Present : Ennis and Schneider JJ.

1922.

CEYLON MUTUAL PROVIDENT ASSOCIATION *v.* MENDIS *et al.*

91—D. C. Colombo, 487.

Mutual Provident Association—Member nominating a person to receive credit balance and contributory call—Death of nominee—Rule that in absence of nominee sum to be paid to widow or heirs of member—Devise in last will of member to third party.

Under the rules of the Ceylon Mutual Provident Association, each member could nominate a person of a specified class to be the person to receive the credit balance and contributory call on the death of a member. In the absence of a nominee, the credit balance and contributory call were to be paid to the member's widow, and if there be no widow to his children, and if there be no children to the next of kin or legal heirs. S, a member, nominated D, who died before S. Then S died leaving no widow or children, but only a sister and nephew as heirs. By last will S devised this specific sum to the widow of D.

Held, that the widow of D was entitled to the sum in question under the last will.

ENNIS J.—"The rules merely say that the money shall be paid to a nominee, a certain specified person, and do not say that the money should become the property of that person, and I know of nothing by which the payment under the rules would affect the devolution of ownership according to the principles of law."

THE facts appear from the judgment of the District Judge (H. A. Loos, Esq.):—

K. T. Solomon Pieris was a member of the Ceylon Mutual Provident ssociation, and, in accordance with the rules of the Association, ominated his cousin, K. T. Daniel Pieris, as the person to whom the ssociation was to pay the money to which he would become entitled on his death under the rules.

K. T. Daniel Pieris predeceased Solomon Pieris who died in July, 1919, aving made a last will whereby he bequeathed to his sister-in-w, Egina Pieris, the added-defendant, all the money due to him, at s death, by the Association, and the will was duly proved in this ourt in the action No. 6,843.

The Association brought the sum of Rs. 2,075.40 into Court in the estamentary Action No. 6,843, and now asks this Court to decide who, the various claimants to the money, is entitled thereto.

The first and second defendants are executors of the last will of olomon Pieris, they do not claim the money, but alleged that the testator equeathed the money to Egina Pieris, and that she claims the money.

Egina Pieris, who was not a party to this action, was then added as a efendant.

The third and fourth defendants, who are wife and husband, claim that the third defendant who is the sister of Solomon Pieris is his next of kin, and as such entitled to the money.

The fifth defendant alleges that he is the only child of the deceased brother of Solomon Pieris, and that he and the third defendant being the only next of kin of Solomon Pieris are, as such, entitled to the money in accordance with the rules of the Association in equal shares.

The added-defendant states that the money is payable to the legal heirs of the deceased Solomon Pieris, in the absence of a nominee, that she is the legatee named in the last will of Solomon Pieris, and the money was bequeathed to her by that will, and she, as the legal heir, is entitled to be paid the money. She is the widow of the nominee, K. T. Daniel Pieris. . . . .

The dispute is as to the interpretation to be placed on the last six words of that rule, as to whether the " next of kin " are intended to be preferred to the " legal heirs," or whether the " legal " heirs are to be preferred to the next of kin, the " legal heir " in this case not being a next of kin, assuming that the words " legal heir " are to be accepted as meaning the instituted heir, the *persona designata*—the added-defendant is the person to whom the money in question has been specifically bequeathed by the testator in his last will.

So far as the testator's intention is concerned, it is clear that it was his intention and desire that the money should go to the added-defendant, and the several authorities cited do not really assist very much in the decision of the point now in dispute, for in those cases the question was as to the intention of the testators in using the various expressions which were used in the wills that had to be interpreted in those cases.

Here, there is no question as to the testator's intention, but as to the intention of the members of the Association, who framed the rules in question, sitting in calm and solemn conclave and unswayed by any personal feeling or regard for any particular individual or class.

Rule 2 sets out that " the objects of the Association are to promote thrift, to aid the members when in pecuniary difficulties, and to make some provision primarily for their widows and orphans." There is no widow and no orphan to be considered in this case, but rule 22 makes the claim of a member's nominee, duly appointed, override that of the widow and the orphan.

