APPELLATE CIVIL.

Before Mr. Justice Pandrang Row and Mr. Justice Horwill.

KUPPU GOVINDA CHETTIAR (PLAINTIFF), APPELLANT,

v.

UTTUKOTTAI CO-OPERATIVE SOCIETY BY ITS LIQUIDATOR (DEFENDANT), RESPONDENT.*

1940, April 5.

Code of Civil Procedure (Act V of 1908), ss. 2 (17) and 80—"Public Officer" within the meaning of sec. 2 (17)—Liquidator appointed by Registrar of Joint Stock Companies—If "public officer"—Winding up or dissolution of a co-operative society—Suit in civil Court with respect to any matter connected therewith—Madras Co-operative Societies Act (VI of 1932), sec. 48—Sanction of Registrar under—If condition precedent to maintainability of such suit—Resignation of member of a private body like co-operative society—Absence of by-laws about same—Resignation effective even without acceptance by society—Inapplicability of principles governing resignation of public office to such cases.

Held: (i) A liquidator appointed by the Registrar of Joint Stock Companies to wind up a co-operative society is not a "public officer" within the meaning of section 2 (17) of the Code of Civil Procedure simply because he is given certain quasi judicial powers and the duties which he performs must necessarily be regarded as public duties. He is not appointed by the Government. Moreover, every person appointed by the Government to perform public duties is not necessarily a "public officer." Hence, a suit against the liquidator is not bad for want of notice contemplated by section 80 of the Code of Civil Procedure,

(ii) Under section 48 of the Co-operative Societies Act the sanction of the Registrar is a condition precedent to the maintainability of a suit in a civil Court with respect to any

* Appeals Nos. 352 and 353 of 1937.

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matter connected with the winding up or dissolution of a co-operative society,

(iii) In the absence of any provision in the Act or the by-laws of the co-operative society as regards the resignation of a member and as regards the mode in which a member ceases to be one, the law does not, in the case of an office in a private body like a co-operative society, require that the resignation of a member should be accepted by the society or any one else on its behalf before it takes effect. The principles governing the resignation of a public office cannot be applied to such cases.

APPEALS against the decrees of the District Court, Chingleput, in Original Suits Nos. 1 and 12 of 1935.

K. Bhashyam and *T. R. Srinivasan* for appellant.

C. S. Venkatachariar and *D. Ramaswami Ayyangar* for respondent.

Cur. adv. vult.

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The JUDGMENT of the Court was delivered by PANDRANG ROW J.—These are appeals from the decrees in two connected suits, Original Suits Nos. 1 and 12 of 1935, on the file of the District Court of Chingleput. The plaintiff was the same in both the suits and the defendant also was the same. The plaintiff is the appellant and the defendant, who is the respondent in these appeals, was described as the Uttukottai Co-operative Society by its liquidator. The suits were for a declaration that certain orders made in 1933 and 1932 by the liquidator of the co-operative credit society in question determining the contribution payable by the plaintiff in the suits at Rs. 8,000 and Rs. 2,000 respectively were illegal and void and of no effect whatever as against the plaintiff. The suits were resisted on various grounds and they were tried together and disposed of in one and the same judgment by the District Judge. It is an unfortunate feature that in this case judgment was pronounced by the

Court below more than a year after the case had been closed.

