

Chia Khwee Eng - - - - - *Appellant*

v.

Chia Poh Choon and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF THE STRAITS SETTLEMENTS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 12TH DECEMBER, 1922.

Present at the Hearing :

LORD ATKINSON.

LORD SUMNER.

LORD PARMOOR.

LORD CARSON.

[*Delivered by* LORD SUMNER.]

When the testator died in 1918 he left a will, the scheme of which was as follows.

After sundry specific bequests to provide for his own and his wife's funeral ; for jewellery for his wife and for one of his daughters, and for the marriage expenses of this daughter ; for pecuniary legacies to two daughters, two nieces and his sister ; and for other sums to remoter legatees ; and after making provision for the religious rites and ceremonies called in Chinese "Sin Choo Kee Sin," in memory of himself and his ancestors, he constituted a trust fund, the income of which was disposed of by Clause 16 as follows :—

" My trustees shall divide the income derived from my trust fund among my said wife Tan Lye Neo and my said sons Chia Kwee Eng, Chia Poh Choon and Chia Poh Hock in equal shares (but should my wife marry again, I direct that her one-fourth share in the income aforesaid shall immediately cease and be then equally divided among my said three sons)."

and the corpus by Clause 17 as follows :—

“ My trustees shall, immediately on the expiration of twelve years after my death, divide my trust fund among my wife and children aforesaid in equal shares (provided that should my wife marry again before the period of distribution of my trust fund I direct that her share in my trust fund shall be given to my said sons in equal shares).”

The will was in English. It employed English terms of legal art, and it is admittedly to be construed according to the English law of wills, as laid down in English decisions. The testator named his wife as one of the executors of this will, but she predeceased him. Three sons and two daughters survived him.

In the event which happened, the share of the corpus destined to the wife by Clause 17 was not expressly disposed of. She did not live to take her share, and, so far as it is given over in express words, they are :—

“ Provided that should my wife marry again before the period of distribution of my trust fund, I direct that her share in my trust fund shall be given over to my sons in equal shares.”

The wife did not marry again but died, and as it stands the express gift over does not operate. Apart from authority there would be an intestacy. If so, the respondents take as two of the next-of-kin and this appeal fails.

The appellant's case is that, truly construed, this gift over to the sons takes effect in the event which happened, and not merely in the event actually expressed. They contend that the gift over must be read as a gift over to them “ should my wife marry again or die.” The principle which they seek to apply is that stated by Parker, J., in *Seaton's case* (1913, 2 Ch., p. 618), as follows :—

“ Where there is a terminable life interest, and there is a gift over on the happening of an event which does not take place, the Court will read this as a limitation in remainder on the life interest, which has determined by death.”

The contention is that, as the testator meant his wife's interest to be a life interest only, he could not be supposed to have intended that if she did not re-marry and thereby bring the very words of the gift over into operation, she might in that event take an interest absolute.

The principle is an old one ; it is not confined to dispositions in favour of wives, or to the determination by re-marriage of the interest given by the will, but it does depend on the possibility of ascertaining from other parts of the will that the original intention of the testator in making the gift was to give a limited interest only. The gift over, as Page Wood, V.-C., says in *Browne v. Hammond* (Johnson, p. 214), “ is to be extended by implication,” that is, beyond its actual expression, but implication must be an implication from something else ; otherwise this extension would be mere conjecture, and that something else is the testator's intention to be found elsewhere “ interwoven into the original gift,” as Mr. Jarman puts it (6th ed., ii, 1362).

It appears to their Lordships that Clause 17 of the will is decisive against this argument. It provides that, after a certain number of years, during which income only is to be payable to her, the wife is to receive a share of the corpus absolutely. This negatives any presumed intention that she should never have more than a life interest for it excludes that general intention, from which any extension of the gift over to cover the event of her death is to be implied. Their Lordships are, therefore, of opinion that the son's argument and appeal fail.

Some considerations were advanced in the dissentient judgment of Barrett-Lennard, J., which rest on the normal dispositions in favour of sons and to the disadvantage of daughters, which might be expected in a Chinese testator's will. The learned Judge thought that in these considerations something might be found, which would show an original intention with regard to the gift to the wife to limit it in such a way as to warrant the suggested implication of an operation of the gift over in the event of the wife's death. How this might be, if the will had not been expressed in English form, it is not necessary to decide. It seems clear that it is deliberately couched in so English a form as to exclude any consideration of Chinese usages not supported by its express terms.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

CHIA KHWEE ENG

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CHIA POH CHOON AND OTHERS.

DELIVERED BY LORD SUMNER.

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