

Chee Wor Lok and others - - - - - *Appellants*

*v.*

Yeoh Saw Geok - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE STRAITS SETTLEMENTS (SETTLEMENT  
OF PENANG)

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JUDGMENT OF THE LORDS OF THE JUDICAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 22ND OCTOBER, 1934.

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*Present at the Hearing :*

LORD ATKIN.

LORD ALNESS.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD ATKIN.]

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This is an appeal from an order of the Court of Appeal of the Supreme Court of the Straits Settlements who set aside an order of Mr. Justice Sawrey-Cookson. The action was brought by the widow of a man who had been a member of the Chinese Benevolent Association at Penang, and it was for a declaration that the husband of the plaintiff at the date of his death was still a member of the Association and had not, as the Association claimed, automatically ceased to be a member by reason of default in paying subscriptions. The rules of the Benevolent Association are expressed in English, and the deceased had been a member since November of 1916. The objects of the Association are to encourage thrift and to make provision for a widow.

The rules state that membership commences from the first day of the month upon payment of deposit and fee for certificate of membership within thirty days of notice of election, and on payment of his monthly deposit and a certificate fee of \$2 a certificate of membership will be issued. Then they provide that " Each member shall deposit with the Association monthly the sum of \$2. Any member who wishes to deposit monthly an extra

amount may do so." Then there comes the clause upon which the dispute arises: "The monthly deposit shall be paid in advance by every member on or before the 15th day of the month. In default he shall be liable to pay a fine of 10 cents for each such failure, which shall be debited to his account, and if his monthly deposit shall be two months in arrear he shall be notified, and failing payment of same in full after the expiration of 21 days he shall *ipso facto* cease to be a member and forfeit all privileges as a member"; and then it provides what shall happen if he is readmitted.

Now the facts in this case are that this man paid his monthly deposit for June in due course on or before the 15th June. In July he did not make any payment. Apparently he was ill—though that is immaterial for this case—and he died on the 24th September. In August he paid no deposit, and on the 16th August, in assumed accordance with the rule, he was notified that his deposits were in default. On the 8th September he thereupon, according to the Association, automatically ceased to be a member, and, as has been said, he died on the 24th September of 1932.

Now the question is whether on the 16th August, when notice was given under the rule, his monthly deposit was, in fact, two months in arrear. The widow says no, the monthly deposit of July being due on the 15th July, on the 16th July it was one day in arrear and on the 16th August it was one month and one day in arrear and not two months in arrear. Therefore, it is said that the rule did not apply and that the man had not ceased to be a member. On the other hand, the Association say that is not the meaning of the rule; that what it does mean is that if subscriptions in respect of two months are in arrear then the rule applies. A monthly deposit, it is said, must be treated as something continuous, and the only question is whether the subscription in respect of two months is in arrear. It appears to their Lordships that one way of stating the question is whether the words mean "if any monthly deposit shall be two months in arrear," or whether they mean "if two monthly deposits are in arrear," which is the contention of the Association.

Now their Lordships think that it has to be remembered, in dealing with a clause of this kind, that it is of the nature of a forfeiture, and it has got to be reasonably clear that the forfeiture operates. Their Lordships find themselves unable to come to the conclusion that the Association have made out that the forfeiture did apply in this case. On the contrary, they agree with the view taken by the Court of Appeal of the Supreme Court. They think that on the true construction of this rule it means that in order to work a forfeiture a monthly deposit has to be in arrear for the period of two months; in other words, that the period of two months applies to the period of default

for each deposit and not to the number of subscriptions that have to be in arrear.

It is a simple question of construction. One can quite understand another view being taken, and no question arises but that the Association have put forward a *bona fide* claim in this case, intending to maintain what they think is the true construction of their rule. In their Lordships' opinion that is not the true construction of the rule, and therefore this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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CHEE WOR LOK AND OTHERS

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YEON SAW GEOK.

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DELIVERED BY LORD ATKIN.

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