

1875.
September 30.
O. S. No. 196
of 1875.

The defendant is in possession of the premises as tenant under a Tamil rental agreement executed on the 18th February 1872 providing for the payment of Rupees 6-4-0 monthly before the 20th day of each month.

The defendant having paid only Rupees 590-8-1 on account of her debt, this suit is brought for the recovery of the balance.

The defendant alleged that she dealt with the Hindu Jananookoola Nidhi established in 1869, but which was never registered under Act X of 1866, and which no longer exists. She denied that she dealt with the Fund represented by the plaintiffs. She pleaded, among other things, that the Nidhi established in 1869 not having been registered is incapable of suing; that she did not receive the whole of the consideration mentioned in the mortgage and the Promissory Note; that she has paid her subscriptions and interest mentioned in the mortgage in full as well as the principal and interest in the Promissory Note; that the claim on the said Note is barred.

On the 22nd July 1875, the Mr. Justice Kernan settled the following amongst other issues:—

“ Whether plaintiffs are competent to sue, the Company not having been registered at the date of the mortgage and Promissory Note ? ”

Balajee Row, Vakil for the plaintiffs.

Gurumurti Iyer and *Kristnasawmy Chetty*, Vakils for the defendant.

Cur. adv. vult.

This case and Original Suit No. 197 of 1875 (next case) were heard together. The judgment of the Court upon both suits will be found at page 195.

Original Suit No. 197 of 1875.

THE SENNAY POORASAY HINDU JANANOOKoola NIDHI (*Limited*).....Plaintiff.
RAMANJIAH and anotherDefendants.

The plaintiffs sued as the President Secretary, Treasurer and Law Agent of the *Nidhi* or fund for the recovery of

Rs. 1,569-12-6 "being the amount of principal and rent due to the plaintiffs up to 15th April 1875 on a Tamil registered Mortgage Bond, and also a rental agreement in writing respectively dated Madras 30th May 1870." The plaintiffs claimed further rent and costs; and prayed that in default of payment the property mentioned in the plaint might be sold and the sale proceeds thereof be applied so far as they can extend towards the payment of the said debt.

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The defendants pleaded, *inter alia*, that they were not indebted to the plaintiffs; that their dealings were with the Hindu Jananookoola Nidhi established in 1869 which was never registered and does not now exist; and that the said Nidhi is incapable of suing as it was not registered under Act X of 1866.

On the 22nd July 1875, the Honorable Mr. Justice Kernan settled the following amongst other issues:—

"Whether the plaintiffs are competent to sue, the mortgage having been executed before the date of registration of the Company?"

Balajee Row, Vakils for the plaintiffs.

Gurumurti Iyer and *Kristnasawmy Chetty*, Vakils for the defendants.

Cur. adv. vult.

On the 30th September the Court delivered the following judgment.

INNES, J.—The plaintiff in these cases is a Society now registered under Act X of 1866 but which admittedly came into existence after the passing of that Act, and made the loans it now seeks to recover some time before it was registered under the provisions of the Act. One of the questions raised by the defendants in each case is, whether the plaintiff is entitled to sue for debts arising out of transactions so entered into before registration.

I have taken time to consider the point as it appeared to me doubtful whether it could have been intended that persons who, like the defendant in each of these two cases, were actually members of the Association and had borrowed

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money of it with a full knowledge of its position in the eye of the law should be entitled, after enjoying the advantages of the loans, to turn round upon the Association and say, you were a legal nullity when you lent me the money and I am not bound to pay you.

The Act no doubt in Section 4 prohibits the formation of such an Association unless it is registered under the Act, or is formed in pursuance of some other Act or of Letters Patent.

The Act does not deal with the rights and liabilities of unregistered Companies except in the eighth part in which it provides for their being wound up, and in Section 218 it distinctly says that an unregistered Company shall not, except in the event of its being wound up be deemed to be a Company under this Act, and then only to the extent provided by this part of the Act.