On all the points except one, the findings of the Court below were in favour of the plaintiff. But the suits were dismissed, though without costs, on the sole ground that no notice had been given as required by section 80 of the Code of Civil Procedure. In other words, it was only on the ground of want of notice that the suits were found to be not maintainable, and in other respects the findings were in favour of the plaintiff. The only point therefore argued in these appeals in the first instance, so to say, on behalf of the appellant is that the finding of the lower Court on the question of notice is wrong. Section 80 of the Code of Civil Procedure requires that, unless notice is given at least two months before the suit, no suit can be instituted against the Crown or against any public officer in respect of any act purporting to be done by him in his official capacity. In this case no notice whatever was given, and the contention on behalf of the plaintiff-appellant is that no notice is required because the defendant in the suit is not a public officer as defined in the Civil Procedure Code; *vide* section 2 (17). It has been contended that, even assuming that the defendant in the suit is the liquidator and not the society, he cannot be regarded as a public officer within the meaning of the Code of Civil Procedure. In this connection perhaps it is desirable first to deal with two applications presented at a very late stage, namely, after the hearing of the appeal was over and just before judgment was to be delivered, one application in each appeal to amend the cause-title so as to show the defendant as "the liquidator of the society" instead of "the society by its liquidator". It is enough to say as regards the oral

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application for permission to withdraw the suits, that it is now withdrawn, and there is no need to pass any other order on it except to dismiss it as it is withdrawn. As regards the first application for amendment of the cause-title of the plaint, it would be highly undesirable from every point of view to allow applications of this kind which are made after the whole case is argued and the parties have an opportunity of knowing or at least guessing with some degree of accuracy what is going to happen to their case. It is not as if this objection to the maintainability of the suit in view of section 48 of the Co-operative Societies Act was not raised in the trial Court, and the application to amend the cause-title should have been put in much earlier. There is really no explanation forthcoming for the delay in making the present application. We are therefore not prepared to allow that application and it is accordingly dismissed. We may add, however, that the application to amend is absolutely contrary to what is alleged in the grounds of appeal, where it is contended that the defendant in the suit was the co-operative society and not the liquidator and therefore the question of notice did not arise at all. In other words, the main ground on which the finding of the Court below, which is against the appellant, was attacked was that the Court below failed to notice that the defendant in the suit was the co-operative society and not the liquidator, and of course, it was nobody's case that the co-operative society is a public officer. Apart from the fact that the suit is really directed against the society which is represented by the liquidator, because the society has been ordered to be wound up and a liquidator has been appointed by the Registrar, the question remains whether even a liquidator appointed by the Registrar can be regarded as

a public officer within the meaning of the Civil Procedure Code. It is contended that he is a public officer because he is an officer in the service of the Crown. It is obvious, however, that *qua* liquidator he is not an officer in the service of the Crown, and it is not the case of either side that the liquidator as such receives any pay from the Crown or receives any remuneration for his duties as liquidator. The liquidator in this case is the Deputy Registrar of Co-operative Societies who, of course, in that capacity is a public officer. But that does not mean that when he is actually acting in the capacity of a liquidator of a co-operative society, he is an officer in the pay of the Crown or in the service of the Crown.

The only decision which has been relied upon by the Court below is the one reported as *Liquidator, Yedha Society, Nimar* v. *Prag*(1). Apart from the fact that in that decision it is merely stated without any discussion that a liquidator should no doubt be considered a public officer within the meaning of section 2 (17) of the Civil Procedure Code, the actual facts of the case show that it was not necessary in that case to give any notice to the liquidator because the suit was not brought against the liquidator in respect of any action of his. In other words, the observation was an *obiter dictum*. Another case which has been cited to us is the one reported as *Sangakheda Society* v. *Ayodhya-prasad*(2) in which POLLOCK J. refers to the earlier decision of the Nagpur Court as one in which it was assumed without discussion that a liquidator is a public officer as defined in section 2 (17) of the Civil Procedure Code. The reason given by POLLOCK J. for holding that the liquidator is a public officer is that

(1) A.I.R. 1934 Nag. 201. (2) A.I.R. 1939 Nag. 232.

