

1956 Present : Sansoni, J., and H. N. G. Fernando, J.

A. KASIPILLAI *et al.*, Appellants, and THEIVANAPILLAI,  
Respondent

*S. C. 561—D. C. Jaffna 1,108/T*

*Administration of estates—“Legal personal representative”—Ordinary meaning of the expression—Theavalamui—Gratuity paid to public servant—Thediathetam.*

A sum of Rs. 4,464 was paid to the credit of the present case by the Government of Malaya. It represented a gratuity which was payable by the Government of Malaya under Rule 19 of the Malayan Pensions Ordinance. Rule 19 reads :—

“Where an officer holding a pensionable office, who is not serving on probation or agreement, dies while in the service of the Federated Malay States, it shall be lawful for the High Commissioner to grant his legal personal representative a gratuity of an amount not exceeding one year's pensionable emoluments.”

*Held*, that when Rule 19 provided that a gratuity was payable to an officer's “legal personal representative”, it made the sum payable to the executor or administrator of the officer's estate, and it became part of the assets of the estate to be paid out to his heirs at law only. The widow, therefore, who was not an heir of the deceased, was not entitled to any part of the money for her own use and benefit, even if she was administratrix of the estate of the deceased.

*Held further*, that a gratuity paid to a public servant on retirement from service is not thediathetam.

<sup>1</sup> (1946) 47 N. L. R. 171.

<sup>2</sup> (1944) 45 N. L. R. 203.

**A**PPÉAL from an order of the District Court, Jaffna.

*H. W. Jayewardene Q.C.*, with *V. Thillainathan*, for the respondents-appellants.

*C. Cheilappah*, with *A. Sambandan* and *S. Sharvananda*, for the administratrix-respondent.

*Cur. adv. vult.*

February 9, 1956. SANSONI, J.—

Two sums of money, namely, a sum of Rs. 4,464 and a sum of Rs. 828·30 were paid to the credit of this case by the Government of Malaya. The latter sum represents the unpaid salary and cost of living allowance due to the deceased Arumugam Nagesapillai whose estate is being administered in these proceedings. It is not disputed that this latter sum should be divided between his widow (who is also his administratrix) and the 1st to 13th respondents (who are his brothers and sisters and their children), the widow taking a half share and the others taking a half share.

The sum of Rs. 4,464 represents a gratuity which was payable by the Government of Malaya under Rule 19 of the Malayan Pensions Ordinance (Cap. 23). That Rule reads :

“ Where an officer holding a pensionable office, who is not serving on probation or agreement, dies while in the service of the Federated Malay States, it shall be lawful for the High Commissioner to grant his legal personal representative a gratuity of an amount not exceeding one year’s pensionable emoluments ”.

Before the District Judge, at the stage of judicial settlement of her accounts, the deceased’s widow claimed the entirety of this amount as a dependant of the deceased, while the respondents claimed that they were entitled to the entirety as the heirs of the deceased, since if this sum is not thediathetam property the widow has no right to any share of it. In view of the decision in *Seethanguniammal v. Eliyaperumal*<sup>1</sup> where it was decided that a gratuity paid to a public servant on retirement from service is not thediathetam, the widow cannot claim any share of this money on that basis.

Can it be said that as a dependant of the deceased she is entitled to this sum? It seems to have been argued that although the deceased died in 1948 the devolution of this sum must be governed by the terms of s. 17 of the Pensions Ordinance No. 1 of 1951 of Malaya, under which the gratuity is payable to such of the dependants of the deceased public officer as the Chief Secretary or Resident Commissioner may think fit. This argument found favour with the learned District Judge who held that the entire gratuity was payable to the widow. But as this Ordinance

<sup>1</sup> (1936) 39 N. L. R. 86.

was not in operation at the time of the deceased's death, its terms cannot in any way control the operation of Rule 19 of the Pensions Enactment which was the relevant enactment in force when the deceased died.

It seems to me that when Rule 19 provided that the gratuity was payable to the officer's legal representative it made the sum payable to the executor or administrator of his estate, and it became part of the assets of the estate to be paid out to his heirs at law. The interpretation of a similar enactment was considered by the Privy Council in the case of *Arbuthnot v. Norton*<sup>1</sup>. Under the Act 6 Geo. IV., c. 85, when a Judge in India died in office the East India Company was required to pay to the legal personal representatives of such a Judge a sum equal to the amount of six calendar months salary. The Privy Council decided that the words "legal personal representative" in that Act meant the executor or administrator of the Judge deceased, and that the money was to be taken as part of his general assets and to be administered as such. I think that this decision governs the point in dispute in this appeal.

It is true that the words "legal personal representative" have been interpreted in different ways when wills and settlements inter vivos have been construed, but the primary meaning of the phrase, when it is unaccompanied by explanatory or controlling words, is "executor or administrator, in that capacity". In *Smith v. Barney*<sup>2</sup> Shadwell V. C. said: "I apprehend that the words 'personal representative' or the words 'legal personal representative' mean ordinarily, and must prima facie be taken to intend, an executor or administrator, that is, a representative in law as to personal estate: not a kinsman or kinswoman, not a wife or husband, not a person entitled by statute to claim distribution. Generally, also, and prima facie, as I suppose, a bequest made to a 'personal representative', when the expression is so interpreted, must be understood as made to that representative not for his or her own benefit necessarily, but for the purposes, whatever they may be, for which he or she holds, or would hold, the general personal estate of the individual whom he or she is described as personally representing."

This expression of opinion also meets the argument put forward in appeal on behalf of the widow that the gratuity should be paid to her as legal representative or administratrix, but for her own use and benefit. If that submission were to be upheld, the gratuity would benefit any person who happened to be appointed administrator even though he is not an heir and is not even remotely related to the deceased. Such a strange result could not have been intended by those who enacted this Ordinance.

I would therefore hold that the widow is not entitled to any part of this money, and that it is payable to the 1st to 13th respondents as heirs of the deceased. The order under appeal is therefore set aside. Under the circumstances I would direct that both parties should have their costs of the inquiry in the District Court and of this appeal paid out of the money in question.

H. N. G. FERNANDO, J.—I agree.

*Order set aside.*

<sup>1</sup> 3 M. I. A. 135.

<sup>2</sup> (1846) 63 E. R. 936.