

THE  
INDIAN LAW REPORTS,  
Calcutta Series.

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ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Bonifex.

FALLE AND OTHERS v. MACEWEN AND OTHERS.

1881  
Feb. 9, 10, 11  
and Mar. 7.

*Mutual Benefit Society—Power of Majority of Subscribers to alter Rules—  
Payment of Pensions in England—Adjustment of Payments in accordance  
with Rate of Exchange—Interest of Subscriber to Society.*

The U. S. F. P. Fund—a society established, as stated in rule 2 of the Rules of the Society, “to provide for the maintenance of the widows and children of those who shall subscribe to it upon the terms and conditions specified below, or upon such others as may be determined upon by the subscribers or by a majority of them”—had, prior to 1850, passed a rule (33) that “widows, being incumbents on the Fund, shall be paid their pensions at any place they may desire, subject to the usual charges of remittance: the pensions of children, being incumbents on the Fund, shall also be so paid and on the same conditions.” The subscriptions were then, and continued to be, paid in rupees, and the pensions were calculated in rupees according to certain tables. On being admitted, a subscriber had to “promise and engage to sub-  
to, and abide by, the rules and bylaws of the Institution” (rule 22), by rule 27 had to pay “a fee equal to ten per cent. on the amount of any pension insured.” Rule 60 gave power to alter any existing rule a duly recorded votes of a majority of the subscribers. In 1850, exchange between India and England being then about par, rule 33 was repealed, and a rule (41) was substituted for it, which provided that “incumbents on the

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Fund shall be paid their annuities in India at par, or in Europe at the fixed rate of two shillings in the rupee." On the 1st July 1876, "exchange being adverse on remittances from India to England, a rule was passed, which provided that "incumbents on the Fund shall be paid their annuities in India in full, and those residing in Europe at the rate of exchange fixed for the official year by the Secretary of State; annuities already due or hereafter becoming due on risks accepted before the 1st July 1876 shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee." Exchange continuing to decline, on the 22nd May 1880, the Society, by the votes of 553 against 505 of the subscribers, passed the following rule:— "Annuities already due, or becoming due before the 1st May 1880, on risks accepted before the 1st July 1876, shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee; but all other annuities due, or becoming due, shall be paid, if to incumbents in India, in full, and if to incumbents residing in Europe, in London, at the market rate of exchange."

The plaintiffs were the widow and children of *F.*, a member of the Society, who was admitted as a subscriber for the benefit of his widow in November 1871, for the benefit of his son in September 1873, and for the benefit of his daughter in November 1874. He commenced to pay an increased subscription for the benefit of his son in September 1878. He was not one of the majority who voted in favor of the rule of the 22nd May 1880, though he attended the meeting of subscribers. He died on the 25th June 1880, having, up to that time, duly paid his subscription to the Fund. In a suit in which the plaintiffs, who were residing in England, claimed to be paid their pensions there at the rate of two shillings in the rupee,—

*Held*, that *F.* had no vested interest at the time of the passing of the rule of the 22nd May 1880; that the plaintiffs were, with respect to their pensions, bound by the terms of that rule, which a majority of the subscribers had full powers to pass so as to affect the nominees of all existing subscribers, and therefore the suit should be dismissed.

Rule 41 gave an undue advantage to one class of subscribers, which was *extra vires* and open to correction under rule 60 by a majority of the subscribers. The Society being one for the equal benefit of all subscribers, even if rule 60 did not give power to adjust payments in accordance with the rate of exchange, such a power might be implied for the purpose of continuing the business of the association.

THIS suit was brought against the defendants as the Directors of a Society called the Uncovenanted Service Family Pension Fund, having its head office at 14, Kyd Street, in Calcutta. The plaintiffs were the widow and infant children of Vernon Falle, a subscriber to the Fund, who died on the 2 June 1880.

