1943 *Present* : **Moseley A.C.J. and Jayatileke J.**

RAJADURAI, *et al.* Appellant, *and* FONSEKA, Respondent.

145—D. C. Jaffna 15,889.

Railway Benefit Association—Money payable on death or retirement of member—Death of member—Money paid to next of kin—Not available to creditor—Ceylon Railway Benefit Association Ordinance (Cap. 208), Rule 9 (1).

Money which is payable on death during his employment in the Public Service or on his retirement of a member of the Railway Benefit Association and which according to the Rules has to be paid to the member, his nominee or next of kin cannot be followed by his creditors in the hands of the next of kin to whom it has been paid on the death of a member.

Letchchimipillai v. Sivakoluntu (25 *N. L. R.* 225) followed.

IN this action the plaintiff sued the defendants the widow and minor children of S. T. Rajadurai, deceased, for the recovery of Rs. 350 balance due on a promissory note made by the deceased. The defendants admitted the debt and the only question was whether a certain fund in possession of the defendants was available for execution. It was the amount payable to the deceased on his retirement or death by the Ceylon Railway Benefit Association of which the deceased was a member. The learned District Judge answered the question in the affirmative.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for the defendants, appellants.—The only question at issue is whether the defendants can be said to have adiated as their inheritance the sum payable to them under rule 9 (1) read with section 3 of the Railway Benefit Association Ordinance (Cap. 208). It is submitted that the money in question did not belong

[1] *16 N. L. R. 438.*

to the deceased and does not form a part of his estate. *Letchchimipillai v. Sivakoluntu*[1] is directly in point. The District Judge was wrong in holding that the deceased had a disposing power over the fund when in reality he had only a nominating power. The fund cannot be considered as part of the estate of the deceased. See *Urquhart v. Butterfield*[2] and *Attorney-General v. Rowsell*[3].

E. B. Wickremanayake (with him *H. Wanigatunge*), for the plaintiff, respondent.—*Letchchimipillai v. Sivakoluntu* (*supra*) has no application to the facts of this case. No nominee had been appointed in that case who predeceased the subscriber. The case of *Ceylon Mutual Provident Association v. Mendis et al.*[4] is more in point. The decision in *Letchchimipillai v. Sivakoluntu* can be explained on the basis of a novation and contractual rights ; it was, therefore, held that the nominee had not only a legal right but also a beneficial interest.

The primary object of the Association in the present case is to benefit the member who subscribed. The member can obtain relief from the Association in times of distress and sickness. He can, further, draw the money for himself on his retirement. The money is the property of the member and, under rule 9 (1), where it is not paid to the member or his nominee, it becomes part of his estate and goes to his heirs. In the English cases cited on behalf of the appellants the funds had clearly been created not for the benefit of the subscribers but for the benefit of their widows and children. *In re Griffin*[5] is an example of an English case where the money was recognized as that of the subscriber.

N. Nadarajah, K.C., in reply.—Rule 9 (1) constitutes a contract between the member and the Association as to the payment of the money. The terms of the contract cannot be varied in any manner other than that prescribed by the rules—*Ashby v. Costin*[6]. *Bennett v. Slater et al*[7].

Cur. adv. vult.

March 5, 1943. MOSELEY A.C.J.—

The respondents sued the appellants, who are respectively the widow and two minor children of one S. T. Rajadurai, deceased, for recovery of Rs. 350 being the balance due on a promissory note made by the deceased in favour of the respondent. The appellants admitted the debt and the only question for decision was whether a certain fund in possession or at the disposal of the appellants was available for execution. This fund amounted to Rs. 3,257.62 and is the amount payable on the retirement or death of the deceased by the Ceylon Railway Benefit Association of which the deceased was a member. The one issue framed was as follows :—

> "Did defendants (1st to 3rd) adiate as their inheritance the sum of Rs. 3,257.62 mentioned in the evidence of the witness Ramachandran (Secretary and Treasurer of the Association)."

The learned District Judge answered the question in the affirmative.

