(1881) 03 CAL CK 0007

Calcutta High Court

Case No: None

Falle and Others	APPELLANT
Vs	
MacEwen and Others	RESPONDENT

Date of Decision: March 4, 1881

Citation: (1881) ILR (Cal) 1

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Pontifex, J.

This case, although exceedingly important to the subscribers to and pensioners upon the Uncovenanted Service Family Pension Fund, does not appear to us to be one of much difficulty. The Fund was established many years ago for the purpose of securing a provision for the widows and children of its subscribers. Originally, or at all events prior to 1850, the Rule (then being No. 33) as to payments of pensions was as follows:---"That widows being incumbents on the Fund shall be paid their pensions at any place they may desire, either monthly, quarterly, or half-yearly, subject to the usual charges of remittance. The pensions of children being incumbents shall also be so paid, and on the same conditions." The subscriptions were and continue to be paid in rupees, and the pensions are calculated in rupees according to certain tables.

2. It is clear, of course, that the tables would be untrustworthy and deceptive guides, if the subscriptions were paid in a lower and the pensions in a higher, standard of currency.

3. In the year 1850, exchange being then somewhere about par, the old Rule (33) was repealed by a general meeting, and a new Rule (41) was substituted for it. The new rule was as follows:

4. That incumbents on the Fund shall be paid their annuities in India at par, or in Europe at the fixed rate of two shillings to the rupee." This alteration must have

been made under Rule 60 of the Society, which is as follows:

5. It shall be competent for any twelve qualified subscribers who may be dissatisfied with any proceeding of the Directors, or who may be desirous of altering or amending any existing rule or practice, or of making any proposition with regard to the Fund," to require the Directors to call a special meeting. ''The meeting shall determine whether the question shall be submitted by circular to the general body of subscribers or not; if the former, the Directors shall circulate it accordingly, and the votes of the majority of the subscribers received within three months from the issue of such circular shall be decisive." If Rule 41 was passed by the votes of a majority of the subscribers in substitution for the old Rule 33, it was of course competent for a majority of the subscribers by their votes duly recorded to alter it.

6. As Lord Westbury puts it in the case of the Secretary of State for India v. Underwood (L. R. 4 Eng. and Ir. App. 605): "If it was competent to them to make that addition" (in this case alteration), "then, by the clear interpretation of the 30th rule, by which that authority was given, there was equal authority to take it away." But the question in this case is, not whether the Society could revoke Rule 41 which they passed in 1850, but how far they could revoke it, so as to bind existing subscribers to the Fund.

7. What they really did was as follows:---When in 1876 adverse exchange began to tell, the following rule, then numbered 50, was on the first of July 1876 passed by the votes of a majority of the subscribers. (Reads Rule 50 ante, P- 6).

8. It was thus attempted, though it seems to us with questionable wisdom or or fairness, to preserve what I suppose where regarded, but in my opinion improperly regarded, as the vested interests of those existing subscribers. Exchange, however, continuing to decline, until at one time there was actually a depreciation of 25 per cent, from the valuation of the rupee at two shillings, it was considered that further steps were necessary for the security of the Fund; and on the 22nd of May 1880, the Society, by the votes of 553 members against 505, passed the following Rule. (Reads rule of 22nd May 1880, ante, p. 7.)

9. The question we have to determine is, whether this new rule is binding on the widows and children of subscribers to the Society before the 1st of July 1876, and who died after the 22nd May 1880. Mr. John Vernon Falle, the husband of the plaintiff Sophia Anne Falle, and father of the infant plaintiffs, commenced subscribing to the Fund on the 11th of November 1871 for the benefit of his widow, on the 18th of September 1873 for the benefit of the plaintiff Phillip Erskine Falle, and on the 14th of November 1874 for the benefit of the plaintiff Nora Eliza Vernon Falle. On the 28th of September 1878, he made a further subscription for an increased benefit to the plaintiff Phillip Erskine Falle but it is not disputed that this last subscription must be governed by the rule passed in 1876. Mr. John Vernon Falle attended the meeting at which the rule of the 22nd May 1880 was passed, but

it is admitted that he did not vote with the majority. Mr. John Vernon Falle died on the 25th June 1880, having up till then duly paid his subscriptions to the Fund.

10. His wife and children, the plaintiffs, are now residing in England, and claim to be paid their pensions in England at the rate of two shillings to the rupee, notwithstanding the existence of the rule passed by the majority of the subscribers on the 22nd May 1880. Their case is, that Mr. Falle contracted on the footing of Rule 41 of 1850; that it was out of the power of the Society to vary the terms of that contract either by passing a rule or otherwise, whatever might be the depreciation of exchange. Their argument is, that if exchange had risen, so that the rupee had become of greater value than two shillings, a state of circumstances which existed not so very long ago, though to us it sounds like a fable of the golden age, the loss would have been theirs, and that, therefore, now they are entitled to insist upon the benefit. But this is scarcely an argument, it is rather a begging of the question.

11. They then argue that it is impossible to say whether Mr. Falle would have become a subscriber to the Fund if he had known that pensions in England were to be calculated at less than two shillings to the rupee. This is, in other words, to argue that Mr. Falle would not have joined the Fund unless an advantage was secured to his nominees which would be unfair to Indian nominees and most of his fellow-subscribers. But as a matter of fact, we do know that Mr. Falle increased his subscription on the 28th of September 1878, although at that time the two-shilling rule had been abrogated so far as respected risks accepted after the 1st of July 1876.

