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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 33 of 1953.

43585

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT PENANG.

BETWEEN

- 1. SALLY LEONG (M.W.)
- 2. LIM EANG HOONG (spinster) an infant by her next friend SALLY LEONG *Appellants*

AND

LIM BENG CHYE *Respondent.*

(In the Matter of Civil Appeal No. 35 of 1952. In the Court of Appeal at Penang.)

BETWEEN

LIM BENG CHYE *Appellant—1st Defendant*

AND

- 1. SALLY LEONG (M.W.)
 - 2. LIM EANG HOONG (spinster) an infant by her next friend SALLY LEONG
 - 3. LIM CHENG HOOI
 - 4. LIM WENG HOOI alias LIM ENG HOIO Administrators with the Will annexed of the estate of LIM KIA JOO deceased
- } *Respondents—2nd and 3rd Defendants*
- } *Respondents—Plaintiffs.*

RECORD OF PROCEEDINGS

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In the Privy Council.

No. 33 of 1953.

ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA IN THE HIGH COURT AT PENANG.

BETWEEN

1. SALLY LEONG (M.W.)
 2. LIM EANG HOONG (spinster) an infant by her next
friend SALLY LEONG *Appellants*
- AND
- LIM BENG CHYE *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Originating Summons.

In the High
Court at
Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Originating Summons No. 196 of 1951.

No. 1.
Originating
Summons.
9th
November
1951.

In the Matter of the estate of Lim Kia Joo, deceased.

Between

1. LIM CHENG HOOI
 2. LIM WENG HOOI alias LIM ENG HOOI administrators with
the will annexed of the estate of LIM KIA JOO, deceased *Plaintiffs*
- and
1. LIM BENG CHYE
 2. SALLY LEONG (married woman)
 3. LIM EANG HOONG (spinster) an infant, by her next friend
SALLY LEONG *Defendants.*

Let the Defendants (1) Lim Beng Chye of No. 47 Northam Road,
Penang, (2) Sally Leong (M.W.) of Lim Lean Teng Mansions, Farquhar

In the High Court at Penang.

No. 1.
Originating Summons.
9th November 1951—
continued.

Street, Penang, (3) Lim Eang Hoong (spinster) an infant of Lim Lean Teng Mansions, Farquhar Street, Penang, claiming to be residuary legatees under the Will of Lim Kia Joo deceased abovenamed within eight days after service of this Summons on them respectively, inclusive of the day of such service cause an appearance to be entered by them respectively to this summons, which is issued upon the application of Lim Cheng Hooi of No. 47 Northam Road, Penang and Lim Weng Hooi alias Lim Eng Hooi also of No. 47 Northam Road, Penang, who claim to be interested in the relief sought as the administrators with the Will annexed of the deceased abovenamed, that the following questions or matters arising in the administration of the estate of the said Lim Kia Joo deceased may be determined under the provisions of the Rules of the Supreme Court 734, Order 52 rule 1, and relief given in respect thereof, that is to say :— 10

1.—That the 1st Defendant, or some other fit and proper person may be appointed for the purposes of this suit to represent all persons other than the 2nd and 3rd Defendants claiming to be residuary legatees under the Will of Lim Kia Joo deceased.

2.—That it may be determined to whom, upon the true construction of Clause 13 of the Will of the said deceased and in the events which have happened, the share in the residuary estate of the said deceased bequeathed to Lim Beng Sai deceased provided that he survived the period of distribution, will be payable. 20

2a.—Whether the surplus income of the said deceased's estate is divisible and if so amongst whom, or whether the same should be accumulated until the period of distribution.

3.—How the costs of this application are to be borne.

Dated this 9th day of November, 1951.

By order,
(Sgd.) J. W. D. AMBROSE,
Sr. Assistant Registrar. 30

This summons was taken out by Messrs. Huck Aik & Inn Kheam of No. 12-A Beach Street, Penang, Solicitors for the abovenamed Plaintiffs.

To :

1. Lim Beng Chye of No. 47 Northam Road, Penang.
2. Sally Leong (M.W.) of Lim Lean Teng Mansions, Farquhar Street Penang.
3. Lim Eang Hoong (spinster) an infant of Lim Lean Teng Mansions, Farquhar Street, Penang.

The defendant may appear hereto by entering appearance either personally or by solicitor at the Registry of the Supreme Court, Penang. In the High Court at Penang.

NOTE :

If the defendant does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings may be taken as the Judge may think just and expedient. No. 1. Originating Summons. 9th November 1951—

A person appearing personally may, if he desire, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$4.00 with an addressed envelope to the Registrar of the Supreme Court, Penang. continued.

10 Amended this 6th day of December 1951 pursuant to an order of Court herein dated the 23rd day of November 1951.

(Sgd.) J. W. D. AMBROSE,
Senior Asst. Registrar.

No. 2.

Affidavit of Administrators.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

No. 2.
Affidavit of Administrators.
6th November 1951.

20 Originating Summons No. 196 of 1951.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- 1. LIM CHENG HOOI
- 2. LIM WENG HOOI alias LIM ENG HOOI Administrators with the Will annexed of the estate of LIM KIA JOO, deceased *Plaintiffs*

and

- 1. LIM BENG CHYE
 - 2. SALLY LEONG (married woman)
 - 3. LIM EANG HOONG (Spinster) an infant by her next friend
- 30 SALLY LEONG *Defendants.*

AFFIDAVIT.

We LIM CHENG HOOI and LIM WENG HOOI alias LIM ENG HOOI, both of No. 47 Northam Road, Penang, do solemnly and sincerely affirm and say as follows :—

In the High
Court at
Penang.

No. 2.
Affidavit of
Administrators.
6th
November
1951—
continued.

1.—Lim Kia Joo (hereinafter referred to as the Testator) late of No. 47 Northam Road, Penang, died on the 19th day of November 1936 leaving a Will dated the 21st day of August, 1936.

2.—We are the present administrators *de bonis non* with Will annexed of the estate of the said Testator having been granted administration by the Supreme Court of the Federation of Malaya at Alor Star, Kedah, on the 7th day of May, 1949. The said Grant was extracted by us on the 13th day of December 1950.

3.—Clause 13 of the Will of the said Testator reads as follows :—

“ I devise and bequeath all my property of whatever nature 10
 “ and wheresoever situate of which I shall die possessed and
 “ which shall not be otherwise disposed of (except my property
 “ in China) unto my trustees Upon Trust to sell call in and
 “ convert the same into money (with power in their discretion
 “ to postpone such sale call in and conversion) and after payment
 “ thereof of my debts and funeral and testamentary expenses
 “ and the legacies hereinbefore directed to be paid to invest the
 “ residue of such moneys and to stand possessed of such
 “ investments and of all parts of my real and personal estate for 20
 “ the time being unconverted (hereinafter called my residuary
 “ estate) Upon Trust to pay out of the income of my residuary
 “ estate in the first place and out of the capital thereof if such
 “ income be insufficient the sums directed to be paid under
 “ Clauses 9, 10, 11 and 12 hereof and until my youngest son
 “ living at my death shall attain the age of 21 years or if he shall
 “ die without having attained the age of 21 years then until
 “ such time as he would if living have attained such age Upon
 “ Trust as to both the capital and income of my residuary estate
 “ to pay and divide the same equally among my said wives Yeoh 30
 “ Ah Eong and Queh Ah Geik and my sons Lim Beng Hong,
 “ Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng
 “ Hooi, Lim Beng Chye and Lim Chit Bah and my nephew Lim
 “ Joo Huat the son of my elder brother Lim Kiah Sah and any
 “ other sons that may hereafter be born to me by my said wives
 “ Yeoh Ah Eong and Queh Ah Geik. Provided that if either
 “ of my said wives shall not remain my widow or lead a chaste
 “ life or shall die before the period fixed for the division of my
 “ residuary estate her share shall go equally to my said sons
 “ Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng
 “ Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah 40
 “ my nephew Lim Joo Huat and any other sons that may hereafter
 “ be born to me by my said wives Yeoh Ah Eong and Queh Ah
 “ Gaik. And Provided that if any of my said sons Lim Beng
 “ Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim
 “ Weng Hooi, Lim Beng Chye and Lim Chit Bah, my nephew

“ Lim Joo Huat and any other sons that may hereafter be born to me by my said wives shall die before the period fixed for the division of my residuary estate leaving male issue his share shall go to such male issue equally if more than one but if he shall not leave any male issue but shall leave a lawful widow and female issue his share shall go to such lawful widow and female issue equally if more than one provided such lawful widow shall remain the widow of such deceased son or nephew and lead a chaste life.”

In the High Court at Penang.
No. 2.
Affidavit of Administrators.
6th November 1951—
continued.

10 4.—The said Lim Chit Bah otherwise known as Lim Beng Chit the youngest son of the Testator living at the time of the Testator’s death was born on the 8th day of March, 1931, and the estate of the said Testator falls to be distributed or divided on the 8th day of March, 1952.

5.—Lim Beng Sai one of the residuary beneficiaries named in the aforesaid Clause 13 of the Will of the Testator died on the 22nd day of December, 1942, leaving a widow named Sally Leong and a daughter named Lim Eang Hoong now aged about 9 years.

6.—The said widow Sally Leong married again on the 13th day of August, 1949, that is to say before the date of distribution.

20 7.—The said Sally Leong has through her solicitors informed us that she is anxious to have the claim of her daughter established under the terms of the Will of the Testator and that unless we take action to have the said Will construed the said Sally Leong would herself take out a Summons for construction of the said Will.

8.—We have therefore taken out the Originating Summons herein.

Severally affirmed by the abovenamed deponents at Penang on the 6th day of November, 1951 (the said deponents having been identified to me by Sgd. A. M. Abubakar clerk to M/s. Huck Aik & Inn Kheam who is personally known to me)

Sgd. LIM CHENG HOOL.
Sgd. LIM WENG HOOL.

30

Before me,

Sgd. CHEAH KIM AW,
Commissioner for Oaths.



In the High
Court at
Penang.

No. 3.

Will of deceased.

No. 3.
Will of
deceased.
21st
August
1936.

I, LIM KIA JOO of No. 47 Northam Road, Penang, Rubber Planter hereby revoke all former wills and codicils by me and declare this to be my last will.