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the liquidator was appointed by the Government and his duties are quasi judicial. In other words, the proposition as put forward in the case is that, as the liquidator is appointed by the Government and performs duties, he is an officer in the services of the Government when acting as the liquidator and therefore a public officer as defined in the Civil Procedure Code. In the present case the liquidator is not appointed by the Government but by the Registrar of Co-operative Societies. Even otherwise, we find it difficult to accept the general proposition that because the liquidator is given quasi judicial powers, the duties which he performs must necessarily be regarded as being public duties. Nor are we prepared to accept the proposition that every person who is appointed by the Government to perform public duties is a public officer. If that view were accepted it would follow that even a member or chairman of a local body appointed by Government would be a public officer. The word "service" must necessarily mean something more than being merely subject to the orders of Government or to control by Government. We are unable to accept the view that a liquidator who is appointed by the Registrar of Co-operative Societies to liquidate a private co-operative society is an officer in the service of the Government, and this is the only ground on which it has been sought on behalf of the respondent to support the finding of the Court below. We are therefore of opinion that the present suits cannot be rightly defeated on the plea that no notice was given as required by section 80, Civil Procedure Code.

The decrees, however, of the Court below dismissing the suits have been supported on the ground that the findings on other points by the Court below in favour

of the plaintiff-appellant are wrong. The main point is whether the suit is maintainable in view of the provisions of section 48 of the Co-operative Societies Act, which runs as follows :

"Save in so far as is expressly provided in this Act, no civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act, and when a liquidator has been appointed no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose."

Considerable reliance is placed on behalf of the appellant on the Bench decision in *Vaikunta Bhat* v. *Sarvothama Rao*(1). That, however, was a case which had to consider a similar provision in the Imperial Act, namely, section 42 (6) which runs as follows :

"Save in so far as is hereinbefore expressly provided, no civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act."

In construing that provision it was held by the learned Judges that the liquidator in the case before them acted without jurisdiction and that therefore the civil Court's jurisdiction was not ousted by section 42 (6) of the Co-operative Societies Act of 1912. That was a case which is otherwise on all fours with the present case, because there also the question arose whether a person who had once been a member of a co-operative society could be rightly made to pay a contribution by an order of the liquidator when he had not admitted his liability. In the case before them the contention was that the appellants had ceased to be members five years before the liquidation and it was held that it cannot be said that they had

(1) (1936) I.L.R., 59 Mad., 895.

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no right to ask the civil Court to decide whether they were under any liability to contribute at all. That decision as well as the other decisions which have been mentioned to us were all of them with reference to the Act of 1912 and section 42 (6) thereof. As will be seen from the words of the provisions of the law with which we have to deal, namely, section 48 of the Madras Co-operative Societies Act (VI of 1932), the second clause thereof is far more precise in its language than the provisions in the earlier Imperial Act. For it says that when a liquidator has been appointed (as in this case) no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar. There was no provision of this kind in the earlier Imperial Act for a suit being filed with the leave of the Registrar against a society after a liquidator was appointed. In this case it is admitted that the Registrar refused leave when leave was asked for, and we find it impossible to find any reason for ignoring the plain words of the provisions of law which are applicable to the present case and in particular, the second clause of section 48 of the Act which is as clear as possible. It says that no suit can be instituted against a society when a liquidator has been appointed except by leave of the Registrar. This provision appears to us to stand in the way of the present suits, and though this point was not prominently placed before us in the argument and was certainly not referred to in the Court below, we are not able to find any way out of the situation created by the new law. This finding, namely, that the suits are not maintainable in view of the provisions of section 48 of Madras Co-operative Societies Act (VI of 1932) is sufficient to dispose of these appeals. Nevertheless, as the other point, namely, the question of the liability

of the plaintiff-appellant has been argued at considerable length before us, it is perhaps desirable that we should briefly express our opinion thereon and all the more so because a special request has been made on behalf of the appellant that we should express our opinion on this point.

