

1947

Present : Howard C.J. and Wijeyewardene J.
DISSANAYAKE, Appellant, and JAYAWARDENE,
Respondent.

S. C. 143—D. C. Colombe, 191 X.

Claim by Co-operative Society—Action brought and decree entered—Reference to arbitration—Res judicata—Co-operative Societies Ordinance—Chapter 107, section 45.

When a Co-operative Society brings an action in respect of a debt due to it by a member and obtains a decree its claim is merged in the decree and cannot thereafter be referred to arbitration under section 45 of the Co-operative Societies Ordinance (Chapter 107).

A PPEAL from an order of the District Judge of Colombo.

N. E. Weerasooria, K.C. (with him *Kingsley Herat*), for the plaintiff, appellant.

L. A. Rajapakse, K.C. (with him *H. A. Koattogodde* and *G. T. Samarawickreme*), for the defendant, respondent.

March 11, 1947. HOWARD C.J.—

The appellant in this case appeals from an order of the District Judge of Colombo, dismissing his application for the execution of an award made under section 45 of the Co-operative Societies Ordinance (Cap. 107). The award was made under sub-section (5) of this section and the matter had been referred to the arbitrator by the Registrar under sub-section (2). The respondent was an ex-member of the registered society in question and it is maintained by the appellant that there was a debt due by him to the registered society, having regard to the language used in sub-section (1) of section 45 of this Ordinance. Sub-section (1) provides that if any dispute touching the business of a registered society arises amongst various categories of persons as set out in paragraphs (a), (b), (c) and (d), such disputes shall be referred to the Registrar for decision. Sub-section (1) then reads as follows:—"A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this sub-section".

It would appear that in D. C. Colombo No. 46,956/M the Co-operative Society sued the respondent to recover a sum of Rs. 890 and interest on a bond dated February 17, 1926. Decree was entered against the debtor on January 26, 1932. On October 21, 1932, writ issued against the debtor and on October 18, 1932, an application was made for the arrest of the debtor. On November 29, 1933, the debtor moved that the warrant should be re-called and his application was allowed on October 17, 1934. On February 15, 1943, that is over ten years after the decree, a second application for writ was made. This application was refused on May 27, 1943, because the decree was barred by prescription. In spite of the fact that execution had been refused the appellant maintains that there was still a claim by the society for a debt or demand due from the respondent who was a past member of the society. The learned District Judge, as I have already said, dismissed this application, holding that the debt was merged in the decree and therefore the matter is *res judicata* and there is an estoppel.

In *Spencer Bower on Res Judicata* at page 177 we find the following words:—"Any cause of action which results in a judgment of an English judicial tribunal whereby relief is granted to the plaintiff, or other 'actor' in the proceedings, is in contemplation of law merged in the judgment, as soon as pronounced, and thereby loses its individual vitality, and disappears as an independent entity, any English judgment even of the lowest degree being regarded as of a higher nature than any, even the

most important, cause of action". Therefore, the cause of action no longer remains and is superseded by the decree. Moreover, in the case of *Silva v. Leiris Appu*¹ we find that Koch J. has dealt with this matter in the following passage:—"Once the intervention of a Court has been sought and once a decree has been entered, the contractual relations are determined and the liability of one to the other is no longer under the contract but under the decree which takes its place and which is the formal expression of the results arrived at by the judgment. The parties thereupon pass out of the domain of contract and enter that of a decree. Once this happens the common law ceases to operate so far as the decree holder's executory powers are concerned and the provisions of the Civil Procedure Code come into play".

It is contended, however, in spite of this decision that the words "a claim by a registered society for any debt or demand due to it from a member or past member" must be given their ordinary meaning and that a claim still exists. We do not think this argument can be maintained and that a claim by a registered society for any debt or demand does not include a decree of a court. In these circumstances we think that the learned District Judge came to the right conclusion and the appeal is dismissed with costs.

WIJEYWARDENE J.—I agree.

Appeal dismissed.