The plaint stated that the Uncoovenanted Service Family Pension Fund was a voluntary association of christian members of the Government Uncoovenanted Service, for the purpose of providing, upon certain terms, for the maintenance of the widows and children of the subscribers to the funds of the Society. That the said J. V. Falle was, from the year 1871 and until his death, employed in the Government Uncoovenanted Service; and on the 11th November 1871, in Calcutta, he applied to be, and was admitted, a member of the Fund for the benefit of the plaintiff S. A. Falle, his wife; on the 18th October 1873, he was further admitted to subscribe to the Fund for the benefit of his son, the plaintiff P. E. Falle, until the age of eighteen years (the benefit being afterwards, on the 28th September 1878, extended until the age of twenty-one years); and on the 14th November 1874, he was admitted to subscribe to the Fund for the benefit of his daughter, the plaintiff, N. E. V. Falle, until her marriage. That, at the date of the admission of J. V. Falle as a member of the Fund, the terms of admission and membership and the benefits secured to the widows and children of members were regulated by the following rules:

“22. That every application for admission as a subscriber shall be in the Form A.

FORM A.

*To the Secretary, Uncoovenanted Service Family Pension Fund,  
Calcutta.*

Sir,

I request to be admitted a subscriber to the U. S. F. P. Fund for the benefit of my \_\_\_\_\_ as per statement and affirmation enclosed; and I hereby promise and engage to submit to, and abide by, the rules and bylaws of the Institution.

I am, Sir,

Yours obediently,

*(Applicant's signature.)*

*(Designation or profession.)*

*(Address.)*

*Dated the*

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“25. That a subscriber wishing to increase the recorded provision for his family, or to provide for his wife or any children not already

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on the Fund, shall in all respects conform to the rules, and comply with the forms prescribed for observance in cases of original application for admission.

“27. That an admission fee at the following rates be charged on every insurance effected, whether for the first time or in augmentation of any prior risk, *viz.*: for a pension of less than Rs. 50 a month, a fee of Rs. 5, and for pensions of Rs. 50 a month and upwards, a fee equal to ten per cent. upon the amount of monthly pension insured.

“32. That the payments for securing annuities be regulated according to the rates laid down in Tables A, B-I, B-II, C; payments for the present risks to be undisturbed; that risks which are declared to be not first-class, but which the Directors may nevertheless consider to be reasonably insurable, may be admitted on a payment of an addition not exceeding 50 per cent. upon the rates of subscription laid down in the tables. Risks not considered by the Directors to be reasonably insurable shall be rejected.

“37. That in every case of admission or of increased provision, the subscription shall be computed from the date on which such entrance or increase shall be effected. All reductions in the recorded provision shall take effect from the first day of the month following that in which the application may be made.

“38. That an entrance certificate according to Form F, after being duly entered on the record of the Fund, shall be granted to each subscriber on his admission, bearing the date on which the risk was accepted by the Directors.

*Note.*—Applicants will be admitted subject to the sanction of the Comptroller-General under the orders of Government. If the Comptroller-General shall refuse to authorize the admission of any person on the ground of ineligibility, the acceptance will be cancelled, and all payments made will be returned, less the medical-fee and stamp-duty on Form D.

#### FORM F.

#### *Uncovenanted Service Family Pension Fund.*

#### ENTRANCE CERTIFICATE.

*Calcutta,*

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Certified that Mr. \_\_\_\_\_ has this day been admitted a member of the Uncovenanted Service Family Pension Fund, under the terms and conditions thereof, for the eventual benefit of the under-

named, and that registry fee (Rs. ) and his entrance subscription for the month of (Rs. ) have been duly received by

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Accountant and Collector.

Class.	Names.	Date of birth.		Age.		Where born.	Where resident.	Provision for Nominees.		Registered monthly subscription.
		Years.	Months.	Years.	Months.			Per Mensem.	Per Annum.	
Subscriber ...										
Nominee ...										

All casualties as well as marriage of children must be communicated to the Secretary as they occur.

Registered as No.

Secretary.

Directors.

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“43. That subscribers residing in Europe may make their payments to the recognized agents of the Fund in London at an exchange of two shillings to the rupee.

“41. That incumbents in the Fund shall be paid their annuities in India at par, or in Europe at the fixed rate of two shillings to the rupee. It shall be imperative, however, on all widows, incumbents on the Fund, to furnish half-yearly a certificate from competent local authority, or from two subscribers to the Fund, of existence and continued widowhood (Form I). A certificate of existence, and where necessary, of spinster-ship also, shall be furnished in the case of incumbents on the children's Fund (Form J).

