

1955

*Present* : Basnayake, A.C.J., and Weerasooriya, J.BELL, *et al.*, Appellants, and F. ARNOLDA *et al.*, Respondents*S. C. 42—D. C. Colombo, 24,377**Contract—Employer and employee—Provident Fund—Nomination of beneficiary.*

A Provident Fund was kept by an employer Company for the benefit of its employees. One of the Rules relating to it provided that on the marriage of an employee the nomination previously made by him would cease to be valid and that a fresh nomination should be made by such employee which "shall be duly registered". No separate register of nominees was ever maintained.

*Held*, that the failure to enter the second nomination in a separate register could not invalidate such nomination.

**A**PPPEAL from a judgment of the District Court, Colombo.

*H. V. Perera, Q.C.*, with *E. A. G. de Silva, M. L. de Silva* and *T. G. Gunasekera*, for Defendants-Appellants.

*N. E. Weerasooria, Q.C.*, with *E. S. Amarasinghe*, for Plaintiffs-Respondents.

October 7, 1955. BASNAYAKE, A.C.J.—

The point that arises for determination on this appeal is whether Mae Bow Bell, widow of Charles Isaac Bell (hereinafter referred to as Bell) who died on 2nd July, 1948, was his nominee for the purpose of his Provident Fund.

Bell was at the time of his death and at all relevant times an employee of Brodie & Company Limited which he joined in 1928. In that year the firm started a Provident Fund for its employees. Bell, who was then a bachelor, became a member of the Fund and it is not disputed that he nominated his mother Jessie Bow Bell as his nominee, in terms of Rule 16 of the Provident Fund Rules.

Bell married in November, 1947, and on his return to Ceylon about January, 1948, he obtained the Provident Fund Pass Book from Mr. Brodie, the Managing Director, and scored off the words "Jessie Bell, mother" from the space provided therein for the name of the nominee and substituted the words "Mae Bow Bell, wife". In July of that year, Bell died leaving a sum of Rs. 23,269.11 to his credit in the Provident Fund. The money was paid to his widow as her name appeared in the Pass Book as his nominee. The plaintiffs, the mother, sister and brother of Bell, claim that his nomination of his widow is not valid and that the money should be distributed as on a failure of nomination among the deceased's lawful heirs in terms of Rule 17 of the Provident Fund Rules (hereinafter referred to as the Rules). On that footing they claim one half of the money and allow the other half to the widow.

The learned District Judge has held that the deceased's nomination of his widow is not a valid nomination and that the money standing to his credit should, in terms of Rule 17, go to his lawful heirs. We are unable to agree with him.

Rule 16 of the rules provides that on the marriage of an employee the nomination previously made by him shall cease to be valid and that a fresh nomination shall be made by such employee which shall be duly registered.

We are of opinion that the entry "Mae Bow Bell, wife", in Pass Book D3, which was made by the deceased in the presence of the Managing Director and with his knowledge and consent almost immediately after his marriage, is a valid, fresh nomination for the purposes of Rule 16.

Counsel for the respondents strenuously argued that the nomination made by the deceased was a change in the nomination and that it should in terms of Rule 16 have been made by application to the Directors of the Company, and that as there has been no such application there was no change in the nomination. He also submitted that the failure to register the nomination was fatal.

It is common ground that no separate register of nominees was ever maintained. The failure to enter the nomination of Bell's wife in a separate register cannot invalidate his fresh nomination which was entered in the Pass Book in the same way as the first nomination of his mother. The lawful heirs can only come in where there is no nominee and not on account of failure to register a nomination.

We therefore set aside the order of the learned District Judge and allow the appeal with costs both here and below.

WEERASOORIYA, J.—I agree.

*Appeal allowed.*