Now, the course prescribed by Act X of 1866 is the only mode by which a Society of this kind and numbering more than 20 members can in British India assume a corporate status and capacity, and, until it has taken that course it is simply a number of people associated for purposes perfectly legal perhaps, but unprovided with any machinery for proceeding at law to recover debts on obligations entered into with the officers of the Association on its behalf.

In the present cases the officers of the non-registered Association who sue are the very persons in whose presence on behalf of the Association the loans were contracted and who continue to hold the same offices as they then did. Section 280 of the Act, which was appealed to by the Vakil for the plaintiff, is a section of Part VII of the Act and has exclusive reference to Companies in existence at the time of the commencement of the Act, and Section 224 must be read with Section 223 which applies to Companies required to register by any Act repealed by Act X of 1866, and certainly there is nothing in the Act to suggest that subsequent Registration can supply that active legal capacity in regard to obligations entered into prior to Registration which

the Act withholds from such an Association while unregistered.

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Then, apart from the Act, is the plaintiff otherwise in a position to recover in either of these suits ?

In the Industrial and Provident Societies Act, 1862 (25 and 26 Vic., c. 87) which provides for the Registration under it not only of Societies already registered under prior enactments but also of any societies of the like nature that may be newly formed, it is provided further that the certificate of Registration shall vest in the society all the property that may at the time be vested in any person in trust for the society and in the *Queensbury Industrial Society v. Pickles*(1) it was held that property included debts due, and that this provision so effectually passed the right to recover the debts due to the Society from the trustees appointed prior to Registration to the society itself that the Society could sue in its corporate name for debts due to it prior to Registration, but that the Trustees could not sue. Such Associations had found it necessary to vest their property in Trustees in consequence of the extreme inconvenience which otherwise attended the conduct of suits for the recovery of debts due to them. This inconvenience ceased when they became corporate bodies and could sue in their corporate name and had no longer to make every member of the Association a party to each legal proceeding. No similar provision is to be found in the Indian Companies Act, and it would therefore seem that Trustees in whom the property of legally formed Associations were vested before registration might sue after registration for debts previously accrued due to the Association.

But the persons who are plaintiffs in the present suits were not constituted Trustees. They were, apparently, merely delegated by the Society to conduct some of its affairs. None of its property is vested in them, and these obligations in their names are, on the face of them, due to the Association itself as it existed prior to registration, and

(1) 35 L. J., Ex., p. 1, s. c. L. R., 1 Ex., p. 1.

1875. this is not such an Association before Registration as is
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No doubt legal disabilities do not always avoid contracts by persons labouring under a disability, as a man may recover on a contract which, as an infant, he entered into with another. But in such a case there is a person to the contract though he be labouring under a disability. There is merely a want of capacity. In the case of this Association formed subsequent to the passing of Act X of 1862 there is, for the purpose of contracting, neither the status of person nor that of capacity, for the law forbids its existence as an Association.

Whether by joining all the individuals who were members of the Association at the date of these contracts or the survivors of those persons or under any other form of suit, the Association could sue for recovery of their debts it is unnecessary now to determine. It is sufficient to say that they cannot recover in the suits in their present form. These suits will, therefore, be dismissed but without costs.

Suits dismissed.

Original Jurisdiction.(a)

Original Suit No. 214 of 1875

THE PURSEWAULKUM HINDU JANOBACARA NIDHI..*Plaintiff.*
 NARAYANA ACHARRY and another.....*Defendants.*

Section 16 of Act X of 1866, does not refer to obligations contracted with a Company in accordance with the purposes of its formation other than those directly implied by the Articles of Association.

Section 208 of the Act has no application to Companies formed but not registered after the Act came into force.

1876.
 February 1.
 O. S. No. 214
 of 1876.

THE Plaintiff Association sued, by its President, Agent, and Secretary, for recovery of Rs. 273-4-2 being the amount of principal and balance of interest up to the 31st March 1875, due in respect of a Tamil Mortgage Bond for the sum of Rs. 172, dated the 29th June 1871, and a Tamil Promissory Note payable on demand, dated the 30th December 1870, for the sum of Rs. 28 respectively executed

(a) Present :—Innes, J.