In this case the nominee of Solomon Pieris was the husband of the added-defendant, and it is not suggested that he was not duly appointed, but the nominee died before Solomon Pieris, and the latter bequeathed the money in dispute to his nominee's widow, the added-defendant, by his last will.

The question as to whether the Association would, or would not, have been justified in paying the money to the nominee's heirs, on the death of the member, on the footing that it cannot be urged that there was an absence of a nominee, for a nominee had been duly appointed, was not raised or discussed.

It was contended on behalf of the third defendant that the words " legal heirs " in the rule 22 are merely explanatory of the words " next of kin " in the rule. " Next of kin " can, of course, be the " legal heirs " of a man, but " legal heirs " need not necessarily be " next of kin," using the words " legal heirs " as meaning the persons designated as heirs by a last will, as distinguished from the words " legal heirs " in the case of an intestacy. If there had been no will in question in this case, then, of course, no difficulty would have arisen for the third and fifth defendants, as the next of kin would have been the legal heirs of Solomon Pieris who died unmarried, his parents

having predeceased him, and leaving only the third and fifth defendants as next of kin.

The third and fifth defendants cannot be regarded as the "legal heirs," contemplated by the rule 22, in this case I think, and the added-defendant is entitled to be regarded as the "legal heir."

That, however, does not dispose of the difficulty in this case, for it remains to be decided whether the rules intend that the next of kin should be preferred to the "legal heirs."

The Committee of Management of the Association has authority under rule 26 to make payment of such money to any person or persons who at the time appears or appear to it to be entitled thereto, and the rule provides that such payments shall be valid and effectual against any demand made upon the Association or the Committee of Management by any other person or persons; and it is to be regretted that when the applications were made for the money now in question, a meeting of the members of the Association was not convened to discuss the provisions of rule 22 and decide what the intention of the Association was, and, if necessary, to alter the rule so as to make that intention clear in unambiguous words.

The Courts may decide that the intention of the members of the Association was something different to what is really their intention, and in that event no doubt a meeting will be convened to amend rule 2.

The rule 22 is very unhappily worded, so far as that part of it which is relevant to this case is concerned—it sets out "if there be no widow, to the children: and if there be no children, to the next of kin or legal heirs"—it does not state "and if there be no next of kin, to the legal heirs," as one would have expected, if the intention is that the next of kin should be preferred to the legal heirs, so that it is possible that the intention is that failing all the persons mentioned earlier, the money is to be paid to the next of kin, or to the legal heirs if there be any such instituted—in other words "to the next of kin unless there be legal heirs" as distinguished from heirs of the body as in a case of intestacy.

I have the less hesitation in coming to the conclusion that that is probably the intention of the Association, for it accords entirely with what was all along, from the time Solomon Pieris joined the Association, the intention of Solomon Pieris, viz., to benefit the added-defendant's family, he originally nominated her husband and on his death made his last will by which he specifically bequeathed this money to the added-defendant, who states that Solomon Pieris informed her that it was his intention to have her name substituted for that of her deceased husband, as his nominee in the books of the Association, but he apparently died before he could do so.

I would accordingly decide the first issue in favour of the added-defendant, and hold that she is entitled to the money in question.

There is no need, therefore, to consider the other issues raised in this case. The added-defendant is entitled to be paid her costs by the third and fifth defendants, who must also pay the costs of the first and second defendants. The plaintiff's costs will be paid out of the money in question. Let decree be entered accordingly.

Rules of the Ceylon Mutual Provident Association were as follows:—

1. That the Association be called "The Ceylon Mutual Provident Association."

1922.

Ceylon Mutual Provident Association v. Mendis

2. That the objects of this Association are to promote thrift, to aid the members when in pecuniary difficulties, and to make some provision primarily for their widows and orphans:

. . . . . .

17. That the nominee or nominees of a member shall be a member or members of his family, including a *bona fide* adopted child where a member has no child or children of his own: or, failing such, any other relation. Such name or names shall be registered in the books of the Association as well as in the member's pass-book; provided that on the marriage of a member the nomination previously made by him shall cease to be valid, and that a fresh nomination shall be made by such member, which shall be duly registered.

. . . . . .