The plaint then stated that this rule was, on or about the 1st July 1876, altered as follows:—

“50. That incumbents in the Fund shall be paid their annuities in India in full, and incumbents residing in Europe and America may be paid their annuities in London at the rate of exchange fixed for the official year by Her Majesty's Secretary of State, for such pensions and allowances as are payable at the India House in London and fluctuate with the rate of exchange. Annuities already due or hereafter becoming due on risks accepted before the 1st July 1876, shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee.

“53. That a valuation of the assets and liabilities of the Fund, both in the widows' and children's branches, shall be made annually by a competent Actuary.

“54. That the surplus capital declared upon the report of the Actuary to exist at the date of such valuation shall form a reserve fund. The interest arising from such reserve fund shall be available for reduction of subscriptions, and such interest accruing annually shall, on the 1st May of each year, be appropriated to the reduction of the subscription for the ensuing year. All subscribers who shall, on or before the 30th April preceding, have completed five years' consecutive payments, shall be entitled to share rateably in the reduction according to the amount of their registered subscriptions.

“55. That whenever the surplus capital or reserve fund so declared shall exceed one-third of the net liabilities, the Directors may, at their discretion, set apart a portion of such reserve fund, not exceeding six per cent. thereof, for distribution in further reduction of subscriptions. Such amounts shall be applied in the first instance, so far as may be necessary, to completing the abatement of subscription of all

subscribers entitled to share in the interest under rule 54, to 32 per cent., and the balance or remaining portion thereof shall then be applied in reduction of the subscription for the ensuing year of all subscribers who, on or before the 30th April preceding, shall have completed three years' consecutive payments in the following rates :—

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Subscribers above 3 years and not exceeding 6 years,	1 share.
„ „ 6 „ 9 „	2 shares.
„ „ 9 „ 12 „	3 shares.
„ „ 12 „ 15 „	4 shares.
„ „ 15 years	5 shares.”

The plaint then further stated that the rules, except as above-mentioned, remained unaltered until the 22nd May 1880, when the Society, by the votes of 553 members against 505, purported to pass the following rule :

“That annuities already due, or becoming due before the 1st May 1880, or risks accepted before the 1st July 1876, shall be payable to incumbents residing in Europe or America at the fixed rate of two shillings to the rupee; but that all other annuities due, or becoming due, shall be paid, if to incumbents in India, in full, and if to incumbents residing in Europe in London, at the market rate of exchange.”

The plaintiffs submitted that the rule of the 22nd May 1880 was void and inoperative so far as it tended to the detriment of the plaintiffs; that the said J. V. Falle, by virtue of his admission as a member of and subscriber to the Fund, and of his subscriptions (which had always been duly paid), became entitled to the benefit of the Fund according to the rules and regulations at the time he was admitted as such member and subscriber; that those benefits could not be taken away from him or from the plaintiffs, nor the rules and regulations alter to his detriment or to the detriment of the plaintiffs; that the Society or Fund contracted with the said J. V. Falle for valuable consideration to pay to his widow and children on his death, and the defendants as Directors of the Fund were bound to pay to the plaintiffs the respective sums subscribed for in the manner provided by the existing rules and regulations at the time he so subscribed; such sums being as follows :

1. On 11th November 1871, in consideration of a monthly

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subscription of Rs. 44-8, the Society contracted to pay the plaintiff S. A. Falle, on the death of J. V. Falle, the monthly sum of Rs. 100 in Calcutta, or £10 in sterling in London, at the plaintiff's option.

2. On the 18th October 1873, in consideration of a monthly subscription of Rs. 10-10, the Society contracted to pay the plaintiff P. E. Falle, on the death of J. V. Falle, the monthly sum of Rs. 32 in Calcutta, or £3-4s. in sterling in London, at his option, until the age of eighteen years; and on the 28th September 1878, in consideration of a further monthly subscription of Rs. 2-5, contracted to continue the said payments to the plaintiff P. E. Falle until the age of twenty-one years.

3. On the 14th November 1874, in consideration of a monthly subscription of Rs. 11-5, the Society contracted to pay the plaintiff N. E. V. Falle, on the death of J. V. Falle, the monthly sum of Rs. 32 in Calcutta, or £3-4s. in sterling in London, at her option, until her marriage.