1.—I appoint my younger wife Queh Ah Gaik and my sons Lim Beng Hong and Lim Beng Choon to be the executors and trustees of this my will and guardians of my infant children.

2.—I also appoint my son Lim Beng Sai to be executor and trustee of this my will and guardian of my infant children jointly with the said 10 Queh Ah Gaik, Lim Beng Hong and Lim Beng Choon when he comes of age.

3.—I declare that in the interpretation of this my will the expression “my trustees” shall (where the context permits) mean and include the trustees or trustee for the time being hereof whether original or substituted.

4.—I direct my trustees to spend a sum not exceeding \$15,000/- upon my funeral and the customary rites and ceremonies in connection therewith including the cost of my grave and the erection of a suitable tombstone thereon.

5.—I direct my trustees to pay all my just debts and testamentary expenses. 20

6.—I direct my trustees on the death of my wives Yeoh Ah Eong and Queh Ah Gaik to expend a sum of \$5,000/- upon the funeral of each of them and the said Yeoh Ah Eong and Queh Ah Gaik.

7.—I give and bequeath the following legacies free of all duties.

- (a) To my grandson^r and two grand-daughters the children of my deceased daughter Lim Beng Chye the sum of dollars Five hundred (\$500/-) to be paid them or the survivors or survivor of them equally upon their respectively attaining the age of 21 years.
- (b) To my grandson Lim Guan Long the sum of Dollars ten thousand (\$10,000/-) to be paid to him without interest upon his marriage and if he shall die before marriage the said sum of \$10,000/- shall be paid to his younger brother Lim Soo Long upon his marriage. 30
- (c) To my daughter Lim Beng Kee the sum of Dollars Five thousand (\$5,000/-) to be paid to her as soon conveniently may be after my death.
- (d) To each of my daughters Lim Beng Tiang, Lim Beng Choo, Lim Beng Tee, Lim Beng Hoon, Lim Beng Looi, Lim Beng

Chooi and Lim Chup It Nya and any other daughters that may hereafter be born to me by my said wives Yeoh Ah Eong and Queh Ah Gaik the sum of \$5,000/- to be paid to each of them after her marriage. The said sum of \$5,000/- shall not be paid to such of them as shall have been married at the time of my death as it is my intention to pay to each of them the said sum of \$5,000/- on her marriage.

In the High
Court at
Penang.

No. 3.
Will of
deceased.
21st
August
1936—
continued.

8.—I direct my trustees to spend a sum of \$2,000/- upon the marriage of each of my daughters Lim Beng Tiang, Lim Beng Choo, Lim Beng Tee,
10 Lim Beng Hoon, Lim Beng Looi, Lim Beng Chooi and Lim Chup It Nya and any other daughters that may hereafter be born to me by my said wives Yeoh Ah Eong and Queh Ah Gaik for her marriage expenses.

9.—I direct my trustees to pay to each of my said wives Yeoh Ah Eong and Queh Ah Gaik a sum of \$100/- a month commencing from my death. Each of the said legacies shall cease to be payable on the death of the legatee or if she shall not remain my widow or lead a chaste life.

10.—I direct my trustees to pay to each of my infant sons the sum of \$20/- a month which shall commence from my death and shall cease to be payable upon each of them attaining the age of 21 years.

20 11.—I direct my trustees to pay to each of such of my daughters as shall not be married at the date of my death a sum of \$10/- a month such payment to commence from my death and to cease on the marriage of each of them.

12.—I direct my trustees to permit my said wives Yeoh Ah Eong and Queh Ah Gaik and my children together with their wives and husbands and my grandchildren to occupy free of rent my house No. 47 Northam Road, Penang, and the land enjoyed therewith until my youngest son living at my death shall attain the age of 21 years or if he shall die without having attained the age of 21 years then until such time as he would if living
30 have attained such age and to pay all rates taxes and impositions whatsoever payable in respect thereof and to maintain the same in good repair and condition, and in order to pay for the wages of servants, gardeners, watchman, chauffeur and the upkeep of a motor-car and in order that my said wives and children and their wives and husbands and my grandchildren may be freely boarded and maintained while living in the said house during the said period I direct my trustees during the said period to pay to my son Lim Beng Hong the sum of \$600/- a month for such purpose and on the death of the said Lim Beng Hong to pay the said sum of \$600/- for the purpose aforesaid to my second son Lim Beng Choon
40 and my third son Lim Beng Sai when he shall come of age. The right of either of my said wives to reside in the said house shall be forfeited if either of them shall not remain my widow or lead a chaste life.

In the High
Court at
Penang.

No. 3.
Will of
deceased.
21st
August
1936—
continued.

13.—I devise and bequeath all my property of whatever nature and wheresoever situate of which I shall die possessed and which shall not be otherwise disposed of (except my property in China) unto my trustees Upon Trust to sell call in and convert the same into money (with power in their discretion to postpone such sale call in and conversion) and after payment thereof of my debts and funeral and testamentary expenses and the legacies hereinbefore directed to be paid to invest the residue of such moneys and to stand possessed of such investments and of all parts of my real and personal estate for the time being unconverted (hereinafter called my residuary estate) Upon Trust to pay out of the income of my residuary estate in the first place and out of the capital thereof if such income be insufficient the sums directed to be paid under clauses 9, 10, 11 and 12 hereof and until my youngest son living at my death shall attain the age of 21 years or if he shall die without having attained the age of 21 years then until such time as he would if living have attained such age Upon Trust as to both the capital and income of my residuary estate to pay and divide the same equally among my said wives Yeoh Ah Eong and Queh Ah Gaik and my sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah and my nephew Lim Joo Huat the son of my elder brother Lim Niah Sah and any other sons that may hereafter be born to me by my said wives Yeoh Ah Eong and Queh Ah Gaik. Provided that if either of my said wives shall not remain my widow or lead a chaste life or shall die before the period fixed for the division of my residuary estate her share shall go equally to my said sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah my nephew Lim Joo Huat and any other sons that may hereafter be born to me by my said wives Yeoh Ah Eong and Queh Ah Gaik. And Provided that if any of my said sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah, my nephew Lim Joo Huat and any other sons that may hereafter be born to me by my said wives shall die before the period fixed for the division of my residuary estate leaving male issue his share shall go to such male issue equally if more than one but if he shall not leave any male issue but shall leave a lawful widow and female issue his share shall go to such lawful widow and female issue equally if more than one provided such lawful widow shall remain the widow of such deceased son or nephew and lead a chaste life.

14.—With regards to the payments to be made under Clauses 10 and 11 hereof I direct that the receipt for such payments given by the eldest surviving brother of my infant sons and infant daughters shall be a sufficient discharge to my trustees.

15.—I hereby declare that as I have every confidence in my trustees I do not require them to furnish security required by laws of Kedah when they apply for the grant of Probate of this my will in Kedah.

IN WITNESS whereof I have hereunto set my hand in Penang this 21st day of August, 1936.

In the High Court at Penang.

Signed by the above named Lim Kia Joo as his last will in the joint presence of himself and us who at his request and in such joint presence have hereunto subscribed our names as witnesses.

(Sgd.) LIM KIA JOO
(in Chinese Characters)

No. 3.
Will of deceased.
21st August 1936—
continued.

(Sgd.) KHOO SOON CHEE
Solicitor, Penang.

10 (Sgd.) KHOO HOCK SENG
Solicitor's Clerk, Penang.

No. 4.

Order granting leave to amend the Originating Summons.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Originating Summons No. 196 of 1951.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

1. LIM CHENG HOOI
20 2. LIM WENG HOOI alias LIM ENG HOOI Administrators with
the Will annexed of the estate of LIM KIA JOO, deceased *Plaintiffs*

and

1. LIM BENG CHYE
2. SALLY LEONG (married woman)
3. LIM EANG HOONG (Spinster) an infant, by her next friend
SALLY LEONG *Defendants.*

Before the Honourable Mr. Justice SPENSER WILKINSON.
In Chambers.

Upon the application of the Plaintiffs abovenamed made this day by way of Summons in Chambers No. 408 of 1951, upon hearing the Solicitor for the Plaintiffs, the Solicitor for the 1st Defendant and the Solicitor for

No. 4.
Order granting leave to amend Originating Summons by adding 2a to the Summons.
23rd November 1951.

In the High Court at Penang. the 2nd and 3rd Defendants IT IS ORDERED that the Originating Summons herein be amended by adding the following paragraph after paragraph 2 therein :—

No. 4.
Order granting leave to amend Originating Summons by adding 2a to the Summons. 23rd November 1951—
continued.

“ 2a.—Whether the surplus income of the said deceased’s residuary estate is now divisible, and if so amongst whom, or whether the same should be accumulated until the period of distribution.”

Dated at Penang this 23rd day of November, 1951.

By Order,
(Sgd.) J. W. D. AMBROSE, 10
Senior Assistant Registrar.

No. 5.
Order appointing 1st Defendant to represent all persons other than 2nd and 3rd Defendants claiming to be residuary legatees. 14th December 1951.

No. 5.
Order appointing 1st Defendant to represent all persons other than 2nd and 3rd Defendants claiming to be residuary legatees.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT PENANG.

Originating Summons No. 196 of 1951.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- 1. LIM CHENG HOOI
- 2. LIM WENG HOOI alias LIM ENG HOOI Administrators with the Will annexed of the estate of LIM KIA JOO, deceased *Plaintiffs*

20

and

- 1. LIM BENG CHYE
- 2. SALLY LEONG (married woman)
- 3. LIM EANG HOONG (Spinster) an Infant, by her next friend SALLY LEONG *Defendants.*

Before the Honourable Mr. Justice SPENSER WILKINSON.
In Chambers.

Upon the application of the Plaintiffs abovenamed made this day by way of Originating Summons and upon reading the affidavit of the Plaintiffs, 30

jointly affirmed on the 6th day of November, 1951, and filed herein on the 9th day of November, 1951 and upon hearing the Solicitors for the Plaintiffs, for the 1st Defendant and for the 2nd and 3rd Defendants IT IS ORDERED that the 1st Defendant be and is hereby appointed for the purposes of this Suit to represent all persons other than the 2nd and 3rd Defendants claiming to be residuary Legatees under the Will of Lim Kia Joo deceased AND IT IS FURTHER ORDERED that the rest of the said Originating Summons be adjourned into open Court and that the costs of this application be costs in the cause.

