

Present: Wood Renton J.

1911.

POULIER v. PUBLIC SERVICE MUTUAL PROVIDENT ASSOCIATION.

236—C. R. Colombo, 22,419.

Public Service Mutual Provident Association—Ordinance, No. 5 of 1891. s. 14 (rule 8)—Legally constituted heirs—Next of kin.

Rule 8 made under section 14 of Ordinance No. 5 of 1891 contemplates the determination of who are a member's "legally constituted heirs" and "next of kin" according to the law to which he is subject.

"As the primary object of the association is to make provision for widows and children, it is not surprising that a special order for distribution should be established in their case, while the rights of the other relatives are left to be determined by the ordinary law of succession."

Rule 11 protects the association only against the consequences of payments made in error to wrong persons, or of other *bona fide* mistakes of fact.

THE facts are fully set out in the judgment of the learned Commissioner of Requests (R. N. Thaine, Esq.):—

The facts in this case are these. One D. E. Poulier, who was a member of the Public Service Mutual Provident Association, died in October, 1909, with the sum of Rs. 1,046.76 to his credit in the books of the association. He left no issue, and his heirs were his full brothers or their children, his half brothers or sisters and their children.

Shortly after his death the plaintiff, one of his full brothers, wrote to the secretary of the association and gave him a statement showing the names of the heirs, brothers and half brothers, &c. The object of the statement was to assist the association "in arriving at a correct distribution of the amount standing to the credit of the deceased member." The defendant association admits having received these particulars, but the committee of management, when they came to distribute the available sum amongst the heirs, ignored the information given to them by the plaintiff, and decided to treat the heirs, whether full or half brothers and sisters, as each entitled to an equal share of the sum.

The plaintiff contends that this distribution is wrong, and not according to law. He says he is entitled to one-third of one-half plus one-seventh of one-half, according to the provisions of section 31 of Ordinance No. 15 of 1876, by which calculation he will receive a much larger amount than that apportioned to him by the association. When the plaintiff demanded this amount from the defendant through his legal advisers, the defendant association denied its liability to pay, on the grounds that payments according to their scheme of distribution had already been made. They plead the benefit and protection of rules 8 and 11 of the rules made under section 14 of Ordinance No. 5 of 1891, which is the Ordinance relating to this association.

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Rule 8 sets out the persons to whom money lying to the credit of a deceased member is to be paid. Rule 11 declared as follows: "Whenever the committee of management, after the decease of any member, makes any payment under rules 8 and 9 to any person or persons who at the time appear to the committee to be entitled to the same, such payment shall be valid and effectual against any demand made upon the association or committee by any other person or persons."

Now, to entitle them to the protection of this rule, it seems to me the association must show that they have strictly complied with the provisions of rule 8. It is strictly laid down in rule 11 that only if payments are made to persons "who appear to the committee to be entitled to the same" will the association be able to claim the protection of this rule.

Therefore, the question first to consider is whether the distribution sanctioned by the committee is in accordance with rule 8. The portion of this rule which has to be applied in the present distribution is the following, viz., "failing widow and children, the amount shall be paid to his legally constituted heirs, and in the case of an intestate to his nominee or nominees or to the next of kin, or into Court to the credit of his estate."

The deceased was an intestate—he had no wife or children—he left no nominee, and therefore the amount was payable to his next of kin or into Court to the credit of his estate.

Counsel for defendant argued that the payments were properly made to the "next of kin," who include the relations nearest in proximity of blood, whether of the whole or half blood (Stroud's *Judicial Dictionary*, under "next of kin"), but clearly next of kin in a matter of this kind has not that vague general sense. The same dictionary from which counsel cited this definition states that "where there is express reference to the statutory distributions (or where such reference is implied, or where reference is made to intestacy), or the phrase 'next of kin' is coloured by association with 'heirs,' then the statutory next of kin are entitled."

From this explanation it is clear, after carefully reading rule 8, that next of kin means the next of kin according to law. The law in Ceylon in regard to inheritance is that enacted in Ordinance No. 15 of 1876, and under section 31 of this Ordinance half brothers and sisters are not entitled to an equal share of the inheritance with the full brothers. Further, the words "into Court to the credit of his estate" clearly imply that the committee must distribute the money according to the law of the land.

These words presuppose the necessity of administration of the property of the deceased if it should happen to exceed Rs. 1,000 in value, and impose upon the association the duty of paying the money into Court for correct distribution according to law. The committee or association cannot excuse themselves on the ground of ignorance of the law. It is clear beyond any doubt that the association has made a mistake in sanctioning the distribution that was made, and considering the fact that the committee had all the particulars before them at the time they made the distribution, I do not think that they can take shelter under the provisions of rule 11. It cannot be said that the heirs "appeared" to be entitled to the sum they apportioned. There was

proof before them of the names and relationships of the heirs, and in the light of these facts, assuming, as one must, their knowledge of the law, they were bound to make the distribution in the manner set out by the plaintiff.

It is not a subtle legal point which the plaintiff is raising. He is only claiming his legal share, to which by law he is fully entitled, and clearly the terms of rule 8 provide for the distribution amongst the heirs of their legal share. The Ordinance relating to the association does not and was never intended to over-ride the law of inheritance where the law of inheritance is applicable. Rule 8 makes it clear that the law of inheritance is applicable in the circumstances of the present case. It appears to me that the defendant association has been guilty of negligence in making this distribution. and I think they are liable to pay the plaintiff the sum he is entitled to both by law and according to the rules of the association.

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I give judgment for plaintiff for Rs. 249.23, with costs.

The defendant appealed.

Bawa (with him *van Langenberg*), for the appellant.

Samarawickrama, for the respondent.

Cur. adv. vult.

August 1, 1911. WOOD RENTON J.—

The learned Commissioner of Requests has written, if I may say so, a very careful and well-reasoned judgment in this case, and as I agree with the conclusions at which he has arrived, I propose to deal only with a few points pressed upon me in appeal, and with these very briefly.

Mr. Bawa argued that to interpret rule 8 of the rules of the appellant association as the Commissioner of Requests has done would be to impose upon it a burden that the rule in question could never have contemplated, namely, that of ascertaining the exact law of inheritance applicable to each member on whose behalf a claim on its funds might be made, and further, that in its provisions in regard to widows and children rule 8 has established a law of inheritance of its own. For the reasons given by the learned Commissioner of Requests, to which I have nothing to add, I think that rule 8 clearly contemplates the determination of who are a member's "legally constituted heirs" and "next of kin" according to the law to which he is subject. I am unable to see that there is any great difficulty in the ascertainment of that law by the appellant association when the necessity for doing so arises. As the primary object of the association is to make provision for widows and children, it is not surprising that a special order for distribution should be established in their case, while the rights of other relatives are left to be determined by the ordinary law of succession. So much for rule 8. Rule 11 seems to me to protect the appellant association only against the consequences of payments made in error to wrong persons, or of other

1911. *bona fide* mistakes of fact. The use of the words " any demand by
WOOD any other person or persons " in the latter part of the rule seems to
RANTON J. me very strongly to support this conclusion.

Poulier v. No question was raised in the Court of Requests as to the adminis-
Public tration of the intestate's estate being necessary, and I do not think
Service that the point can be entertained now.
Mutual

Provident On these grounds, I dismiss the appeal with costs.
Association

Appeal dismissed.

