." The argument is that it is the object of the Ordinance to provide for the widows and children of members, and that rule 16 is inconsistent with that object. There is no substance in the argument. The rules, including rule 16, do provide for the widows and orphans, inasmuch as they provide in effect that the widow and children of a member who punctually discharges his obligations to the Association shall receive the benefit of his contributions. The fact that a defaulting member forfeits his rights, which rights include a provision for his widow and children, does not establish the appellants' position that the rules are contrary to the object of the Ordinance. Suppose a rule had been made to the effect that a member in default with his contributions for over two months shall not be entitled to a loan from the Association funds. It might equally well have been argued that that rule was *ultra vires* because it contravened another object of the Association, viz., that of " aiding the members when in pecuniary difficulties. "

Lastly, it was argued that the Association had, by its resolution of 30th August, 1902, adopting the Committee's report and approving of the action of the Committee, " decided " that the sums claimed should be paid to the plaintiffs, and that this " decision " could not therefore be altered except in manner provided by section 19 of the Ordinance. Assuming that the scope of the resolution is as stated, the short answer is that the Association had not the power to direct the payment to the plaintiffs. The Association is purely the creature of the Ordinance. It has power to make rules for carrying out its objects, but when those rules have been made, it is bound by them. It may, in the manner prescribed by the Ordinance, alter or amend any rule, but it has no dispensing power enabling it to

exempt any member from the operation of the rules, or to restore to his privileges any member who has forfeited his membership. It has no power to make a compassionate allowance or grant out of its funds to the widow or children of a person who had once been a member of the Association. I am therefore of opinion that the resolution in question, if it authorized the payment of plaintiffs' claims, was *ultra vires* of the Association, and therefore null and void. For these reasons I think the appeal should be dismissed with costs.

MIDDLETON J.—

This is an action by the widow and children of Mr. Anthony Santiago Chandrawarnum, Mudaliyar, deceased, against the Public Service Mutual Provident Association to recover the sum of Rs. 1,536.89, which they claimed to be entitled to on the death of the deceased.

The defendant Association is incorporated by Ordinance No. 5 of 1891, and its general objects are set out in section 2 as being to promote thrift, to give relief to the members in times of sickness or distress, to aid them in pecuniary difficulties, and to make provision for their widows and orphans.

Section 11 ordains the keeping of a register by the Committee of Management in which every person who at the date of the passing of the Ordinance is a member of the Association and every person thereafter duly admitted a member of the Corporation by the Ordinance constituted is to have his name inscribed.

Section 14 empowers the Corporation from time to time at any general meeting of the members and by a majority of votes to make rules for the admission, withdrawal, or expulsion of members, for the imposition of fines and forfeitures, for breaches of rules, for the conduct of the duties of the Committee of Management, &c., and generally for the management of its affairs and accomplishment of its objects. It further enables these rules to be altered, amended, or cancelled, subject however to the requirements of section 19 with a proviso that no rule or alteration, amendment, or cancellation of any rule shall have effect until the same is confirmed by the Governor in Executive Council, notice of which confirmation is to be published in the *Government Gazette* and thereupon to be as valid and effectual as if it had been therein enacted.

Section 19 ordains that no rule passed and no decision come to by the Corporation in general meeting shall be altered, amended, or cancelled except by at least a majority of two-thirds of the members present and voting at any subsequent general meeting.

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Under these sections a body of printed rules was adopted at a general meeting on the 6th and 20th February, 1892, and approved by the Governor in Council on the 14th June, 1892.

The deceased Santiago joined the Association in 1883 and died on the 14th March, 1902, being then in arrears of fifteen months' contributions and eleven or twelve calls for donations under rules 8, 9, and 16.

Rule 8 so far as it is material to this case says: " In the event of the death of a member the amount to his credit in the books of the Association, less any sum he may be indebted to the Association, shall be paid to his widow and lawful children in the proportion of half to the widow and half to the children in equal shares. . . . . " The rest of the rule is immaterial to this case. Rule 9 says: " In addition to the payment referred to in the foregoing rule the Committee of Management shall pay to the widow of a deceased member, within three months of the date of receipt of notice of death, a donation calculated at the rate of Re. 1 per head of the members on the roll at the date of the member's death, " with a proviso not material to this case.