In the High Court at Penang.

No. 5. Order appointing 1st Defendant to represent all persons other than 2nd and 3rd Defendants claiming to be residuary legatees. 14th December 1951—*continued.*

10 Dated at Penang this 14th day of December, 1951.

By Order,
(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar.

No. 6.
Notes of Evidence.

25th March, 1952.

Originating Summons No. 196 of 1951.

- 1. LIM CHENG HOOI
- 2. LIM WONG HOOI alias LIM ENG HOOI Plaintiffs

No. 6. Notes of Evidence taken by Spenser-Wilkinson, J. 25th March 1953.

20

- 1. LIM BENG CHYE
- 2. SALLY LEONG (m.w.)
- 3. LIM EANG HOONG, an infant Defendants.

HOGAN with LIM HUCK AIK for Plaintiffs.

C. O. LIM for 1st Defendant.

T. E. CONAGHAN for 2nd and 3rd Defendants.

HOGAN : Plaintiffs are administrators with Will annexed.

30 1st Defendant represents all residuary legatees, other than 2nd and 3rd Defendants. 2nd Defendant is widow of son of deceased, a residuary legatee. 3rd Defendant is the daughter of Lim Beng Sai by 2nd Defendant.

o Affidavit of administrators (reads it).

Certified copy of Will handed in.

In the High
Court at
Penang.

No. 6.
Notes of
Evidence
taken by
Spenser-
Wilkinson,
J.
25th
March
1952—
continued.

T. E. CONAGHAN : I shall be compelled to submit to Court that Sally Leong is entitled.

HOGAN : Other Clauses of Will. Clause 7—legacies. Clause 8—marriage expenses of daughters. Clause 9—monthly allowances to widows. Clause 10—allowances to infant sons. Clause 11—allowances to unmarried daughters. Clause 12—occupation of the family house. Clause 13—Devise and bequeath all my property to trustees in trust to sell, call in and pay debts and legacies ; and to invest residue—upon trust to pay the sums above referred to—until youngest son attains twenty-one—then in trust to pay and divide equally. Gift is entirely in words “to pay and divide.” 10
Prima facie a contingent gift. Provisos provide a gift over. Second proviso. Question is son who died before distribution, leaving widow and daughter, widow having re-married before distribution. Submit clear intention of testator to make a gift of residue to named sons upon donee surviving period of distribution. If he does not survive there is a gift over to sons or daughters subject to certain conditions. Gift to Lim Beng Sai was divested and the gift over takes effect subject to the condition. Presumption of vesting subject to divesting especially in gift of residue.

Hailsham Volume 34, page 371, page 416.

2nd Defendant having re-married what is effect on her ? 20

Submit she is disqualified by reason of her re-marriage.

Condition is valid in law—Hailsham, Volume 34, page 108.

Re Rutter, Donaldson v. Rutter (1907, 2 Ch., 592).

Re Dewhurst, Flowers v. Dewhurst (1948, 1 A.E.R., 147).

No other clause in Will by which lapsed share could pass.

Submit it passes to next of kin.

Hailsham Volume 34, page 147.

Jarman on Wills, Volume II, page 1016.

Nothing to indicate the contrary here, page 1019.

What share does 3rd Defendant get? 30

Two gifts—half to widow and half to issue.

Gift over is to widow and issue and then follows the condition.

Submit intention is that the condition attached itself to the widow of the son in the same way that it attached to the widows of testator.

Prayer 2a of Originating Summons. When Summons filed period of distribution had not arrived.

Question of income before date of distribution may affect income tax.

Was surplus distributable ?

I am told there is excess income.

Trustees are directed to invest and so if there is a surplus they should 40
accumulate and invest it.

C. O. LIM : Position of my clients is that they agree there was a vesting in the dead son but this was a vesting which could be transmitted—not vesting which was indefeasible. I wish to adopt argument of my learned friend that gift to dead son was in words of direction. Gift vested subject

to divesting. First proviso has not arisen but second has because one son died in 1942 and widow of that son re-married in 1949.

Submit condition was not one in restraint of marriage and was valid. So she has lost her share. Inasmuch as there was no accrual clause in regard to her lapsed share, that share goes to next of kin.

Difficult to construe the modifying clause "equally if more than one."

My instructions are to argue that last proviso governs widow and female issue.

10 As to Prayer 2a of Originating Summons: Use of the word "until" in Clause 12 creates difficulty.

My clients say that widow has disqualified herself by re-marriage and that lapsed share goes to next of kin. Also the daughter gets nothing.

T. E. CONAGHAN: As to vesting: Theobald on Wills, 10th edition, page 389, chapter 41 at page 399.

Has in fact been a vesting but no vesting in possession.

2nd Defendant is entitled to half the share upon the principle that the words of the proviso are in general restraint of marriage and so void and of no effect.

20 *Potter v. Richards* (1855 L.J.C. L. 488). Judgment page 489. 1950 2 A.E.R., 1073, *Re Fenton, deceased*.

Here definite restraint in marriage.

Testator not looking at any person other than 2nd Defendant and from point of view that she was not to marry again. I agree if Court is against me and widow gets nothing the share must go as in intestacy.

If the proviso is *in terrorem* then it is bad.

Theobald, page 438.

Trustees come and ask Court to hold that gift is void. Gift to 3rd Defendant must stand.

No intention to take away right of widow on re-marriage to live in the family house.

30 Residue is personalty (this is not disputed).

This is a general restraint of marriage and 2nd Defendant is entitled to her share. 3rd Defendant is entitled to her share. She gets her half share.

Hogan: As to general restraint: *Potter v. Richards* has no bearing.

The 1950 case has no bearing either.

So far as widows are concerned to say on ceasing to be widows is not a general restraint—it is only a partial restraint.

As to family house a wife who re-marries ceases to be a widow. Monthly allowances must be paid and continued.

Estate of Lee Choon Guan, deceased. 1949 M.L.J. 299 C.A.V.

40

(Signed) T. C. SPENSER WILKINSON,
Judge.

25th March, 1952.

In the High
Court at
Penang.

No. 6.
Notes of
Evidence
taken by
Spenser-
Wilkinson,
J.
25th
March
1952—
continued.

In the High Court at Penang.

15th April, 1952.

Originating Summons No. 196 of 1951.

No. 6.
Notes of Evidence taken by Spenser-Wilkinson, J.—
continued.

- | | | | | | |
|----|----------------------------------|-----|-----|-----|--------------------|
| 1. | LIM CHENG HOOI | | | | |
| 2. | LIM WENG HOOI alias LIM ENG HOOI | ... | ... | ... | <i>Plaintiffs</i> |
| | | | | | <i>v.</i> |
| 1. | LIM BENG CHYE | | | | |
| 2. | SALLY LEONG (m.w.) | | | | |
| 3. | LIM EANG HOONG, an infant | ... | ... | ... | <i>Defendants.</i> |

HOGAN with LIM HUCK AIK for Plaintiffs.

C. O. LIM for 1st Defendant.

10

G. H. CONAGHAN for 2nd and 3rd Defendants.

I read written judgment.
Costs of all parties to be taxed as between Solicitor and Client and paid out of the Estate.
Certificate for two Counsel.

(Signed) T. C. SPENSER WILKINSON,
Judge.

True copy.
(Signed) CHEE TIN POH.
Private Secretary to Judge
Supreme Court,
Penang.

15th April, 1952.

20

Date : 26th April, 1952.

No. 7.
Grounds of Judgment of Spenser-Wilkinson, J.
15th April 1952.

No. 7.

Grounds of Judgment of Spenser-Wilkinson, J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Originating Summons No. 196 of 1951.

- | | | | | | |
|----|----------------------------------|-----|-----|-----|--------------------|
| 1. | LIM CHENG HOOI | | | | |
| 2. | LIM WENG HOOI alias LIM ENG HOOI | ... | ... | ... | <i>Plaintiffs</i> |
| | | | | | <i>v.</i> |
| 1. | LIM BENG CHYE | | | | |
| 2. | SALLY LEONG (m.w.) | | | | |
| 3. | LIM EANG HOONG, an infant | ... | ... | ... | <i>Defendants.</i> |

30

JUDGMENT OF SPENSER WILKINSON, J.

This is an application by the administrators with the Will annexed of the Estate of Lim Kia Joo, deceased for the construction of Clause 13 of the testator's Will.

10 The clause in question provides for the distribution of the residuary estate when the youngest son living at the testator's death shall have or would have attained the age of twenty-one years. This, in the events which have happened, fixed the date of distribution on the 8th March, 1952. The residuary estate is to be divided equally amongst two widows the deceased's sons and a nephew. There is a proviso to the effect that if either of the wives shall not remain a widow or shall die before the distribution date her share shall go equally to the other residual beneficiaries. There is a further proviso that if any of the sons shall die before the date of distribution leaving male issue that such male issue shall stand in his place, but that if such deceased son "shall leave a lawful widow and female issue his share shall go to such "lawful widow and female issue equally if more than one, provided such "lawful widow shall remain the widow of such deceased son or nephew and "lead a chaste life." It is with regard to this last quoted proviso that the difficulty of construction arises.

20 It is common ground that under the provisions of this Will the shares in the residuary estate vested in the beneficiaries subject to divesting in certain events. One of the sons Lim Beng Sai died on the 22nd December, 1942 leaving a widow, the 2nd Defendant and a daughter, the 3rd Defendant. On the 13th August, 1949, that is to say before the date of distribution, the widow re-married. The question is whether the last proviso in Clause 13 of the Will results in a forfeiture of the share of the widow or of the daughter or of both. It is agreed that if either or both of these shares has ceased to be payable as a result of the widow's re-marriage, then there is a partial intestacy in respect of such share which does not fall into residue. Although 30 there is a gift over in the case of widows of the deceased who may re-marry, there is no gift over in the case of a widow of a deceased son.

It was argued on behalf of the 2nd Defendant that she is entitled to half the share upon the principle that the words of the proviso are in general restraint of marriage and so void and of no effect. The case of *Potter v. Richards* (1855 L.J.C.L., 488) was relied upon.