21. That on satisfactory proof of the death of a member being furnished to the Treasurer, he shall have the power to advance to the person nominated by the deceased, or, in the absence of a nominee, to his widow, orphans, or next of kin, or in either case to some responsible person, upon application, a sum not exceeding one hundred rupees (Rs. 100) to meet funeral and incidental expenses; and no claim by any person whomsoever shall be entertained in respect of such advance. Any sum so advanced shall be deducted from the amount payable on account of the deceased member.

22. On the death of a member the amount available at his credit in the books of the Association shall be paid to his nominee upon application. In addition to this payment, if the deceased member's name had been twelve months or more immediately preceding his death on the books of the Association without his being liable to forfeiture of membership under rules 15 or 23, the Committee shall pay to the nominee a contributory call calculated at rupees two (Rs. 2) per head of members whose names have been for the same period on the said books. The said payment shall be made within two months of application being made therefor; and in the event of the Committee not finding it practicable to make the payment within such time, then with interest on the amount due at the rate of 4 per cent. per annum from the expiry of the said two months. In the absence of a nominee the credit balance and contributory call shall be paid to the widow; if there be no widow, to the children; and if there be no children, to the next of kin or legal heirs. Provided, that if the nominee be a minor, the amount due to such minor shall be deposited in the Ceylon Savings Bank for the benefit of the minor, and be subject to the rules of the said Bank in respect of deposits made for the benefit of minors.

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Drieberg, K.C. (with him *Navaratnam*), for appellant.

Samarawickreme, for respondent.

September 5, 1922. ENNIS J.—

This was an action brought by the Ceylon Mutual Provident Association, which originated in the following circumstances. One of the members of the Association, Solomon Pieris, died, and left a credit balance and contributory call thereupon due by the Association to somebody. The Association could not decide to whom the money had to be paid, so they instituted this action and paid

the money into Court. It appears that under the rules of the Association each member could nominate a person of a specified class to be the person to receive the credit balance and contributory call on the death of the member. In this case Solomon Pieris had nominated his cousin, Daniel Pieris, who died, before Solomon Pieris, leaving a widow, the added-defendant in the present case and respondent in this appeal. Solomon Pieris then died leaving a will by which he devised this specific sum to the added-defendant in the present case. Under the rules of the Association, in the event of the death of a member and in " the absence " of a nominee whatever that may mean, the Association is bound to pay the credit balance and contributory call to the widow, and if there be no widow to the children, and if there be no children to the next of kin or legal heirs. It appears that Solomon Pieris left no widow and no children. The first and second defendants are the executors of Solomon Pieris's will. The third defendant is the sister of Solomon Pieris, fourth defendant is her husband, the fifth defendant is a nephew of Solomon Pieris, and they all claim as next of kin and legal heirs. The learned Judge held in favour of the added-defendant, and the next of kin appeal from that decision. I am unable to see the circumstances under which the substantial rights of the parties are affected by the decree under appeal, because there is no legal principle upon which the nominee mentioned in the rules (or, in the absence of a nominee, the person specified in the rules), becomes the owner of the amount paid to him or her. The effect of the rules, as at present formulated, is to provide that the Association shall be in a position to obtain a good receipt for any payments they make. The rules merely say that the money shall be paid to a nominee, a certain specified person, and do not say that the money should become the property of that person, and I know of nothing by which the payment under the rules would affect the devolution of ownership according to the principles of law. It is possible that if the rules had added that the property should pass to the nominee or the persons specified, it might have been suggested that the devolution was based upon the contract between each individual member and the other members of the Association. However, the rules contain no such words, and the words of the rule merely designate the destination of the property. This being an interpleader action, the question between the defendants is which of them is legally entitled to the property in question ? Under the will of Solomon Pieris, which does not appear to have been contested, the added-defendant is the person intended to be benefited in respect of this property. In the circumstances of the case there is no occasion to consider what the terms " next of kin " or " legal heirs " may mean in the rules of the Association, or, the order in which the next of kin or legal heirs are to be paid. The added-defendant is entitled to the property, and whether she be

1922.

ENNIS J.

Ceylon Mutual Provident Association v. Mendis

the person whom the Association should pay in the first instance or not, the decree in her favour substantially declares the ultimate destination of the property in question. I would accordingly dismiss the appeal with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.