The money forming the above-mentioned fund became available to the appellants in pursuance of rule 9 (1) of the Rules of the Association, made

[1] *(1923) 25 N. L. R. 225.*
[2] *L. R. (1887) 36 Ch. D. 55.*
[3] *L. R. (1887) 36 Ch. D. at 67.*
[4] *(1922) 24 N. L. R. 205.*
[5] *L. R. (1902) 1 Ch. 135.*
[6] *L. R. 21 Q. B. D. 401*
[7] *L. R. (1899) 1 Q. B. 45.*

under the provisions of Ceylon Railway Benefit Association Ordinance (Cap. 208 of the Legislative Enactments).

The rule is as follows :—

"9 (1) : On the retirement from the public service, or on the death during his employment in the public service of any member of the corporation who has contributed regularly in accordance with these rules to the funds of the corporation, and has also been a member of the corporation for a period of not less than one year, a donation in addition to the payment referred to in rule 8, shall be paid to such member or to his nominee or next of kin or heirs at law, as the case may be."

The provision made by the rule for payment is strictly in accordance with the terms of section 3 of the Ordinance. It should be stated that the deceased had made a nomination in accordance with the provisions of the Ordinance and that the nominee had predeceased him. The money was therefore payable to the next of kin *i.e.* the appellants.

Counsel for the appellants relied upon the case of *Letchchimipillai v. Sivakoluntu*[1] where the question for decision was in regard to the rights of a nominee of a member of a mutual provident association. The member died intestate and the heirs asserted that the sum payable by the association to the nominee formed part of the estate of the deceased. It was held that the nominee was the owner of the money and that the heirs of the deceased could claim no interest in it. That is to say, the money formed no part of the estate of the deceased and could not be followed by his creditors.

Counsel for the respondent sought to distinguish that case, and no doubt in some respects it may be distinguished, from the case before us now. The association in the case cited was a provident association which afforded no benefit to the member during his lifetime, while in the present case it was open to the member, if he so elected, to draw such money as might then be due to him on his retirement. I am unable to see that this distinction materially affects the case. The statutory provisions of rules in respect of each of the associations concerned provide for the naming of a nominee, and Mr. Wickremanayake conceded, as indeed I think he must, that had the nominee survived the member his title to the money would have been unassailable. He argued, however, that the primary object of the Railway Benefit Association is to give relief to its *members* in times of distress and sickness, and that the benefit of the dependents of a deceased member was of only secondary importance. He cited in support of his view the preamble and section 3 of Cap. 208, but an examination of the Ordinance indicates that the only manner in which a member may seek relief prior to his retirement is *by borrowing* from the association, and section 3 makes no distinction between the member and his family when it comes to the ultimate disposal of the fund, unless one can be drawn from the mere fact that the member is mentioned before his nominee or his widow and children.

In regard to the position enjoyed by a nominee it is, I think, clear that it is the same whether it be a provident or benefit association. Counsel for the respondent described the standing of the nominee as the result

[1] *(1923) 25 N. L. R. 225.*

of a contract between the member and himself. It is moreover the result of a contract between the member and the association, that is to say, his fellow-members. Can it not be said that section 3 of the Ordinance and the Rules which provide for the devolution of the fund on the death of the member, and in the absence of a nominee, on the widow and children, express a contract between the member and the association? It seems to me that it must be so. Mr. Wickremanayake, if I rightly understood his argument, interpreted the provisions to which I have referred as merely reproducing the law of succession and that the intention of the legislature was to provide that, failing the member or his nominee, the money was to go to the member's estate. I can see no reason for supposing that the legislature would employ such unnecessary phraseology when its intention, if that it were, could have been more conveniently expressed.

The decision in the English cases which were brought to our notice were carefully considered in *Letchchimipillai v. Sivakoluntu* (*supra*) and I do not think it is necessary to refer to them beyond quoting an observation of Cave J. in *Ashby v. Costin* (*supra*) which is as follows :—

> "The money . . . . was to be paid according to the bargain made by the deceased with the other members."

The bargain in the present case seems to me to be (using the words of Jayewardene A.J. in *Letchchimipillai v. Sivakoluntu*) that the money standing in the deceased's name should, in the absence of a nominee, devolve in a particular order of succession.

For these reasons I do not think the money paid or payable from this fund to the widow and children is available to the respondent.

The appeal is allowed with costs. The judgment of the District Court is set aside and judgment will be entered for the defendants with costs.

JAYETILEKE J.—I agree.

Appeal allowed.