Mr. Hogan for the administrators cited the cases of *Donaldson v. Rutter* (1907 2 Ch. 592) and *Re Dewhirst, Flowers v. Dewhirst* (1948 1 A.E.R., 147) as showing that the 2nd Defendant in this case is disqualified from receiving a share by reason of her re-marriage. In both those cases, 40 however, there was, in fact, a gift over in case of re-marriage, and those cases do not, therefore, in my opinion apply to the case now before me.

Mr. C. O. Lin for the other residuary legatees adopted Mr. Hogan's view as to forfeiture but went further and argued that by reason of the words "lawful widow and female issue" the forfeiture operated upon the share both of the widow and the daughter with the result that neither was entitled to anything. I cannot accept this contention. I think the meaning of the testator in this clause is reasonably clear, although the

In the High
Court at
Penang.

—
No. 7.

Grounds of
Judgment
of Spenser
Wilkinson,
J.

15th April
1952—

continued.

In the High Court at Penang. draftsman has attempted to be too concise. I think the testator's meaning could have been indicated by the use of that somewhat over-worked expression "and or" instead of "and." More fully extended, I think the intention of the testator was something like this :—

No. 7.
Grounds of Judgment of Spenser-Wilkinson, J.
15th April 1952—
continued.

" If any of my sons or nephew shall die before the date of distribution and shall not leave any male issue but shall leave a lawful widow or a daughter or daughters or both such lawful widow and daughter or daughters then his share shall go to such lawful widow and daughter or daughters in equal shares or if there be only a widow then to such widow or if there be only a daughter or daughters then to such daughter or daughters equally if more than one." 10

I think the law regarding forfeiture clauses of the kind now in question is correctly summarised in Theobald on Wills 10th edition at pages 439 and 440 in the following passages :—

" Conditions in partial restraint of marriage are valid both with regard to realty and personalty, though with regard to the latter the further question arises, whether they are *in terrorem* or not. Thus, conditions restraining a widow or widower . . . from marrying again . . . are good as conditions, though they may be ineffectual if there is no gift over, on the principle hereinafter mentioned." 20

" In the case of personalty and possibly in the case of realty and personalty given together certain conditions subsequent, though good in law, are, in accordance with the rule of the Civil Law held to be void and *in terrorem* merely if there is no gift over. Of this nature are the conditions in partial restraint of marriage already mentioned."

In support of this last proposition the cases of *Marples v. Bainbridge* (1816 1 Mad. 590), *Reynish v. Martin*, (26 E.R. 991), *Wheeler v. Bingham* (26 E.R. 1010) and *W. v. B.* (1849 11 B 621) are cited and in my opinion these authorities amply support the statements contained in the text. 30

It is not disputed that we are here concerned with personalty and on considering the authorities above cited I have come to the conclusion that the proviso in Clause 13 of the testator's will is one in partial restraint of marriage ; and that this being personalty and there being no gift over the proviso is merely *in terrorem*, and I would, therefore, adopt the words of the Lord Chancellor in the case of *Wheeler v. Bingham* (26 E.R., at page 1013) :—

" I am of opinion an express devise, that if a legatee should not perform the condition, the legacy shall sink into the *residuum* amounts to a devise over ; but there is no such direction here, and therefore though there is nothing unreasonable in the restriction . . . yet I cannot construe it to be a forfeiture of the legacy without shaking the authority of all the other cases." 40

I hold, therefore, that this clause is one merely *in terrorem* and that the re-marriage of the widow does not result in a forfeiture.

A further question is raised in the Originating Summons, as to whether surplus income after paying the various annuities and legacies provided for in Clauses 9, 10, 11 and 12 of the will should be accumulated until the date of distribution and divided as part of the residue. I have no doubt that this was the intention.

In the High Court at Penang.

No. 7. Grounds of Judgment of Spenser Wilkinson, J.

15th April 1952—
continued.

The result is that the date of distribution having arrived on the 8th March, 1952 the residuary estate is now divisible amongst the widows, sons and nephew of the deceased with the exception of Lim Beng Sai, deceased, whose share is to be divided equally between the 2nd and 3rd

10 Defendants.

Dated this 15th day of April, 1952.

Signed T. C. SPENSER WILKINSON,

Judge.

True Copy.

Signed CHEE TIN POH,
Private Secretary to Judge,
Supreme Court,
Penang.

Dated 16th April, 1952.

No. 8.

Order.

No. 8.
Order
15th April
1952.

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Originating Summons No. 196 of 1951.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- 1. LIM CHENG HOOI
- 2. LIM WENG HOOI alias LIM ENG HOOI *Plaintiffs*

and

- 1. LIM BENG CHYE
- 30 2. SALLY LEONG (m.w.)
- 3. LIM EANG HOONG (Spinster) an infant by her next friend
SALLY LEONG *Defendants.*

Before the Honourable Mr. Justice SPENSER WILKINSON.

In Open Court.

The Application of the abovenamed Plaintiffs made by way of Originating Summons dated the 9th day of November, 1951 which upon

In the High Court at Penang.
 No. 8.
 Order
 15th April 1952—
continued.

hearing Counsel for the Plaintiffs, for the 1st Defendant and for the 2nd and 3rd Defendants, was adjourned to be heard in Open Court coming on for hearing on the 25th day of March, 1952, and upon reading the joint affidavit of the Plaintiffs affirmed on the 6th day of November, 1951 and filed herein on the 9th day of November, 1951 and upon hearing what was alleged by Counsel as before THE COURT DOTH ORDER that this action do stand for judgment and the same coming on for Judgment this day THE COURT DOTH ORDER AND ADJUDGE (1)—That upon the true construction of the Will of Lim Kia Joo, deceased, the share in the residuary estate of the said Lim Kia Joo, deceased, bequeathed to Lim Beng Sai, since deceased, 10
 is to be divided equally between the 2nd Defendant Sally Leong (m.w.) and the 3rd Defendant Lim Eang Hoong (Spinster) widow and daughter respectively of the said Lim Beng Sai, deceased.

(2)—That the surplus income of the said Deceased's estate after paying the various annuities and legacies provided for in Clauses 9, 10, 11 and 12 of the aforesaid Will should be accumulated until the date of distribution and divided as part of residue.

AND THE COURT DOTH ORDER that the costs of all parties to this action be taxed as between Solicitor and client and when taxed to be paid out of the Estate of the said Lim Kia Joo, deceased. AND THE COURT 20
 DOTH CERTIFY the costs of two Counsel for the Plaintiffs.

Dated at Penang this 15th day of April, 1952.

In the Court of Appeal at Penang.
 No. 9.
 Notice of Appeal.
 23rd April 1952.

By the Court,
 Sd. G. M. YUSOFF,
Ag. Sr. Asst. Registrar.

No. 9.
 Notice of Appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
 IN THE COURT OF APPEAL AT PENANG.

Civil Appeal No. 35 of 1952. 30

Between
 LIM BENG CHYE *Appellant* 1st Defendant
 and
 1. SALLY LEONG (m.w.) } *Respondents—*
 2. LIM EANG HOONG (Spinster) an infant by her next friend } *2nd and 3rd*
 SALLY LEONG } *Defendants*
 3. LIM CHENG HOOI }
 4. LIM WENG HOOI alias LIM ENG HOOI Administrators } *Respondents—*
 with the Will annexed of the estate of Lim Kia Joo, } *Plaintiffs*
 deceased

(In the Matter of Originating Summons No. 196 of 1951.
In the High Court at Penang)

In the
Court of
Appeal at
Penang.

In the Matter of the Estate of Lim Kia Joo, deceased.

No. 9.
Notice of
Appeal.
23rd April
1952—
continued

Between

- 1. LIM CHENG HOOI
- 2. LIM WENG HOOI alias LIM ENG HOOI Administrators with
the Will annexed of the estate of Lim Kia Joo, deceased *Plaintiffs*

and

- 1. LIM BENG CHYE
- 10 2. SALLY LEONG (m.w.)
- 3. LIM EANG HOONG (Spinster) an infant by her next friend
SALLY LEONG *Defendants.*

TAKE NOTICE that Lim Beng Chye appointed by an Order of Court made in the above Originating Summons No. 196 of 1951 dated the 14th day of December 1951 to represent all persons other than the 1st and 2nd Respondents—Defendants claiming to be residuary legatees under the Will of Lim Kia Joo, deceased, being dissatisfied with the decision of the Hon'ble Mr. Justice Spenser Wilkinson given at Penang on the 15th day of April 1952 appeals to the Court of Appeal against the whole
20 of the said decision.

Dated this 23rd day of April, 1952.

(Sgd.) LIM, LIM & OON,
Solicitors for the Appellant.

To
The Senior Assistant Registrar,
Supreme Court, Penang.

And to

- 1. Messrs. Conaghan, Wreford & Thornton,
Solicitors for the 1st and 2nd
Respondents—Defendants.
- 30 2. Messrs. Huck Aik & Inn Kheam,
Solicitors for the 3rd and 4th
Respondents—Plaintiffs.

The address for service of the Appellant is at No. 29 Church Street,
Penang.

In the
Court of
Appeal at
Penang.

No. 10.
Memorandum of Appeal.

No. 10.
Memorandum of
Appeal.
12th May
1952.

MEMORANDUM OF APPEAL.

Lim Beng Chye, the Appellant above-named, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Spenser Wilkinson given at Penang on the 15th day of April, 1952, on the following grounds :—

1. The Court below was wrong in holding that Clause 13 of the Will of the testator is one merely in terrorerm and that the re-marriage of Respondent No. 1, Sally Leong, does not result in a forfeiture of her right to share in her deceased husband's share in the residuary estate of the testator. 10
2. The Court below was wrong in holding that Clause 13 of the Will of the testator entitles Respondent No. 2, Lim Eang Hoong, to a half share in her father's share in the residuary estate of the testator.
3. The Court below was wrong in holding that the surplus income of the deceased's estate after paying the various annuities and legacies provided for in Clauses 9, 10, 11 and 12 of the said Will should be accumulated until the date of distribution and 20 divided as part of the residue.

Dated this 12th day of May, 1952.

(Sgd.) M. N. CUMARASAMI,
Solicitor for the Appellant.

To

The Senior Asst. Registrar,
Supreme Court, Penang.

And to

Messrs. Conaghan, Wreford & Thornton,
Solicitors for 1st and 2nd Respondents,
Penang. 30

Messrs. Huck Aik & Inn Kheam,
Solicitors for the 3rd and 4th Respondents,
Penang.