On the death of J. V. Falle, the plaintiffs went to reside in England, and the defendants, on being called upon to pay these sums, refused, on the ground that the sums they were bound to pay were those which would be payable under the rule of the 22nd May 1880, passed by the majority of the subscribers, *viz.* Rs. 100, Rs. 32, and Rs. 32 respectively.

The plaint prayed for a declaration that the defendants were bound to pay the sums claimed by the plaintiffs, and that the defendants might be ordered to pay them.

The defendants, in their written statement, stated, that the object of the Fund was stated in rule 2 of the Rules of the Fund, *viz.*, "to provide for the maintenance of 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;" or that, so far as the deceased J. V. Falle was admitted to subscribe to the Fund in respect of the plaintiff P. E. Falle, on the 28th September 1878, the application to become such subscriber, and the admission to be such subscriber, was, under rule 25, a distinct matter from any previous application for admission of the deceased as a subscriber to the Fund; that the altered rule 50 was in force



at the time the deceased applied to be and was admitted as a subscriber to the Fund for the benefit of the plaintiff P. E. Falle; that rule 41 was passed in 1850 in place of, and substitution for, the old rule (33) of the Fund, which was as follows :

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“ 33. That widows, being incumbents on the Fund, shall be paid their pension 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 condition, at the request of their guardians. It shall be imperative, however, on all widows, incumbents on the Fund, to furnish half-yearly a certificate from competent local authority, or from two subscribers to the Fund, of existence and continued widowhood ; a certificate of existence, and where necessary, of spinstership also, shall be furnished in the case of incumbents on the children's Fund.”

That, at the time of the passing of rule 41, the rate of exchange between England and India was variable, in favor sometimes of silver and sometimes of gold, and the rule was passed to avoid the trouble of paying in England a slightly different sum each month to each incumbent, and as an equitable rate at a time when the value of a rupee and of two shillings was, roughly speaking, equal, varying occasionally in favor of England, and occasionally in favor of India ; that the rule which was passed on the 22nd May 1880, by the votes of the majority of the subscribers to the Fund, was so passed under the power conferred upon the subscribers to alter or amend any existing rule of the Fund by rule 60, which was as follows :—

“ 60. That it shall be competent to 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, by a written requisition, to call a special meeting of subscribers, and such meeting shall thereupon be called by the Directors. Notice of the object of such meeting shall be given by the Directors in two of the principal newspapers of Calcutta and the Government *Gazettes* four weeks before the time appointed. It shall be essential to the validity of such meeting that not less than fourteen subscribers other than the requisitionists and Directors shall be present thereat. The meeting shall determine whether the question shall be submitted by

1881 circular to the general body of subscribers or not ; if the former, the  
 FALLE Directors shall circulate it accordingly, and the votes of the majority of  
 " the subscribers received within three months from the issue of such  
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The defendants further stated that the deceased J. V. Falle himself voted in respect of the passing of the rule of the 22nd May 1880 ; that that rule was passed because it was found that the relative value of gold and silver and the conditions of the members whose families were to be provided for by the Fund had so altered, as that the loss to the Fund by exchange in paying pensions of incumbents in Europe at the rate of two shillings to the rupee rose from the sum of Rs. 4,246 in the year 1871-72 to the sum of Rs. 40,583 in the year 1878-79, and such loss threatened to increase as each new incumbent for many years came on the Fund, and it was found that such loss might seriously injure the stability of the Fund ; and because the paying of the said pensions at the said rate of exchange was conferring an undue advantage on one class of subscribers to the Fund at the expense of another class of subscribers, besides disturbing seriously the subscription tables of the Fund, which were made after due deliberation, and fixed certain proportions between the rates of payment and the pensions secured, both being expressed in Indian money, and which tables formed the basis of contract with every subscriber as shown by the entrance certificate, which declares the pension payable to be in Indian money, and even directly alludes (as in the form for children) to the tables in question.