The point really is a simple one because the facts are practically undisputed. The plaintiff-appellant sent his resignation on 4th June 1930 to the secretary of the society and there is no doubt that that resignation was received by the society and a meeting was held in the next month to consider the resignation. A copy of the letter of resignation appears also to have been sent to the co-operative department. The society in its resolution, dated 1st July 1930 (*vide* Exhibit II), resolved that the resignation should not be accepted. A copy of the resolution was sent to the plaintiff-appellant by registered post, but he appears to have declined to receive it. There can be no doubt that he was aware of the contents or at least of the fact that his resignation had not been accepted. On 24th January 1931 at a general body meeting of the co-operative society the plaintiff was present as a member and took part in it for some time, though he later on was asked to go out by the chairman who presided at the meeting. It is argued on behalf of the respondent that these facts show that the resignation did not take effect and that the plaintiff-appellant really continued to be a member in spite of the letter of resignation sent by him on 4th June 1930. This argument assumes, first, that unless a resignation is accepted it does not take effect in a case of this kind, and secondly, that the subsequent conduct of the plaintiff-appellant amounts to a withdrawal of his letter of resignation. As regards the first assumption, it

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appears to be really without foundation. In the case of an office in a private body like a co-operative society the law does not require that resignation should be accepted by the society or anyone else before it takes effect. The by-laws of the society are altogether silent as regards the mode in which a member ceases to be a member, and there is no reference to resignation in the Act or in the by-laws. There are one or two references in the Act to the withdrawal of members from the society, and it is not contended that there can be no withdrawal or cessation of membership by means of resignation of membership. On the side of the plaintiff-appellant reliance has been placed on two English cases; *Finch* v. *Oake*(1) and *Glossop* v. *Glossop*(2). *Finch* v. *Oake*(1) was a case which related to the membership of the Bermondsey and Rotherhithe Licensed Victuallers and Beer Sellers' Trade Protection Association and though the member who had resigned wanted subsequently to withdraw his resignation, the society declared that he had ceased to be a member by reason of the resignation and it was held that he had really ceased to be a member as soon as his letter of resignation had been received by the committee of the association. In that case also the rules of the association contained nothing as to the right of members to retire, this matter being left to be governed by the ordinary principles of law. In those circumstances it was held that he could withdraw from the association at any moment of his own pleasure and without the consent of his fellow members or the association and, therefore, that immediately the letter of resignation reached the association the member who sent in his letter of resignation ceased to be a member and he could again become a member only

(1) [1896] 1 Ch. 409. (2) [1907] 2 Ch. 370.

by following the rules regarding election of members framed by the association and not by any withdrawal. In the latter case, *Glossop* v. *Glossop*(1), it was a director of a limited company who resigned his office as managing director. On the very day on which the letter of resignation came up for consideration before the special meeting of the directors an attempt was made to withdraw the resignation. But the meeting resolved that the office of managing director had been vacated. In this case, however, the matter of resignation was provided for in two articles of the company, which provided that the office of managing director should be vacated on the happening of any of the contingencies mentioned therein whereby the office of director should be vacated. The provision regarding the latter subject was to this effect:

"The office of director shall be vacated (inter alia) if by notice in writing to the company he resigns his office, provided that the vacation of office shall not take effect unless the directors shall pass a resolution to the effect that he had vacated his office, such resolution to be passed within six months from the happening of the event whereby such director had vacated his office."

In these circumstances it was held that the managing director could not withdraw his resignation without the consent of the company and that he had vacated his office by his letter of resignation and that the resolution of the Board at the special meeting was effective and valid. On the side of the respondent reliance has been placed on two decisions, namely, *Sudarsana Rao* v. *Christian Pillai*(2) and *Kuppu Govinda Chetty* v. *Secretary, Co-operative Central Bank, Conjeevaram*(3). The latter case does not contain any discussion of the question but is important in view of the fact that it deals with the very letter of resignation

(1) [1907] 2 Ch. 370. (2) (1923) 45 M.L.J. 798.
(3) 1932 M.W.N. 18.

