1954 *Present :* **Gratiaen J. and Fernando A.J.**

PARAKRAMA SAMUDRA COLONY C. A. P. S. SOCIETY, LTD., Appellant, *and* E. S. WIMALASEKERA, Respondent

S. C. 479—D. C. Anuradhapura, 3,122

Co-operative Societies Ordinance (Cap. 107)—Section 18—Contractual liability of society—Effect of by-laws.

A co-operative society, upon registration under the Co-operative Societies Ordinance, becomes incorporated by statute (section 18), and its liability in contract is regulated by the limits of its constitution and of its by-laws. The President of a co-operative society has, therefore, no power or authority to commit the society to contractual obligations into which, according to the by-laws, the Committee alone can enter.

APPEAL from a judgment of the District Court, Anuradhapura.

H. V. Perera, Q.C., with *E. R. S. R. Coomaraswamy*, for the defendant appellant.

S. J. V. Chelvanayakam, Q.C., with *N. Kumarasingham*, for the plaintiff respondent.

Cur. adv. vult.

June 16, 1954. GRATIAEN J.—

The appellant is a co-operative society registered under the Co-operative Societies Ordinance (Cap. 107), and the respondent is a trader doing business at Hingurakgoda. This appeal is from a judgment of the learned District Judge of Anuradhapura awarding the respondent Rs. 41,892·50 as damages against the society for an alleged breach of contract to supply to him a certain quantity of paddy.

According to the plaint, a contract was entered into between the society and the respondent on 15th November, 1949, for the sale of 20,000 bushels of paddy at Rs. 8·25 a bushel ; the respondent had paid sums aggregating Rs. 62,150 by instalments as part of the consideration between 15th November, 1949, and 6th December, 1949, but only 6,215 bushels had been delivered in terms of the contract, so that the society was in default in respect of the balance 13,785 bushels (for some of which, admittedly, no payment had been made).

The amount claimed includes a sum of Rs. 10,876·25 representing that part of the total amount advanced against which no deliveries had been made, but Mr. Chelvanayakam concedes that this item also falls to be included under the general head of " damages " for breach of contract. It was certainly not claimed upon any alternative cause of action such as " money had and received " or on the footing of " unjust enrichment ".

For the purposes of considering the grounds upon which Mr. Perera has challenged the correctness of the judgment under appeal, I shall

assume that the respondent's version of the transaction is substantially correct. The society itself was not in a position to offer any reliable evidence as to what had originally taken place—the reason being (as the learned judge points out) that two of the society's office-bearers (with whom the respondent had carried on all his negotiations in regard to the alleged contract) had embezzled a large portion of the money paid to them by the respondent, and fabricated the society's books in order to cover their fraud. The relevant facts may be summarised as follows : The society purchased paddy from its members, who were cultivators, at a guaranteed price of Rs. 8 per bushel, and sold the produce to outsiders at prices determined from time to time by the Committee. (*By-law 44* of the society prohibited credit sales except on terms as to security previously approved by the Registrar of Co-operative Societies.)

On 1st November, 1949, the President of the society (with the Committee's authority) advertised in the " Ceylon Daily News " that 26,000 bushels were available " for immediate sale ". On the same day the respondent negotiated with the President for the purchase of 20,000 bushels, and the President orally accepted his offer of Rs. 8·25 per bushel subject to this rate being confirmed by the Committee. So matters stood until 15th November, 1949, when the previous arrangement was orally confirmed. The respondent paid a sum of Rs. 500 to the President out of the proposed purchase-price, and obtained from him a receipt P3 describing the payment as " an advance agreeing to sell 20,000 bushels at Rs. 8·25 per bushel *if the Committee agrees to sell at this rate* ".

The receipt P3 did not, however, incorporate all the terms of the bargain. According to the respondent, he did not possess either the funds or the storage facilities to permit of a " spot sale " whereby he could take immediate delivery of 20,000 bushels on payment of the full contract price. Accordingly, the arrangement was that, subject only to general confirmation of the price by the Committee (but without reference to any particular contract with any specified buyer) the respondent would be entitled " to pay whatever money (he) had and buy the paddy from time to time ".

Later in the day, i.e. on the 15th November, 1949, the Committee passed a resolution " to sell the paddy at the store without gunnies at Rs. 8·25 to be delivered at the store and further to receive payment before delivery ". The President immediately informed the respondent that the price had now been fixed, and the respondent's contention is that his previous oral agreement with the President thereupon came into operation as an enforceable contract binding on the society.

According to the plaint, this " contract " was performed in part both by the respondent and by the President " on behalf of the society ". The respondent made various payments and received instalment deliveries from time to time—although it is not suggested that, against each payment, a precisely corresponding quantity of paddy was handed to him.

This is the contract which the respondent seeks to enforce against the society. Analysed in the context of the Sale of Goods Ordinance, it is capable of two alternative interpretations. *Either* a specific quantity

of 20,000 bushels was appropriated to the contract on 15th November itself, the seller undertaking to retain the goods at the buyer's disposal until such time as the latter chose to remove them by convenient instalments (against payment of an equivalent instalment of the contract price); *or*, in the alternative, the seller bound himself by agreement to sell an aggregate quantity of 20,000 bushels at future dates selected by the buyer, so that the property in part of the goods would pass to the buyer whenever he took an instalment delivery against an instalment payment.