The defendants submitted that the correct meaning of the words of rule 2 was, that the Fund was intended to provide upon the terms and conditions contained in the subsequent rules of the Fund, or in such other rules as might be determined upon by the subscribers or a majority of them, for the maintenance of the widows and children of those who might subscribe to the Fund ; that the rule of the 22nd May 1880 was and is a good and valid rule, and such a rule as the subscribers had full power and authority to make and pass ; and such rule was and is binding on the deceased and on all who were subscribers to the Fund at the date of the passing of the said rule, or who had

become subscribers since the passing of the rule; and that it was one of the rules and conditions of the Fund under which the Fund agreed to provide for the plaintiffs as the widow and children of the deceased. The defendants further submitted that the rule of the 22nd May 1880 was a good and valid rule of the Fund at the date of the death of J. V. Falle and at the date when the plaintiffs became entitled to the benefit of the Fund; and that the plaintiffs were not entitled to claim payment of the respective pensions due to them otherwise than under the rules of the Fund at the date they became so entitled, and therefore were not entitled to claim to be paid their respective pensions at the rate of two shillings to the rupee, or at any other rate than that provided by the rule of the 22nd May 1880.

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*Mr. Kennedy and Mr. Phillips* for the plaintiffs.

*Mr. Branson and Mr. Evans* for the defendants.

For the plaintiff it was contended, that the terms for payment of the annuities at two shillings in the rupee was a part of the contract entered into between Mr. Falle and the Society at the time he was admitted as a subscriber; and that there was no power to alter the rules so as to take away any advantage which he might derive under that contract, which could not be altered by any subsequent agreement of the members amongst themselves. The amount of the annuity or the terms of subscription were not subject to alteration. As long as Mr. Falle continued to pay his subscription, he had a vested interest in what he had contracted to pay for, and the Society had contracted to give his nominees, of which interest he could not be deprived. It was an important object that the interest of the nominees should be certain. The following cases and authorities were referred to:—*In re Norwich and Norfolk Provident Benefit Building Society, Smith's case* (1); *May's Law of Insurance*, s. 152, p. 587, and cases there cited; *Menier v. Hooper's Telegraph Works* (2); *East India*

(1) L. R., 1 Ch. D., 481.

(2) L. R., 9 Ch. App., 350.

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*Company v. Robertson* (1); *Secretary of State for India v. Underwood* (2); and *Edwards v. Warden* (3).

For the defendants it was contended, that there was no contract at all with the plaintiffs; every member who joined was admitted under all the rules of the Society, one of those rules being that a majority of the subscribers had power to alter the rule (see rule 60); that the rule which had been altered was a subsidiary rule, and not a rule of the essence of the Fund. There were particular provisions for any cases of hardship. The plaintiffs had not completed their title under the old rules; therefore their case was governed by the new rules. The rules refer to the tables of subscription and annuities (see rule 32), and therefore the calculation of annuities is to be made from the tables. The rule objected to observes a just proportion between the amount each member pays in and what he takes out. *Secretary of State for India v. Underwood* (4) was referred to.

The judgment of the Court (GARTHE, C. J., and PONTIFEX, J.) was delivered by

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 charge 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.

(1) 12 Moore's P. C., 400.

(2) L. R., 4 Eng. and Ir. App., 580, at p. 583.

(3) L. R., 9 Ch. App., 495; S. C. on appeal, 1 App. Cas., 281.

(4) L. R., 4 Eng. and Ir. App., at pp. 588, 589, 599, and 608.

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.

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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:—

“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:—“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.

As Lord Westbury puts it in the case of the *Secretary of State for India v. Underwood* (1): “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.

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.)

It was thus attempted, though it seems to us with questionable wisdom or fairness, to preserve what I suppose were re-

(1) L. R., 4 Eng. and Ir. App., 605.

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garded, 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.)

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 Philip 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 Philip 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.

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.

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.

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

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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 Hatherley again at p. 590 of the case already cited: "Those who have not yet paid in excess might all be held to 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."

It seems to us, therefore, that even Lord Hatherley, 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 Chelmsford, Lord Westbury, and Lord Colonsay would have been of that opinion.

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



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. Fålle, if he had continued to live.

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

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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 affect the nominees of all the existing subscribers, and beyond this, for the purposes of this case, it is not necessary to go.

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.

*Suit dismissed.*

Attorneys for the plaintiffs: Messrs. *Carruthers and Jennings.*

Attorney for the defendants: Mr. *Fink.*

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