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with which we are concerned in this case, though the decision therein was in respect of the resignation of the office of the president of the society, the petitioner being also the president of the society and the letter of resignation being in respect of both his office as president as well as his membership. We are not concerned in the present case with the office of president but only with the question of membership and therefore the decision in *Kuppu Govinda Chetty* v. *Secretary, Co-operative Central Bank, Conjeevaram*(1) is not very helpful. The discussion of the point is contained in *Sudarsana Rao* v. *Christian Pillai*(2) where the same learned Judge, namely, RAMESAM J., relies to a great extent on certain passages from two text-books on Elections. The case with which the learned Judge had to deal was one in which the question for decision was whether a certain person had ceased to be an honorary magistrate prior to a certain date on which he was elected as a member of a local body. In that case it was held that an honorary magistrate does not cease to hold his office by his resignation but only on the acceptance of his resignation. That decision is certainly supported by the extracts from the text-books on Elections which relate to public offices or offices in local bodies in England which cannot be ordinarily given up without either the consent of some authority or the payment of a fine for non-acceptance. That case was one similar to *The Queen* v. *Corporation of Wigan*(3) which was decided in the light of the statutory provision in section 36 of the Municipal Corporations Act, 1882, which provided that a person elected to a corporate office may, at any time, by writing signed by him and delivered to the town

(1) 1932 M.W.N. 18. (2) (1923) 45 M.L.J. 798.
(3) (1885) 14 Q.B.D. 908.

clerk, resign the office, on payment of the fine provided for non-acceptance thereof. The reasoning which would apply to resignation of a public office of this kind cannot be applied to resignation of the membership of a society with which we have to deal in the present case. We are therefore inclined to the view that the membership of the plaintiff-appellant ceased immediately his letter of resignation reached the society, that is to say, early in June 1930. There was thus an immediate cessation of his membership, and there being no provision for withdrawal of any resignation in the Act or in the by-laws, he could become a member again only by complying with the provisions relating to membership. The mere fact that he refused to receive the copy of the resolution sent to him in July 1930 and that he attended a meeting of the society some six or seven months later has no legal effect so far as this question is concerned in the sense that these subsequent circumstances could not possibly restore him to his membership or make him a member after he had ceased to be one. It follows from this that the plaintiff-appellant ceased to be a member more than two years prior to the orders complained of in the present suits and to the liquidation.

The only other point which perhaps deserves some reference is the question whether the liquidator acted within his jurisdiction in these circumstances. So far as this point is concerned the decision of the Bench in *Vaikunta Bhat* v. *Sarvothama Rao*(1) appears to us to hold the field and, being a case clearly in point, has to be followed unless it is declared not to lay down the law correctly. Reliance has also been placed on two decisions of the Lahore High Court which are to the

(1) (1936) I.L.R. 59 Mad. 895.

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same effect, namely, *Mukand Lal* v. *Liquidator, Malhotra Bank, Hafizabad*(1) and *Anjuman-i-Imdad Qarza Bahami* v. *Mehr Din*(2). In view of the fact that these decisions relate exactly to the present point, whereas the other cases, and in particular *Secretary of State for India* v. *Meyyappa Chettiar*(3) and cases of that description, deal with other enactments, it does not seem necessary for us to consider in detail the question whether the cases dealing with other enactments really affect the present question having regard to the decisions which deal with the exact point which arises in these cases. On these points we are inclined to decide in favour of the plaintiff-appellant. Nevertheless his appeals must fail and the suits must stand dismissed because of the absence of leave from the Registrar for the institution of the suits which, in our opinion, is required by the provisions of section 48 of the Madras Co-operative Societies Act (VI of 1932). Having regard to the circumstances of these cases, we think the just course to follow with regard to costs is to direct the parties to bear their own costs in this Court, the appeals being dismissed and the memorandum of cross-objections also.

G.R.

(1) (1933) I.L.R. 14 Lah. 703. (2) (1937) I.L.R. 18 Lah. 649.
(3) I.L.R. [1937] Mad. 211.