The Committee itself had no knowledge of the fact that the President had purported to bind the society in this way. The market price of paddy soon began to show an upward trend, and certain quantities in stock on or after 15th November (including that which, according to the respondent, should have been ear-marked for him) were sold and delivered to other purchasers at higher rates in the ordinary way. In the result, the President was not in a position fully to implement his earlier undertaking with the respondent even if he so desired. What he and another office-bearer actually did was to embezzle certain instalments of the purchase-price received from the respondent, and to put him off with false promises on various pretexts. Inevitably, the fraud came to light, and the President was interdicted from duty. The present action then commenced.

The society's books of account (fraudulently maintained by the dishonest office-bearers) sufficiently establish at any rate that the society had not received the benefit of any sum exceeding the value of paddy actually received by the respondent under the "contract" sought to be enforced. No question of "unjust enrichment" would therefore have arisen as a ground of liability even if it had been put in issue between the parties.

The defence which was pressed before us in appeal was that, even upon the respondent's version of the transaction, his agreement with the President did not constitute a contract enforceable against the society. In other words, the President had no power or authority to commit the society to contractual obligations of that kind. In my opinion, this objection must be upheld.

The society, upon registration under the Co-operative Societies Ordinance, became incorporated by statute (section 18), and its liability in contract is regulated by the limits of its constitution and of its by-laws. Under *by-law 32*, the Committee "shall exercise all the powers of the society subject to any . . . . restrictions in the by-laws", and is specially empowered "to decide the terms of purchase and sale of any goods"—*by-law 32 (14)*. *By-law 32 (21)* further empowers the Committee (and no one else):

> "to enter into contracts on behalf of the society. Such contracts shall bear on behalf of the society the signature of the President and of either the Secretary or the Treasurer of the society".

I have already referred to the special restrictions imposed with regard to sales on credit. *By-law 44* clearly applies to "spot sales" across

the counter. It also invalidates, in my opinion, any "agreement to sell", even if directly entered into by the Committee, on terms as to credit not previously approved by the Registrar. In order to minimise the risks involved in improvident transactions without adequate safeguards, only the Registrar is empowered to bind the society by decisions as to whether, and on what terms, credit facilities could safely be given to a customer.

The President is merely the chief executive officer of the society, and his powers and duties are specified in *by-law 35*. In the present case, the officer concerned was also the society's Treasurer, and as such he was required to take charge of all monies received "by the society" from its members and its customers—*by-law 41*.

Having regard to these by-laws, it is perfectly clear to my mind that the society is not liable under the contract purported to have been entered into by its President in November 1949. Had the President, acting upon the Committee's resolution of 15th November, merely sold 20,000 bushels to the respondent against immediate payment at the approved rate, the transaction would without doubt have been binding on the society. But we are here concerned with a contract imposing many onerous obligations on the society, some of them to be fulfilled at a future undetermined date : for instance, it involves an irrevocable undertaking to accept payment at Rs. 8·25 even if the market for paddy should subsequently rise, and to keep in stock a very large quantity ear-marked for the buyer for an unspecified period of time. The formation of such a contract fell entirely outside the scope of an individual office-bearer's functions, and only the Committee was vested with power to bind the society in that way. This power was not exercised by the Committee, nor was it delegated to the President. Indeed, it was not capable of delegation. Moreover, it is implicit in the language of *by-law 32 (21)* that a contract involving future obligations should, if entered into by the Committee, be reduced to writing so that the ascertainment of its terms should not depend on oral testimony. The present contract was therefore also defective in matter of form. Finally, it might well have been argued that the contract purported to grant the respondent credit facilities in violation of *by-law 44*. For all these reasons, I conclude that no cause of action had accrued to the respondent to sue the society for the recovery of Rs. 41,892·50 or any part of that sum.

It was the duty of the respondent, before entering into this transaction, to satisfy himself as to the powers of the office-bearers with whom he chose to negotiate. Mr. Chelvanayakam conceded that it was the Committee alone which could validly enter into a contract of the kind sought to be enforced, but he argued that these powers had, in the ordinary course of business, been delegated to the President subject only to the limitation as to the price at which the paddy might be sold. I do not agree that the present case falls within the well-known "principle of convenience" which entitles a third party to assume against a corporation that all matters of internal administration have been duly complied with—*Royal British Bank v. Turquand* [1] and *Dey v. Pullinger Engineering Co.* [2]. That principle only applies where the third party can point to an

[1] *(1856) E. & B. 327.* [2] *(1921) 1 K. B. 77.*

article (or by-law) *authorising the delegation of authority by the Directors* (or persons vested with the actual power) to someone who had purported to enter into the contract on behalf of the corporation. In such a case, the *ostensible* authority of the servant or agent binds the corporation even though there had been no delegation *in fact*. But the present action concerns a contract with a President who had no delegated authority to bind the society, and to whom the Committee had no power to delegate its own powers. In such a situation, the contract is wholly void as against the corporation—*Kreditbank Cassell v. Schenkers, Ltd.*[1].

Mr. Chelvanayakam finally suggested that the respondent was at least entitled to recover the sum of Rs. 10,876·25 which he had overpaid to the President and in exchange for which no paddy had been delivered. Suffice it to say that no such claim was made on the basis of any alternative cause of action. Indeed, I do not see how it could have succeeded. The society was not " enriched " in any way by payments made to (and retained by) two office-bearers who had no authority under the by-laws to accept money on behalf of the society under a contract by which the society was not bound.

I would set aside the judgment under appeal and enter a decree dismissing the respondent's action with costs both here and in the Court below.

FERNANDO A.J.—I agree.

Appeal allowed.