The address for service of the Appellant is No. 47, Northam Road,
Penang.

No. 11.
Notes of Hon. Mathew, C.J.

In the
Court of
Appeal at
Penang.

Federation Civil Appeal No. 35 of 1952.

19th August, 1952.

No. 11.
Notes of
Hon.
Mathew,
C.J.
19th
August
1952.

Cor : MATHEW, C.J., MURRAY-AYNSLEY, C.J. (S) ; PRETHEROE, J.,

MARJORIBANKS and CUMARASAMI for Appellants.

CONAGHAN for 1st and 2nd Respondents.

HUCK LIM for 3rd and 4th Respondents—(permitted to withdraw).

MARJORIBANKS :—

- 10 Appeal against construction on certain portions of will.
Points :—(1) Conditions re re-marrying void.
(2) Surplus income.
Testator died in 1936—Will August, 1936.
Clause 13 page 18. (Record page 8.)
Held proposition bad as in *terrorem*.
Jarman on Wills, 7th ed., vol. 2, page 1513.
Doctrine should not be applied in this country.
Reason lies in origin of doctrine. Came from Romans through
Ecclesiastics.
- 20 Ecclesiastical Courts jurisdiction over legacies.
Stadpole v. Beaumont, 30 E.R. 909—page 912.
In *terrorem* not an absolute rule.
Harry v. Ashton, 26 E.R., pages 230-240.
Kedah Will.
In lower Court presented as an absolute rule.
In re Dixon's Trusts, 20 L.J. New Series, 33.
Newton v. Marsden, 31 L.J. N.S. 690.
Article 13—provision until re-marriage.
Restraint only until date of distribution.
- 30 *Heath v. Lewis* 22 L.J. N.S. 721.
Evans v. Rosser, 71 E.R. 435 *Jones v. Jones*, 1 Q.B. 279.
Support while unmarried—281.
Gift over to second degree. Not restraining merely defining his
intention. "In *Terrorem*" should not be applied in the case of Chinese
testators.
Share to daughter must also go. Effect given to that intention.
Accumulation of surplus income.
Income more than sufficient to meet expenses of family house. Surplus
revenue over p. 4—trustees.
- 40 Ask (1) 1st Respondent does not take the share.
(2) No 2nd Respondent.

In the
Court of
Appeal at
Penang.

No. 11.
Notes of
Hon.
Mathew,
C.J.
19th
August
1952—
continued.

CONAGHAN :—

My friend says English law does not apply.
Decision confusing and contradictory.
Jarman, pages 1513 & 1442.
Theobald, 10th edition.
Personalty to son and the widow—no gift over.
Restraint of marriage. Theobald, page 439.
Partial or general restraint immaterial.
34 Hailsham, pages 112—para. 147.
Canon of construction set out clearly in text books.
Page 8, Clause 13. Gift over widows. Not so in 2nd case.
Civil Law Ordinance—only applies to personalty.
Para. 12 Will. *Marples v. Bainbridge*, 56 E.R. 217.
Dixon's Trusts—61 E.R., page 14.
1905 C.D., page 96. In re Whitley's Settlement.

10

MARJORIBANKS :—

Discusses *Marples v. Bainbridge* and *Heath v. Lewis*.
Not absolute rule in terrorem.

c. a. v.

True copy.
(Sgd.) Illegible.

(Sgd.) CHARLES MATHEW.

20

Private Secretary to Chief Justice
(T. V. MAHADAVEN).

No. 12,
Notes of
Murray-
Aynsley,
C.J.
19th
August
1952.

No. 12.

Notes of Murray-Aynsley, C.J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

F.M. Civil Appeal No. 35 of 1952.
Penang Originating Summons 196 of 1951.

In the Matter of the Estate of Lim Kia Joo deceased.

30

	Between				
LIM BENG CHYE ... ..	...	...	...	...	<i>Appellant—1st Defendant</i>
	and				
1. SALLY LEONG (m.w.) ... ..	...	...	...	...	} <i>Respondents— 2nd and 3rd Defendants</i>
2. LIM EANG HOONG (spinster) an infant	...	...	...	...
3. LIM CHENG HOOI ... ..	...	...	...	...	} <i>Plaintiffs</i>
4. LIM WENG HOOI alias LIM ENG HOOI Administrators with the will annexed of the estate of LIM KIA Joo deceased ... ..	...	...	...	...

Coram : MATHEW, C.J.
MURRAY-AYNSLEY, C.J., Singapore.
PRETHEROE, J.

40

NOTES OF ARGUMENT TAKEN BY MURRAY-AYNSLEY, C.J.

19.8.52.

MARJORIBANKS for Appellant with CUMARASAMI.

CONAGHAN for 1st and 2nd Respondents.

LIM HUCK AIK for 3rd and 4th Respondents trustees.

Question of share of widow remarried.

Surplus income.

Clause 13.

Bequest of personalty—

10 7th Ed. II Jarman 1513—

question of gift over—

should not be applied here—

origin of doctrine Roman Law.

Ecclesiastical Courts—

Stackpole v. Beaumont, 30 E.R. 909 at p. 912

distinction of realty and personalty.

Harvey v. Aston, 26 E.R. 230 at P. 240

1 Atkinson 362.

20 (1851) *In re Dickson's Trusts*, 20 L.J. Ch. 33

61 E.R. 14 : Simon (N.S.) p. 36

nothing unlawful in partial restraint.

Newton v. Marsdon, 31 L.J. Ch. (N.S.) 690

2 J. & H 356

70 E.R. 1094

Intention to provide for widow to remarriage—

Restraint only operates until distribution—

Heath v. Lewis,

(1853) 22 L. J. Ch. 721 (N.S.)

Evans v. Rosser, 71 E.R. 43530 *Jones v. Jones*, 1 Q. B. D. 279

no question of named person.

daughter also loses share—

Accumulation of surplus income—

Summons (2a)

agreed went to next of kin—

—not pursued—

CONAGHAN contra

Application of doctrines of construction to this country—

7th Ed. II Jarman, 1513—1442—

40 10th Ed. Theobald, 439

doctrine of “ in terrorem ”—

“ partial or general ”

submit general.

34 Hailsham

In the
Court of
Appeal at
Penang.No. 12.
Notes of
Murray-
Aynsley,
C.J.
19th
August
1952—
continued.

In the Court of Appeal at Penang.
 No. 12.
 Notes of Murray-Aynsley, C.J.
 19th August 1952—
continued.

rule of construction settled—
 no evidence of custom—
 Legal advice—
 Gift over earlier in the clause.
 Civil Law Ordinance section 3 (g)
 question of residue—
Marples v. Bainbridge,
 (1816) 56 E.R. 217
 1 Maddocks 590.
 supra *In re Dickson*, 61 E.R.
Whiting's Settlement
 (1905) 1 Ch. 96
 part of law of England.
 Granddaughter should not be excluded
 para. 12.

MARJORIBANKS in reply
Marples v. Bainbridge.
Heath v. Lewis
 Will clause 9.

C.A.V. 20

Certified true copy.
 (Sgd.) A. T. FERNANDEZ,
Private Secretary to the Chief Justice,
 Singapore.

No. 13.
 Notes of Pretheroe, J.
 19th August 1952.

No. 13.
 Notes of Pretheroe, J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
 IN THE COURT OF APPEAL AT PENANG.

F.M. Civil Appeal No. 35 of 1952.

Between

LIM BENG CHYE *Appellant—1st Defendant.*

and

1. SALLY LEONG (m.w.) } *Respondents—2nd & 3rd*
 2. LIM EANG HOONG (spinster) an infant } *Defendants.*
 3. LIM CHENG HOOI }
 4. LIM WENG HOOI, alias LIM ENG HOOI ... } *Respondents—*
 Administrators with the will annexed of } *Plaintiffs.*
 the estate of LIM KIA JOO, deceased.

(In the Matter of Originating Summons No. 196 of 1951.
In the High Court at Penang.

In the
Court of
Appeal at
Penang.

In the Matter of the Estate of Lim Kia Joo, deceased.

No. 13.
Notes of
Pretheroe,
J.
19th
August
1952—
continued.

Between

1. LIM CHENG HOOI
2. LIM WENG HOOI, alias LIM ENG HOOI
Administrators with the will annexed of the estate of LIM
KIA JOO, deceased *Plaintiffs*

and

- 10 1. LIM BENG CHYE
2. SALLY LEONG (m.w.)
3. LIM EANG HOONG (spinster) an infant *Defendants.*

MARJORIBANKS for Appellant—CUMARASAMI with him.

CONAGHAN for 1st and 2nd Respondents.

HUCK AIK for 3rd and 4th Respondents.

NOTES OF ARGUMENT TAKEN BY PRETHEROE, J.

MARJORIBANKS :—

1. Testator died 1936.
Will dated August, 1936.
- 20 Conceded only personalty concerned.
Jarman, 7th Edition, Vol. II, 1513 (top of page).
Doctrine does not apply in this country.
Reason—origin of doctrine.
It came from Roman Law to Ecclesiastical law.
Those Courts dealt with legacies.
Stackpole v. Beaumont—30 E.R. 909 (passage at 912), last paragraph.
Also page 913.
2. “ in terrorem ” rule is not an absolute one.
Harven v. Ashton—26 E.R. 230 at 240—top 241 last paragraph.
- 30 There are other ways of finding out testator’s intention—since 1737.
(Testator was Chinese and the will made in Kedah).
In re Dickson’s Trusts—20 L.J.N.S. 33.
This case goes to the intention—see page 34, first paragraph.
Is intention clear ?
Is it legal ?
Newton v. Marsden—31 L.J.N.S. 690.
This shows somebody other than the widow can be restrained—at 695.
(Was it a custom that Chinese widows should *not* re-marry ?)

In the
Court of
Appeal at
Penang.

No. 13.
Notes of
Pretheroe,
J.
19th
August
1952—
continued.

Heath v. Lewis—22 L.J. 721.

Evans v. Rosser—71 E.R. 435.

Distinguishes “ limitation ” from “ defeasable on subsequent condition.”

Jones v. Jones—1 Q.B.D. 279 at 281.

All these show the importance of testator’s intention.

In this will no names are used.

Therefore testator was not trying to restrain from marriage.