The rule then goes on to say that " should the deceased member leave no widow such donation shall be paid to the children in equal shares, and, failing widow and children, it shall be paid to his legally constituted heirs. . . . . " The rest is immaterial.

Rule 16 lays down that " instalments due on account of loans and advances made under rules 12 and 14, and the interest due thereon, as well as the calls falling due under rule 10, shall be deducted from the salaries of members on pay day by the Pay Clerk, but the responsibility of seeing that the amounts due on these accounts, as well as the monthly contributions, are duly deducted and remitted to the Treasurer, shall nevertheless rest on the members themselves. Should any amount due by a member as monthly contribution or as instalment or interest on account of such loans or advances not be remitted to the Treasurer within fifteen days after it shall fall due, such member shall be liable to and shall pay a fine not exceeding one-fourth of his monthly contribution for each default, and if he shall make default for three consecutive months, or neglect to pay the fine or fines imposed on him, he shall *ipso facto* cease to be a member of the Association, and shall absolutely forfeit all claim to the whole amount to his credit in the books of the Association, and such amount shall thereupon merge into the general fund."

It would seem that the last payment made by Santiago for contributions was on the 2nd December, 1901, for August to November, 1900, and that he owed Rs. 11 for donations at his death and

admittedly was in default for over three months, although when he died his name was still on the register; and it would also appear that the Committee of Management had been very lax in carrying out the rules of the Corporation both in regard to Santiago and other deceased contributors.

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Upon the notice of death and application for moneys due being sent to the Secretary by deceased's son on the 25th March, 1902, he was informed by letters of 28th May that the application could not be entertained, but by letter of the 8th August, 1902, he was told that the Committee would pay subject to a fine of Rs. 20, but on the 7th November, 1902, he was again informed that as at present advised the Committee were unable to make any payment.

The learned District Judge held that the deceased had ceased to be a member before his death, and over-ruling the arguments based on estoppel by conduct and *ultra vires* dismissed the plaintiffs' action, and as at present advised I see no reason to think that he was wrong in holding that deceased had *ipso facto* ceased to be a member by default under rule 16, and that it is only the widow and children of a deceased member under rule 8 who are entitled to recover. The fact that the Committee had negligently omitted to strike his name off the register does not appear to me to affect the question.

It has however been urged upon us with much insistency and perhaps more as an appeal *ad misericordiam* that although rule 16 may penalize a member, it does not affect the widow and children for the benefit of whom it is contended the Association was constituted and who are now entitled to recover. The answer to this seems to me to be that the widow and children are not members of the Association. They do not pay the contributions. In fact there is no privity between them and the Association, and to make provision for them is only one of the four general objects of the Association under section 2 of the Ordinance, and they would under rule 8 only be entitled to recover if the person through whom they claimed was a member of the Association at his death.

Again it was pressed upon us, so far as I am able to gather, that the Association had waived their right to deny their liability owing to the fact that they had admitted it by the letter of the 8th August and the resolution of the 30th August, 1902, and the fact of their not striking off the name of the deceased from the register and allowing his name to appear as payable on a list of members.

It was argued that this waiver of their legal rights estopped them now from refusing to make payment to the plaintiffs. I confess my inability to understand what the learned counsel for the appellants

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was pleased to call "waiver by estoppel," by which doubtless he meant estoppel by waiver.

There is an essential element, however, wanting in the facts to bring the case within section 115 of the Evidence Ordinance of 1895, as to estoppel, and that is that even if the plaintiffs were caused to believe that the defendant Association was bound to pay, there is no evidence to show that they were caused to act or did act in any way on such belief in any particular transaction so as to give them the benefit of the section.

So long as rules 8, 9, and 16 were in force I cannot see that the Association had any power to pass a resolution to make payments to the widow and children of a person whom rule 16 deprived of the right of membership and so to waive their obligation under the Ordinance and rules.