12. Rule 33, which was in existence prior to 1850, was a rule which dealt with perfect fairness with all classes of pensioners, Indian and foreign ; though under it troublesome calculations might become necessary in payment of each English pension. As a matter of convenience, and to save constant trouble of calculation, it was, no doubt, in the Society''s power to alter it as they did in 1850, provided they gave no class of pensioners an undue advantage. But that a majority should give an undue advantage to any class would be, in our opinion, extra vires, and open to correction. As Lord HATHERLEY said in the case already cited (p. 588):

The power of making general rules must surely be one of making rules that operate equally on all subscribers; as for instance, any general change in the rate of percentage or of contribution or the like.

The plaintiffs, however, rely on certain other observations of Lord HATHERLEY in the same'' case when he says (p. 589): "No rules" (meaning powers to effect changes by the resolution of a majority), "unless the expressions were insuperably the other way, would ever be so construed as to enable a majority, having an interest directly opposed to the vested interest of a minority, to confiscate that interest." But when the rule of 1880 was passed by a majority, Mr. Falle cannot, in our opinion, be said to have had any vested interest in the proper acceptation of the term. Nor could it be said that the majority had an adverse interest to the minority; for it was

impossible at the time the rule was passed to predicate whether Mr. Falle or any other member of the minority would be prejudiced or would benefit by it. If Mr. Falle had lived for some years after the passing of the rule, he would probably have benefited by it. As it happens, he died shortly after the rule was passed; but the result of the rule is to place his nominees in the same and no worse position than the nominees of any other existing member of the Association at the time the rule was passed. To quote Lord HATHEELEY again at p. 590 of the case already cited: "Those who have not yet paid in excess might all be held Ho be in an equal position, regard being had to their chances of life;" and further:

I think a rule might well be passed that, saving the rights of all who have contributed in excess of the one-half value of the annuity, no future refund shall be allowed.

13. It seems to us, therefore, that even Lord HATHEELEY, the dissentient Judge in the case cited, would have agreed that the nominees of all the shareholders in existence at the date of passing the new rule would be bound by it. And it is clear that the other Judges, Lord CHELMSFOBD, Lord WESTBURY, and Lord COLONSAY would have been of that opinion.

14. But apart from authority, common sense would lead us to the same result. This was a Society intended for the equal benefit of all its subscribers. Mr. Falle, in becoming a subscriber, can scarcely be supposed to have intentionally subscribed on a footing unjust and prejudicial to a large number of the other subscribers. Rule 41 of 1850 was itself a rule of adjustment, and its very existence was notice of the necessity of adjusting Indian and English payments for pensions. The existence of tables in which pensions were calculated in rupees, and the reference to them in the rules, was further notice that a pension payable in England was calculated on precisely the same data as a pension payable in India; and ought, therefore, to be of precisely the same value, subject only, for convenience'' sake, to some easy and ready rule of adjustment; and so long as exchange had but slight variations under or over par, the two-shilling Rule [17] was a roughly convenient one. In a Society of this kind, if pensions are, for the convenience of certain nominees, allowed to be paid out of India, it seems to us absolutely necessary that there should be a continuous power to adjust payments in accordance with the true rate of exchange. The 60th rule seems to us sufficiently wide to confer that power, and the fact that the Society failed for some years to make such adjustment, does not in our opinion disable them from at any time afterwards putting all the subscribers on an equality. Indeed, this being an Indian Society, and the subscriptions being payable in India in rupees, we see no reason to prevent a majority of the subscribers from passing a rule that all pensions should be payable exclusively in India. For the rule allowing pensions to be paid elsewhere is simply a rule of convenience. If the Society could not make adjustments in accordance with the rate of exchange, or refuse to pay pensions out of India, the result might be that the existing subscribers would

decline to continue to contribute for what, according to the actuarial calculations upon which the operations of the Society are founded, would be such evidently unfair results. Indeed, according to the strict interpretation of Rule 41 of 1850, and as between competing pensioners, it might be difficult to hold that all pensioners entitled before the 1st July 1876, even though they might reside in India, could not demand payment to be made to their agents in England at the rate of two shillings to the rupee. For it is to be observed that Rule 41 of 1850 makes no mention of "residence." Rule 33, for which it was substituted, speaks of payment at any place pensioners might desire, and Rule 50 of 1876 is the first to use the word "residing," though'' curiously enough the latter part of the rule omits all reference to incumbents residing in America. This, however, might be so seriously detrimental to existing subscribers as to involve the collapse of the Society, and it would of course have been equally detrimental to Mr. Falle, if he had continued to live.

15. If, therefore, the terms of Rule 60 were not as wide as they are, it seems to us that, for the purpose of continuing the business of this Association, it, would be necessary, if pensioners are to be paid out of India, to imply a power to make such adjustments as equal fairness might require. But when we see what was the description of the Society to which each subscriber elected to become a member, viz., the description contained in its second rule stating the object of the Society to be "to provide for the widows and children of those who shall subscribe to it, upon the terms and conditions specified below, or such others as may be determined upon by the subscribers or by a majority of them,"-when we refer to the terms upon which Mr. Falle entered into his so-called contract, namely, his request to be admitted a subscriber, and his engagement" to submit to, and abide by, the rules and bylaws of the Institution,"-when we consider the terms of some of these rules, as for instance, Rule 27, which requires the payment by subscribers of " a fee equal to ten per cent. upon the amount of monthly pension insured,"-and particularly when we further consider the terms of its 60th rule, it seems to us beyond all question that a majority of the Society had full power to pass such a rule as was passed on the 22nd of May 1880, so as to effect the nominees of all the existing subscribers, and beyond this, for the purposes of this case, it is not necessary to go.

16. We are, therefore, of opinion that the plaintiffs are, with respect to their several pensions, bound by the terms of the rule passed on the 22nd of May 1880, and that this suit should be dismissed with a declaration to that effect. This being a representative case, and the defendants not pressing for costs, we think the suit should be dismissed without costs.