I suggest widow’s share and also daughter’s share also must go—that was testator’s intention. 10

3. Accumulation of surplus income ?

This Court should hold that 1st Respondent does *not* take her share—nor does her daughter, 2nd Respondent.

CONAGHAN :—

I say result of the cases are set out in—Jarman 7th Edition, page 1513. (This gives the principle).

Theobald 10th Edition (1947) page 439, 2nd paragraph.

Jarman 1442—same matter considered.

Hailsham 34 page 112 para. 147 (see this).

Will prepared by Penang lawyer—now dead. 20

Look at whole will.

Clear no “ gift over ”—there *was* in the case of the widows.

Civil Law Ordinance—Sec. 3 (g) and (h).

Testator’s intention—see Clause 12 at page 8.

Marples v. Bainbridge—56 E.R. 217.

In re Whiting’s Settlement—(1905) 1 Ch.

Div. page 96.

I ask Court to apply the rule.

This is Equity rule and applicable.

MAJORIBANKS :—

Refers again to *Heath v. Lewis*. 30

(Case of an annuity).

Refers to Clause 9 of will.

(Sgd.) E. O. PRETHEROE.

C.A.V.

True copy.

(Sgd.) CHIN SEN BOO,
Secretary to Judge,
Ipoh.

No. 14.

Grounds of Judgment of Pretheroe, J.

In the
Court of
Appeal at
Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

No. 14.
Grounds of
Judgment
of
Pretheroe,
J.
20th
October
1952.

F.M. Civil Appeal No. 35 of 1952.

Between

- | | | | | | |
|---------------|-------------------------------------|---|-----|-----|---|
| LIM BENG CHYE | ... | ... | ... | ... | <i>Appellant—1st Defendant</i> |
| | | | | and | |
| 10 1. | SALLY LEONG (m.w.) | ... | ... | ... | } <i>Respondents—2nd and 3rd Defendants</i> |
| 2. | LIM EANG HOONG (spinster) an infant | ... | ... | ... | |
| 3. | LIM CHENG HOOI | ... | ... | ... | |
| 4. | LIM WENG HOOI, alias LIM ENG HOOI | Administrators with the Will annexed of the estate of LIM KIA JOO, deceased | | | } <i>Respondents—
Plaintiffs.</i> |
| | ... | | | | |

(In the Matter of Originating Summons No. 196 of 1951.
In the High Court at Penang.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- | | | | | | |
|-------|-------------------------------------|---|-----|-----|--------------------------|
| 1. | LIM CHENG HOOI | | | | |
| 20 2. | LIM WENG HOOI, alias LIM ENG HOOI | Administrators with the Will annexed of the estate of LIM KIA JOO, deceased | | | <i>Plaintiffs</i> |
| | | | | and | |
| 1. | LIM BENG CHYE | | | | |
| 2. | SALLY LEONG (m.w.) | | | | |
| 3. | LIM EANG HOONG (spinster) an infant | ... | ... | ... | <i>Defendants.</i>) |

Cor. : MATHEW, C.J.
MURRAY-AYNSLEY, C.J., Singapore.
PRETHEROE, J.

30 JUDGMENT OF PRETHEROE, J.

In this case one Lim Kia Joo (hereinafter referred to as the testator) died on the 19th November, 1936, and left a valid Will executed on the 21st August, 1936. By that will he directed his executors to convert all his assets into money and to pay out certain legacies. The balance left after payment of the funeral expenses and the legacies was to be invested until

In the
Court of
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No. 14.
Grounds of
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of
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continued.

testator's youngest son attained the age of twenty-one years or, in the case of the death of such youngest son, until such time as that son would have attained the age of twenty-one years. When the date of distribution arrived the residuary estate was to be divided equally between his two widows, his numerous sons and one nephew. In the event the date of distribution proved to be the 3rd March, 1952.

Clause 13 of the will provided, *inter alia*, that if any of the sons, or the nephew, died before the date of distribution and left male issue the son's (or nephew's) share should go equally to such male issue but—

“ if he shall not leave male issue but shall leave a lawful widow 10
“ and female issue his share shall go to such lawful widow and
“ female issue equally if more than one provided such lawful
“ widow shall remain the widow of such deceased son or nephew
“ and lead a chaste life.”

Testator's son Lim Beng Sai died on the 22nd December, 1942, leaving a lawful widow and one daughter. The widow married again on the 13th August, 1949. In these circumstances the Administrators of the Estate (with will annexed) approached the Court to ascertain what share, if any, of testator's residuary estate should go to the son's widow and to her daughter. 20

The learned trial Judge, in the course of a long and carefully considered judgment, decided that the proviso in the above quoted portion of the will was merely *in terrorem* and consequently that the widow and her daughter should each take one half of the share which would have accrued to the deceased's son had he survived the date of distribution.

Thereupon the 1st Defendant, who had been duly appointed to represent all the beneficiaries having an interest in testator's residuary estate, other than the widow and her daughter, appealed to this Court.

Now the first rule of construction in the case of a will is to give effect to the intention of the testator at the time he made the will. As long ago as 1780, Buller, J. said “ There is no rule better established than that 30
“ the intention of a testator expressed in his will, if consistent with the rules
“ of law, shall prevail. That is the first and great rule in the exposition
“ of all wills ; and it is a rule to which all others must bend.” (1) Although his judgment is silent on the point, the learned trial Judge doubtless decided that he was unable to ascertain the intention of the testator from the wording of the will. With great respect I am of the opinion that the will does disclose the testator's intention at the time he made it. Clause 9 of the will directs the trustees appointed therein to pay each of his two wives \$100/- a month from the date of testator's death but provided that 40
such payments “ shall cease to be payable . . . if she (sic) shall not remain my widow.” Clause 12 gives the two widows of testator (and others) the right to live in the family house free of all expenses. Again the direction

(1) *Hodgson v. Ambrose*
99 Eng. Rep. p. 216 at 219

is added " the right of either " (of my wives) " to reside in the said house " shall be forfeited if she shall not remain my widow." Clause 13 directs that the two widows several sons and a nephew shall share the residue equally but again the provision is inserted that if either widow does not remain as such " her share shall be forfeited." Finally, in the events which happened, a daughter-in-law was to take a fractional share of the residue but this again is conditional on the fact that she remained the widow of the deceased's son. In short, testator's own widows and the widows of any of his sons forfeited every right under the will if they re-married. These provisions make it reasonably clear I think that testator did not expect, and did not
 10 desire, either his own or his son's widows to re-marry. In other words, they had joined his family and he desired them to remain members of the family.

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No. 14.
Grounds of
Judgment
of
Pretheroe,
J.
20th
October
1952—
continued.

Now the position regarding the testator's daughters is quite different : he expected them to get married. This is reasonably clear because, although each daughter would sacrifice a monthly allowance of \$10/- on her marriage (Clause 11), each was to receive \$5,000/- on her marriage (Clause 7 (d)) and also a further sum of \$2,000/- as marriage expenses (Clause 8). Thus, though the re-marriage of widows in the family is discouraged to the utmost degree in testator's power, the marriage of his daughters is encouraged by
 20 the offer of considerable financial assistance.

Now the provision in this will which the Court is asked to construe, and which I have quoted earlier in this judgment, concerns the gift to the widow of one of testator's sons. As in the case of other widows in the family the gift to her of a fractional part of the residue of his estate is made conditional on the fact that " such lawful widow shall remain the widow of such deceased son." Surely he is here giving effect to his view on the re-marriage of widows ? I do not for one moment consider that testator intended the condition to be a " mere empty threat " ; I think he meant exactly what he said.

30 I admit that the construction adopted by the learned trial Judge receives support from the fact that there was no devise over in this part of the clause and that there were such devises in all the other cases of forfeiture on re-marriage. But in this instance there was no necessity for any devise over. The widow was to receive a fractional part of the residue, which the trustees had been directed to convert into cash, and not a specified sum as a legacy. So that, if the widow forfeited her right before the date of distribution, it merely resulted in the other beneficiaries getting a large share of the residue. There was no partial intestacy and consequently no necessity for a gift over.

40 For the above reasons therefore I am of opinion that the widow (1st Respondent) has forfeited her right to share in the distribution of the residuary estate by her re-marriage before the date of distribution.

I now pass to consider the position of the daughter of this widow (2nd Respondent). I have already drawn attention to the vastly different treatment meted out by the will to the widows in testator's family on

In the Court of Appeal at Penang.

No. 14.
Grounds of Judgment of Pretheroe, J.
20th October 1952—
continued.

re-marriage as compared with that accorded to his daughters on their marriage. In my opinion testator would regard his granddaughters (for the purposes of their marriages) in the same light as his own daughters though he did not provide any financial assistance to them on marriage. This is supported by the fact that the forfeiture provision in Clause 13 of the will is directed at the widow but not at her daughter. There is no reason why the daughter should lose her right merely because her mother has forfeited her own right. Each derives her right from the same source—the testator's deceased son—but otherwise the gifts are distinct and separate. In my opinion therefore the daughter (2nd Respondent) is entitled to receive one half of the share her father would have received if he had survived the date of distribution. 10

With regard to the third ground of appeal (the destination of the surplus income) I am in complete agreement with the learned trial Judge.

I would therefore allow this appeal as against 1st Respondent but would dismiss it as against 2nd Respondent. I would hear Counsel as to costs.

Sgd. E. O. PRETHEROE,
Judge,
Federation of Malaya. 20

20.10.52

True Copy.
Sgd. CHIN SEN BOO,
Private Secretary,
to Chief Justice.

No. 15.
Grounds of Judgment of Murray-Aynsley, C.J.

No. 15.
Grounds of Judgment of Murray-Aynsley, C.J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

F.M. Civil Appeal No. 35 of 1952.

Between

LIM BENG CHYE *Appellant—1st Defendant*

and

1. SALLY LEONG (m.w.) } *Respondents—*
2. LIM EANG HOONG (Spinster) an infant } *2nd & 3rd*
} *Defendants.*

3. LIM CHENG HOOI }
4. LIM WENG HOOI alias LIM ENG HOOI Administrators } *Respondents—*
with the Will annexed of the estate of Lim Kia Joo, } *Plaintiffs.*
deceased

(In the Matter of Penang Originating Summons 196 of 1951.

In the Matter of the Estate of Lim Kia Joo, deceased.)

Coram : MATHEW, C.J.

