

4. Any society or branch claiming to avail itself of the provisions of this Act shall be debarred from lowering its rate of contribution to the fund operated upon or from increasing the amount of any benefit to be paid out of the said fund until the next quinquennial valuation.

APPENDIX IV.

LOCKE and OTHERS *versus* THE PUBLIC TRUSTEE, as Administrator of Frederick E. Bisley, deceased.

In the Supreme Court of New Zealand, Nelson District.—Judgment of Richmond, J., delivered 19th August, 1886.

THE plaintiffs in this case are the trustees of Court Perseverance, Motueka, a registered friendly society under the Act of 1882. The defendant is the Public Trustee, as administrator of the estate of Frederick E. Bisley, deceased. Bisley had been for many years permanent secretary of the society, and, at his death, was indebted to the society in a sum of money amounting, according to the statement of the plaintiffs, to £587 16s. 7d. The plaintiffs claim, on behalf of the society, to be paid this sum in preference to other debts or claims against the estate of Bisley, by virtue of section 13 of "The Friendly Societies Act, 1882," subsection (9). The cause was tried by me without a jury at the last sittings at Nelson, and was reserved for further consideration. It was proved that Bisley at his death was accountable for the following sums received by him on account of the society: Bank of New South Wales, fixed deposit and interest, £385 16s. 9d.; Colonial Bank, Motueka, fixed deposit and interest, £156 13s.; sundry small sums, £43 1s. 5d.: amounting in the whole to £585 11s. 2d. Under the by-laws of the society it is plain that the treasurer, and not the secretary, was the proper custodian of the uninvested moneys of the society. Investments, including, it seems, fixed deposits in banks, were to be in the names of the trustees. Rule 20 defines the duties of the permanent secretary, and provides that he shall receive all contributions and other moneys on behalf of the court at the monthly meetings, and hand over the same to the treasurer before leaving the court. Unfortunately the society, as too often happens, acted with habitual disregard of its own by-laws. Bisley was intrusted with a cheque payable to bearer, which enabled him to withdraw the fixed deposit with the Bank of New South Wales, and to pay the amount to the credit of his own drawing account with the Colonial Bank at Motueka. The fixed deposits with the Colonial Bank were made by him in his own name with cheques placed in his hands by the treasurer. All the transactions display on the part of the trustees and officers a blind confidence in Bisley and an entire ignorance of business. It is quite clear that the money which came to Bisley's hands in the way described was not in his possession by virtue of his office in the sense in which these words have always been construed in enactments similar to that on which the claim is founded. As secretary, Bisley had no business to be in possession of the money. It was not received by him in the regular and proper course of his official duty. It makes no difference that resolutions of the court are said to have been passed from time to time purporting to warrant his receipt of it. Such resolutions were, according to the constitution of the society, ineffectual to alter the by-laws. I hold, therefore, that the claim to preference in administration under section 13 of the Act fails.

But, on a different ground, it appears to me (on the authority of a long line of cases reviewed by the late Master of the Rolls in *Knatchbull versus Hallett*, 13 Ch. D., 696) that there exists a preferential right to a part of the amount claimed. The balance of £119 7s. 11d. at Bisley's credit in his account with the Colonial Bank is identified as part of the fixed deposit of £149 4s., which, with interest added, amounted, on the 2nd August, 1885, to £156 13s. The £149 4s. was made up, amongst other sums which are not identified as the society's property, of two cheques, one for £40 and one for £75, drawn by Mr. Staples, and handed to Bisley to place on fixed deposit for the society. Those two principal sums, together with the interest attributable to them, constitute a specific trust fund exceeding £119 7s. 11d. in amount, which can, I think, be followed into the hands of the administrator as still partly existing in specie in the shape of the bank balance at Bisley's credit. To that extent the plaintiffs are entitled to preference in administration. On the residue of their claim they must take a dividend with the other creditors.

Each party must pay their own costs—those of the Public Trustee to be paid out of the estate.

APPENDIX V.

RULES OF THE NEW ZEALAND FRIENDLY SOCIETIES' MUTUAL FIDELITY GUARANTEE ASSOCIATION.

1. That the name of the association be "The New Zealand Friendly Societies' Mutual Fidelity Guarantee Association," and that it be composed of societies and branches established in New Zealand, and registered under the Friendly Societies Act, and of such only. That the office of the association be _____, or as the Committee may from time to time determine.

2. That the guarantee given by the association shall cover any defalcation which shall be made by the secretary or treasurer of a society or branch which shall have been enrolled in the association, in respect of moneys held by the said officers *as such*, belonging to the said society or branch, subject to the provisions contained in the subsequent rules.

3. That no liability shall be incurred by the association unless the appointment of the defaulting officer shall have been notified to the secretary of the association within one calendar month after the date of the appointment of the said officer.

4. That no liability shall be incurred by the association in respect of any defalcation by an officer of a society or branch which shall not have paid the premium (if any) due in advance for the current year.

5. That no liability shall be incurred by the association in respect of any defalcation which shall not have been notified to the secretary of the association and claimed for within six months from the end of the year in which the defalcation occurred.

6. That no liability shall be incurred by the association in respect of any defalcation committed prior to the date at which the society or branch shall have been enrolled in the association.

7. That no liability shall be incurred by the association unless the society or branch making the claim shall lay a criminal information against the defaulting officer.

8. That, in case of any dispute between the association and an enrolled society or branch, the matter shall be referred, by consent of both parties, to the Registrar of Friendly Societies, or else to arbitration, each party to the dispute appointing an arbitrator, and these two if they cannot agree appointing a third; and that the decision of the Registrar or of a majority of the said arbitrators, as the case may be, be final and without appeal to any Court of law.

9. That the following scale of premiums be payable yearly in advance until a capital sum of not less than £300, and not more than £500, be accumulated, and that after such accumulation no further premium be payable by any society or branch which shall have paid one year's premium until the capital of the association shall again fall below the sum of £300: Provided that the association shall always have the power to make an extra levy, to be calculated *pro rata* according to the amount for which it is insured, whenever the amount of defalcations to be made good shall exceed the total funds in hand:—

Scale of Premiums and Guarantee Bonds.						Annual
Total Maximum Guarantee.*						Premium.
£50	..	..	..	..	..	£0 10 0
100	..	..	..	..	..	1 0 0
150	..	..	..	..	..	1 10 0
200	..	..	..	..	..	2 0 0

* By "total maximum guarantee" is meant the total amount for which the association will be liable during any one year.