Such a resolution would be altogether *ultra vires* of their position and null, and I cannot see that *Graham v. Ingleby* (1), which lays down that a plaintiff may waive a provision in an enactment which is introduced for his benefit helps the plaintiffs.

The Great Eastern Railway Co. v. Goldsmid et al. (2), as regards the question of waiver is only an authority for the same general principle of law, *i.e.*, *unusquisque potest renunciare jure pro se introducto*, and not for holding that a Provident Association has power to waive its fundamental rules in relation to the administration of the funds with which it is entrusted.

The appellants' counsel then contended that the action of the general meeting regarding the amendment moved by Mr. Brohier on the 30th August, 1902, and the carriage of the original motion approving of the action of the Committee, was a "decision" in favour of the payment of plaintiffs' claim which could only be altered under the terms of section 19 of the Ordinance, and that this had not been done.

The answer to this appears to me to be that the general meeting would have no power to pass the resolution in question, inasmuch as it would be *ultra vires* of the rules of the Corporation to sanction a payment which they had no authority to authorize. In other words, the resolution would be a nullity and would not require cancellation.

We have had access to the Minute Book of the Committee of Management, and it appears that on the 18th April, 1902, the Committee resolved to pay the plaintiffs subject to a fine of Rs. 20. That on the 23rd May, 1902, the Committee in effect cancelled that resolution by resolving they could not entertain the plaintiffs' application. That on the 28th July, 1902, the Committee resolved

(1) (1884) 1 *Ex.* 651.

(2) (1883-1884) 9 *App. Cas.* 927.

on a full consideration to give effect to their resolution of the 18th April, so that it would appear that the general meeting on 30th August in resolving to approve of the action of the Committee did sanction a resolution of that body to pay the plaintiffs what they were claiming.

The learned counsel also relied on *Wittensleger v. Kellar* (1) and *Thomas v. Junis Lebbe* (2) as authority for this Court holding that the rules were *ultra vires*, even if the requirements of section 14 had been fulfilled, and contended that rule 8—I presume counsel meant rule 16—was *ultra vires* of the Ordinance.

Without going into the question raised in those cases, I will assume for the purposes of argument that this Court has the power relied on, and will discuss the latter contention as put by appellants' counsel that rule 16 is inconsistent with the declared object of the Legislature to benefit the widows and children of members.

The premise relied on is in the first place in my judgment incorrect.

The objects of the Association are at least four-fold as section 2 of the Ordinance shows, and the provision for widows and orphans of members comes last. The promotion of thrift comes first, and there can be no doubt that with many people a strong sanction is needed to induce thrift. In the present case the loss of membership by default and the consequent forfeiture of all claim to moneys to the credit of a contributor form the sanction deemed necessary to induce thrift. If a man insures his life even for the benefit of his widow and children and neglects to pay the premiums, his policy in most cases lapses. The same is the case here, and I fail to see that the imposition of such a sanction is so unreasonable and inconsistent with the avowed objects of the Association as to make it *ultra vires*.

While section 14 of the Ordinance specially empowers the Corporation to make rules for the expulsion of members and the imposition of fines and forfeitures for breaches of rules, some such sanction must be imposed to induce members to be regular in their payments, and if Santiago had lived as a party to these rules I cannot see that he would have had any cause to complain.

If, however, the learned counsel contended that rule 8 was *ultra vires* of the Ordinance, I would point out that there is nothing inconsistent with or beyond the powers of the Ordinance in making a rule that only widows and children of members are to participate on the death of such member.

It may perhaps appear hard on the plaintiffs to deprive them of this money, but the theory that they were entitled to it under such circumstances as these has only been raised by the laxity of the

(1) (1879) 2 *S. C. C.* 163. (2) (1881) 5 *S. C. C.* 6.

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Corporation in other cases. It is absolutely necessary that persons dealing with moneys of a Provident Association in a fiduciary capacity should do so strictly according to the law governing such Associations, and should avoid being led into illegality by sentiment.

On the views I have expressed on rules 8 and 16 it is not necessary for me to consider the other points relied on or the question of misjoinder and prescription, and I would therefore dismiss the appeal with costs.

Appeal dismissed.