MURRAY-AYNSLEY, C.J., Singapore.

PRETHEROE, J.

JUDGMENT OF MURRAY-AYNSLEY, C.J.

This case concerns with the effect of a clause in the Will of a Chinese testator.

The clause reads :—

10 “ 13. I devise and bequeath all my property of whatever
 “ nature and wheresoever situate of which I shall die possessed
 “ and which shall not be otherwise disposed of (except my
 “ property in China) unto my trustees Upon Trust to sell call in
 “ and convert the same into money (with power in their discretion
 “ to postpone such sale call in and conversion) and after payment
 “ thereof of my debts and funeral and testamentary expenses
 “ and the legacies hereinbefore directed to be paid to invest the
 “ residue of such moneys and to stand possessed of such
 “ investments and of all parts of my real and personal estate for
 20 “ the time being unconverted (hereinafter called my residuary
 “ estate) Upon Trust to pay out of the income of my residuary
 “ estate in the first place and out of the capital thereof if such
 “ income be insufficient the sums directed to be paid under
 “ Clauses 9, 10, 11 and 12 hereof and until my youngest son
 “ living at my death shall attain the age of 21 years or if he shall
 “ die without having attained the age of 21 years then until
 “ such time as he would if living have attained such age Upon
 “ Trust as to both the capital and income of my residuary estate
 “ to pay and divide the same equally among my said wives Yeoh Ah
 30 “ Hong and Queh Ah Gaik and my sons Lim Beng Hong,
 “ Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng
 “ Hooi, Lim Beng Chye and Lim Chit Bah and my nephew Lim
 “ Joo Huat the son of my elder brother Lim Kiah Sah and any
 “ other sons that may hereafter be born to me by my said wives
 “ Yeoh Ah Kong and Queh Ah Gaik Provided that if either of
 “ my said wives shall not remain my widow or lead a chaste life
 “ or shall die before the period fixed for the division of my residuary
 “ estate her share shall go equally to my said sons Lim Beng
 “ Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim
 40 “ Weng Hooi, Lim Beng Chye and Lim Chit Bah my nephew
 “ Lim Joo Huat and any other sons that may hereafter be born
 “ to me by my said wives Yeoh Ah Kong and Queh Ah Gaik.

In the
Court of
Appeal at
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—
No. 15.
Grounds of
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of Murray-
Aynsley,
C.J.—
continued.

In the
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Appeal at
Penang.

No. 15.
Grounds of
Judgment
of Murray-
Aynsley,
C.J.—
continued.

“ And Provided that if any of my said sons Lim Beng Hong,
“ Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng
“ Hooi, Lim Beng Chye and Lim Chit Bah my nephew Lim Joo
“ Huat and any other sons that may hereafter be born to me by
“ my said wives shall die before the period fixed for the division
“ of my residuary estate leaving male issue his share shall go to
“ such male issue equally if more than one but if he shall not
“ leave any male issue but shall leave a lawful widow and female
“ issue his share shall go to such lawful widow and female issue
“ equally if more than one provided such lawful widow shall 10
“ remain the widow of such deceased son or nephew and lead
“ a chaste life.”

In the events that have happened it is necessary to determine whether the widow of a son who has remarried and her daughter by the deceased son are entitled to a share of residue. The learned Judge who decided the case at first instance applied English cases and formed the opinion that they were so entitled ; he reached this conclusion by the application of the “ in terrorem ” rule. This rule is strange and anomalous. It is quite clear that there is nothing contrary to public policy in a gift that discourages the remarriage of widows, though in the case of persons other than widows 20 a general restraint on marriage is contrary to public policy. If the appropriate formula is used, as was done earlier in the clause, by making use of a gift over, then no difficulty arises and the widow who has remarried forfeits her interest. In these circumstances it would appear to be merely a question of ascertaining the meaning of the testator, in looking at the clause as a whole ; did the testator intend that a son’s widow who remarried should forfeit her interest or not ?

The “ in terrorem ” rule is based on a presumption that he did not. It is not possible to justify the presumption on rational grounds. The Courts fell into difficulties when they had to apply the civil law to gifts of 30 personalty and the common law to gifts of realty. One system of law regarded any restraint on matrimony as contrary to public policy, the other did not. The “ in terrorem ” rule satisfied neither system of law. Its only explanation is that it is due to the prejudices of lawyers trained in the civil law. I think that the first question is whether it is a mere rule of construction. If it is more than this, if it is a rule of law, then, absurd though it is, I think we are bound to follow it. On the other hand, I think that since *Perrin v. Morgan* (1943), A.C. 399, we are no longer bound as the result of decided cases to hold that the testator meant something which we are quite certain he did not. I think the case of *Harvey v. Aston*, 40 1 Atkyns 361, makes it clear that this is a mere rule of construction (Welles, C.J. at p. 377). Among Chinese of old-fashioned kind, and among Hindus, the remarriage of widows is contrary to custom. A Chinese testator would not intend the widow of a son to share the family property after she had remarried into another family. This is perfectly well known to anyone with the slightest acquaintance with Chinese Custom. I think,

therefore, that we would be wrong, in applying English law in this country, to rely on English cases in order to make a presumption as to the intentions of a testator. The Courts in England were dealing with people whose customs were very different, especially on this particular matter of the remarriage of widows. Taken by itself the clause is quite clear and unambiguous and I see no reason why it should not be applied.

I would allow the appeal on this point.

I do not think that the interest of the 2nd Respondent can be separated from that of the 1st Respondent. I consider that the remarriage of the mother defeats the interest of her daughter.

As regards the remainder of the Judgment, the appeal should be dismissed.

Costs of all parties, solicitor and client, out of estate, Deposit to Appellant.

(Sgd.) C. M. MURRAY-AYNSLEY,
Chief Justice,
 Singapore.

In the Court of Appeal at Penang.

No. 15.
 Grounds of Judgment of Murray-Aynsley, C.J.—
continued.

No. 16.

Grounds of Judgment of Mathew, C.J.

No. 16.
 Grounds of Judgment of Mathew, C.J.
 10th December 1952.

20 IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
 IN THE COURT OF APPEAL AT PENANG.

F.M. Civil Appeal No. 35/52.
 Penang O.S. No. 196/51.

LIM BENG CHYE... *Appellant*
 versus

1. SALLY LEONG (m.w.)
2. LIM EANG HOONG an Infant
3. LIM CHENG HOOI
4. LIM WENG HOOI, alias LIM ENG HOOI... *Respondents.*

30 Cor. : MATHEW, C.J.
 MURRAY-AYNSLEY, C.J. (S)
 PRETHEROE, J.

JUDGMENT OF MATHEW, C.J.

This case concerns the construction of a portion of Clause 13 of a Chinese testator's will. The relevant part reads :—

“ . . . if he shall not leave any male issue but shall leave a lawful widow and female issue his share shall go to such lawful widow and female issue equally if more than one provided such lawful widow shall remain the widow of such deceased son or nephew and lead a chaste life.”

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In the
Court of
Appeal at
Penang.

No. 16.
Grounds of
Judgment
of Mathew,
C.J.
10th
December
1952—
continued.

The learned trial judge held that as there was no gift over, the condition in partial restraint of marriage was *in terrorem* and void.

The law on this subject is extremely difficult. In *In re Whiting's Settlement* (1905) 1 Ch. 96, Vaughan Williams, L.J., said (at page 115):—

“ This branch of the law is one with which it is not very satisfactory to deal, and I cannot say that I think the mode in which it has been dealt with is very easy to weld into one consistent whole. We are told that the law on this point has been partially imported into our system of law from the Roman Law, and that this was done through the Ecclesiastical Courts. And then we are told that the Court of Chancery did not entirely adopt the view of the law adopted by the Ecclesiastical Courts just as the Ecclesiastical Courts did not adopt in its entirety the Roman Law. And, eventually, as a matter of history, we find ourselves face to face with this state of things—that the Court of Chancery had to administer rules of law which they did not think very fair or very just, and that they were constantly straining the rules, by which they yet declared that they were bound, in order to escape from them.”

There have been a number of authorities quoted to us which tend to support the passage in Theobald on Wills (10th edition) at page 440, which reads:—

“ In the case of personalty . . . certain conditions subsequent though good in law, are, in accordance with the rules of the Civil Law, held to be void and *in terrorem* merely if there is no gift over.”

In *Marples v. Bainbridge*, 1 Madd. 590, Plumer, V.C., says (at page 592):—

“ Where there is a bequest, like the present, of personal property, upon a condition subsequent”—that the legatee continues unmarried—“ and no bequest over in breach of the condition, the condition is considered only *in terrorem*.”

But I do not think that the question is thereby disposed of completely and that all conditions subsequent with no bequest over are necessarily void. There may be circumstances to rebut the presumption that the condition is void. The true test to be applied in cases of this kind is, to quote the words of Blackburn, J., in *Jones v. Jones*, 1 Q.B.D. 279 (at page 281):—

“ The real question seems to be whether the testator intended to discourage marriage or not.”

Was this proviso intended to compel the celibacy of the sons' widows? If it was, then this condition is *in terrorem* and void.

In my view, the testator's intention is clear. He provided in his will for the maintenance of the members of his family while they remained in the family and, apart from certain provisions for payments to his daughters on their marriage, the estate was to be applied for the benefit of the members of the family. His intention was not to penalise widows who remarried, but to insure that all members of the family should be provided for, so long

as they remained within the family. The failure of the bequests to the widows and daughters of his sons had the effect of increasing the shares of those members of the family who remained within the family, and a failure of a bequest did not create a partial intestacy.

10 I do not consider that in this case I am compelled to hold that the testator meant something which he did not, and give effect to the exact contrary of his intention. When his intention, as I see it, was not to condemn widows to celibacy, but to preserve his estate for those members of the family who remained within the family, I would be very loath to hold that in cases where remarriage is contrary to custom, the strict application of the *in terrorem* rule must be applied.

As regards the second Respondent, the testator intended, in my view, that if any widow of his deceased sons suffered forfeiture, that the female issue of such widow should also forfeit on the ground, possibly, that if the mother left the family so also would her female issue. I do not think that the proviso as it is worded can be construed so as to apply only to the widow and not to her issue.

I would allow this appeal with costs, and order that the costs be paid out of the estate, the deposit to be paid to the Appellant.

20 (Sgd.) CHARLES MATHEW,
Chief Justice,
Federation of Malaya.

Kuala Lumpur.
10th December, 1952.

True Copy.
(Sgd.) T. V. MAHADAVEN,
Private Secretary to Chief Justice.

In the Court of Appeal at Penang.

No. 16.
Grounds of Judgment of Mathew, C.J.
10th December 1952—
continued.

No. 17.
Order.

No. 17.
Order
13th
February
1953.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

30 Civil Appeal No. 35 of 1952.

Between
LIM BENG CHYE *Appellant—1st Defendant.*
and

1. SALLY LEONG (m.w.)
2. LIM EANG HOONG (Spinster) an infant by her next friend } *Respondents—*
SALLY LEONG } *2nd & 3rd*
3. LIM CHENG HOOI } *Defendants*
4. LIM WENG HOOI alias LIM ENG HOOI Administrators } *Respondents—*
with the Will annexed of the estate of Lim Kia Joo, } *Plaintiffs*
40 deceased }

In the
Court of
Appeal at
Penang.

(In the Matter of Originating Summons No. 196 of 1951.
In the High Court at Penang.)

In the Matter of the estate of Lim Kia Joo, deceased.

No. 17.
Order
13th
February
1953—
continued.

Between

1. LIM CHENG HOOI
2. LIM WENG HOOI alias LIM ENG HOOI Administrators with
the Will annexed of the estate of Lim Kia Joo, deceased *Plaintiffs*

and

1. LIM BENG CHYE
2. SALLY LEONG (m.w.)
3. LIM FANG HOONG (Spinster) an infant by her next friend
SALLY LEONG *Defendants.*

10

Before : The Honourable Mr. Justice CHARLES MATHEW, Chief Justice,
Federation of Malaya.

The Honourable Sir CHARLES MURRAY-AYNSLEY, Chief
Justice, Singapore.

The Honourable Mr. Justice PRETHEROE, Judge, Federation
of Malaya.

IN OPEN COURT.

This 13th day of February, 1953. 20

ORDER.

This appeal coming on for hearing on the 19th day of August, 1952 before the Court of Appeal at Penang in the presence of Mr. N. A. Marjoribanks and Mr. M. N. Cumarasami Counsel for the Appellant, Mr. T. E. Conaghan Counsel for the Respondents Nos. 1 and 2 and Mr. Lim Huck Aik Counsel for the Respondents Nos. 3 and 4 and upon reading the Record of Appeal and upon hearing Counsel for the Appellant and the Respondents IT WAS ORDERED that the said appeal should stand for judgment and the same coming on for judgment this day IT IS ORDERED that the appeal be allowed AND IT IS FURTHER ORDERED that the 1st and 2nd Respondents 30 are not entitled to a share of the residue of the estate of Lim Kia Joo, deceased bequeathed to Lim Beng Sai, since deceased AND IT IS FURTHER ORDERED that the appeal against that part of the judgment of the Court below in holding that the surplus income of the deceased's estate after paying the various annuities and legacies provided for in Clauses 9, 10, 11 and 12 of the Will of the deceased should be accumulated until the date of distribution and divided as part of residue be dismissed

AND IT IS FURTHER ORDERED that the costs of all parties in the appeal be taxed as between solicitor and client and paid out of the estate of the said deceased AND LASTLY IT IS ORDERED that the sum of \$500.00 deposited in Court be paid out to the Appellant or his solicitor.

Given under my hand and the seal of the Court this 13th day of February, 1953.

(Seal)

Sgd. P. SAMUEL,
Asst. Registrar, Court of Appeal,
Federation of Malaya.

In the Court of Appeal at Penang.

No. 17.
Order
13th
February,
1953—
continued.

10

No. 18.

Order granting Conditional Leave to Appeal to Her Majesty in Council.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

Civil Appeal No. 35 of 1952.

Between

LIM BENG CHYE *Appellant—1st Defendant*

and

- | | | | |
|----|--|---|--|
| 20 | <ol style="list-style-type: none"> 1. SALLY LEONG (m.w.) 2. LIM EANG HOONG (Spinster) an infant by her next friend <li style="padding-left: 2em;">SALLY LEONG 3. LIM CHENG HOOI 4. LIM WENG HOOI alias LIM ENG HOOI Administrators with the Will annexed of the estate of Lim Kia Joo, deceased | } | <i>Respondents—
2nd & 3rd
Defendants</i>

<i>Respondents—
Plaintiffs</i> |
|----|--|---|--|

In the Matter of Originating Summons No. 196 of 1951
In the High Court at Penang.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- | | | |
|----|--|-------------------|
| 30 | <ol style="list-style-type: none"> 1. LIM CHANG HOOI 2. LIM WENG HOOI alias LIM ENG HOOI Administrators with the Will annexed of the estate of Lim Kia Joo, deceased | <i>Plaintiffs</i> |
|----|--|-------------------|

and

- | | | |
|----|---|--------------------|
| 30 | <ol style="list-style-type: none"> 1. LIM BENG CHYE 2. SALLY LEONG (m.w.) 3. LIM EANG HOONG (Spinster) an infant by her next friend <li style="padding-left: 2em;">SALLY LEONG | <i>Defendants.</i> |
|----|---|--------------------|

No. 18.
Order
granting
Conditional
Leave to
Appeal
to Her
Majesty in
Council.
24th April
1953.

In the
Court of
Appeal at
Penang.

Before The Honourable Mr. Justice BRIGGS sitting as a Single Judge of
Court of Appeal.

IN OPEN COURT.

No. 18.
Order
granting
Conditional
Leave to
Appeal
to Her
Majesty in
Council.
24th April
1953—
continued.

Upon Motion made unto the Court on the 17th day of April, 1953 and adjourned to this day by Counsel for the 2nd and 3rd Defendants—Respondents and upon reading the Affidavit of Sally Leong (m.w.) affirmed and filed herein on the 26th day of March, 1953 and upon hearing Counsel for the Appellant and for the Respondents IT IS ORDERED that the 2nd and 3rd Defendants—Respondents are at liberty to appeal to Her Majesty in Council from the Judgment of the Court of Appeal herein dated the 13th day of February, 1953, subject to the following conditions : 10

- (a) That the 2nd Defendant-Respondent do deposit into Court or give security for the sum of \$5,000/- for the due prosecution of the appeal and the payment of all such costs as may become payable to the 1st Defendant—Appellant and the Plaintiffs-Respondents to the satisfaction of the Senior Assistant Registrar, in the event of the 2nd and 3rd Defendants—Respondents not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the 2nd and 3rd Defendants—Respondents to pay the 1st Defendant—Appellant and the Plaintiffs—Respondents' costs of the appeal as the case may be. 20
- (b) That the Title of these proceedings be amended by adding to the words " Lim Eang Hoong (spinster) an infant " the following words " by her next friend Sally Leong."
- (c) Liberty to all Parties other than Sally Leong to apply if they consider Sally Leong should be made guardian ad-litem of the infant Lim Eang Hoong (spinster).
- (d) That the 2nd Defendant—Respondent within six weeks from 30 date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England.
- (e) That the costs of this application be reserved.

Given under my hand and seal of the Court this 24th day of April, 1953.

By the Court,

Sd. K. SOMASUNDRAM,
Senior Assistant Registrar.

No. 19.

Order granting Final Leave to Appeal to Her Majesty in Council.

In the Court of Appeal at Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

Civil Appeal No. 35 of 1952.

No. 19.
Order granting Final Leave to Appeal to Her Majesty in Council.
29th June 1953.

Between

LIM BENG CHYE *Appellant—1st Defendant.*
and

- | | | |
|----|--|--|
| 10 | 1. SALLY LEONG (m.w.) | } <i>Respondents—
2nd & 3rd
Defendants</i> |
| 2. | LIM EANG HOONG (Spinster) an infant by her next friend
SALLY LEONG | |
| 3. | LIM CHENG HOOI | } <i>Respondents—
Plaintiffs</i> |
| 4. | LIM WENG HOOI alias LIM ENG HOOI Administrators
with the Will annexed of the estate of Lim Kia Joo,
deceased | |

In the Matter of Originating Summons No. 196 of 1951.
In the High Court at Penang.

In the Matter of the Estate of Lim Kia Joo, deceased.

Between

- | | | |
|----|---|---------------------|
| 20 | 1. LIM CHENG HOOI | } <i>Plaintiffs</i> |
| 2. | LIM WENG HOOI alias LIM ENG HOOI Administrators with
the Will annexed of the estate of Lim Kia Joo, deceased | |

and

- | | | |
|----|---|----------------------|
| 1. | LIM BENG CHYE | } <i>Defendants.</i> |
| 2. | SALLY LEONG (m.w.) | |
| 3. | LIM EANG HOONG (Spinster) an infant by her next friend
SALLY LEONG | |

Before The Honourable Mr. Justice BUHAGIAR sitting as a Single Judge of
Court of Appeal

30 This 29th day of June, 1953.

IN OPEN COURT.

Upon Motion made unto the Court this day by Counsel for the
2nd and 3rd Defendants-Respondents, and upon reading the Affidavit

In the
Court of
Appeal at
Penang.

No. 19.
Order
granting
Final Leave
to Appeal
to Her
Majesty in
Council.
29th June
1953—
continued.

of Sally Leong (m.w.) affirmed and filed herein on the 13th day of June, 1953 and upon hearing Counsel for the Appellant and for the Respondents It IS ORDERED that final leave be granted to the 2nd and 3rd Defendant— Respondents to appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated the 13th day of February, 1953.

Given under my hand and seal of the Court this 29th day of June, 1953.

Sgd. K. SOMASUNDRAM,
Senior Assistant Registrar.

In the Privy Council.

No. 33 of 1953.

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT PENANG.

BETWEEN

1. SALLY LEONG (M.W.)
 2. LIM EANG HOONG (spinster)
an infant by her next friend
SALLY LEONG *Appellants*
- AND
- LIM BENG CHYE *Respondent.*

RECORD OF PROCEEDINGS

BULL & BULL,
11 Stone Buildings,
Lincoln's Inn, W.C.2,
Appellants' Solicitors.

BULCRAIG & DAVIS,
Amberley House,
Norfolk Street,
Strand, W.C.2,
Respondent's Solicitors.